

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

Hon'ble Justice Soumitra Pal,                      Hon'ble Chairman &  
 Hon'ble Dr. Subesh Kumar Das,                      Administrative Member.

**Case No. OA 840 of 2018.**

**GATHA CHATTERJEE - VERSUS- THE STATE OF W.B. & OTHERS.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>10 9.9.2019.</p>	<p>For the Applicant : Mr. S.K. Roy, Advocate.</p> <p>For the State Respondent : Mr. S. Ghosh, Advocate.</p> <p>For the Principal Accountant General (A &amp; E) W.B. : Mr. B. Mitra, Departmental representative.</p> <p>In this application, Gatha Chatterjee, the applicant, who was Health Supervisor, has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p><i>(a)".....To decide and dispose of the representation dated 26.3.2018 having received by the office on 29.3.2018 in accordance with law by accepting the application for her voluntary retirement from service under attending circumstances and releasing the entire service benefit in accordance with law upon recalling the release order dated 16.1.2017/17.1.2018 and 04.7.2018 passed in violation of natural justice.</i></p> <p><i>(b)An order directing the authorities to withdraw and/or set aside the release order dated 16.1.2017/17.1.2018 and 04.07.2018 as it has been</i></p>	

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	<p><i>issued in contravention of the Rules violating the principle of natural justice...".</i></p> <p>After the application was admitted directions were issued to file reply and rejoinder. Reply and rejoinder have been filed.</p> <p>It appears that the applicant by letter dated 7<sup>th</sup> July, 2006 addressed to the Director of Health Services and Ex-officio Secretary, Department of Health and Family Welfare, – the respondent no. 2, had applied for resignation from service, the relevant portion of which is as under :-</p> <p><i>".....It may kindly be noted that I could not attend my duty since 8<sup>th</sup> July, 2005 and as <u>such I would like to resign from service with retrospective effect.</u> Intervening period will be treated as a period of notice. I, would, <u>therefore request you to kindly accept my resignation with effect from 08/07/2005...."</u></i></p> <p>(Emphasis supplied)</p> <p>It is evident from the rejoinder that the applicant had withdrawn the letter of resignation by letter dated 2<sup>nd</sup> August, 2007 , the relevant portion of which is as under :-</p>	

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	<p><i>“.....With due respect I, Gatha Chatterjee (designation : H.S.F. serving at Khandra Ukhra B.P.H.C. under Andal Block, dist – Burdwan) beg to state you that I have tendered resignation from 08.07.05 (for which application has been submitted on 07.07.2006), but it is not yet accepted.</i></p> <p><i>But I have changed my mind and wish to withdraw my resignation letter. I shall be highly obliged if you accept my prayer and kindly take necessary action accordingly...”.</i></p> <p>Thereafter the applicant had applied an application for voluntary retirement from service on 3<sup>rd</sup> August, 2007, the relevant portion of which is as under :-</p> <p><i>“.....With due Respect I beg to state you that I Gatha Chatterjee (Designation :- H.S.F.) have been serving at Khandra –Ukhra B.P.H.C. under Andal Block in the District of Burdwan since June 2003. I have completed more than 25 Years of my service (Joining Date 21/07/1980). But, during last few months I have been suffering from some ailments and my husband has fallen seriously ill due to massive heart attack followed by CABG surgery (Certificate enclosed). Due to these reason it may</i></p>	

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	<p><i>not be possible on my part to continue in service.</i></p> <p><i>It may kindly be noted that I, therefore wish to take voluntary retirement from service with effect from .....". Be it noted that the date from which the voluntary retirement is to take effect is missing.</i></p> <p>It appears on 26<sup>th</sup> March, 2018 the applicant had written a letter to the respondent no. 2 praying for review and recall of order of release from service and for consideration of the applicant for voluntary retirement. Thereafter on 4<sup>th</sup> July, 2018 the Joint Director of Health Services (Nursing) , West Bengal had given an intimation to the applicant , the relevant portion of which is as under :-</p> <p><i>".....You are hereby informed that the prayer for re-consideration for acceptance of Voluntary Retirement in lieu of Resignation from Service in respect of Smt. Gatha Chatterjee, Ex-HS (F), lastly attached to Khandra (Ukhra) BPHC, Paschim Bardhaman, has been rejected by the DHS, WB.....".</i></p> <p>Mr. S.K. Roy, learned advocate for the applicant submits that since letter dated 4<sup>th</sup> July, 2018 was issued without giving the applicant an opportunity of hearing and was in violation of principles of natural</p>	

