

5

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 561 OF 1995.

CUTTACK, this the 30th day of November, 1998.

SHRI PARKHIT BHITRIA. APPLICANT.

- VERSUS -

UNION OF INDIA & OTHERS. RESPONDENTS.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30/11/98

G. Narasimham
(G. NARASIMHAM)
MEMBER(JUDICIAL)
30-11-98

6

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 561 OF 1995.

CUTTACK, this the 30th day of November, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

....

Shri Parkhit Bhitria, aged about 41 years,
Son of Shri Upendra Bhitria, Vill./PO.
Subdega-770 014, P.S. Talsara, Dist. Sundergarh. ... Applicant.

By Legal Practitioner : M/s. Antaryami Rath, A.C. Rath, Advocates.

- Versus -

1. Union of India represented by the
Secretary, Ministry of Finance,
Department of Revenue, Government of
India, New Delhi.
2. Secretary to the Government of India,
Ministry of Personnel, Public Grievances
and Pensions, New Delhi.
3. Commissioner, Central Excise and Customs,
Rajswa Vihar, Bhubaneswar-751 004. ... Respondents.

By legal practitioner : Mr. Ashok Mohanty, Senior Standing
Counsel (Central).

.....

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :-

Applicant who joined as Inspector of Central
Excise & Customs on 12-6-1977, due to some domestic
problems, represented on 6-1-1992 to the Collector, Central

Excise & Customs, Bhubaneswar tendering his resignation to be effective from 6-2-1992 (Annexure-2). The resignation was accepted by the Authorities vide Annexure-R/3. On 24-3-1994, applicant sent another representation to the Collector, Central Excise and Customs, Bhubaneswar vide Annexure-3 requesting to allow him to assume his service treating the representation of resignation as withdrawn. On 2-5-1994, from the Collectorate of Central Excise & Customs, Bhubaneswar, he received intimation that as per Rule-26 of the Central Civil Services Pension Rules, 1972, such withdrawal of resignation is not permissible as the resignation become effective on acceptance and the applicant, had since been relieved (Annexure-4).

He had submitted resignation as he was required to stay at his native village to look after his ailing old parents. As his domestic problems to some extent were solved, he had again represented for his reinstatement. He belongs to ST community and the strength of representation of ST Community in the cadre of Inspector of Excise is not in full.

Hence, this application, under section 19 of the Administrative Tribunals Act, 1985 on 21.9.1995 for a direction to the Respondents to consider the representation under Annexure-3 taking these facts into account and ultimately permit him to withdraw the resignation and assume his duty.

8

8

2. Respondents Department, in their counter, pointed out that the resignation became effective on 6.2.1992 on its acceptance and the applicant was relieved accordingly. Hence his representation for withdrawal of resignation and consequently reinstatement submitted after a gap of two years, can not be considered because of Rule-26(4)(III) of the Central Civil Services (Pension) Rules, 1972 (in short Rules) which provides that such withdrawal of resignation can be considered if the period of absence of 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 90(ninety) days. There is no specific denial in the counter as to the shortage of representation of ST community in the Cadre of Inspector of Central Excise and Customs.

3. Rule-26(4)(III) of the Rules, is clear that any withdrawal of resignation and consequent assumption of duty must be within 90 days from the date when the resignation becomes effective. Shri Antaryami Rath, learned Counsel for the applicant, however, contended that his resignation was accepted by the Additional Collector, Central Excise and Customs, Bhubaneswar, who is not the competent authority to accept and as such, it is deemed that his resignation has not been accepted according to law and consequently, he is deemed to be continuing in

Service. We do not see any force in this submission. It is true that Annexure-5, dated 3-3-1992 has been signed by the Additional Collector (P&V), Central Excise and Customs, Bhubaneswar. This is an order intimating that the resignation of the applicant has been accepted with effect from the Afternoon of 6th February, 1992. But the order is issued from the Office of the Collector, Central Excise and Customs, Bhubaneswar which implies that it had the approval of the Collector. Even otherwise, in this application, he has not prayed to quash this order and also could not have, because of the ^{hurdle} ~~power~~ of limitation under section 21 of the Administrative Tribunals Act, 1985. This apart, in his representation dt. 24.8.1994, under Annexure-3, applicant himself admits that he was relieved from service w.e.f. 6.2.1992 and not only that, he also prays to condone the two years break in his service treating it as leave without pay and consequently reinstatement. This being so, it is too late, at this stage, for him to challenge the authority of the order under Annexure-5 signed by the Additional Collector, Central Excise and Customs, Bhubaneswar.

4. We have already held that Rule 26(4) (III) of Rules dis-entitles the applicant's plea for reinstatement. However, learned counsel for the applicant submitted that the Tribunal can issue a direction to the Respondents to relax this particular Rule in this case under Rule 83 of the Rules on the ground that it causes undue

hardship to the applicant. Rule-83 deals with power of any Ministry or Department of the Government to dispense with or relax the requirement of any Rule in any particular case, causing undue hardship. Even if, such power of relaxation can be extended in any individual cases, utilisation of such power is completely within the discretion of the concerned Ministry or Department of the Government. In such cases, it is not desirable for this Tribunal to issue any direction to the concerned Ministry or Department i.e. Respondent No.1, Union of India to use this power of relaxation in ^{the} case of the applicant. The applicant, if so advised, may submit a representation to the concerned Authority praying for relaxation of the Rules in this case.

5. In the result, the application is without any merit and is dismissed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM