

Before S.S. Saron, J.

EX.MAJ. DIPINDER SINGH,—Petitioner

versus

UNION OF INDIA & ANOTHER,—Respondents

C.W.P. NO. 12138 OF 1995

30th May, 2003

Army Act, 1950—Ss. 8, 191 & 192—Army Rules, 1954—Rls. 16—B & 18—Defence Services Regulations—Regs. 104 & 105—Acceptance & Approval of the request for pre-mature retirement of an Army Officer—Application for withdrawal of request—Competent authority rejecting the request—Rl. 16—B entitles an officer to apply to the Government for withdrawal of his request before he is actually retired and Central Government may at its discretion grants such withdrawal—Rl. 18(1) provides that the retirement of an officer shall take effect from the date specified in the notification—Application for withdrawing the request made before the order became effective—Mere approval of retirement would not make the retirement effective—Giving of an undertaking in the request would not operate as an estoppel against the statutory provisions of the Rules—Power to consider the request for withdrawal of application for pre-mature retirement vests in the Central Government—Such power cannot be delegated to the Army Headquarters in the absence of any statutory provisions or rules—Authorities failing to take into consideration all the relevant material while considering request for withdrawal—Decision of the authorities rejecting petitioner's request for withdrawal held to be arbitrary—Petition allowed.

Held, that the mere approval of retirement,—vide letter dated 26th February, 1993 would not make the retirement effective in praesenti but in future from its effective date. The mere fact that the petitioner had given an undertaking in his request for seeking voluntary retirement, would not operate as an estoppel against the statutory provisions of the Army Rules. Therefore, the position is that unless the employee is relieved of the duties after acceptance of offer of voluntary retirement jural relationship between the employer and employee does not come to an end. The order dated 26th February, 1993 was a

conditional one and the petitioner was to be relieved of his duties and struck of the strength as early as possible but not later than 90 days of the issue of the said letter. Before the condition of being relieved of his duties could be complied with, the petitioner withdrew his request for seeking voluntary retirement. Therefore, the order approving the voluntary retirement did not become effective.

(Para 25)

Further held, that the statutory provisions i.e. Rule 18 of the Army Rules clearly provide that the effective date is the date specified in that behalf in the notice of such retirement in the official Gazette. The date of retirement of the petitioner indicated in the notification published in the official gazette is 25th May, 1993 and the request for withdrawal of voluntary retirement was before this date on 23rd March, 1993. In terms of Rule 16—B(2) of the Army Rules, it is provided that an officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request and that the Central Government may at its discretion grant such withdrawal of his application. The significant words to be noticed in Rule 16—B(2) are that where request to retire is granted the officer may “before he is retired” apply for withdrawal. Therefore, it is not before grant or acceptance of the request that an officer can apply for withdrawal of his request but he can apply “before he is retired”. The effective retirement would be the date specified in the Notification of such retirement in the official Gazette. To similar effect are the provisions of Regulation 104(d) of the Army Regulations which provide that an officer will not be relieved of his duties until receipt of intimation that his application to retire or resign has been accepted. The provisions of Regulation 105(h) also provide for withdrawal of request for pre-mature retirement “after acceptance”. Therefore, it is evident that the petitioner could withdraw his request for pre-mature retirement after its approval or acceptance and it was for the Central Government to consider the same in accordance with its discretion.

(Paras 28 & 29)

Further held, that Section 8 of the Army Act does not give the power to delegate the authority to Army Headquarters to consider request for application for withdrawal of premature retirement made by Army Officer in terms of Rule 16-B of the Army Rules.

(Para 32)

Further held, that the failure of the authorities to take into consideration the relevant factors in the decision making process does vitiate the decision. It appears that the Army Headquarters has rejected the application of the petitioner for withdrawing the request for premature retirement primarily in view of the instructions dated 6th March, 1993 issued by the Central Government. Therefore, the decision of the army authority, assuming that it had jurisdiction to pass such an order, is arbitrary inasmuch as there is an error of jurisdiction in the decision making process by not taking into account the relevant material which was liable to be taken into consideration.

(Para 39)

K.L. Arora, Advocate on behalf of *the petitioner*

Anil Rathee, Additional Central Government standing
counsel for Union of India.

JUDGMENT

S.S. Saron, J

(1) The petitioner in this petition under Articles 226/227 of the Constitution of India seeks the quashing of the orders dated 26th February, 1993 (Annexure P-2), 21st April, 1993 (Annexure P-4) and 26th May, 1993 (Annexure P-6), whereby, the petitioner's request for withdrawing the premature retirement earlier sought, has been rejected.

(2) The facts leading to the case are that the petitioner was selected by the Union Public Service Commission and graduated from the National Defence Academy (N.D.A.) (Khadakwasla), Pune. Thereafter, he did specialised Army Training at Indian Military Academy (IMA) Dehradun for one year. He was then commissioned in the Indian Army on 13th December, 1980 as a Permanent Regular Commissioned Officer and was assigned the Armoured Corps (Tanks Branch) of the Indian Army.

(3) The petitioner during his service career qualified various courses and also successfully cleared all the promotion examinations which entitled him to qualify for promotion to the rank of Lt.Colonel. It is stated that the petitioner is a highly motivated officer of the

Indian Army and as a young Lieutenant was awarded the Sena Sewa Medal for his dedication towards his duty during his active service in J&K. He also successfully participated in the active Army Operations such as "Operation Trident" in Punjab from 27th January, 1987 to 11th April, 1987 and "Operation Rakshak" in Jammu & Kashmir from 25th July, 1990 to 11th November, 1992. In December, 1992, the petitioner as a young Major of 33 years of age became Officer Commanding of an Army Sub Unit and was posted as Officer Commanding of Trawl Squadron 16(Independent) Armoured Brigade stationed at Mamun Cantt, Pathankot. There on account of certain compelling domestic circumstance beyond his control, he submitted an application dated 8th December, 1992 (Annexure P-1) requesting to consider his request of premature retirement from service with his entitlements at the earliest. The respondents,—*vide* their order dated 26th February, 1993 (Annexure P-2) approved the premature retirement and the petitioner was informed that he would be relieved of his duties and struck off the strength as early as possible but not later than 90 days of the issue of the said letter. The petitioner had not yet been relieved from service and he submitted a letter dated 23rd March, 1993 (Annexure P-3) requesting for withdrawal of his application for premature retirement. He submitted that the circumstances for which the petitioner had sought retirement had changed. He, therefore, requested for cancellation of his premature retirement order. The said application was recommended by his Brigade Commander with the remarks that the Officer is a competent, good, dedicated and regimental officer. Besides, there was a change in his family circumstances and now he wanted to stay. In the interest of service his retention was strongly recommended. The said request of the petitioner was considered and rejected by the competent authority,—*vide* order dated 21st March, 1993 (Annexure P-4). Hence the present petition assailing the order dated 26th February, 1993 (Annexure P-2) approving his premature retirement, the order dated 21st April, 1993 (Annexure P-4) rejecting his request for premature retirement and the order dated 26th May, 1993 (Annexure P-6) retiring him from service.

(4) Notice of the petition was issued and the respondents filed their written-statement in which preliminary objection was taken that the petition merits dismissal on the ground of delay and laches as the impugned order was passed on 21st April, 1993 and the petitioner was

retired from army with effect from 25th May, 1993 and the writ petition having been filed after more than 2 years is not maintainable. Besides it is stated that the petitioner by his act and conduct and acquiescence is estopped from challenging the impugned order as the retirement was ordered on his own request. He had submitted his withdrawal application after the order dated 26th February, 1993 (Annexure P-2) of his premature retirement wherein it was specifically stated that he would be relieved of his duties and struck off the strength as early as possible. The other material aspects of his service career are admitted being matter of record. It is, however, denied that there was any promotional examination for promotion to the rank of Lt. Col. As regards Sena Sewa Medal, it is submitted that it is given to every person subject to Army Act of any rank who serves in a particular area for a specified period and it is not an individual decoration or award for distinguished service as was being projected. Besides, with regard to participation in various operations by the petitioner, it is submitted that it is the routine duty of the various officers, JCOs and other rank at any given time. The allegations of illegal retirement are denied. It is also stated that the petitioner has a high average profile and has been assessed as High Average (Overall and in personal quality and demonstrated performance variables) in number of ACRs. It was also submitted that in spite of undertaking, the petitioner submitted an application for cancellation of his premature retirement in view of changed circumstances at home. His application for cancellation of premature retirement was considered and rejected by the competent authority on merit. Thereafter, he proceeded on premature retirement and led a retired life. It was prayed that the writ petition may be dismissed.

