

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00401/2020

Friday, this the 9th day of April, 2021.

CORAM:

**HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER**

B. Suja, 50 years,
W/o. K.N. Anil Kumar,
Formerly Assistant Registrar,
Customs Excise & Service Tax Appellate Tribunal,
Chennai – 600 006.
Residing at : VI/644A, Harihara Iyer Road,
Perumbavoor – 683 542, Ernakulam District. - Applicant

[By Advocate : Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi – 110 001.
2. The Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi – 110 001.
3. The Customs, Excise & Service Tax Appellate Tribunal, West Block No. 2., R.K. Puram, New Delhi – 110 006 through its Registrar. - Respondents

[By Advocate : Mr. N. Anilkumar, SCGSC]

The application having been heard on 08.01.2021, the Tribunal on 09.04.2021 delivered the following:

ORDER

Per: Mr. P. Madhavan, Judicial Member

The applicant filed this O.A seeking the following reliefs:-

“(i) Call for the records leading to the issue of Annexure A-39 and quash the same.
(ii) Declare that the applicant must be deemed to have withdrawn her resignation and that the applicant must be deemed to be on duty w.e.f. 10.11.2016 or w.e.f such date as this Hon'ble Tribunal might be pleased to consider just and proper.”

2. In short, the brief facts of the case are as follows:-

The applicant was working as Assistant Registrar of Customs, Central Excise & Service Tax Appellate Tribunal (CESTAT) in Group-A service. She was selected and appointed initially through UPSC as Assistant in Group B Gazetted service in the Legislative Department, Ministry of Law and Justice in the year 1993. Thereafter, she was selected and offered appointment as Assistant Registrar in Group-A Gazetted Service, Junior Time Scale in the CESTAT. She joined CESTAT after giving technical resignation in the Legislative Department with continuity of service. She was initially appointed at Mumbai Bench of the CESTAT. The applicant, a native of Kerala, was a mother of two daughters; one aged about 5 years and another one year at that time. After joining Mumbai, the applicant was on deputation to Kerala for two short spells and thereafter she was directed to join Delhi Bench of CESTAT. The applicant's posting at Delhi left her daughters in severe health problems, mainly for want of maternal care and attention to the children. The applicant's mother-in-law was also an acute cancer patient. The applicant's mother was also unable to look after the children at that time and she required constant care and attention of the applicant. So, the applicant requested for transfer on deputation to Kerala in the light of present needs, but it was not considered by the Department. Even her request for transfer to Southern Region was not considered favourably. She was also denied Child Care Leave and owing to the severe mental stress and frequent travels, she also became sick.

3. The respondents during that time was threatening with disciplinary action against the applicant for taking leave. So, she represented her

grievances to the Ministry of Finance and at the intervention of the Ministry, the applicant was given posting at Southern Region, Chennai. The said order was produced as Annexure A-1. The applicant joined at Chennai Bench of the CESTAT in the year 2011. While working there, the applicant had to take some medical leave during the year 2015 due to gynaecological issues. The applicant submitted requisite medical certificates along with application for leave. While she was working at Chennai had to travel to Kochi every week to meet the requirements of the applicant's daughters and aged mother-in-law. The request for transfer on deputation was not considered. When she filed a request for sanction of leave on medical grounds, it was met with a violent response by the respondents by transferring the applicant to Allahabad as per order dated 03.09.2015. She was directed to report at Allahabad on 28.09.2015. The applicant was relieved from Chennai in her absence for joining at Allahabad. She had filed a representation for review of the transfer order and she had also given a representation to the President of CESTAT for considering her case sympathetically. Since the applicant continued on medical leave due to her treatment, the 3rd respondent on 10.12.2015 directed the Medical Superintendent, Government General Hospital, Ernakulam to subject the applicant for medical examination. The said letter was produced as Annexure A-11. The applicant received a letter from the Government Hospital, Ernakulam for medical examination and she attended the Medical Board on 29.12.2015, 08.01.2016, 15.01.2016 and 19.01.2016 for various medical check-ups. The letter issued from the Government Hospital is produced as Annexure A-13 series. But, on 13.06.2016, she had received a communication from the respondents alleging that she was not properly attending the medical examination and therefore, she was directed to appear

