

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.021/00240/2014

Date of Order: 22nd June, 2018

Between:

Mummadi Srinivasulu, S/o.M.S. Ramchandrudu,
Aged about 34 years, Occ: Ex. Security Assistant (Executive),
O/o. Joint Director, Subsidiary Intelligence Bureau,
Koti, Hyderabad, R/o. H. No. 86/347,
Doctor Colony, Kurnool – 518002.

... Applicant.

And

1. Union of India rep by its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Director,
Intelligence Bureau, SP Marg,
Intelligence Bureau Head Quarters,
Ministry of Home Affairs, New Delhi.
3. The Joint Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs, Koti, Hyderabad.
4. The Joint Deputy Director (Establishment),
Subsidiary Intelligence Bureau,
Koti, Hyderabad.
5. The Assistant Director (Establishment),
Subsidiary Intelligence Bureau,
Koti, Hyderabad.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar, Advocate

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. Justice Vishnu Chandra Gupta, Member (Judl.)

ORDER
{As per Hon'ble Mr.Justice Vishnu Chandra Gupta, Member (Judl.)}

This reference under Section 26 of the Administrative Tribunals Act, 1985 has been referred to me to resolve the difference of opinion of the two Hon'ble Members in OA No.020/00240/2014. The question referred for resolution under Section 26 of the Administrative Tribunals Act is as under:

“The main point of disagreement is as to whether having regard to the circumstances which lead the applicant to tender resignation it can be viewed that he tendered the same under some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and he can be permitted to withdraw his resignation in public interest under Rule 26 (4) of CCS (Pension) Rules or on a strict construction of Rules 26(5) of CCS (Pension) Rules, the withdrawal of the resignation shall not be accepted by the appointing authority.”

2. Before resolving the dispute arisen on account of difference of opinion, some facts of the case are necessary to be looked into. The applicant was serving as a Security Assistant (Executive) in the Intelligence Bureau, Ministry of Home Affairs, Government of India. A notification was issued by the National Insurance Company Limited (for short “NICL”), working under the Ministry of Finance, in 2012, inviting applications for the posts of Administrative Officer, Scale-I (Specialist) and Administrative Officer, Scale-I (Generalist). On 04.03.2012 the applicant sought permission to apply on line for the post of Administrative Officer (Specialist). The respondent No.5 after considering the request of the applicant, granted permission to the applicant to apply for the post of Administrative Officer (Generalist) and not for the post of Administrative Officer (Specialist) vide Memo dated 06.03.2012. Thereafter, the

applicant submitted another representation dated 15.03.2012 seeking correction of the post mentioned in the letter dated 06.03.2012 and made a request that instead of Administrative Officer (Generalist), the word “Administrative Officer (Specialist)” be written. The respondents in response to his request vide e-mail message dated 01.06.2012 asked the applicant to furnish a copy of the online application for taking further action in the matter. But, by that time, the due date for submission of online application was already over. The applicant before due date had already applied online for the post of Administrative Officer (Specialist) and after going through the selection process, he was selected for the said post as per letter dated 26.11.2012 of the NICL. After the selection of the applicant to the said post, he requested to consider his resignation from service, vide his letter dated 07.12.2012 on the ground that he has been selected to the post of Administrative Officer (Specialist) in NICL. The respondents thereafter sought certain clarifications and certain information from the applicant. In pursuance thereof, the applicant furnished required information and clarifications on 19.12.2012. However, the respondents vide Memo dated 31.12.2012 rejected the request of the applicant for accepting the resignation and permitting him to join the post as Administrative Officer (Specialist). Copy of the same is annexed with the original applicant as Annexure A-XVII, which is extracted as under:

“Please refer to his application dated December 7, 2012 requesting to accept resignation to the post of SA/G in IB on his selection to the post of Administrative Officer (Investigator) in National Insurance Company (A Govt. of India undertaking).

The request for resignation could not be accepted as he is neither given permission to apply for the post nor issued NOC.

This issues with the approval of SD, SIB, Hyderabad.”