(5) The petitioner has filed his replication. It has been denied that there were any lapses on his part in approaching this Court. It is stated that after he was relieved from his duties,—*vide* order dated 26th May, 1993 (Annexure P-6) he made numerous representations on 3rd May, 1993 (Annexure P-7), 2nd June, 1994 (Annexure P-8) and 1st March, 1995 (Annexure P-9) and he requested the authorities that he be retained in service because he had already withdrawn his request for premature retirement. Besides, it is stated that he has been put on RRO (Regular Reserve Officer) for a period of 5 years within which he can be recalled to serve the nation in the Armed Forces on 72 hours notice issued through Radio, T.V. or Communication and if

the authorities can put him on RRO and call him back to serve the nation, there is no reason that he be not kept in service specially when he has withdrawn his request for retirement. The other averments made in the written statement are denied and those made in the petition are reiterated.

(6) I have heard Shri K.L. Arora, Advocate, learned counsel for the petitioner and Shri Anil Rathee, Additional Central Government Standing Counsel for the respondents and with their assistance gone through the records of the case.

(7) Learned counsel for the appellant has contended that at the time of relieving the petitioner from the Army, there was no request for premature retirement as the request made had been withdrawn before it had become effective. The service of the petitioner is governed by the provisions of the Army Act, 1950, Army Rules, 1954 and the Defence Services Regulations framed thereunder as also policy decision circulated by the Army,—*vide* letter dated 31st December, 1990. It is contended that under Rule 16-B of the Army Rules, 1954 an officer whose request to retire is granted and before he is actually retired, is entitled to apply to the Government for withdrawal of his request. Besides, the date of retirement is published in the Government Gazette in term of Rule 18 of the aforesaid Rules and actual date of retirement is 25th May, 1993 which is the date which was published in the Gazette on 9th March, 1996 and forwarded,—*vide* letter dated 16th April, 1996 (Annexure P-12). It is further contended that in terms of Regulation 105(a) of the Defence Services Regulations (Regulations for short) the applicant is not required to give the date of retirement from which he wants to retire because it may not be administratively convenient to the authorities to retire him and that Regulation 104(d) provides that an officer whose application to retire has been approved by the Government may apply for the cancellation of his request. Even Regulation 105(h) provides that if an officer is forced to seek his withdrawal of his application due to unforeseen reasons after acceptance of his request for premature retirement but before he is retired he may apply to the Central Government and his request may be granted on the discretion of the Central Government. As a sequel to this, it is contended during the course of arguments that the request of the petitioner for premature retirement has not been considered by the Central Government but by the Army

Headquarters and therefore, the request was not considered by a competent authority. It was also contended that even the policy decision dated 31st December, 1990 provides that an officer whose application for premature retirement has been accepted and he wishes to withdraw his request due to unforeseen circumstances he may apply to the Government and his request will be decided on merits. In support of his contention, he has relied upon the decisions of this Court in *Subhash Chander Rathi versus State of Punjab* (C.W.P. No. 9826 of 1994) decided 8th May, 1995 and the decision of the Hon'ble Apex Court in **Balram Gupta versus Union of India**(1) which is reiterated in the case of **Shambhu Murari Sinha versus Project & Development India & Anr.**(2). He further contends that in any case the impugned order rejecting his request for withdrawing his premature retirement is a non-speaking order and all relevant factors and material which were liable to be taken into consideration, have not been considered.

(8) On the other hand, Shri Anil Rathee, learned Senior Standing counsel for the Union of India has contended that the petitioner cannot claim withdrawal of his premature requirement which was approved by the competent authority on his request. Besides, it is the prerogative and discretion of the Central Government to grant or not to grant such withdrawal. Besides, it is not the case of the petitioner that he had not submitted an application for premature retirement which was allowed by the competent authority. He also contends that the petitioner ought to have no grouse in rejection of his request for withdrawing the request for premature retirement as the order has been passed by the competent authority after consideration of the facts. It is also contended that the Judgments relied upon by the learned counsel for the petitioner have no bearing on the facts and circumstances of the present case as in those cases officer/official had submitted a conditional application for premature/voluntary retirement from a due date and the application for withdrawal of the same in those cases was accepted before that date. With regard to the passing of the order by the Army Headquarters and not by the Central Government, it is submitted by the learned counsel that the order dated 21st April, 1993 was passed by the Chief of Army Staff and since the petitioner had not raised a plea in this regard in the writ petition

(1) AIR 1987 S.C. 2354

(2) (2000) 5 S.C.C. 621

and as such there was no occasion to file a reply in this regard. The respondents have taken the stand that the order passed by the Army Headquarters in view of the order dated 6th March, 1993 issued by the Central Government in pursuance of which it was directed to the Army Headquarters that only those applications for withdrawal of premature retirement be forwarded to the Central Government in which the Army Headquarters/M.S. Branch came to the conclusion that it was a fit case for withdrawal otherwise the applications be dealt with at their own level. After due consideration it was found that the grounds taken by the petitioner for withdrawing his request for premature retirement were not fit for withdrawal. His application was decided by the Army Headquarters which decision was conveyed to him. It is also contended that under Section 8(2) of the Army Act, the Central Government has the power to delegate its powers to any Officer.

(9) During the course of arguments the instructions of the Ministry of Defence dated 6th March, 1993 relating to the delegation of the powers to the Army Headquarters were taken on record,—*vide* order dated 8th January, 2003.

(10) On the basis of the above pleadings and contentions urged by the respective counsel, the questions that require to be considered are :—

1. Whether the request for premature retirement made by the petitioner, an Army Officer, can be withdrawn after its approval but before it became effective.
2. Whether the Army Headquarters can be said to be the competent authority to reject the request for withdrawing the premature retirement, in exercise of its delegated powers under Section 8(2) of the Army Act and the instructions dated 6th March, 1993.
3. Whether the impugned order rejecting the request for premature retirement in any case is arbitrary in as much as all the relevant factors in the decision making process have not been taken into account.

(11) Regarding question No. 1, it is not in dispute that the petitioner is governed by the provisions of the Army Act, 1950, the Army Rules 1954 and the Defence Services Regulations framed

thereunder and circulated,—*vide* letter dated 31st December, 1990. In order to answer the question involved, it may be noticed that the petitioner did apply for premature retirement,—*vide* his letter dated 8th December, 1992 (Annexure P-1). The said request was approved by the Army headquarters on 26th February, 1993 (Annexure P-2). It was indicated therein that he would be relieved of his duties and struck off the strength as early as possible but not later than 90 days. The petitioner thereafter,—*vide* letter dated 23rd March, 1993 (annexure P-3) made a request for withdrawal of premature retirement due to unforeseen circumstances as the circumstances had changed. This request was recommended by the Brigade Commander who was the Reviewing Officer of the petitioner. However, the petitioner was retired from service,—*vide* letter dated 26th May, 1993 (Annexure P-6) with effect from 25th May, 1993. Rule 16-B of the Army Rules, 1954 deals with the retirement of an officer on his own request. Rule 18 deals with the date from which the retirement becomes effective. Rule 16-B and 18 of the Army Rules 1954 read as under :—

- “16-B. Retirement of an officer at his own request.—(1) The retirement of an officer at his own request before he becomes liable to compulsory retirement under rule 16A shall require the sanction of the Central Government.
- (2) An officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request. The Central Government may, at its discretion, grant such withdrawal of his application”.
- (1) Date from which retirement, resignation, removal, release, discharge or dismissal otherwise than by sentence of court-martial takes effect.—(1) the dismissal of an officer under Section 19 or the retirement, resignation, release or removal of such officer shall take effect from the date specified in that behalf in the notification of such dismissal, retirement or removal in the official Gazette.
- (2) The dismissal of a person subject to the Act, other than an officer whose dismissal otherwise than by sentence of a court-martial is duly authorised or the discharge

of a person so subject whose discharge, if duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect :

Provided that if no such date is specified the dismissal or discharge shall take effect from the date on which it was duly authorised or from the date on which the person dismissed or discharged, ceased to be perform military duty, whichever is the later date.

