

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.198/2015

M.A.No.133/2015

Order reserved on 24th January 2017

Order pronounced on 25th January 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Smt. Parulben Kishore Mansatar
Aged 37 years (DOB being 28.05.1977) (Ex. Sepoy wife)
Wife of Shri Kishore D Mansatar (Applicant No.2)
Presently residing at Plot No.5/B
Behind St. Mary's School
Bhavnagar 364002 Gujarat.
2. Kishore Dinkarray Mansatar
Son of Shri Dinkarray Mansatar (Ex. Sepoy)
Aged 39 years (DOB being 10.06.1975)
Presently residing at Plot No.5/B
Behind St. Mary's School
Bhavnagar 364002 Gujarat.

..Applicants

(Mr. M S Rao and Mr. Vijay K Verma, Advocates)

Versus

1. Union of India
(to be presented through its Secretary to the Govt. of
India, Department of Personnel
Ministry of Personnel, Training & Pensioners'
Grievances (DoPT), Govt. of India
North Block, New Delhi – 110 001.
2. The Secretary to the Govt. of India
Department of Revenue
Ministry of Finance, Govt. of India
North Block, New Delhi -1
3. Central Board of Excise & Customs
(to be represented through its Chairman
Central Board of Excise & Customs
Department of Revenue, Ministry of Finance
Govt. of India, North Block
New Delhi – 1
4. The Chief Commissioner
Central Excise & Service Tax
Ahmedabad Zone

o/o the CC of CE & Serv. Tax., Central Excise
Bhavan, Ambawadi, Ahmedabad 380 015

5. The Commissioner of Customs (Prev)
Office of the Commissioner of Customs (Prev)
Sarda House, Bedi Bandar Road, Near Panchavati
Jamnagar 361 008
6. The Additional Commissioner (P&V)
Office of the Commissioner of Customs (Prev)
Sarda House, Bedi Bandar Road, Near Panchavati
Jamnagar 361 008
7. The Deputy Commissioner of Customs
“Gurukrupa” Building
Office of the Deputy Commissioner of Customs
Parimal Chowk, Waghawadi
Bhavnagar – 364 001

..Respondents

(Mr. Rajeev Kumar, Advocate)

O R D E R

M.A. No.133/2015

M.A. seeking joining together in a single petition is allowed.

O.A. No.198/2015

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following main reliefs:-

“B..... to quash and set aside the impugned communication dated 21.08.2014 at Annexure-A/1 hereto, holding and declaring the same to be arbitrary, whimsical, unreasonable, unfair & discriminatory and runs counter to the statutory provisions contained in the CCS (Pension) Rules and also in total disregard to the observations and feelings expressed by this Hon’ble Tribunal in its final order dt. 2.5.2014 while disposing of the applicant’s previous O.A. No.246/2013.

C.... to issue appropriate directions commanding the respondents herein to permit the applicant no.2 herein to forthwith re-join his services as Sepoy Gr.D in the respondent department on such terms & conditions as may be reasonably imposed by the respondents herein.”

2. Brief facts of the case are under:-

2.1 The applicant No.2 was appointed as a Sepoy Grade 'D' in the Department of Customs & Central Excise by the Rajkot Collectorate of the Department vide order dated 23.12.1994. The applicant No.1 is the wife of applicant No.2 and their marriage was solemnized on 26.02.1995. Applicant No.2, due to his family circumstances, tendered unconditional resignation from the Department on 18.01.2010 to the Additional Commissioner (P&V) Jamnagar (R-6). His resignation was accepted on 05.02.2010 and on the same day he was relieved from the government service.

2.2 Apparently, the resignation of the applicant No.2 was prompted by an offer made by his uncle to join his gas agency as a partner. The said partnership did not materialize due to certain reasons/ conditionalities. Applicant No.1, i.e., wife of the applicant No.2 did not know-of the resignation of applicant No.2 from the government service as per the averments made in the O.A.

2.3 Due to precarious financial conditions of his family, comprising self, wife, two daughters and two sons, applicant No.2 represented to respondent No.5 on 15.12.2010 for grant of permission to rejoin the government service on the ground that he had tendered his resignation without proper application of mind.

