

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

F.M.A. 845 of 2019

**Kartick Chandra Ghosh
Vs.
Union of India & Ors.**

**Mr. Phatick Chandra Das
Ms. Soma Chowdhury(Bandhu) ... For the Appellants.**

**Mr. Soumya Majumder
Mr. Ashok Kumar Jena For the Respondent Nos. 2 and 3.**

Being aggrieved by the disciplinary proceedings started against him, the appellant moved this court. Pursuant to the order passed in those proceedings on 7th February, 2014 he was reinstated in service. However, the disciplinary proceedings continued in terms of directions passed by this court.

Ultimately on 27th June, 2014 the disciplinary authority issued a punishment order reducing the appellant to a lower grade. Against this, the appellant filed the statutory appeal before the appellate authority on or about 11th August, 2014.

S.D. In January, 2015 a voluntary retirement scheme was introduced by the employer. Immediately after announcement of the scheme on 16th January, 2015 the appellant applied before the authority for availing of the scheme.

On 24th February, 2015 there was separation of

service between the appellant and his employer by his availing of all the benefits under the scheme.

The voluntary retirement scheme was announced after the punishment order.

All entitlements of the appellant on voluntary retirement were computed taking the punishment order into account and, more particularly the reduction in grade imposed by that order.

Now having accepted voluntary retirement order the said scheme which was a kind of a contract or settlement between him and the employer, and taking all the benefits of it, he is estopped from turning around and now contending that he may be allowed to challenge the punishment order. The rules of estoppel clearly prevent him from doing so. Nobody can approbate and reprobate at the same time. The Supreme Court Judgement in Nar Singh Pal Vs. Union of India & Ors. reported in 2000 SCC (L & S) 362, cited by Mr. Das, learned counsel for the appellant is of no assistance to the appellant. In that case the compensation amount was meagre. The litigant was extremely poor. On compassionate grounds, the Supreme Court had entertained his appeal despite his having taken retrenchment compensation. No such case of impecuniosity has been made out here. Moreover, this benefit has been taken by the appellant under the voluntary retirement scheme, which is on a completely

different footing. In computation of the compensation payable to an employee under such a scheme diverse factors like length of service of the employee, the last pay and allowances drawn by him, the number of years of service left, the performance and track record of the employee and so on are considered to arrive at a figure of compensation, which the employer proposes and the employee accepts, as consideration for the employee's service and for his relinquishment or deprivation of future service. This amount of compensation is often a result of hard bargaining.

Hence this case is completely different from the one decided by the Supreme Court.

For all those reasons this appeal fails. We affirm the impugned judgement and order except the part relating to costs which is set aside.

We find no reason to interfere with the judgement and order dated 24th February, 2016 in appeal before us.

The appeal is thus dismissed.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)