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	<p>justice, it may be set aside and direction may be issued to the respondents to accept the application for voluntary retirement of the applicant. In this regard, he has relied on the judgement passed by the Supreme Court of India in Shambhu Murari Sinha-vs- Project &amp; Development India : (2000)5 SCC 621, particularly paragraph 5 thereof.</p> <p>Mr. S. Ghosh, learned advocate appearing on behalf of the State respondent submits that since it is evident from the letter dated 7<sup>th</sup> July, 2006 that request was made to accept the resignation with effect from 8<sup>th</sup> July, 2005 and as particularly under the 'Note' to Rule 34A of the West Bengal Service Rules Part-I it has been stipulated that resignation takes effect from the date mentioned in the letter, it cannot be withdrawn. As on the prayer of the applicant resignation was given effect to from 8<sup>th</sup> July, 2005, no order may be passed. Assuming the letter of resignation has been allowed to be withdrawn as the letter seeking voluntary retirement does not contain date from which date it should be given effect to, as it was kept blank, it is non-est and cannot be acted upon.</p> <p>In reply it is submitted by Mr. Roy that the 'Note' of 34A (1) is not part of the rules. As the letter</p>	

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	<p>dated 4<sup>th</sup> July, 2018 was issued after her date of retirement, the period of absence may be treated as <i>dies-non</i>. On a query, it is submitted the applicant did not attend office from 8<sup>th</sup> July, 2005.</p> <p>Heard learned advocates for the parties.</p> <p>In order to appreciate the issue, it is appropriate to refer to rule 34A and the relevant portion of the note, which are as under :-</p> <p><i>“...34a. (1) No Government employee shall, unless the Government otherwise directs, be permitted to resign if he fails to serve on his appointing authority due notice at least for –</i></p> <p><i>(a) In the case of a Government employee holding no lien or suspended lien on a permanent post under the Government,.....one month; or</i></p> <p><i>(b) In the case of a Government employee holding lien or suspended lien on a permanent post under the Government , three months.</i></p> <p><i>Explanation – In this rule and in rule 34B “Government employee” means a person appointed to a service or post in connection with the affairs of the State</i></p>	

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	<p><i>and remunerated otherwise than on a daily, weekly or fortnightly basis.</i></p> <p><i>(2)A Government employee who tenders resignation and quits without giving the notice as provided in sub-rule (1) shall, at the discretion of the appointing authority, be liable to forfeiture of his salary for the period by which the notice falls short of the requirements of clause (a) or clause (b), as the case may be , of that sub-rule in addition to such disciplinary action as may be taken against him for contravention of these rules.</i></p> <p><u>Note :</u></p> <p><u>**Regarding the question of taking back in service a Government employee who resigned and subsequently withdrew such resignation letter the following principles shall be followed :-</u></p> <p><u>(i)A person continues in service if he withdraws his resignation letter before the date from which the resignation is to take effect. The resignation becomes irrevocable and operative after the aforesaid date of resignation.</u> So the question of withdrawal of the resignation letter by the Government employee and taking back such employee in service does not arise. After the resignation has become irrevocable and effective, it</p>	

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	<p><i>cannot be cancelled...".</i></p> <p style="text-align: center;">(Emphasis supplied)</p> <p>It is apparent that the applicant, by letter dated 7<sup>th</sup> July, 2006, had made "a request" to "accept" her "resignation with effect from 08/07/2005". Under "Note" to rule 34A resignation stands revoked if he or she withdraws his or her resignation letter before the date from which the resignation is to take effect and "The resignation become irrevocable and operative after the aforesaid date of resignation...". In the instant case the applicant, who was not attending duties since 8<sup>th</sup> June, 2005, by letter dated 7<sup>th</sup> July, 2006 had requested the authorities to accept her resignation with effect from 8<sup>th</sup> July, 2005. It is apparent from the said letter that the applicant had no intention to continue in service as she had requested the authorities to accept her resignation with "retrospective effect" from 8<sup>th</sup> July, 2005.</p> <p>So far as the application for voluntary retirement is concerned, since the resignation had, as desired by the applicant, had already taken effect retrospectively, the question of voluntary retirement does not arise. Assuming the application for resignation has been withdrawn by the applicant, the application</p>	



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	<p>dated 3<sup>rd</sup> August, 2007 for voluntary retirement from service cannot be acted upon as admittedly no date was given from which the applicant sought to retire voluntarily. Therefore, it is immaterial whether principles of natural justice were adhered to or not while disposing of the application for voluntary retirement.</p> <p>The judgement in Shambhu Murari Sinha (supra) relied on by the applicant is distinguishable on facts as in the instant case, the applicant, who was not attending duties, had requested for accepting the letter of resignation retrospectively with effect from 8<sup>th</sup> July, 2005, whereas the case before the Supreme Court was regarding voluntary retirement. The said fact becomes clear as before the Supreme Court the issue was <i>"....the question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance before it is made effective....."</i>.</p> <p>Though on behalf of the applicant it was submitted <i>"Note"</i> is not part of the rules, it is clear from the language of the rules that the <i>"Note"</i> is a part of Rule 34(A). Assuming the <i>"Note"</i> is not part of Rule 34(A), as the applicant had requested the authorities to accept her</p>	

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Skg.	<p>resignation retrospectively “with effect from 08/07/2005” and as resignation naturally took effect from the said date, no order can be passed on the application. Therefore, for the reasons as aforesaid, no order is passed on the application. The application is dismissed.</p> <p>(Subesh Kumar Das) Member (A).</p>	<p>(Soumitra Pal) Chairman.</p>