before the Medical Board constituted by Rajeev Gandhi Government General Hospital, Chennai. The applicant has produced various medical records in support of her case and illness. While the matter was going on, the applicant received a letter dated 25.02.2016 directing her to join at Allahabad and if she fails to do so, she will be taken up for misconduct. Again, the applicant gave representation to respondent No. 3 highlighting the factual position. All her representations were not properly considered and owing to the constant pressure and victimization, the applicant was forced to tender her resignation on 08.03.2016. A copy of the resignation letter is produced as Annexure A-20. There was no response to Annexure A-20 representation for a long time. Finally, on 27.10.2016, the resignation letter was accepted and the said letter is produced as Annexure A-21. However, in the interest of applicant's daughter and family members and also on account of some changed circumstances, the applicant submitted a letter for withdrawing the request for resignation on 10.11.2016, which is produced at Annexure A-22. The said letter was personally handed over to the Registrar, CESTAT – Respondent No.3 (Annexure A-23). The applicant was not issued with any relieving orders or order regarding terminating the applicant. There was no response to the application for withdrawal of resignation from the respondents. The applicant's mother also had submitted a representation to the Hon'ble Minister for Finance on 21.11.2016 requesting for withdrawal of resignation. A copy of the representation is produced as Annexure A-24. But, there was no action on the applicants request for withdrawal of the resignation. Again on 10.08.2017 the applicant submitted another representation directly to the Registrar and also to the President of the CESTAT by personally going over to Delhi and requested these authorities to allow the petitioner to withdraw the

resignation. But, there was no result. On 20.09.2017, she received a letter stating that in terms of Sub-rule (4) of Rule 26 of CCS (Pension) Rules, 1972 the applicant's request for withdrawal of resignation was not agreed to. Copy of the said order dated 20.09.2017 is produced at Annexure A-27. She again filed representation seeking condonation of delay and accepting her request for withdrawal. She had also sought for either accepting the withdrawal of resignation or granting monthly pension pro-rata for the service rendered. There is no sufficient reason to reject the withdrawal of resignation filed by the applicant. Even then the respondents had singled out the applicant and discriminated her by not accepting her request. Therefore, the applicant approached Chennai Bench of this Tribunal seeking remedy. Chennai Bench of the Tribunal disposed of the said O.A by directing the respondents to consider the representation of the applicant under Rule 26(4) of the CCS (Pension) Rules and pass a speaking order within a period of four months. She had again gave a representation along with order of the Tribunal on 18.11.2019 to the first respondent. The first respondent thereafter rejected the representation, which is produced at Annexure A-39. The applicant challenges Annexure A-39, which is arbitrary and without applying the mind and not based on relevant considerations, discriminatory and violative of the constitutional guarantees enshrined in Articles, 14, 16 and 21 of the Constitution of India.

4. Even though notice was served to the respondents through the Standing Counsel who appeared on 28.08.2020. But the respondents did not file any reply to the averments made in the O.A. The case was adjourned to 18.01.2021, 01.03.2021, 04.03.2021 and to 08.04.2021 for filing the reply

statement by the respondents herein. Even though many adjournments were given, the respondents did not file any reply in this matter. When the Standing Counsel was asked regarding the situation, the counsel submitted that he had sent e-mails and letters seeking instructions for filing reply statement. But there is no response and he is not in a position to make any submission in this regard. It appears that the respondents are not at all interested in defending the case. Hence, respondents are set ex-parte.

5. Heard Mr. T.C. Govindaswamy, learned counsel appearing for the applicant made arguments in support of her case and submitted that the applicant was compelled to resign from the post due to frequent transfers. She was denied medical leave and she was also denied Child Care Leave. The applicant have two small daughters and she was unable to look after her children. Even though many representations were given for transfer, but they were not considered. There upon, she gave representation to the Finance Department and at the intervention of the Finance Department she was granted a transfer to Chennai Bench of CESTAT. Thereafter, she was transferred to Allahabad. Owing to the frequent transfer, the applicant became ill and she had to take medical leave and she submitted all the medical bill to the respondents. But the respondents did not care to consider the above and directed the applicant to appear before the Medical Board in the Government Hospital, Ernakulam. While her medical examination was going on, the respondents again directed her to appear before the Medical Board constituted in the Rajeev Gandhi Government General Hospital, Chennai. Owing to the constant pressure and threats, the applicant had to tender her resignation out of compulsion and frustration. Even though the resignation was given on

08.03.2016, the same was accepted only on 27.10.2016 as per Annexue A-21. Immediately, she had filed an application for withdrawal of her resignation on 10.11.2016.

