

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.51/2006

Date: 12.9.2007

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN
HON'BLE MR.AMIT KUSHARI, MEMBER(A)

Shambhu Prasad Singh, son of Sri Jagannath Prasad Singh,
resident of Village- Laukaria,
P.O. Siswa Bazar, P.O.Harsidhi,
District-East Champaran.

.. Applicant

By Advocate : Sri Madhav Krishna

vs.

1. The Union of India, through Secretary to the Govt. of India, Ministry of Human Resource Development & Dept. of Secondary & Higher Education, New Delhi.
 2. The Secretary to Govt. of India, Ministry of Human Resource Development, Department of Secondary and Higher Education, New Delhi.
 3. The Under Secretary to the Govt. of India, Ministry of Human Resource Development, Department of Secondary and Higher Education, New Delhi.
 4. The Section Officer, Establishment-III, Secondary and Higher Education Deptt, Ministry of Human Resource Development, Shastri Bhawan, New Delhi.
- ... Respondents

By Advocate : Sri Rajesh Kumar

ORDER

JUSTICE P.K.SINHA, V.C:-

The applicant while working as Lower Division Clerk in the Department of Culture, claiming for his transfer to Bihar as well alleged mental torture inflicted upon

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him by "certain mischievous people" as well by the authorities who did not transfer him to Bihar, he wrote a letter dated 12.8.2003 on the subject of tendering resignation but in which he only stated that climate of Delhi did not suit him and his request for transfer to Patna since did not materialise nor did it appear to be materialising in near future, he craved permission for leaving the service, requesting that order be issued at the earliest. This prayer was accepted under orders of the competent authority vide Annexure R/19, dated 11.9.2003, per which the competent authority accepted his resignation from the post he was holding with effect from the afternoon of 11th September, 2003 and was relieved of his duties with effect from the same date. As per the applicant, he submitted another letter, a copy of which is at Annexure A9/1, in which he prayed for cancellation of his resignation and for his transfer to Bihar. The same copy of the letter is to be seen at Annexure R/20 annexed to the written statement. In Annexure A9/1, no date is given but it is said to have been received on 11.12.93. However, a receipt with illegible signature dated 11.12.93 would appear at the bottom of the letter which is not to be found at the bottom of the letter at Annexure R/20, though in the margin of the letter this communication (at Annexure R/20) is said to have been received at 4.45 p.m on 11.12.2003. Side notings are absent from Annexure A9/1. From Annexure R/20, it would appear that at the bottom of the second page, full permanent address of the applicant was also given which also is missing from the second page of Annexure A9/1. May be that the letter at Annexure A9/1 was edited to some extent, but the fact remains that it was received on 11.12.93.

2. Through Annexure A/10 dated 2.1.2004 the applicant was informed by the authority that his letter dated 11.12.03 relating to withdrawal of resignation was not

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accepted. However it will also appear from Annexure A/12 that another letter dated 9.8.2005, with same request, was received by the authorities which was replied to by their letter dated 30.8.2005 stating therein that his case was reexamined, but due to administrative reasons, the request could not be acceded to.

3. Learned counsel for the applicant has based his case on the following grounds:-

(i) While rejecting the prayer for withdrawal of resignation, no reason was given by the authorities.

(ii) Under sub-rule 4 of Rule 26 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), the resignation could have been withdrawn under certain circumstances which did exist in this case, hence the prayer should have been allowed, but those circumstances were ignored.

(iii) The applicant was mentally ill at the time he had tendered his resignation, which fact should have been considered by the authorities.

(iv) Annexure A9/1 was not exactly a resignation letter, but it was a letter for granting him permission to resign.

4. In so far as the first point is concerned, when a person voluntarily resigns and that is accepted then, subsequently, when a prayer is made to withdraw the resignation, the concerned authority is under no obligation to give a detailed reason for not accepting the prayer. In any case the applicant has been intimated through Annexure A/12 that his prayer could not be allowed for administrative reasons.

5. In so far as the third reason is concerned that the applicant had mental ailment, this is hard to accept. There are many intimations sent at different times by the applicant such as Annexure A/4 dated 11.1.2002, Annexure A/8 dated 30.6.2003 and, lastly,

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Annexure A/9, but a perusal of any of these would not give an impression that it was written by a person who was mentally sick. Though in some representations, some complaints against the departmental colleagues have been made but the entire narration and the language of these representations would give a definite impression that these were written by a person within his full senses.

6. Just a claim that at the time of writing resignation the applicant was mentally ill could hardly be accepted in the absence of some clinching material on record to support that.

7. In so far as the last argument of the learned counsel for the applicant is concerned, that Annexure A/9 was not a resignation letter, but a letter for permission to file resignation, also cannot be accepted. In Annexure A/9, subject of the letter has been mentioned as follows (in English version):-

“in relation to submit resignation from the service”

In the prayer portion also, a definite request has been made to allow 'end of his service' at the earliest.

8. In Annexure A9/1, which is letter for withdrawal of resignation, it has been clearly mentioned that he had filed letter dated 12.8.2003 for being allowed to resign which was accepted by the Department's letter dated 12.9.2003, which also clearly shows that he fully knew what he was doing when he submitted letter Annexure A/9.

9. From a perusal of these documents would give a clear impression that frustrated with his attempts to get himself transferred to Bihar, he ultimately had submitted resignation in his full senses.

10. Now coming to the second argument of the learned counsel for the applicant, as

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noted hereinbefore, that under Rule 26(4) of the Pension Rules, the prayer should have been allowed as those conditions did exist.

11. The relevant portion of Rule 26 may be reproduced:-

“26. Forfeiture of service on resignation – (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies,

(3) Interruption in service in a case falling under Sub-rule (2), due to the two appointment being at different stations not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(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 tend 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

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acceptance of his resignation or any other comparable post, is available.”

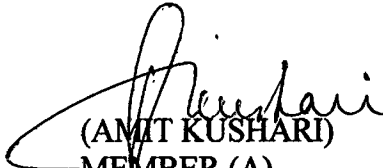
12. The learned counsel could not convince us as to what was the material change in the circumstances which originally had compelled him to tender his resignation. As already seen, the ground that he was mentally ill cannot be accepted. But he has given this ground alone, in the withdrawal letter, that when he went to his village home after his resignation was accepted, he was treated there and then he felt healthy and desired to get his resignation cancelled and get himself transferred to Bihar. However, in the last paragraph he only prayed that he should be transferred to Bihar at the earliest. In this letter also he has mentioned the reason for tendering resignation the denial of his transfer to Bihar. Therefore when the applicant filed a representation for withdrawal of resignation, the situation was same, without any material change.

13. Sub-rule 4 (iii) of Rule 26 states that the period of absence from duty between the date on which resignation became effective (in this case, with effect from 11.9.2003) 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 days. Here, admittedly, the letter for withdrawal of resignation was received in the office of the respondents on 11.12.2003, more than 90 days after the resignation became effective. The period of 90 days ended on 10.12.03 not counting the date on which the resignation became effective in the afternoon.

14. In such circumstance when there is a gap of more than 90 days from the date the resignation became effective, till the date on which his letter to withdraw the resignation was received, there is no question of making the date of joining to be

within 90 days even if the prayer was allowed.

15. Taking any view of the matter, we do not find that the prayers as made in this application, can be allowed. This application, therefore, is dismissed. No costs.



(AMIT KUSHARI)
MEMBER (A)



(P.K.SINHA)
VICE CHAIRMAN

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