

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00343/2016

Bilaspur, this Monday, the 18th day of November, 2019

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MR. B V SUDHAKAR, ADMINISTRATIVE MEMBER

Chandan Kumar Gupta, S/o Shrawan Kumar Gupta, aged – 33
years, R/o Village – Lurgi, Post Office – Parhi, P.S. – Rajpur,
District – Balrampur (C.G.) **-Applicant**

(By Advocate – Shri Akhilesh Mishra)

V e r s u s

1. Deleted.
2. South Eastern Central Railway through its General Manager,
Railway Zone, Bilaspur 495001.
3. The Divisional Railway Manager, South Eastern Central
Railway, Bilaspur Division, Bilaspur 495004.
4. Chief Personnel Manager, South East Central Railway,
Division Office, Personnel Department, Bilaspur Division,
Bilaspur 495001.
5. Senior Personnel Manager, Head Quarter Personnel
Department, 1st Floor, GM's Office, South East Central
Railway, Bilaspur 495001.
6. Assistant Personnel Officer, South Eastern Central Railway,
Bilaspur Division, Bilaspur 495004 **-Respondents**

(By Advocate – Shri Vivek Verma)

O R D E R

By B V Sudhakar, AM.

This Original Application has been filed challenging the
order dated 03.06.2015 (Annexure A-1) issued by the sixth
respondent in regard to withdrawal of resignation.

2. Brief facts of the case are that the applicant was appointed as Senior Clerk in the respondents organization on 06.11.2013. Thereafter, applicant submitted his resignation from the post of Sr. Clerk on 09.06.2014 on the ground that he has been selected as Stenographer by the Government of Chhattisgarh. On 25.08.2014, the applicant made a representation to the respondents organization to withdraw his resignation and allow him to rejoin as Senior Clerk in the respondents organisation. The applicant made quite a few representations on the same and since there was no response on his representations, he sought information under Right to Information Act. Applicant based on the information obtained through RTI pursued with the respondents and finally the impugned order was issued. The prayer of the applicant is to quash the impugned order, wherein his request to rejoin the respondents organisation was rejected.

3. The contentions of the applicant are that, respondents denying the applicant to withdraw his resignation is bad in law. Para 10 of the Master Circular No.21 issued by the respondents permits an employee to withdraw his resignation in public interest, within a time period of 90 days from date of

resignation. The impugned order does not contain sufficient reasons for rejecting the request of the applicant. Therefore, order is in violation of Article 14 and 16 of the Constitution of India.

4. The respondents have opposed the contentions of the applicant stating that as per Para 10 (i) of the Master Circular No.21, the applicant has to justify his withdrawal by stating changes in the material facts for enabling the respondents to take him on duty. The applicant has not brought out any change in circumstances as stipulated under the said circular. The representations made by the applicant on 25.08.2014 and 27.04.2015 were replied vide letter dated 03.06.2015. The request of the applicant could not be considered in view of the Clause (ii) (iii) and (v) of Para 10 of the Master Circular No.21. The resignation from Railway Services was agreed to based on request of the applicant. If the applicant was not happy with his new job, he should move the application within 90 days as stipulated in Master Circular No.21 of the respondents organisation. The representation of the applicant was also not forwarded through proper channel, i.e. through State Governemnt. Hence, the request of the applicant was rejected by the competent authority keeping in view the provisions of

the Master Circular cited supra and, therefore, the O.A deserves to be dismissed.

5. The applicant has also filed rejoinder, wherein he states that the respondents have erroneously contended that his application has not been routed through State Government. The applicant claims that he was in direct contact with the APO. The respondents have not submitted any document to establish that the applicant did not make request for withdrawal of resignation within 90 days as has been enshrined in Master Circular No.21. The applicant blames the respondents that once the application is made, it is responsibility of the respondents organisation to process the same in time.

6. Heard both the counsel and perused the pleadings.

7.(i) The learned counsel for applicant has submitted that the applicant has made his request for withdrawal of resignation within 90 days as stipulated in Para 10 of the Master Circular No.21. Learned counsel for the respondents and the respondents, in the reply statement, have agreed to this contention. Therefore, there is no dispute on this fact. However, the impugned order dated 03.06.2015 reads as under:

“आपके आवेदन पत्र दिनांक 25.08.2014 के अवलोकन के पश्चात पाया गया कि छ0ग0 राज्य शासन के मंत्रालय स्टेनोग्राफर के पद पर पदस्थ होने के उपरान्त किन कारणों से उक्त सेवा छोड़कर रेलवे में पुनः वापस आना चाहते हैं, जिसका उचित कारण अपने आवेदन पत्र में नहीं दर्शाये हैं, साथ ही मास्टर स्कूलर – 21 पैरा – 10 के अनुसार रेल सेवा से त्यागपत्र एवं तत्काल समय अंतराल पर त्यागपत्र लेने की प्रवृत्ति उचित प्रतीत नहीं होती है, साथ ही आवेदन पत्र के साथ किसी भी प्रकार का दस्तावेज जिससे सत्यापित किया जा सके कि किन कारणों से पुनः रेलवे सेवा में वापस लिया जाये संलग्न नहीं था।”

