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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.26 of 2010
Cuttack, this the 05th of January, 2012

Nabin Kumar Agarwal Applicant
Versus
Union of India & Others Respondents

For instructions

1. Whether it be referred to the reporters or not? ✓
2. Whether it be sent to the PB for circulation to all Benches of the Tribunal? ✓

(C.R.MOHAPATRA)
MEMBER (ADMN.)


(A.K.PATNAIK)
MEMBER (JUDL.)

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CUTTACK BENCH: CUTTACK

O.A.No.26 of 2010

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C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)
A N D
THE HON'BLE MR. A.K.PATNAIK, MEMBER (JUDL)

.....

Nabin Kumar Agarwal, aged about 40 years, Son of Jagdish Prasad Agarwal, Ex.SSE/Estimates, Office of PCE/East Coast Railway, Bhubaneswar, residing at Qr.No.D 76/G.Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Applicant

By legal practitioner -Mr.S.Palit, Counsel

-Versus-

1. Union of India represented through Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi-1.
2. General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Principal Chief Engineer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Deputy Chief Engineer (Project), Office of General Manager (Engineering), East Coast Railway, Eastern Annex Building, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Assistant Personnel Officer (HQ-1), Office of Chief Personnel Officer, East Coast Railway Sadan, Second Floor, Bhubaneswar-17, Dist. Khurda.

... Respondents

By legal practitioner -Mr.S.K.Ojha, S.C Railways

O R D E R

A.K.PATNAIK, MEMBER (JUDL)

The applicant has challenged the order dated 26-08-2009 under Annexure-A/5 communicating the approval of the competent authority [i.e. PCE/ECOR/BBS] accepting the resignation of Applicant with immediate effect who was then working as SSE (Estt.)/ECOR/HQ/BBS of Engineering Department of the Railway with a prayer to quash the said order and to direct the Respondents to allow the Applicant to resume his office and also to allow him to work in the post

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held by him prior to the acceptance of his application for resignation dated 2.5.2008 thereby accepting the application for withdrawal of his resignation dated 27.10.2009 under Annexure-A/10.

2. The Respondents by filing the counter objected to the prayer of the applicant by stating therein that the applicant who was working as SSE/Estimate under PCE/ECOR/BBS submitted an application on 02.05.2008 through proper channel to the Chief Personnel Officer, East Coast Railway, Bhubaneswar to accept his technical resignation /resignation from the Railway Service. As the applicant in his application requested to accept his technical resignation/resignation, he was advised in letter dated 14.7.2008 to confirm whether he wants technical resignation or resignation from Railway Service and in response thereto, the applicant in his application dated 30.7.2008 expressed his desire not to join any other service & requested to accept his resignation/voluntary retirement. The Respondents in order to appraise this tribunal on the past service of the applicant vis-vis the reason for rejection of his request for technical / voluntary resignation have stated that the applicant joined the Railway as Head Estimator on 02-03-1998 and requested for acceptance of his request for technical resignation/resignation/voluntary retirement vide application dated 02-05-2008 i.e. prior to completion of 20 years of service in Railway. Therefore he was not eligible to seek voluntary retirement. Similarly, as the applicant was not going to join in any State/Central Government Organization his request was treated as a case of normal resignation from Railway Service or quitting the Railway service as per Rule 302(3) of IREC Vol.I Accordingly his case was considered as a normal resignation & the same was accepted and intimated to him under Annexure-A/5. Thereafter, by making application on 27.10.2009 (received by the Respondents on 28.10.2009), Applicant sought to withdraw his application dated 02.05.2008. Hence it has been averred by the Respondents that once the resignation of the applicant has been accepted and acted upon by the competent authority, the applicant

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cannot claim as a matter of right to withdraw the resignation at a belated stage. Accordingly, Respondents have prayed for dismissal of this OA.