(3) The retirement, removal, resignation, release, discharge or dismissal of a person subject to the Act shall not be retrospective.

(12) Regulations 104 and 105 of the Defence Services Regulations which are also necessary for the determination of the question involved may also be adverted to :—

“104. Retirement And Resignation.—(a) The President may call upon any Officer to retire or resign his commission at any time without assigning any reason.

(b) The Central Government may call upon any officer to retire or resign his commission at any time subject to the provisions of the rules in this behalf, as made under the Army Act.

(c) No authority other than that specified in sub-paras (a) and (b) above, may call upon an officer to retire or resign his commission or exert any pressure on him to do so.

(d) An Officer will not be relieved of his duties until receipt of intimation that his application to retire or resign has been accepted. An officer whose application to retire or resign has been accepted may apply to the Central Government for his application to be cancelled. In the case of officers who have once proceeded on leave

pending retirement, permission to withdraw such applications will only be granted in exceptional circumstances. The decision of the Central Government on all applications to retire will be final.

- (e) An officer of the Army who resigns from the service, vacates any civil appointment under the Central Government that he may be holding, unless the Central Government otherwise directs.

105. **Application for Resignation/Retirement.**—(a)

Application of officers of the Army to resign their commission or to retire from the service will be forwarded through the prescribed channels to Army HQ. The applicant need not give a prospective date from which it is desired that the retirement/resignation should take effect as it, may not be administratively convenient for the competent authority to take a decision by a desired date. However, if an applicant desires to retire from a specified date for any valid reasons, such as commutation of pension or higher rate of pension, he may indicate a prospective date in his application and submit his application not less than 4 months before that date. In the case of retirement with requisite qualifying service for pension, the applicant will also state where he wishes to draw his pension.

- (b) In forwarding an application, the OC unit, when it is the result of misconduct or any thing affecting the honour of the officer or his character as a gentlemen, will state all the circumstances and particulars of the case. The authority responsible for forwarding the statement to Army Headquarters will ensure that it gives a complete account of the case before forwarding it. The OC unit will also state whether all regimental claims have been paid if he is aware of any outstanding claims, and if there is any objection to the resignation or retirement being sanctioned.
- (c) In the case of an officer resigning his commission or retiring with gratuity, a provisional no demand certificate (IAFA-4500) clearly endorsed as such, will be obtained from the CDA(O) and forwarded with the application.

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- (d) When an officer proceeds or is about to proceed on retirement/resignation or leaves his unit or appointment on retirement/resignation, his commanding officer will prepare IAFA-4500, complete it in so far as regimental and public claims are concerned, and clearly endorse as a final no demand certificate in respect of any demand outstanding. This form will be submitted to the CDA(O) who will check it and amend it where necessary. The CDA(O) will endeavour to ensure that this certificate accompanies the last pay certificate, when the latter has to be issued. When the CDA(O) has reasons to believe that a public demand is outstanding against an officer who is about to retire with gratuity, he will report the matter to CDA(P), Allahabad and Army Headquarters by telegram if necessary, in order that portion of the gratuity may be withheld to meet demand.
- (e) Every Officer desirous of leaving the Army service by resigning or retiring prematurely should apply only after weighing the pros and cons of premature, retirement/resignation because requests for withdrawal of such requests subsequently, when the same are at advanced stages of considerations cause administrative difficulties. The applicant officer should, therefore, resort to premature retirement/resignation as a last resort when no other practical alternative is available to him. If he has any grievances with regard to posting, adverse remarks in ACR, punishment and so on, he, should first seek redressal through prescribed channels and submit his application only when he finally decides to leave the service unconditionally. While making an application, he should give an undertaking that he will not withdraw his request after it has been accepted.
- (f) The applications for premature retirement/resignation will be examined by Army HQ. and submitted for consideration and approval of the COAS who may reject an application which is not based on adequate and justifiable reason at his level without reference to the Government of recommend for acceptance by the

Central Government. In case, the officer feels aggrieved by the decision of the COAS, he can, if he so chooses, file a statutory complaint addressed to the Central Government under the provisions of section 27 of the Army Act. The decision of the Central Government on application to retire premature/resign will be final.

- (g) Where the Central Government are satisfied that the officer's continuance in service for a specified period is necessary to meet exigencies of service and alternative arrangements cannot be made, they may order holding the retirement/resignation order in abeyance.
- (h) If an officer is forced to seek withdrawal of his application due to unforeseen reasons after acceptance of his request for premature retirement resignation but before he is retired, he may apply to the Central Government and his request may be granted at the discretion of the Central Government".

(13) The relevant paras of the policy decision dated 31st December, 1990 relating to premature retirement and resignation from service of Army Officers (Excluding AMC, ADC and MNS) issued by the army authorities may also be noticed :—

“Approving Authority

- 3. Central Government is the sole authority to accept a request for premature retirement/resignation as per Rule 16 of Army Rules, 1954 and para 105 of the Regulation for the Army Revised Edition) 1987. Each case is considered on merit.

Withdrawal of Application

- 4. Government decision on a request for premature retirement/resignation is final and normally a request for withdrawal of application is liable to be rejected. However, if an officer whose application for premature retirement/resignation from the Army has been accepted, wishes to withdraw his application due to unforeseen circumstances, he may apply to the Central Government and his request will be decided on merits.

Attention in this regard is drawn to para 104(d) of the Regulations for the Army (Revised Edition) 1987 and Rule 16-B of Army Rules, 1954. No application for withdrawal of request for premature retirement/resignation will be withheld by lower formations on the ground that the reasons advanced by the officer are not convincing. On the contrary all such applications will be forwarded to this HQ. (MS Branch/MS Premature Retirement) expeditiously. Intimation regarding withdrawal of application will be intimated by the unit/formation concerned direct to this HQ (MS Branch/MS Premature Retirement) by the fastest means pending submission of the withdrawal application expeditiously through channels”.

10. Relieving of Officers on premature Retirement.—

Officers whose requests for premature retirement have been accepted by the Government should be relieved of their duties by the date specified in the retirement orders. Normally 90 days time is given in the retirement orders fore completion of retirement formalities and relieving an officer of his duties. Where the date of retirement is stipulated in the retirement orders as per the officer's application for premature retirement, officer should be relieved of duties accordingly. Request for extension of time in this regard will not normally be entertained. If, however, it is not possible to relieve an officer of his duties as ordered, due to his being away on leave, hospitalisation or recent involvement in disciplinary proceedings or any other important administrative reason, this HQ (Ms. Branch/ Ms. Premature Retirement) will be approached immediately through the fastest means for necessary directions. Any difficulty in interpretation of the orders regarding encashment of leave should be projected to AG's Branch, (PS 2) at this HQ or CDA (O), Pune for clarification. Similarly, advice regarding pension/gratuity entitlement should be obtained from AG's Branch (PS 4C) or CDA (P) Allahabad.

11. Part II orders, Units/formations concerned will forward a copy of Part II orders to this HQ (MS Branch/MS Premature Retirement) notifying details of leave for which encashment has been allowed, the date of struck off strength and his permanent home address on receipt of which this HQ will intimate his effective date of retirement to the CDA (P) Allahabad to enable them to initiate action regarding grant of terminal”.

