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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

24.09.2012

MA 170/2012 & MA 171/2012 (TA No. 11/2009)

Mr. S.S. Shekhawat, Proxy counsel for
Mr. S.P. Sharma, Counsel for applicant.
Mr. Neeraj Batra, Counsel for respondents.

MA No. 170/2012 & MA 171/2012

MA No. 170/2012 for condonation of delay in filing the restoration MA No. 171/2012 is allowed. The MA No. 171/2012 for restoration of the TA No. 11/2009 is also allowed. The TA is restored to its original number and position.

Both the MA are disposed of accordingly.

TA No. 11/2009

Heard learned counsel for the parties. The TA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)

Member (A)

ahq

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of September, 2012

TRANSFERRED APPLICATION No.11/2009

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Virendra Kumar Rulania
s/o Shri Ram Chandra Jat,
r/o K-1/16, LIC Flats,
Sector-6, Vidhya Dhar Nagar,
Jaipur

.. Applicant

(By Advocate : Shri S.S.Shekhwat, proxy counsel for Shri S.P.Sharma)

Versus

1. Bharat Sanchar Nigam Limited, a Government of India Enterprises, through its General Manager Telecom, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur
2. Deputy General Manager, Regional Telecom Training Centre, Plot No. SPB, Road No.14, VKI Area, Jaipur

.....Respondents

(By Advocate : Shri Neeraj Batra)

ORDER (ORAL)

The applicant has filed SB Civil Writ Petition No.11326/2008 before the Hon'ble High Court and the Hon'ble High Court vide order dated 5.1.2009 pursuant to the notification dated 10.11.2008



and in accordance with the provisions of Section 29(2) of the Administrative Tribunals Act, 1985, transferred the Writ Petition to this Tribunal and the same was registered as Transferred Application (TA) No.11/2009. The applicant by way of this TA has prayed for quashing and setting-aside the impugned order dated 4.8.2008 passed by respondent No.1 so far as it denies benefit of Rule 26(2) of CCS (Pension) Rules, 1972.

2. Brief facts of the case are that the applicant while working as Junior Telecom Officer (JTO) in the Bharat Sanchar Nigam Limited applied for the post of Executive Trainee in the other Govt. of India Enterprises i.e. Power Grid Corporation of India Limited (PGCIL) and appeared in the examination held on 20.1.2008 and was declared pass. He also appeared before the Interview Board and ultimately offer of appointment was issued on 21.4.2008 to the applicant for the post of Executive Trainee in PGCIL with certain conditions. On the next day i.e. on 22.4.2008, the applicant informed the respondents regarding his selection to the post of Executive Trainee and tendered his resignation. The applicant also informed that he has to join by 24.7.2008 but resignation of the applicant was not accepted till 23.7.2008, therefore, the applicant proceeded to join the new assignment. He received a relieving order on 4.8.2008 from the respondents informing the applicant that his resignation had been accepted in view of his selection in PGCIL, however, it was made clear that the benefit under Rule 26(2) of CCS (Pension) Rules, 1972 shall not be admissible to him.



3. Aggrieved and dis-satisfied with the action of the respondents, the applicant has preferred this TA. The learned counsel appearing for the applicant referred to Rule 26 (2), which reads as under:-

"26. Forfeiture of service on resignation

(1)

(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.

....."

After referring the aforesaid provisions, the learned counsel for the applicant submits that since resignation is accepted, the applicant is entitled for benefit of past service.

4. The learned counsel appearing for the respondents has strongly controverted the submissions made on behalf of the applicant and stated that the applicant has applied for the post of Executive Trainee in PGCIL at his own, without proper permission of BSNL authority or through proper channel i.e. without following the procedure for applying for other job. Further, the applicant did not submit his application in the prescribed format and the same was also without any supportive documents, such as, the application form for said employment/notification of said examination, although the application submitted by the applicant was forwarded by the Divisional Engineer on 18.1.2008. It is further submitted that while process/action on his resignation letter dated 22.4.2008 was in progress, the applicant submitted another



application dated 15.5.2008 seeking resignation w.e.f. 15.7.2008, hence no action on his previous application dated 22.4.2008 could be taken.

5. The respondents have also referred letter dated 23.7.2008 (Ann.R/3). Upon perusal of this letter, it reveals that the applicant left the service on 23.7.2008 afternoon without acceptance of his resignation or without proper relieving from the service by the competent authority. In that eventuality, resignation of the applicant was rightly accepted as normal resignation without benefit of Rule 26(2) of CCS (Pension) Rules, 1972 by the competent authority after due examination of the facts and circumstances. As the applicant got himself relieved after receipt of relieving order on resignation and handing over the charge to other officer willingly and did not show any unwillingness for the acceptance of resignation without benefit of Rule 26(2) of CCS (Pension) Rules, 1972, therefore, at this stage, he cannot challenge that resignation was accepted without the benefit of Rule 26(2) of CCS (Pension) Rules, 1972.

6. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record, we have also carefully examined the Rule 26(2) of the CCS (Pension) Rules, 1972. We are fully satisfied with the action of the respondents as the applicant without waiting for the order to be passed on the application seeking resignation and on his own left the office willfully on 23.7.2008. Since the applicant has not waited for the decision to be taken on the application seeking resignation and left



the office without handing over the charge, therefore, the decision of the competent authority vide order impugned dated 4.8.2008 (Ann.A/11) wherein it is clearly stated that resignation has been accepted without benefit of Rule 26(2) of CCS (Pension) Rules, 1972 cannot be faulted. In such circumstances, the applicant has no right to claim the benefit of past service under the provisions of Rule 26(2) of CCS (Pension) Rules, 1972 and we find no illegality in the impugned order dated 4.8.2008 and the same does not require any interference by this Tribunal.

7. Consequently, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

J.C.S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/