(ii) The respondents have contended vide impugned order stated supra that the applicant has not given any reasons as to why he wants to withdraw his resignation. This can be verified from the contents of the application made on 25.08.2014 (Annexure A-3) by the applicant, which reads as under:

“उपरोक्त विषयांतर्गत निवेदन है कि मैं चंदन कुमार गुप्ता, “पूर्व वरिष्ठ लिपिक” के पद पर बिल अनुभाग तथा रूलिंग अनुभाग (कार्मिक) विभाग, मुख्यालय बिलासपुर में कार्यरत था परंतु मुकाधि कार्यालय आदेश संख्या अराजपत्रित/230/2014 दिनांक 17 जून 2014 को विभागीय नियमानुसार मैं रेल सेवा छोड़कर छ0ग0 राज्य शासन के मंत्रालय में स्टेनोग्राफर के पद पर 20/06/2014 से पदस्थ होकर कार्यरत हूँ लेकिन मैं पुनः राज्य शासन की सेवा छोड़कर रेल प्रशासन में अपनी सेवा देना चाहता हूँ।

अतः आपसे विनम्र निवेदन है कि मुझे पुनः रेल सेवा में पूर्व नियुक्ति अनुसार वरिष्ठ लिपिक के पद पर कार्य करने की अनुमति प्रदान करने की कृपा करें।”

It is thus obvious from the above letter of the applicant that he had not justified his withdrawal of the resignation. To this extent the stand of the respondents is correct.

(iii) Further, the respondents have enclosed the letter of resignation and acceptance of the same by the respondents vide

Annexure R-1 and R-2. The above facts have to be assessed in the background of the Master Circular No.21, which stipulates the following conditions for accepting the resignation, as extracted below:

“10. The authority competent to accept the resignation may permit a person to withdraw his resignation in the public interest on the following conditions:

- i. that the resignation was tendered by the Railway servant for some compelling reasons which did not involve any reflection on his integrity, efficiency of conduct and the request for withdrawal has been made as a result of a material change in the circumstances which compelled him to tender his resignation originally;*
- ii. during the intervening period between the date of his resignation and the withdrawal, the conduct of the person was not improper;*
- iii. that the period of absence from duty between the date on which the resignation became effective and the date on which a person was allowed to resume duty as a result of permission granted for withdrawal of resignation, is not more than 90 days;*
- iv. that the post, which was vacated by the person or any other comparable post is available;*
- v. withdrawal of a resignation shall not be accepted where a Railway servant resigns his service or post with a view to take up a private employment or in a company wholly or substantially owned or controlled by the Government or under a body controlled or financed by the Government; and*
- vi. when an order is passed by the competent authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include condonation of interruption in service but the period of interruption shall not count for qualifying service.”*

As can be seen from clause (v), the withdrawal of the resignation can be accepted by the respondents only if the person has not accepted any private employment or in a company wholly or substantially owned or controlled by the Government or under a body controlled or financed by the Government. In the present case, we find that the applicant has been selected by the State Government and as per his own submission, he has joined the State Government. Therefore, as per the said circular, the applicant loses the entitlement to make a request for withdrawal of his application for resignation. Besides, his application has not been forwarded through State Government. It is necessary that the State Government, for whom the applicant is working for, should have to be necessarily made a party to the issue. Therefore, the O.A also suffers from inadequacy of non-joinder of necessary party. The applicant has also not given any reason as to why he wants to come back to the respondents organisation, which invariably has to be examined by the respondents to take a view. Thus the relief sought by the applicant is against the rule (v) of Master Circular No.21 of the respondents organistaion and also against the law since the State Government has not been made a party to the issue.

(iv) Learned counsel for the applicant has submitted that the impugned order does not speak about Para 10 (v) of Master Circular No.21 and, therefore, the respondents, improving the impugned order through reply statement, does not stand valid as per law. However, Hon'ble Supreme Court has observed in the case of **State Represented by Inspector of Police Central Bureau of Investigation vs. M. Subrahmanyam** in Criminal Appeal No(s). 853 of 2019, decided on 07.05.2019 that procedural inaccuracies need not be given significance in the context of substantial law to be considered. The substantial aspect in the present case is that the applicant is ineligible as per Para 10 (v) of the Master Circular No.21 and, therefore, the action of the respondents is appropriate in view of the judgment of the Hon'ble Supreme Court, cited above. The relevant portion of the Hon'ble Supreme Court judgment is extracted hereunder driving home the importance of substantial law prevailing over procedural law:

“8. In Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597, the Court Opined:

“6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural

direction....The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?"

9. *The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law."*

(v) In view of the aforesaid facts and circumstances, the O.A being devoid of merit, merits dismissal and hence dismissed, with no order as to costs.

(B V Sudhakar)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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