Thereafter, the applicant submitted resignation from the post of Security Assistant in Intelligence Bureau for personal reasons vide his letter dated 28.12.2012 and he requested to relieve him at the earliest. Copy of the said letter is annexed with the original application as Annexure A-XVIII. After accepting the resignation of the applicant by the respondents, the applicant moved an application to the Assistant Director, SIB, Hyderabad for considering his reinstatement into service on the ground that his efforts to join the post in NICL could not materialize due to late reporting. Copy of his letter dated 21.01.2013 is enclosed as Annexure A-XIX with the original application and the same reads as under:

“Sir, I am a candidate named Srinivasulu Mummadi, a Security Assistant in metro branch of SIB-Hyderabad and had resigned on personal grounds and got relieved on 17th Jan 2013, submit the following few lines for your kind consideration.

Sir, as you are aware that I had tendered my resignation on personal grounds only to join the post of Administrative Officer (Investigation) as my technical resignation was not accepted. But, my efforts to join the post could not materialize due to late reporting.

I kindly request you to consider for reinstatement into service.”

3. Subsequently, on 25.01.2013, the applicant moved another application addressed to the Assistant Director/E, SIB-Hyderabad wherein he stated that due to some family problems and mental depression he had hastily tendered resignation on personal grounds, for which, he sincerely apologize and requested to consider his reinstatement into service. The respondents vide letter dated 02.04.2013 declined the request of the applicant for his reinstatement, copy of

which is annexed as Annexure II to the original application. After rejection of his claim, the applicant made another representation to reconsider his request, but his request was again declined for reinstatement vide Memorandum dated 18.06.2013, which is filed as Annexure A-III to the original application.

4. Aggrieved by the aforesaid orders including the order of accepting the resignation of the applicant vide letter dated 16.01.2013, the applicant filed this original application seeking the following relief:

“In view of the above facts and circumstances the applicant herein prays that this Hon’ble Tribunal may be pleased to call for the records pertaining to the Memo. No. 27/Est(PF)/2009(15)120 dated 16.01.2013, Memo. No. 27/Est(PF)/2009(15)-652 dated 02.04.2013 and Memo. No.27/Est(PF)/2009(15)-1340 dated 18.06.2013 and quash and set aside the same as illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and rules on the subject matter and consequently direct the respondents to reinstate the applicant henceforth as Security Assistant (Executive) in the interest of justice..”

5. Heard learned counsel for the applicant and the learned counsel for the respondents on 18.06.2018. Learned counsel for the respondents was further heard on 20.06.2018 in view of the order passed on 18.06.2018 and he also submitted written arguments, which were taken on record. The counsel for applicant did not file any reply to the written arguments as he stated that there is no need to file the same.

6. During the course of arguments, learned counsel for the applicant has not pressed the relief sought in respect of the order dated 16.01.2013, by which, the resignation of the applicant was accepted and in the light of the request made by

the learned counsel for the applicant, the relief sought in respect of the order dated 16.01.2013 is deemed to be abandoned.

7. The main grounds to set aside the two other orders whereby the request for reinstatement of applicant was declined, are that the applicant has tendered his resignation on personal grounds and he satisfy all the requirements of sub-rule 4 of Rule 26 of the CCS (Pension) Rules, 1972, therefore, the impugned orders declining his request for reinstatement are not sustainable. It was further contended that once the resignation has been tendered on personal grounds and has been accepted as such, sub-rule 5 of Rule 26 of CCS (Pension) Rules cannot be allowed to be invoked by the respondents in declining the claim of the applicant for reinstatement into service against such post from which he submitted his resignation. It was further contended that the reasons assigned in the letter dated 18.06.2013 are not substantiated from the record.

It has been further submitted that finding recorded by respondents that reasons mentioned by the applicant in the letter of request to reconsider the resignation of the applicant are not true, is wrong. It is further stated that the allegations leveled against the applicant that he suppressed material facts while making a request for reinstatement is also not sustainable. It was further contended that the fact narrated in para 4 & 6 of the letter dated 02.04.2013 are not sustainable on the material available on record and as such, both the orders are not sustainable and the applicant is entitled for reinstatement into service.