6. The counsel for the applicant mainly relies on the legal position as enumerated in Rule 26 of the CCS (Pension) Rules, 1972. Rule 26 (4) reads as follows:-

“(4) The Appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

- (i) That the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation.*
- (ii) That during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper.*
- (iii) That the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days.*
- (iv) That the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.”*

7. On a perusal of Rule 26(4), we find that if the resignation was tendered for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been as a result of a material change in the circumstances which originally compelled him to tender the resignation or that during the period of intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was not improper, the period of absence from duty between the date on which the resignation became effective and the date on which the person was allowed to duty as a result if permission to withdraw

the resignation is not more than 90 days that the post which was vacated by the Government servant on the acceptance of her resignation or any other comparable post is available, a withdrawal of resignation can be permitted by authority.

8. From this, it can be seen that the applicant has submitted her resignation under compelling circumstances on 08.03.2016 and the said resignation was accepted by the Department only on 27.10.2016 as per Annexure A-21. So, the resignation was became effective only on 27.10.2016, the date on which it was accepted. The period of limitation prescribed is 90 days under Sub-rule 4(iii). In this case, the applicant had applied for withdrawal on 10.11.2016, i.e., within 13 days of the acceptance of the resignation. If we go through the records produced in this case, there is no reason to believe that the applicant was involved in any disciplinary proceedings or to consider that her resignation was due to her involvement in any matter relating to her efficiency of conduct. She had tendered her request for withdrawal of resignation within 13 days of the acceptance of resignation and there is no delay occurred as stated by the respondents in Annexure A-39. A-39 order was passed under the presumption that the applicant had submitted the letter for withdrawal of resignation only on 10.11.2016 i.e., after much delay. As per the documents produced before the Tribunal, it seems that the applicant had applied for withdrawal of resignation immediately on acceptance i.e on 10.11.2016. The respondents did not consider this matter in detail. The resignation became effective only when it is accepted. So, the resignation of the applicant became effective only on 27.10.2016 and she is entitled to withdraw her resignation within 90 days.

From Annexure A-22, it can be seen that the respondents had passed impugned order at Annexure A-39 without properly applying the mind and without understanding of rule provisions and also the details regarding withdrawal of resignation stated by the applicant. **The action of the respondents in rejecting the withdrawal of application as per Rule 26(4) is arbitrary and without any backing of law. Hence, the impugned order at Annexure A-39 is liable to be set aside and we do accordingly. The applicant has clearly shown that she is entitled for withdrawal of her resignation under Rule 26 (4)-(i), (ii), (iii) and (iv) of the CCS (Pension) Rules.**

9. Accordingly, we allow the O.A. Respondents are directed to reinstate the applicant after allowing the withdrawal of resignation within a period of 30 days from the date of receipt of a copy of this Order. No order as to costs.

(Dated, 9th April, 2021.)

**(K.V. EAPEN)
ADMINISTRATIVE MEMBER**

**(P. MADHAVAN)
JUDICIAL MEMBER**

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Applicant's Annexures

Annexure A-1 - A true copy of proceedings of the Ministry received under letter bearing F.No. R.20011/27/2012-Ad.IC dated 27.03.2012.

Annexure A-2 - A true copy of order bearing F.No. A50050/9/2011-A. IC (CESTAT) dated 13.06.2011 issued by the 1st respondent Ministry.

Annexure A-3 - A true copy application dated 16.07.2015 addressed to the Senior Member (Technical), CESTAT, Chennai.

Annexure A-4 - A true copy of Office Order bearing No.23(51)/Trans./CESTAT/Admn. 2014 dated 03.09.2015 issued from the office of the 3rd respondent.

Annexure A-5 - A true copy of the letter bearing F.No. 4(6)/CESTAT/PF/Admn./2003 dated 2309.2015.

Annexure A-6 - A true copy of the Office Order bearing F.No. A-19(I)/Pers. File/SBP-AR/CHE/2011-Vol-II dated 03.09.2015.

Annexure A-7 - A true copy of the detailed representation dated 15.09.2015, submitted by the applicant addressed to the 3rd respondent.

Annexure A-8 - A true copy of the letter bearing F.No. 4(6)/CESTAT/PF/Admn./2003 dated 23.09.2015 issued by the 3rd respondent.

Annexure A-9 - A true copy of representation dated 03.10.2015 submitted by the applicant, addressed to the 1st respondent.

Annexure A-10 - A true copy of representation dated 04.10.2015 submitted by the applicant.