3. Mr. Subir Palit appearing on behalf of the applicant mainly emphasized that while the applicant was continuing in the Railways & made an application dated 2.5.2008 praying for acceptance of his technical resignation, the respondents can not treat the request as a normal resignation instead of technical resignation and accepted the same with immediate effect after more than a year vide order under Annexure-A/5 dated 26.8.2009. Mr. Palit further submitted that even if the said order under Annexure-A/5 is considered as acceptance of a normal resignation, then also it could have been followed by the order relieving the applicant from the services of the Railways. But the applicant was not relieved rather after the order under Annexure-A/5, in letter under Annexure-A/7 dated 2.9.2009 the applicant was requested to be present in the office during the stock verification on the dates mentioned in the said letter. Thereafter through application dated 27.10.2009 the applicant requested for withdrawal of his application seeking technical resignation. Hence it has been contended that a resignation becomes effective when it is accepted and the Government servant is relieved from his duty. Since the applicant was not physically relieved till his application dated 27.10.2009 seeking withdrawal of his earlier request was made, acceptance of such earlier request of the applicant is not sustainable in the eyes of law. On the other hand, Sri S.K.Ojha, learned Standing Counsel appearing on-behalf of the Respondents by placing reliance on sub para 10 of para 302 of IREC Vol.I [2003 edition), Master Circular No. 21 Board's letter No. F (E)III/77/PNI/11 dated 05.08.1977 strongly objected by stating that once resignation tendered by an employee is accepted the Government servant abandons his/her right to claim withdrawal of his request as a matter of right and it is purely within the domain of the competent authority who may permit withdrawal of the resignation only in public interest if he is satisfied that the resignation was tendered by the railway servant for some compelling reasons which did

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not involve any reflection on his integrity, efficiency or conduct and that the request for withdrawal has been made as a result of material change of the circumstances which compelled him to tender his resignation originally. Therefore, by submitting application at a belated stage, the applicant is estopped to challenge non-acceptance of his request for withdrawal of his resignation especially after the acceptance of his request besides he being relieved from his duty long since. In support of the claim of the Respondents that soon after the acceptance of resignation the applicant was relieved from service, Mr. Ojha, Learned standing counsel appearing for the Respondents has produced Xerox copies of inventory prepared by the Railway. By stating so, Mr. Ojha, further reiterated that this OA being devoid of any merit is liable to be dismissed.

4. After giving our thoughtful consideration to the points raised by the Learned Counsel for both sides, we have perused the materials placed on record including the inventory report submitted in course of hearing by the learned Standing Counsel appearing for the Respondents. The applicant by making application dated 2.5.2008 requested acceptance his technical resignation, on which Respondents in letter dated 14.7.2008 sought clarification from the Applicant as to whether he seeks acceptance of resignation or technical resignation. On receipt of such letter, the applicant in letter dated 30.7.2008 intimated that his resignation/voluntary retirement from railway service may be accepted as per extant rules. It is the stand of the Respondents that as the applicant did not complete 20 years by the time his request for acceptance resignation/voluntary retirement, the application of the applicant was treated as a request of resignation and the same was accepted vide letter dated 26.08.2009. When the Respondents in letter dated 14.7.2008 had sought clarification because of mentioning acceptance of technical resignation/resignation by the applicant in his first application dated 2.5.2008 we fail to understand as to why it was not brought to the notice of the applicant that his request for voluntary retirement could not be

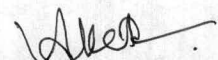
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accepted as he did not complete 20 years of service before treating the application of applicant as a case of resignation and its acceptance. Besides the above, we find that despite adequate opportunity except the copies of inventory statement, the Respondents have not produced any evidence in support of the relieve of the applicant after acceptance of his resignation vide Annexure-A/5. In view of the above, we find force in the submission of the Learned Counsel for the applicant that the request for withdrawal of his resignation/technical resignation/voluntary retirement should have been accepted. Hence, the order accepting his resignation vide Annexure-A/5 is liable to be quashed. Ordered accordingly. Consequently, the Respondents are hereby directed to relegate the applicant to the post which he was holding in his cadre and allow him to discharge his duty with immediate effect, i.e., from the date of the receipt of copy of this order. He would be entitled to count his past service for all purposes, but would not be entitled to any back wages during the interregnum period on the principle of 'no work no pay.'

5. With the aforesaid observation and direction this OA stands allowed to the extent stated above. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(A.K. PATNAIK)
MEMBER (JUDL.)