8. Reply affidavit has been filed by the respondents supporting their orders dated 02.04.2013 and 18.06.2013 and vehemently argued that the applicant resigned from service to join the post of Administrative Officer (Specialist) in the Scale I in NICL which he admits himself in the letter dated 21.01.2013. As such, in view of sub-rule 5 of Rule 26 of CCS (Pension) Rules, the applicant cannot be allowed to be reinstated into service as there is complete bar in exercising the power of reinstatement by the competent authority in the light of the sub-rule 5 of Rule 26 of the CCS (Pension) Rules. Moreover, the applicant while submitting resignation concealed the fact that he tendered resignation to join in NICL. He also tried to mislead the Department by alleging that he was deprived of joining NICL due to late acceptance of his resignation. It was also vehemently contended that the applicant has virtually joined the NICL on 18.01.2013, but thereafter, without giving any information to the competent authority, he did not turn up on the pretext that his sister is seriously ill. In fact, the applicant has no sister as per the service records available with the Intelligence Bureau. The applicant has also made a request for reinstatement in NICL and he also exerted pressure by exercising political influence. He relied upon certain documents, copies of which have been annexed with the reply. One of the letters which has been issued on 22.01.2014 by the General Manager, NICL, to the Ministry of Finance is placed on record as Annexure R-V to establish the fact that the applicant is defrauding the authorities. The respondents also filed letter dated 10.03.2014 to establish that the applicant was virtually allowed to join after accepting resignation in NICL on the basis of the letter written by Sri Kotla Jaya Surya Prakash Reddy, Hon'ble Minister of State

for Railways and also certain documents to prove that he also made a request for reinstatement into service in NICL.

9. Learned counsel for the respondents also contended that the applicant's conduct could be seen from the record of this case. The applicant submitted two documents along with the original application which are annexed as Annexures A-XIX at page 43 and Annexure A-XX at page 44, which are said to be the representations given by the applicant on 21.01.2013 and 25.01.2013 respectively for his reinstatement. But, the actual representations of the applicant given on 21.01.2013 and 25.01.2013 have been annexed by the respondents to their reply affidavit as Annexure R-6 and R-7 respectively which are different with those filed by the applicant. It was further contended that the endorsement made on Annexure R-6 is also appears to be fictitious. He also submitted that the applicant after rejection of claim for reinstatement vide letter dated 02.04.2013 also approached the NICL for revival of his candidature for which he has taken the help of political persons which is evident from Annexure R-5 at pages 26, 27, 28 & 29 of the counter affidavit. The applicant not only suppressed the material fact while tendering resignation to join the NICL, but also fabricated the documents and filed the same in this Court to get favourable orders, as such, the applicant is not entitled to any relief and the OA deserves to be dismissed.

10. No rejoinder affidavit has been filed in this case by the applicant.

11. Learned counsel for the applicant vehemently argued that even if the rejoinder affidavit has not been filed, the respondents have failed to bring on record any communication made by the NICL which was taken place before passing the order on 02.04.2013 or 18.06.2013. It is not denied that the respondents have brought on record certain letters which are annexed as Annexure R-5 to the reply affidavit. One of the letters dated 22.01.2014, which was in respect of the applicant and this letter was issued by the General Manager, NICL to the Ministry of Finance in pursuance of the request of the applicant processed through Sri Kotla Jaya Surya Prakash Reddy, Hon'ble Minister of State for Railways, Government of India in pursuance of the representation given by the applicant to him. Annexure R-5 contains the details of happenings taken place after acceptance of the resignation of the applicant on 16.01.2013, wherein it is clear that the NICL extended the period to join the post to the applicant and directed him to report the training centre immediately for completion of joining formalities on 19.01.2013. But the applicant suddenly left Kolkata on 19.01.2013 without proper information and he merely informed over phone to an officer of the Personnel Department later in the day that he is leaving due to sudden sickness of his sister. In order to ascertain the actual situation, the NICL wrote a letter dated 16.04.2013 to Assistant Director, SIB, Hyderabad and in response to the said letter, information was conveyed to the NIC on 22.04.2013 that the apprehension of the NICL that the applicant left Kolkata to rejoin his previous employer was correct and confirmed by the Intelligence Bureau as he had already applied for reinstatement. The NICL also informed to the Intelligence Bureau that the offer in the NICL was not rejected on account of late reporting of