16. Submission of application for Premature Retirement and Resignation.--Applications for premature retirement/resignation will be forwarded expeditiously to this HQ (MS Branch/MS Premature Retirement or (MS X) as the case may be) in duplicate. The applicant should express willingness to retire/resign at the earliest without reference to any date as it may not be administratively convenient for the competent authority to take a decision by a desired date. However, if an applicant desire to retire/resign from a specified date for any valid reasons, such as commutation of pension or higher rate of pension, he may indicate a prospective date in his application and submit his application not less than 4 months before that date. Application should be submitted to this HQ MS Branch, (MS Premature Retirement) in respect of officers of the rank of Col. and below and to MS X in respect of officers of the rank of Brig. and above as per the prescribed format a appendix. Two advance copies of.....”.

(14) Rule 16-B(1) of the Army Rules envisages that the retirement of an officer at his own request before he becomes liable to compulsory retirement, shall require the sanction of the Central Government. Rule 16-B(2) provides that an officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request and the Central Government may, at its discretion, grant such withdrawal of his application.

(15) Rule 18 of the Army Rules provides for the effective date from which retirement takes effect. It is envisaged that retirement of such officer shall take effect from the date specified in that behalf in the Notification of such retirement in the official Gazette. Rule 18(3)

thereof provides that the retirement of a person subject to the Army Act shall not be retrospective. The said Rules have been framed by the Central Government in exercise of the powers conferred by section 191(2)(a) of the Army Act. Section 191(1) provides that the Central Government may make rules for the purpose of carrying into effect the provisions of the Army Act and sub-section (2)(a) thereof, provides that without prejudice to the generality of the power conferred by sub-section (I), the rules made thereunder may provide for the removal, retirement, release, or discharge from the service of persons subject to the said Act.

(16) Section 192 of the Army Act confers powers on the Central Government to make regulations for all or any of the purposes of the said Act other than those specified in Section 191. The Defence Services Regulations reference to which has been made above, therefore, cover a wider field. Regulation 104 relates to retirement and resignation and sub-regulation 104 provides that an officer will not be relieved of his duties until receipt of intimation that his application to retire has been accepted and an officer whose application to retire or resign has been accepted may apply to the Central Government for his application to be cancelled. It is further provided that in case of officers who have once proceeded on leave pending retirement, permission to withdraw such applications would only be granted in exceptional cases. The decision of the Central Government on all applications to retire will be final. Regulation 105 envisages that application of officers of the Army to retire from the service would be forwarded through the prescribed channels to Army head Quarters. The applicant need not give a prospective date from which it is desired that the retirement should take effect as it may not be administratively convenient for the competent authority to take a decision by a desired date.

(17) Regulation 105 (e) provides officer desirous of leaving the Army Service should apply only after weighing the pros and cons because request for withdrawal of such request subsequently, when the same are at advanced stage of consideration cause administrative difficulties. Therefore, the officer should resort to it as a last resort. Besides, if an officer has any grievance with regard to passing adverse remarks in ACR and punishment and so on he should first seek redressal through prescribed channels. While making an application the officer should give an undertaking that he will not withdraw his request after it had been accepted.

(18) Regulation 105(h) provides that if an officer is forced to seek withdrawal of his application due to unforeseen reasons after acceptance of his request for premature retirement, resignation but before he is retired, he may apply to the Central Government and his request may be granted at the discretion of the Central Government.

(19) Para No.3 of the instructions dated 31st December, 1990, reference to which, has been made above provides that Central Government is the sole authority to accept a request for premature retirement as per Rule 16 of the Army Rules and para 105 of the Regulations and each case is considered on its own merit. Para 4 provides for withdrawal of applications which provides that Government decision on a request for premature retirement is final and normally a request for withdrawal of application is liable to be rejected. However, if an officer whose application for premature retirement from the Army has been accepted, wishes to withdraw his application due to unforeseen circumstances, he may apply to the Central Government and his request would be decided on merits. It is further provided that no application for withdrawal of request for premature retirement/resignation would be withheld by lower formations on the ground that the reasons advanced by the officer are not convincing. On the contrary all such applications would be forwarded to the Headquarters (MS Branch/MS Premature Retirement) expeditiously. Intimation regarding withdrawal of application would be intimated by the Unit/formation concerned direct to the HQ (MS Branch/MS Premature Retirement) by the fastest means pending submission of the withdrawal application through channels.

(20) Para 10 of the instructions provides that normally 90 days time is given in the retirement orders for completion of retirement formalities and relieving an officer of his duties. Para 11 thereof provides that units/formations concerned will forward a copy of Part II orders to this H.Q. (MS Branch/MS Premature Retirement), notifying the details of leave for which encashment has been allowed, the date of struck off strength and his permanent home address on receipt of which the Headquarter would intimate his effective date of retirement to the Controller, Defence Accounts (P) Allahabad to enable them to initiate action regarding grant of terminal. Para 16 of the instructions deals with submission of application for premature retirement and it is provided therein that the applicant should express willingness to retire at the earliest without any reference to any date as it may not be administratively convenient for the competent authority to take a decision by a desired date.

(21) From the reference to the above statutory provisions, regulations and instructions, it may be noticed that Officers have generally been advised to be careful while applying for premature retirement and in making such applications they should be careful as normally requests are not to be entertained. Besides, the officers once making a request are required to give an undertaking that they would not withdraw such request. However, the application for withdrawing the request for premature retirement is to be considered by the Central Government at its discretion. Therefore, there is no bar as such to make an application requesting the withdrawal of request for premature retirement. Shri Anil Rathee, learned Senior Standing Counsel for the respondent's however, contends that the petitioner had given an undertaking that he would not withdraw his request and that this undertaking therefore, binds him not to make a request for withdrawing the request for premature retirement. He has also asserted that the Government approved the request on 26th February, 1993 which is the relevant date whereby the request of the petitioner has been approved and after the said date the request was in any case not maintainable. He draws the pointed attention of this Court to para 5 of the application dated 8th December, 1992 (Annexure P-I) for premature retirement, wherein, it is provided that the petitioner has requested to consider his request for premature retirement from service with his entitlements at the earliest. Besides, he also refers to sub-para (b) Section III of the said application wherein the petitioner has clearly undertaken that he has submitted this application after consideration of all the factors involved and would not hereinafter withdraw his request. He also placed reliance on the letter dated 26th February, 1993 which provides that his premature retirement has been proved and the petitioner would be relieved of his duties and struck off the strength as early as possible but not later than 90 days of issue of the said letter. Therefore, according to Shri Rathee, the effective date of retirement in respect of the petitioner for all intents and purposes is 26th February, 1993 and the application for withdrawing the request having been submitted on 23rd March, 1993 (Annexure P-3) i.e. after 26th February, 1993 is not maintainable and the petitioner is estopped from withdrawing his request after its approval. Shri Rathee has strongly relied upon a judgement of the Hon'ble Rajasthan High Court in the case of **Brig. B. S. Gill versus Union of India and others** (S. B.) Civil Writ Petition No. 392 of 2001, decided on 13th February, 2002.