2.4 Respondent No.7, who is the Deputy Commissioner of Customs, Bhavnagar, vide his communication dated 21.03.2011, informed applicant No.2 that his request for rejoining the Department cannot be considered as per the Rules. Aggrieved by the said communication, applicant No.2

approached Ahmedabad Bench of this Tribunal in O.A. No.246/2012, which was disposed of vide order dated 02.05.2013 (Annexure A-5) with the following directions to the respondents:

“7. Given the aforementioned facts, we would feel it necessary to direct the competent authority of the respondents may take a view as to whether there would be sufficient ground in to relax the provisions of Rule 26 (4)(iii) of CCS (Pension) Rules under Rule 88 of the CCS (Pension) Rules in favour of the applicant with respect to his request for rejoining service and for that purpose treating his resignation as withdrawn. It is expected that the respondents would keep in mind the difficulties enumerated by the applicant in the OA, while taking a decision, in conformity with the rules and instructions. Respondents shall pass a reasoned order and communicate the same to the applicants within a period of three months from the date of receipt of a copy of this order.”

2.5 In compliance with the Annexure A-5 order of the Ahmedabad Bench of this Tribunal in O.A. No.246/2012 dated 02.05.2013, the Department of Customs & Central Excise took up the matter with Department of Personnel & Training (DoPT); and in consultation with the DoPT, vide impugned Annexure A-1 communication dated 21.08.2014, declined to consider the request of applicant No.2.

Aggrieved by the Annexure A-1 communication, the applicants have filed the present O.A. praying for the reliefs mentioned in paragraph (1) above.

3. Pursuant to the notice, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder. With the completion of pleadings, the matter was taken up for hearing on 24.01.2017. Mr. M.S. Rao, learned counsel for applicants and Mr. Rajeev Kumar, learned counsel for respondents argued the case.

4. Learned counsel for applicants submits that the applicants belong to scheduled tribe community and their financial position is absolutely precarious and that applicant No.2, without proper application of mind fell for an offer of his uncle to join his gas agency as a partner, and resigned from the government service. Later, he realized that the offer made was a red herring and in that process he lost four precious years. It was also submitted that applicant No.2 is a semi illiterate person and his family is facing acute financial hardships.

5. Mr. M.S. Rao, learned counsel for applicants drew my attention to the report submitted by the Assistant Commissioner, Customs Division Bhavnagar to respondent No.7 (Annexure H) dated 19.09.2013, which would indicate that the applicants are indeed facing acute financial hardships. Mr. Rao submitted that Rule 88 of CCS (Pension) Rules, 1972 (for short "Pension Rules") provides adequate powers to the respondents to relax the time limitation of 90 days for withdrawal of the resignation as contemplated under Rule 26 of the Pension Rules. He thus prayed for invocation of relaxation under Rule 88 of the Pension Rules and for restoring the government service of applicant No.2.

6. *Per contra*, learned counsel for respondents argued that as per Rule 26 of Pension Rules, applicant No.2 was having liberty to withdraw his resignation within 90 days, which he failed to do so. He finally submitted his representation for withdrawal of his resignation 15.12.2010. The respondents, therefore, in terms of Rule 26 of the Pension Rules, had no option but to reject the said representation of applicant No.2. It was further submitted that pursuant to the directions of the Ahmedabad Bench of this

Tribunal (supra), the respondent-Department reexamined the request of applicant No.2 in consultation with DoPT and finally vide impugned Annexure A-1 communication dated 21.08.2014 informed the applicant No.2 that his request for withdrawal of resignation cannot be considered.

7. I have given my thoughtful consideration to the arguments put-forth by the learned counsel for the parties and perused the pleadings and documents annexed thereto.

8. It is an admitted fact that the applicants, who belong to scheduled tribe community, are facing acute financial hardships. This fact is quite evident from the report of the Assistant Commissioner, Customs Division Bhavnagar (Annexure H). For better appreciation of this case, I consider it necessary to reproduce the said report, which reads thus:-

“Report on hardship faced by Shri K.D. Mansatar.

As directed, visited the resident of Shri K.D. Mansatar on 19.09.2013 at 16.15 hrs.