the applicant, but he was not inclined to join NICL as he is not having any expectation of posting in Kolkata. This letter leaves no room to doubt that certain correspondence took place in between the NICL and the Intelligence Bureau before passing the order dated 18.06.2013. The correctness of this letter has not been disputed. The correspondence filed on record also reveals that the applicant after rejection of the claim for reinstatement by the Intelligence Bureau, approached the NICL for revival of his candidature which was also declined.

12. The main controversy in this case is whether the applicant would be entitled to reinstatement after accepting his resignation or not?

13. The normal rule of service jurisprudence is that once resignation is accepted and become effective, it cannot be allowed to be withdraw as ruled by the Hon'ble Supreme Court in the case of ***Union of India Vs. Rakesh Kumar, 2001 (4) SCC Page 309***. In ***Chand Mal Chayal Vs. State of Rajasthan, 2006 (10) SCC 258***, the Hon'ble Supreme Court ruled that the incumbent would be entitled to withdraw his resignation before the acceptance and re-employment thereafter cannot be claimed as a matter of right, especially when there is no rule dealing with the re-employment after resignation in the relevant rules. In this case, the Hon'ble Apex Court further cautioned that no Writ of Mandamus can be issued against the respondents for re-employment of the applicant. In ***Raj Kumar Vs. Union of India, 1968 (3) SCR 857***, the Hon'ble Supreme Court has ruled that resignation became effective as soon as it was accepted by the

appointing authority in absence of any time limit fixed by the employee. It was also ruled that no communication of acceptance is necessary and there is no rule framed under Article 309 of the Constitution of India which, in effect, to indicate a Rule which requires communication of acceptance to the person submitting the resignation. In ***North Zone Cultural Centre Vs. Vedpathi Dinesh Kumar, 2003 (5) SCC 455***, Hon'ble Supreme Court again ruled that in absence of any law or statutory rule governing the conditions of service of Government servants to the contrary it will not be open to the public servants to withdraw his resignation after it is accepted by the appointing authority and if any delay is caused in intimating the acceptance, or reliving of the concerned from his duties, the effect of resignation cannot be neutralized.

14. In view of the aforesaid judgments, it is crystal clear that once resignation is accepted, the public servant cannot have any vested right to withdraw his resignation unless the Rules provide for the same. It is also crystal clear that the reinstatement cannot be claimed as of right and the discretion lies with the appointing authority to consider reinstatement if the rule permits for reinstatement after acceptance of the resignation.

15. In this background, Rule 26 of the CCS (Pension) Rules, 1972 plays an important role. As this is being relied upon by the both sides, the Rule is extracted in toto hereinbelow for convenience:

“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 appointments 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 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.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of [Rule 37](#) shall not entail forfeiture of past service under the Government.”

16. The perusal of the Rule 26 reveals that normally when a Government servant tendered his resignation and is accepted by the appointing authority, his previous service stands forfeited. It further provides that after the acceptance of resignation of a public servant, the appointing authority may permit a person to withdraw his resignation in public interest on fulfilling the conditions mentioned

in sub-rule 4 of Rule 26. But, there is an impediment in exercising the power conferred on the appointing authority under sub-rule 4 of Rule 26 which is mentioned in sub-rule 5 of Rule 26. Sub-Rule 5 of Rule 26 says that the withdrawal of resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or under a corporation or company, wholly or substantially owned or controlled by the Government, or in or under a body controlled or financed by the Government.

The other sub-rules are not relevant for deciding the controversy in this matter.