(22) I have considered the said contention. It may be noticed that 26th February, 1993 is not the effective date of retirement of the petitioner. The perusal of the order dated 26th February, 1993 (Annexure P-2) shows that it is only an approval of request for the premature retirement. It is specifically provided therein that the petitioner would be relieved of his duties and struck off the strength as early as possible but not later than 90 days of the issue of the said letter. Besides Rules 18(1) of the Army Rules specifically provides for the effective date of retirement and it is provided therein that the retirement of an officer shall take effect from the date specified in that behalf in the notification of retirement in the official Gazette. The Gazette Notification dated 9th March, 1996 has been placed on record which depicts the date of retirement of the petitioner as 25th May, 1993 (A.N.) It is provided therein that the President of India is pleased to permit the officers mentioned therein to retire from army services with effect from the dates mentioned against them, earlier than their normal age of retirement at their own request for their personal reasons and transfer them to Regular Reserve of Officers (Class X) under 10/S/63 as amended. The name of the petitioner is at Serial No. 54 and the date of retirement against his name is 25th May, 1993. Therefore, it is this date of retirement i.e. 25th May, 1993 which is the effective date of retirement when read in context of Rule 18(1) of the Army Rules. Besides, Rule 18(3) of the Army Rules, also provides that retirement of a person subject to the Act shall not be retrospective. Not only this, even in the written statement filed by the respondents while taking the plea of laches in para No. 1 of the preliminary objections it has been stated that the petitioner was retired from army with effect from 25th May, 1993. Even in the order dated 26th May, 1993 (Annexure P-6) against the date 25th May, 1993 it is recorded "Retirement from army service" and against the date dated 26th May, 1993 it is recorded "SOS/SORS" (i.e. struck off the strength/Struck off ration strength). Therefore, it is evident that the effective date of retirement of the petitioner for all intents and purposes is 25th May, 1993 and not 26th February, 1993 as is sought to be contended by Shri Rathee. The application making a request for withdrawal of premature retirement was made on 23rd March, 1993, Annexure P-3 i.e. before 25th May, 1993. Therefore, admittedly, the request for withdrawing the request for premature retirement was made before the order became effective on 25th May, 1993.

(23) The question, however, that requires to be considered is whether such a request could be made and considered. In **Balram Gupta's case** (*supra*) the employee wrote a letter dated 24th December, 1980, seeking voluntary retirement on 31st March, 1981. He wrote that a notice period of three months be treated from 1st January, 1981. *Vide* an order dated 20th January, 1981 he was allowed to retire voluntarily from service prospectively with effect from afternoon of 31st March, 1981. However, in the mean time, on 31st January, 1981 i.e. after he was allowed to retire on 20th January, 1981 the employee withdrew his notice on the ground that on account of persistent and personal request from the staff members he had changed his mind. The employee was relieved by an order dated 31st March, 1981 in which it was also mentioned that his withdrawal application was considered and was found not acceptable. In the said case also a reference was made to the appropriate rules which enjoined that a Government servant shall be precluded from withdrawing his notice except with the approval of such authority. Besides, it was stipulated therein that request for withdrawal shall be made before the intended date of retirement that was accepted in the said case to have been done. The approval of the authority was however, not given. It was held that therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of a nature therein because the Government servant cannot withdraw except with the approval of such authority. A reference was also made to the judgement in **Air India versus Nergesh Meerza (3)**, wherein it was held that there should not be arbitrariness and hostile discrimination in Government's approach to its employees. It was contended in Bal Ram Gupta's case that a Government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Attention was drawn of their Lordships of the Supreme Court to an earlier decision in **Raj Kumar versus Union of India (4)** wherein the Hon'ble Supreme Court reiterated that till resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned, has locus poenitentiae but not thereafter. However, in Bal Ram Gupta's case the resignation was to take effect from a prospective

(3) AIR 1981 S.C. 1829

(4) AIR 1969 S.C. 180

date and it was held that the employee therein had the locus. Besides, it was held that it may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason. However, it was held that the approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward in the Bal Ram Gupta's case was that the appellant had not indicated his reasons for withdrawal. This, in the opinion of the Hon'ble Supreme Court, was sufficiently indicated that he was prevailed upon by his friends and he had a second look at the matter and this was not an unreasonable reason. It was ultimately held that there was no valid reason for withdrawing the permission by the respondent and further there had been compliance with the guidelines because the employee therein had indicated that there was a change in the circumstances towards continuing Government service. It was also emphasised that in the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty a certain amount of flexibility is required and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the employee to withdraw his letter of retirement in the facts and circumstances of the case. Much complications which had arisen could have been thus avoided by such graceful attitude. The Court cannot but condemn circuitous ways to ease out uncomforted employees and as a model employer the Government must conduct itself with high probity and candour with its employees. The ratio of the judgment in Bal Ram Gupta's case has been reiterated in Shambhu Murari Sinha's case (*supra*). The appellant in the said case,--*vide* application dated 18th October, 1995 sought voluntary retirement which was accepted,--*vide* letter dated 30th July, 1997 with the further intimation that "the release memo along with details particulars will follow." The appellant therein was relieved on 26th September, 1997 but before this date the application dated 18th October, 1995 for voluntary retirement was withdrawn by him on 7th August, 1997. It was held that the effective date of voluntary retirement was 26th September, 1997 and the withdrawal, which was before this date, was permissible in law. The appellant therefore, was held entitled to continue in service with all consequential benefits. A reference was also made to Constitution

Bench decision of the Hon'ble Apex Court in **Union of India and others versus Gopal Chandra Misra and others (5)**, wherein, in para 50 it was held that the general principle is that in the absence of a legal contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it become effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. The settled position of law was reiterated that the appellants have locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employee or employer came to an end. The judgment in Shambhu Murari Sinha's case was again followed in **Bank of India versus O. P. Swarnakar (6)**. The common question involved therein was as to whether an employee who opts for voluntary retirement pursuant to or in furtherance of a scheme floated by the Nationalised Banks and the State Bank of India would be precluded from withdrawing the said offer. After noticing the salient features of the various retirement schemes and also considering the contentions raised in the appeal before the Supreme Court, the following questions of law were formulated for determination in appeals :—

- A. Whether an application by an employee to secure voluntary retirement under the voluntary Retirement Scheme (VRS) can be withdrawn by such an employee before the same is accepted by the competent authority though the Scheme contained an express stipulation that an application made thereunder is irrevocable and the employee will have no right to withdraw the application once submitted ?
- B. Whether upon making an application under VRS the employer bank secures the authority to unilaterally determine one way or the other the jural relationship of master and servant between the parties ?

(24) The various banks in the said case had framed a scheme providing for voluntary retirement of its employees so as to undertake the exercise of manpower planning by rightsizing its staff. The scheme regarding voluntary retirement was applicable in relation to

(5) (1978) 2 S.C.C. 301

(6) (2003) 2 S.C.C. 721

employees who on the date of application had completed 15 years of service or 40 years of age. Consideration of the legal issues involved were in the realm of contract and there was no statutory rules providing for voluntary retirement and withdrawal of the request for the voluntary retirement. It was held that the provisions of Indian Contract Act were applicable. Besides, the nature of the scheme constituted an invitation to treat and not a proposal for an offer the acceptance of which by an employee could fructify in a concluded contract. It was rather the banks acceptance of the employee's proposal that would constitute a promise and culminate in an unforeseen contract and in the absence of any binding contract of Statutory provisions to the contrary, such proposal, held attracted Section 5 of the Indian Contract Act. Therefore, despite there being a prohibition clause in the scheme it was held that the High Court rightly held that an employee could withdraw his option from the scheme before the same was accepted. Reference was made to para 10.5 of the scheme framed by the Punjab National Bank which barred an employee from withdrawing the request made for voluntary retirement after once exercising the option. Other sub-paras of para 10 of the Scheme provided that a request for voluntary retirement would not take effect unless accepted by the competent authority who would have absolute discretion to accept or reject that request. The scheme provided for a particular procedure for making an application for seeking voluntary retirement. Large number of employees submitted their applications out of whom a small number withdrew their offer. Despite withdrawal of the offer, the same was accepted. In some cases offers despite withdrawal thereof were accepted after expiry of the operation period of the Scheme. Writ petitions were filed in various High Courts to challenge the acceptance of the employees applications by the Bank despite their withdrawal. The Bank had contended that the employee by submitting themselves to para 10.5 must be held to have resigned in praesenti and, therefore, the contractual bar contained therein cannot be held to be bad in law. The affected employees contended that the Voluntary Retirement Scheme was merely an invitation to offer and the employee's, option pursuant thereto, constituted an offer and, therefore, in view of Section 5 of the Contract Act, the employee concerned had an absolute right to withdraw the same before a concluded contract was arrived at and Clause 10.5 in question was, thus, held to be *ultra vires* Section 5 of the Contract Act. It was further held that the mere declaration given by an officer that he would not withdraw or cancel the offer,

would not destroy his locus. Besides, after acceptance of the offer, the same could be withdrawn by the employee before being relieved from his post. The Hon'ble Supreme Court held that once the application filed by the employees is held to be an 'offer', Section 5 of the Contract Act, in absence of any other binding contract or statute or statutory rules to the contrary would come into play. The employees of the State Bank of India, it was noticed, were governed by statutory rules. Even the employees of other nationalised Banks were governed by several standing orders and by bipartite settlements which had the force of law. The Banks, therefore, could not take recourse to "hire and fire" for terminating the services of the employees. They are required to act fairly and strictly in terms of the norms laid down therefor and their actions in this behalf must satisfy the test of Articles 14 and 21 of the Constitution. Besides, it was also held that the request of voluntary retirement of an employee would not take effect in praesenti but in future.