On enquiry it is observed that Shri Kishor Mansatar and his wif Smt. Parulben and two daughter and two sons are living with his father Shri Dinkarraai Kanibhai, at plot no.05, Mirapark near Saint Marry High School Akhilesh Circle Bhavnagar.

On inquiry it is noticed that Shri Kishor Mansatar having a Bank Account No.30060763322 in SBI Diwanpara Branch Bhavnagar. The Last Balance is Rs.8278/- on 30.06.2013. Moreover there is no any significant credit during the period 07.04.2010 to 30.06.2013 (copy enclosed).

It indicates financial problem to Shri Kishor Mansatar.

Moreover it is report that Shri Kishor was two marriageable daughters Viz., 1. Km. Jagruti aged 18 years and 2. Km. Komal aged 16 years both have passed 9th standard and left school due to monetary problem. Further it is to report that Shri Kishor has two sons namely 1. Shri Rutvik aged 13 years studying in 8th standard and 2. Shri Nayan aged 5 years studying lower class LKG.

In addition to above it is noticed that Shri Kishor or his wife has no any immovable property on their name. At present Shri Kishor is unemployed and searching for work. He is totally depending on the helps and mercy of his parents and relatives.”

9. Rule 26 (4) of Pension Rules, stipulating the conditions when the resignation tendered can be withdrawn by a government servant, reads as under:-

“(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.”

10. From Rule 26 (4) (iii) above, it is crystal clear that the government servant has liberty to withdraw his resignation within 90 days and not thereafter. The applicant No.2 admittedly made representation for withdrawal of his resignation on 15.12.2010, i.e., almost after 10 months, but respondent No.7, vide communication dated 21.03.2011, informed him that his request for rejoining the Department cannot be considered. Thereafter applicants went before the Ahmedabad Bench of the Tribunal in O.A. No.246/2012. Pursuant to the order dated 02.05.2013 passed by the

Ahmedabad Bench, the respondents reconsidered the request of the applicants in consultation with DoPT and vide impugned Annexure A-1 communication dated 21.08.2014 and have regretted their inability to consider the request of applicant No.2. The direction of the Ahmedabad Bench, in its order dated 02.05.2013, was that the case of the applicant No.2 should be reexamined by the respondents in accordance with Rule 88 of the Pension Rules, which reads as under:-

“88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that no such order shall be made except with the concurrence of the ¹[Department of Pension & Pensioner's Welfare].”

11. The power of relaxation provided under Rule 88 of the Pension Rules is basically to deal with some exceptional circumstances. In the instant case, it is quite clear from the records that the applicants are facing acute financial hardships. They belong to scheduled tribe community, who deserve compassion and sympathetic consideration by the civil society at large and more particularly by the Government. In the instant case, I find that the impugned Annexure A-1 communication has been issued in a mechanical manner without explaining as to why the relaxation under Rule 88 (ibid) cannot be invoked. Even the respondents have also not been able to explain the reasons given by the DoPT in disagreeing with the recommendations of the Department of Customs & Central Excise and the highest level for sympathetic consideration of the case. Annexure H letter of

Assistant Commissioner, Customs Division Bhavnagar to the Deputy Commissioner (P&E), Jamnagar and Annexure I letter of Commissioner, Jamnagar to the Chief Commissioner, Customs Gujarat Zone, Ahmedabad, furnished by the respondents as enclosures to their reply, describe the penury condition of the applicants in vivid details.

Under these circumstances, I am of the view that the applicants deserve due compassion and sympathy, and the ends of justice would meet only by giving a direction to the respondents to permit applicant No.2 to withdraw his resignation and rejoin his duties by exercising their powers under Rule 88 of the Pension Rules.

12. In the conspectus of the discussions in the foregoing paragraphs, the respondents are directed to permit applicant No.2 to withdraw his resignation by exercising their powers under Rule 88 of the Pension Rules. They shall pass an order to this effect within a period of three months from the date of receipt of a copy of this order. It is made clear that the applicants shall not be entitled for any back-wages and the period from the date of acceptance of his resignation (05.02.2010) and the date when he rejoins the service shall not be counted for any pensionary benefits. O.A. is accordingly allowed.

No order as to costs.

(K.N. Shrivastava)
Member (A)

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