17. To resolve the referred question, first of all, it will be necessary to decide whether the case falls within the ambit of sub-rule 5 of Rule 26 or not. If the applicant succeeds in coming out of the rigours of sub-rule 5 of Rule 26, only then his case may be considered under sub-rule 4 of Rule 26.

18. So far as the factual matrix of the case is concerned, it is not denied that the applicant has applied in pursuance of an open competition for the post of Administrative Officer (Specialist) in NICL in pursuance of an advertisement issued in the year 2012. Before applying for the said post, the applicant made a request for grant of permission to apply, but the same was declined by the respondents and his request to relieve him to join was also declined. As the applicant has already applied and was selected against the post of Administrative Officer (Specialist) in NICL, he chose to tender his resignation once again on personal grounds which was accepted on 16.01.2013 and the applicant was

relieved. Thereafter on 21.01.2013, the applicant made a request for reinstatement wherein he has categorically stated that he tendered resignation to join the post in NICL, but his joining could not be materialized.

19. Learned counsel for the applicant pointed out that once the resignation has been accepted on personal grounds, the rigour of sub-rule 5 of Rule 26 cannot be invoked. Order dated 02.04.2013 says that the applicant cannot be reinstated in view of sub-rule 5 of Rule 26 of CCS (Pension) Rules. It was further contended that in subsequent order passed on 18.06.2013, the grounds which have been taken by respondents that the applicant is not entitled to seek reinstatement is based on sub-rule 4 of Rule 26 and stated that the applicant is not fulfilling the criteria under sub-rule 4 of Rule 26. Learned counsel for the applicant vehemently argued that the respondents cannot deviate from the ground which they had taken first of all for passing the order rejecting the claim of the applicant for reinstatement and they cannot be allowed any other ground which is not at all incorporated in the order itself, because the validity of the impugned order has to be judged on the ground taken by the author of the order and it cannot be justified on the grounds which were not taken while passing the order in view of the judgment rendered by the Hon'ble Supreme Court in ***Mohinder Singh Gill Vs. Chief Election Commissioner***, reported in ***AIR 1978 SC 851***.

20. The respondents pleaded that the document filed by the applicant as Annexure A-XIX wherein he made a request for reinstatement on 21.01.2013 is not the document which he furnished to the respondents and as such, his conduct

is sufficient to throw away his claim on the basis of forgery committed by him before this Tribunal. It was further contended that even from the document which is filed by the applicant as Annexure A-XIX and is of dated 21.01.2013, the applicant clearly stated that “as you are aware that I had tendered my resignation on personal grounds only to join the post of Administrative Officer (Investigation) as my technical resignation was not accepted”. This leaves no room to doubt that the resignation was with a view to take up appointment in or under a commercial company, wholly or substantially owned or controlled by the Central Government through the Ministry of Finance. As such, it could be safely inferred on the basis of the admission made by the applicant in his own document filed as Annexure A-XIX that he resigned with a view to take up appointment in a commercial company.

21. Sub-rule 5 of the Rule 26 which starts with a phrase “*request for withdrawal of a resignation shall not be accepted by the appointing authority*” leaves no room to doubt that if the rigour of sub-clause 5 is in existence, the appointing authority cannot exercise the power conferred upon him under sub-rule 4 even though the conditions as mentioned in sub-rule 4 are fulfilled. The view expressed by the Hon’ble Judicial Member in para 13 of the draft order that “*Sub Rule (4) and Sub rule (5) of Rule 26 of CCS (Pension) Rules have to be read conjointly either to grant or refuse the relief to the Applicant. Sub Rule (4) (i) lays down that if 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, the appointing authority may permit the Government servant to withdraw his resignation” cannot be concurred in view of the scheme of Rule 26. I am of the firm opinion that even if the requirements of sub-rule 4 of Rule 26 are fulfilled, but the case falls within the ambit of sub-rule 5 of rule 26, the benefit of sub-rule 4 of Rule 26 cannot be extended as the sub-rule 5 creates an impediment in exercising the power by the appointing authority to consider reinstatement. The word “shall” has been used in sub-rule 5. Therefore, it is mandatory in nature.