(25) In the case in hand, as already noticed above, there are statutory rules and the date for the retirement to take effect in terms of Rule 18 of the Army Regulation is the date specified in that behalf in the Notification of such retirement in the official Gazette. Therefore, keeping in view, the ratio of the judgments of the Hon'ble Supreme Court, the mere approval of retirement,--*vide* letter dated 26th February, 1993 (Annexure P-2) would not make the retirement effective in praesenti but in future from its effective date. The mere fact that the petitioner had given an undertaking in his request for seeking voluntary retirement, would not operate as an estoppel against the statutory provisions of the Army Rules. Therefore, the position is that unless the employee is relieved of the duties after acceptance of offer of voluntary retirement jural relationship between the employer and employee does not come to an end. The order dated 26th February, 1993 (Annexure P-2) was a conditional one and the petitioner was to be relieved of his duties and struck off the strength as early as possible but not later than 90 days of the issue of the said letter. Before the condition of being relieved of his duties could be complied with, the petitioner withdrew his request for seeking voluntary retirement. Therefore, the order approving the voluntary retirement did not become effective.

(26) Learned counsel for the respondents, however, relies upon decision in **P. Kasilingam versus P.S.G. College of Technology (7)** to contend that it is open to a servant to make his resignation operative from a future day and to withdraw such resignation before its acceptance. However, the services of the Government servant would normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, unless there is any law or statutory rule governing the conditions of service to the contrary can apply to the case of any other employee. In P. Kasilingam's case (*supra*) the appellant was a Lecturer and while on probation he was subject to departmental enquiry for dereliction of duty and irresponsible conduct. Before the departmental enquiry was to commence the appellant therein handed over two letters addressed to the Principal, first was a letter of apology and the other letter of resignation. The letter of apology was virtually an admission of his guilt. The letter of resignation signified his intention to leave service with the request that his services may be retained for six months. The resignation was accepted and it was directed that the appellant be relieved from duties after six months and the enquiry was dropped. The Principal thereafter issued a relieving order dispensing with his services forthwith on payment of his salary for a period of six months. The appellant preferred an appeal under the Tamil Nadu Private Colleges (Regulation) Act, 1976. The Government directed the Additional Director of Technical Education, to hold an enquiry into the allegations made by the appellant which was to the effect that his letter of resignation was not voluntary but had been obtained by coercion. The Enquiry Officer held that the allegations made by the appellant were baseless. This report was not accepted by the Government and it was held that the letter of resignation was not voluntary. The Government accordingly allowed the appeal and directed reinstatement of the appellant with immediate effect. The Management challenged the order of the Government by a writ petition, in which the order of the Government was quashed by the High Court. It was held by the Hon'ble Apex Court that the High Court had viewed the matter from a wrong perspective and that in quashing the order of the Government the High Court observed that its finding is based on no evidence but proceeded on conjecture and surmises. Therefore, the observations made by the Hon'ble Apex Court were not directly in issue and the question in issue was whether the resignation was

voluntary which was held a matter of inference to be drawn from other facts which was essentially one of the fact and it could not be questioned that the Government undoubtedly had the jurisdiction to draw its own conclusions upon the material before it. In this view of the matter, the question involved was not really whether the services of a Government employee would stand terminated from the date on which the letter of resignation was accepted. Besides, the said observations that the services of a Government servant normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority unless there is any law or statutory Rules governing the conditions of service to the contrary are based on an earlier judgement of the Apex Court in the case of **Raj Kumar versus Union of India (supra)**. *Raj Kumar's case (supra)* was considered in *Shambhu Murari Sinha's case (supra)* and it was held that *Raj Kumar's case (Supra)* may not have a direct bearing in the said case and the principle laid down therein was noticed. In *Shambhu Murari Sinha's case (Supra)*, a reference was also made to the judgement in **Power Finance Corporation Ltd. versus Pramod Kumar Bhatia (8)**, wherein it was held as follows :—

“It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end.”

(27) The ratio of the above judgement was reiterated in *Shambhu Murari Sinha's case (supra)*. In this view of the matter, the ratio of the judgement in *P. Kasilingam's case (supra)* is inapplicable to the facts of the present case.

(28) The learned counsel for the respondents also placed reliance on the judgement of the Hon'ble Rajasthan High in *Brig. B.S. Gill versus Union of India & Ors. S.B. Civil Writ Petition No. 392 of 2001*, decided on 13th February, 2002. In the cited case, the petitioner, who was a Brigadier in the Army submitted an application dated 20th April, 2000 seeking premature retirement from service. The said application was approved by the Central Government,—*vide order*

dated 17th August, 2000 and the decision was communicated,—*vide* letter dated 21st August, 2000 in which it was indicated that the officer would be relieved of his duties within 90 days from the said date. The petitioner therein sought extension of his relieving date till December, 2000 so that he may witness as an Army officer, the "Passing Out Parade" of his son in Indian Military Academy. This request was accepted on 25th September, 2000. However, before the letter could be despatched the petitioner therein filed an application dated 12th October, 2000 for withdrawal of his application for premature retirement and to continue serving in the army. The respondent-authority therein,—*vide* letter dated 18th October, 2000 asked the petitioner to furnish documentary proof in support of the reasons given in the application for withdrawing the application for premature retirement which was submitted. The order dated 21st August, 2000 approving the retirement of the petitioner therein was kept in abeyance so that the petitioner's application for withdrawal may be considered. The application dated 12th October, 2000 for withdrawal was considered but was rejected,—*vide* letter dated 19th December, 2000 and it was further directed that the petitioner would be relieved within 45 days. The said writ petition of the petitioner therein was dismissed. It was held that petitioner submitted the request for premature retirement to be accepted at the earliest and it was not to be operative prospectively and as such the same becomes effective as soon as it is accepted. However, the provisions of Rule 18 of the Army Rules which provide the date from which retirement becomes effective i.e. the date specified in that behalf in the notification in the official Gazette were not brought to the notice of the Hon'ble Rajasthan High Court. Therefore, it proceeded on the assumption that approval of the request for voluntary retirement was an acceptance which became effective as soon as it was accepted. The statutory provisions i.e. Rule 18 of the Army Rules, however, clearly provide that the effective date is the date specified in that behalf in the notice of such retirement in the official Gazette. In the present case, as already noticed above, the date of retirement of the petitioner indicated in the notification published in the official gazette is 25th May, 1993 and the request for withdrawal of voluntary retirement was before this date on 23rd March, 1993 (Annexure P—3). In terms of Rule 16—B(2) of the Army Rules, it is provided that an officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request and that the Central Government may at its discretion grant

such withdrawal of his application. The significant words to be noticed in Rule 16—B(2) that where request to retire is granted the officer may “before he is retired” apply for withdrawal. Therefore, it is not before grant or acceptance of the request that an officer can apply for withdrawal of his request but he can apply “before he is retired”. The effective retirement would be the date specified in the Notification of such retirement in the official Gazette. To similar effect are the provisions of Regulation 104 (d) of the Army Regulations which provide that an officer will not be relieved of his duties until receipt of intimation that his application to retire or resign has been accepted. It is, thereafter, provided that “An officer whose application to retire or resign has been accepted may apply to the Central Government for his application to be cancelled”. This undoubtedly means that an officer can apply for cancellation of his request to retire after his request has been accepted.” The fact that the application for premature retirement contains an averment to the effect “but, now, extremely compelling domestic circumstances beyond my control have forced me, to submit my application for premature retirement from service at the earliest”, would in any case mean that the request is to be effective as soon as it is approved. In fact, Regulation 105 of the Army Regulations provide that the applicant while making an application for retirement need not give a prospective date from which it is desired that the retirement should take effect as it may not be administratively convenient for the competent authority to take a decision by a desired date. The provisions of Regulations 105(h) are also in consonance with the provisions of Rule 16—B of the Army Rules which provide that if an officer is forced to seek withdrawal of his application due to unforeseen reasons “after acceptance of his request for premature retirement/resignation but before he is retired” he may apply to the Central Government and his request may be granted at its discretion. So, therefore, the provisions of Regulation 105(h) also provide for withdrawal of request for premature retirement “after acceptance”.