Annexure A-11 - A true copy of letter dated 10.12.2015 issued by the 3rd respondent with copy marked to the applicant.

Annexure A-12 - A true copy of letter No. C2-8133/2013 dated 14.12.2015, issued by the Government to the applicant along with its true translation.

Annexure A-13 series - True copy of attendance certificates issued by the Superintendent and Chairman, General Hospital,

Ernakulam dated 08.01.2016, 15.01.2016 and 19.01.2016.

Annexure A-14 - True copy of letter bearing dated 13.01.2016 issued from the office of the 3rd respondent.

Annexure A-15 - True copy of communication received by the applicant addressed to the Chief Medical Officer of the Rajeev Gandhi Government General Hospital, Chennai dated 13.01.2016.

Annexure A-16 - True copy of the letter dated 18.01.2016 issued by the applicant to 3rd respondent.

Annexure A-17 - True copy of the MRI Scan Report of the applicant conducted at the General Hospital, Ernakulam.

Annexure A-18 - True copy of the letter dated 25.02.2016 issued by the 3rd respondent.

Annexure A-19 - True copy of the representation dated 29.02.2016 submitted by the applicant addressed to the 3rd respondent.

Annexure A-20 - True copy of the letter dated 08.03.2016 submitted by the applicant before the 1st respondent.

Annexure A-21 - True copy of the letter bearing F.No. 4(6)/CESTAT/PF/Admn./2003 dated 27.10.2016. issued by Deputy Registrar (Admn.)

Annexure A-22 - True copy of the letter dated 10.11.2016, submitted by the applicant addressed to the 1st respondent.

Annexure A-23 - True copy of the covering letter dated 10.11.2016 issued to the Registrar, in the office of the 3rd respondent.

Annexure A-24 - True copy of the representation dated 21.11.2016, submitted by the applicant addressed to the Hon'ble Minister for Finance.

Annexure A-25 - True copy of the bearing F.No. 4(6)/ CESTAT/ PF/ Admin./2003 dated 10.08.2017 received by the applicant from the third respondent.

Annexure A-26 - True copy of the letter dated 25.08.2017 submitted by the applicant to the 3rd respondent.

Annexure A-27 - A true copy of the letter bearing F.No. 4(6)/CESTAT/PF/Admin./2003 dated 20.09.2017 issued by Deputy Registrar (Admn.).

Annexure A-28 - True copy of the detailed representation dated 28.12.2017 submitted by the applicant before the Hon'ble Minister for Finance.

Annexure A-29 - True copy of the communication bearing F.No. 4(6)/CESTAT/PF/Admn./2003 dated 05.02.2018 received by the applicant.

Annexure A-30 - True copy of representation dated 26.02.2019 submitted by the applicant.

Annexure A-31 - True copy of the representation dated 23.04.2019 submitted by the applicant addressed to the 1st respondent.

Annexure A-32 - True copy of the letter bearing F.No. A50050/77/2016-Ad.IC(CESTAT) dated 10.06.2019 issued by the 1st respondent.

Annexure A-33 - True extract of Rule 26 of the CCS (Pension) Rules, 1972.

Annexure A-34 - True copy of the Department of Personnel & Training OM No. 28035/2/2007-Estt.(A) dated 04.12.2007, (as published in pages 65 and 66 of "Swamy's Pension Compilation, 2018 Edition".

Annexure A-35 - True copies of pages 64 to 67 as contained in of "Swamy's Pension Compilation, 2018 Edition", indicating the procedure to be followed in accepting the resignation from service.

Annexure A-36 - True copy of the Seniority list of Assistant Registrars published by the respondents under No. 17(1) Sen.list/ AR/ CESTAT/ Admn. 2007 dated 01.08.2011.

Annexure A-37 - A true copy of the order of the Hon'ble Central Administrative Tribunal, Chennai Bench in MA No. 310/695/2019 in O.A No. 310/.../2019 dated 08.11.2019.

Annexure A-38 - True copy of the representation dated 18.11.2019 submitted by the applicant addressed to the 1st respondent.

Annexure A-39 - True copy of the order bearing F. No. A. 50050/77/2016-Ad.IC (CESTAT) dated 06th January, 2020 issued by the 1st respondent.

Annexure A-40 - A true copy of said representation dated 10.08.2017 submitted by the applicant to the President of the 3rd respondent Appellate Tribunal.

Annexures of Respondents

NIL