22. In view of the above, the Tribunal need not to go into the correctness of the reasons assigned by the authorities in terms of sub-rule 4 of Rule 26 while passing the subsequent order dated 18.06.2013. But, as the question referred includes consideration of sub-rule 4 of Rule 26 of CCS (Pension) Rules, the same is also being considered in this case.

23. The primary requirement to exercise the discretion of the appointing authority in granting reinstatement under sub-rule 4 is to ensure the fulfilment of certain conditions. The first requirement is that the reinstatement is in the public interest and if it is in the public interest, certain conditions mentioned in clauses (i) to (iv) of sub-rule 4 must be fulfilled. One of the conditions which has to be fulfilled before considering the claim for reinstatement is that it must be established 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. Here, in this case, the applicant admittedly resigned without assigning the reason that he is willing to join the post against which he has been selected in NICL. He simply requested the Department to accept his resignation on personal grounds. He made a request after acceptance of the resignation by moving a representation on 21.01.2013. The applicant filed copy thereof in this original application. The respondents denied the correctness of the document. The applicant himself has filed another document before the authority on 21.01.2013, which has been filed by the respondents along with the reply affidavit. On a perusal of both the documents i.e. one filed by the applicant and the other filed by the respondents, they have no resemblance. The document dated 21.01.2013 filed with the reply affidavit is a detailed representation. Similarly, another representation, which has been filed by the applicant in the OA said to have been given by the applicant on 25.01.2013 before passing the impugned order dated 02.04.2013 is also not the same as that of the document filed along with the reply affidavit and there is lot of difference in these two documents – one filed by the applicant and the other filed by the respondents. It is also noticed that when this charge of fabrication of document is levelled in the counter affidavit against the applicant, no rejoinder has been filed by the applicant refuting the allegation levelled by the respondents. The applicant did not explain by filing a rejoinder affidavit as to why these documents were not resembling.

24. The learned counsel for applicant in support of his contentions relied upon certain judgments.

25. Learned counsel for the applicant relied upon a judgment of Hon'ble Delhi High Court in ***Nirmal Verma Vs. MCD & Another***, decided on 18.03.2005, ***2006 (1) SLJ 243 Delhi***, wherein the Hon'ble Delhi High Court held that if a Government servant resigns from service and thereafter, contests elections on behalf of political parties, it will not amount to violation of Rule 5 of CCS (Conduct) Rules, which creates a bar with regard to participation of Government servants in politics. Hon'ble Delhi High Court ruled that when the petitioner fought elections, he was not Government servant and therefore, the provisions of Rule 5 of CCS (Conduct) Rules cannot be applied and if the authority declined the claim of reinstatement applying Rule 5 of CCS (Conduct) Rules in such a scenario, the order of declining reinstatement cannot be allowed to sustain.

In this case, the Hon'ble High Court also finds that there was a clear discrimination so far as the impugned order of declining the claim of reinstatement of the petitioner because similarly situated person was reinstated into service earlier to the decision taken by the respondents in this case. Resultantly, Hon'ble Delhi High Court after setting aside the order, directed the respondents to reconsider the case of the petitioner for reinstatement.

26. Learned counsel for the applicant also relied upon two judgments of Principal Bench of this Tribunal. One, in OA No. 3994/2013, in ***Manisha Sharma Vs. Govt. of NCT of Delhi & Others***, decided on 14.07.2015, and another in OA No. 2491/2009, in ***Renu Bala Vs. Commissioner of Police & Others, decided on 25.05.2010.***