(29) Therefore, keeping in view the above position it is evident that the petitioner could withdraw his request for premature retirement after its approval of acceptance and it was for the Central Government to consider the same in accordance with its discretion. Therefore, question No. 1 is answered in the affirmative that an army officer can withdraw his request for premature retirement after approval or acceptance but before it became effective.

(30) The second question that requires consideration is regarding the competence of the Army Headquarters to reject the request for withdrawing the application for premature retirement. A reference to Rule 16—B(2) of the Army Rules shows that an Officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request and that the Central Government may at its discretion grant such withdrawal on his application. Therefore, evidently the power to grant request for withdrawal of application for premature retirement vests with the Central Government. However, the perusal of the order dated 21st April, 1993 (Annexure P—4) whereby the request of the petitioner for withdrawal of premature retirement is said to have been considered and rejected, is issued by the Army Headquarters and not by the Central Government. The learned standing counsel for the Union of India, had taken time to produce the file of the case to show whether the consideration process for rejecting the request for premature retirement was considered by the Central Government or not. However, after taking time and seeking instructions, he stated that the file is not traceable and has in all probability been destroyed in January, 1995 in respect of which he has received instructions. Therefore, he is not in a position to state whether the request for premature retirement had been considered by the Central Government as enjoined by Rule 16-B(2) of the Army Rules. Shri Rathee, has however, contended that in any case the Central Government had delegated the powers to the Army Headquarters to consider the cases for premature retirement. In support of his contention he placed reliance on Section 8 of the Act which reads as under :—

“8 Officers exercising powers in certain cases.—(1)

Wherever persons subject to this Act are serving under an officer commanding any military organisation not in this section specifically named and being in the opinion of the Central Government, not less than a brigade, that Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

- (2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations exceptions and conditions as it may think fit.

(31) At first blush, a reading of the above Section 8 does give the impression that the Central Government may confer powers either absolutely or subject to such restrictions, reservations, exceptions and conditions as it may think fit. However, the said Section 8 falls under Chapter II which is super-scribed by the Heading "Special provisions for the application of Act in certain cases". Section 4 which is also under Chapter II of the Army Act provides for application of the Army Act to certain forces under Central Government what is provided therein that the Central Government may, by Notification, apply, with or without modifications, all or any of the provisions of the Army Act to any force raised and maintained in India under the authority of that Government and suspend the operation of any other enactment for the time being applicable to the said force. Therefore, the intention of the Legislature is to confer the powers of the Army Act to certain other forces maintained by the Central Government and it is for the purposes of the said forces which would be other than the regular army that the powers are to be conferred in terms of Section 8 of the Army Act. Section 8, therefore in my view would not apply to the regular army officers. This is evident from the use of the expression "whenever persons subject to this Act are serving under an Officer commanding any military organisation". The reference to "any military organisation" is relatable to the forces raised and maintained under the authority of the Central Government for which the provisions of the Army Act may be applied in terms of Section 4 of the Army Act. It is for that purpose that the Central Government may confer powers as may be prescribed absolutely or subject to certain restrictions as the Central Government may think fit.

(32) Therefore, in my view, Section 8 of the Army Act does not give the power to delegate the authority to Army Headquarters to consider request for application for withdrawal of premature retirement made by Army Officer in terms of Rule 16-B of the Army Rules.

(33) A strong reliance is however, placed on the instructions dated 6th March, 1993 which is issued by the Ministry of Defence and which has been taken on record,—*vide* order dated 8th January, 2003 which according to Shri Rathee are the basis of delegation of powers to the Army Headquarters by the Central Government for the purpose

of rejection of application of withdrawal for premature retirement at their own level. The said instructions dated 6th March, 1993, issued by the Ministry of Defence read as under :—

“MINISTRY OF DEFENCE D (MS)

Subject : Premature retirement of Army officers.

Army Officers, while moving their applications for premature retirement, are required to certify, *inter alia*, that they have submitted the application after due consideration of all the factors involved and would withdraw their requests later.

2. Of late, Army Headquarters have been referring to MOD requests from Army Officers for cancelling the earlier order on their applications for premature retirement. Recently the following cases were received in the Ministry :—

(a) Lt. Col N.K. Khosla (IC-17040) EME.

(b) Col Vijay Gaikwad (IC-13298) MLI.

(c) Lt. Col (TS) R.R. Singh (IC-17963) Engrs.

3. These requests were received at the eleventh hour just a few days before the officers were to proceed on premature retirement.

4. Premature retirement is a major event and Army Officers are expected to weigh the pros and cons of such a step before deciding to do so. They are also required to render a certificate to this effect. Having done so, it is not acceptable for them to retrace their steps after a few weeks and request for withdrawal of their earlier application for premature retirement, after the same has been processed through proper channels and decided by the Government.

5. Army Headquarters are, therefore, requested to issue suitable instructions to all echelons on the subject. *Further, Army Headquarters should also reject such applications at their own level without referring the same to the Government, unless there are solid compelling reasons for doing so, which should be specifically mentioned.*

6. Government, as a special case, agreed with the recommendations of COAS in allowing the officers mentioned in para 2 above. It may please be noted that such requests may not be entertained by the Government in future.

(D. BASU),
Joint Secretary (G).

M of D ID No. 15(1)/93/D(MS) dated 6th March, 1993.

(Emphasis added)”

(34) I have already held that the provisions of Section 8 of the Army Act do not confer any powers to the Army Headquarters to consider the request for withdrawal of premature retirement in terms of Rule 16-B (2) of the Army Rules. Besides, it is beyond doubt that the Central Government can issue executive instructions for administrative convenience but the same are primarily for filling in the gaps or void in the rules on a particular matter. These administrative instructions do not supersede or super-impose themselves on the statutory rules. The executive powers of the State is excluded from the field specifically covered by the statute. The executive power of the Central Government is divided amongst various functionaries under Article 77 (3) of the Constitution of India. The object of regulating the recruitment and conditions of service by statutory provisions including that by way of delegated or subordinate legislation is to rule out arbitrariness, provide consistency and crystalise the rights of the employees concerned. The Central Government in terms of Rule 16-B(2) of the Army Rules exercises delegated functions which are conferred by the Army Rules enacted by virtue of Section 191 (1) and 2(a) of the Army Act. Therefore, the instructions dated 6th March, 1993 issued by the Central Government directing the Army Headquarters to reject applications for request for withdrawal of premature retirement at their own level without referring them to the Government unless there are solid compelling reasons for doing so, is an act of abdication of its jurisdiction and is illegal. A delegatee is not entitled to exercise powers in excess or in contravention of the delegated powers. Therefore, the instructions dated 6th March, 1993 have been framed in excess of the powers delegated to the Central Government. Where a statute or delegated legislation requires a

particular act to be done in a particular manner, it is to be done in that manner alone and other modes are prohibited. The learned standing counsel for the Union of India, however, sought to justify these instructions on the basis of various judgements which may be noticed hereinafter :—

- (a) Learned counsel relied upon **Roop Chand versus State of Punjab, (9)** The State Government in exercise of its powers under Section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 delegated its powers under Section 21(4) to hear appeals to an officer. The order passed by such officer was held to be an order passed by the State Government itself and not an order passed by any officer under the said Act. Therefore, the statutory provisions of Section 41(1) provided for the State Government to appoint such persons as it thinks fit and may by Notification delegate any of its powers of functions under the Act to any of its officer either by name or designation. As such, there being a specific power of delegation under Section 41(1), the ratio of the judgement is inapplicable.
- (b) **Datta Ria versus State of Bombay (10)** was a case of preventive detention under the Preventive Detention Act, 1950. In the said case one of the objections that was raised, was that the order of confirmation of detention was not in proper legal form as it was not expressed to be made in the name of the Governor as required by Article 166(1) of the Constitution. It was held that the provisions of statute creating public duties are directory and those conferring private rights are imperative. It was found that the decision to confirm the order of detention had in fact been taken by the appropriate Government. Therefore, there was no breach of the procedure established by law. Therefore, the said judgement is also inapplicable.

(9) AIR 1963 S.C. 1503

(10) AIR 1952 S.C. 181

(c) In *Chitar Lekha versus State of Mysore* (11) the objection again was that the letter signed by the Under Secretary to Government, to the Selection Board, communicating decision of the Government to prescribe interview for regulating admission to colleges, was raised on the ground that it was not issued in the name of the Governor. The objection was held to be without merit. The question which arose for consideration in the case in hand was not involved therein.

(35) The other authorities cited by the learned counsel for the parties are also inapplicable where the matter in controversy as in the present case was not there. Therefore, question No. 2 as framed is answered by holding that the power to consider the request for withdrawal of application for premature retirement in respect of the Army Officer is vested in the Central Government and in the absence of any statutory provisions or rules to the contrary that power cannot be delegated to the Army Headquarters and that too by issuance of administrative instructions.

(36) The third question may now be adverted to. As already noticed above, the order dated 21st April, 1993 (Annexure P—4) rejects the request for withdrawal of application for premature retirement of the petitioner. The said order reads as under :—

“Tele : 301 8823” REGISTERED

Army Headquarters
Ms Branch/Premature
Retirement.
DHQ PO, New Delhi,
110 011.

38176/3935/MS PR

21st April, 1993

HQ 16(1) Armoured Brigade,
C/O 65 APO.

PREMATURE RETIREMENT

IC—37227—K, Maj. Dipinder Singh, AC.

1. Reference your letter No. 3242/A, dated 24th March, 93.
2. The request of above mentioned officer for withdrawal of premature retirement from the Army Service has been considered and rejected by the competent authority.

(3) The officer may please be informed accordingly, Please acknowledge.

(Sd.) . . . ,
K. S. Kumar,

Civilian Staff Officer,
DAMS/Premature Retirement
for Military Secretary.

Copy to :

HQ 16 Corps (MS)
C/O 56 APO”

(37) To say the least the rejection is bereft of any reason. The settled legal position is to record reasons in support of an administrative decision which entails evil consequences for an employee. The recording of reasons in support of a decision is an accepted facet of the principles of natural justice. According to this, a party has not only the right to know the result of the decision but also the reasons in support thereof. This has been found to be a salutary rule. The recording of reasons introduces clarity and rules out arbitrariness. Besides, if judicial review is to be effective the recording of reasons is necessary. For an effective judicial review which affects the rights of a citizen, it has been considered desirable that reasons should be recorded. However, by not recording reasons in support of the order, does not vitiate the action but at the same time, does leave an impression that the test of reasonableness which requires consideration of all relevant materials and exclusion of all irrelevant materials has not been complied with. The decision dated 21st April, 1993 (Annexure P—4) even if it is assumed to have been taken by the competent authority (though I have already held while considering question No. 2 that the Central Government could not delegate its functions to the Army Headquarters) in that eventuality even, it may be noticed that the material on record has not been considered by the authorities. The reasons given of changed circumstances for withdrawing the request for premature retirement were relevant circumstances in the decision making process. The reasons have been indicated in the application dated 23rd March, 1993 (Annexure P—3) while making request for withdrawal of

premature retirement. The recommendations of the Reviewing Officer, which are at the foot of the said application (Annexure P—3) was also an important circumstance which was to be considered. The said recommendations of the Brigadier Commander of the petitioner are to the following effect :—

“RECOMMENDATIONS OF THE REVIEWING OFFICER

The officer is a competent, good, dedicated Regimental Officer. As there is a change in his family's circumstances and now he wants to stay, in the interests of the service, his retention is strongly recommended”.

Station : C/O 56 APO Sd/- Date : 23rd March, 93 (Arjun Singh)
Brig. Cdr.”

(38) Two affidavits dated 19th March, 1993, Annexure P—3/1 and Annexure P—3/2 of the brothers of the petitioner, were also necessary documents which were necessary to be considered in the decision making process. Besides, the certificate dated 20th May, 1993 (Annexure P—5) given by the Brigadier Commander of the petitioner which includes his pen picture, was also a document which required consideration of the competent authority in reaching the decision. The pen picture of the petitioner was also a relevant factor that was liable to be taken into account while considering the request of the petitioner seeking withdrawal of the request for premature retirement. The pen picture has been depicted in the following manner :—

“Pen picture :

“The Officer has above average intelligence and clarity of thought. He is practical in his approach and manages his resources excellently. Has a clear perception and plans his work well. His integrity and loyalty are unquestionable and can be relied upon to work without supervision. His honesty and man management are his strength and would serve the organisation he joins in good stead.”

(39) Therefore, the failure of the authorities to take into consideration the relevant factors in the decision making process does vitiate the decision. It appears that the Army Headquarters has rejected the application of the petitioner for withdrawing the request for premature retirement primarily in view of the instructions dated 6th March, 1993 issued by the Central Government, reference to

which has been made above. Therefore, question No. 3 as framed is answered by holding that the decision of the army authority, assuming that it had jurisdiction to pass such an order, is arbitrary inasmuch as there is an error of jurisdiction in the decision making process by not taking into account the relevant material which was liable to be taken into consideration.

(40) Another aspect that requires consideration is that of laches, raised by the counsel for the respondents. It is contended that the order rejecting the request for premature retirement was passed on 21st April, 1993 (Annexure P—4) and the petitioner was retired from Army with effect from 25th May, 1993 (Annexure P—6) and he filed the writ petition on 21st August, 1995. The Petitioner has explained this delay in his replication inasmuch as that before he actually retired on 25th May, 1993, he submitted his application dated 23rd March, 1993 (Annexure P—3) requesting for withdrawal of his request for premature retirement but despite that he was relieved from duties. Thereafter, the petitioner made representation dated 3rd May, 1993 (Annexure P—7) for re-consideration of his request for premature retirement. Besides, immediately after the release of the petitioner on 26th May, 1993, he submitted another representation dated 2nd June, 1994 (Annexure P—8) for re-consideration of his request for withdrawing the request for premature retirement. This was followed by another representation dated 1st March, 1995 (Annexure P—9). Therefore, it is not a case where the petitioner had been dormant or was not agitating his rights. Rather there was inaction on the part of the authorities to respond to the representations. Even otherwise, the plea of laches is a technical in nature. The petitioner has filed a writ petition within the period of limitation in case he had filed the Civil Suit for declaration for the same relief. Therefore, keeping in view the above circumstances and the technical nature of the plea raised, which as per the settled law is that where technical consideration and substantive justice are pitted against each other the cause of substantive justice is to prevail. Therefore, in my view, the plea of laches urged by the respondents is without any merit.

(41) For the reasons aforesaid the writ petition is allowed and the orders dated 26th February, 1993 (Annexure P—2), 21st April, 1993 (Annexure P—4) and 26th May, 1993 (Annexure P—6) are quashed and the petitioner is to be treated in service of the army with effect from the date of his premature retirement with all consequential benefits. There shall, however, be no order as to costs.

R.N.R.