i) So far as **Manisha Sharma**'s case is concerned, in this case, the respondents while declining the claim of reinstatement of the applicant, did not assign any reason. However, in pleadings, they pleaded that the petitioner violated Rule 5 of CCS (Conduct) Rules, 1964 as she participated in election. The applicant was a Post Graduate Teacher and it was also contended that after losing the election, she can claim reinstatement in service in view of sub-rule 4 of Rule 26 of CCS (Pension) Rules. The respondents also relied upon an amendment of All India Services (Death-cum-Retirement Benefits) Rules, 1958 made in 2011 wherein it was included that if the Government servant resigns with a view to associate with political parties or any organization which takes part in politics, or takes part in an election to legislature or local authority, the request for withdrawal of the resignation shall not be accepted. The Principal Bench, in this case, held after relying upon the judgment in **Nirmal Verma**'s case ruled that contesting election on behalf of political party will not violate Rule 5 of CCS (Conduct) Rules. The Bench was also of the view that the amendment made in 2011 in All India Services (Death-cum-Retirement Benefits) Rules is not at all applicable in the present case. It was also observed that the appointing authority also discriminated the applicant as similarly situated persons were granted the benefit of reinstatement earlier.

ii) In the case of **Renu Bala**, the petitioner was a Police Constable whose resignation was accepted, which she tendered on account of some matrimonial disputes in the family. Later on, the matrimonial disputes were settled and she got the decree of divorce and thereafter, moved an application for reinstatement

under sub-rule 4 of Rule 26 of CCS (Pension) Rules, 1972. It was found that though Rule 26(4) of CCS (Pension) Rules, 1972 is not strictly applicable, but the case of the applicant is covered by Rule 88 of CCS (Pension) Rules, 1972 which are applicable if the applicant being a temporary employee and her resignation was accepted. The Bench further ruled that analogy and methodology for withdrawal provided under Rule 26(4) of CCS (Pension) Rules, 1972 not being in conflict with the Delhi Police Act and could operate simultaneously with harmonious construction, since the CCS (Pension) Rules, 1972 are applicable only to holders of permanent posts, the above provisions would apply only in the case of permanent Government servant who had resigned the post. But, in case of a temporary Government servant, withdrawal of resignation in relaxation of provisions is permissible as per Rule 88 of the CCS (Pensions) Rules, 1972 and thus, directed the respondents to reconsider the matter.

27. In all the three cases referred above, the question of applicability of sub-rule 5 of Rule 26 of CCS (Pension) Rules was not involved. But, in the case in hand, the application of sub-rule 5 of Rule 26 is involved and this Tribunal has to take a decision as to whether the provisions of sub-rule 4 of Rule 26 could be applied when the circumstances for invoking sub-rule 5 of Rule 26 are available. In view of the above, the judgments cited by the learned counsel for the applicant are not extending any help to the applicant and cannot be applied in the case in hand.

28. During the course of arguments, learned counsel for the applicant would submit that all the posts at Kolkatta were filled up and NICL was intending to post the applicant in North East area, for which, the applicant was not willing and he declined to join in NICL. Though this averment was not pleaded anywhere in the original application, but it belies the stand of the applicant that he was not permitted to join the post in NICL after acceptance of resignation of the applicant on 16.01.2013. It is also important to mention that the respondents have taken a specific plea on the basis of the information received from the NICL that the applicant was allowed to go on training by extending the period of joining as a special case for the applicant and he was asked to report for training on 19.01.2013, but he left Kolkata without any permission by the authorities of NICL on the pretext that his sister is ailing. This fact has also not been disputed by filing a rejoinder affidavit by the applicant. As such, it shall be deemed that the applicant has accepted the facts mentioned in reply affidavit filed by the respondents. In this scenario, it is crystal clear that the contention of the applicant of not allowing him by NICL due to belated reporting as mentioned in the letter of the applicant which is filed an Annexure A-XIX alleged to have been given on 21.01.2013 and also in the letter dated 21.01.2013 given by the applicant filed by the respondents as Annexure R-6, is not sustainable. Therefore, the view taken by the Hon'ble Administrative Member that the respondents cannot be faulted for not taking the applicant back in terms of the Rule 26(4) of CCS (Pension) Rules, particularly since the Intelligence Bureau is a sensitive department requiring high standards of integrity and devotion to duty is well founded.

I am also in full agreement with the opinion expressed by the Hon'ble Administrative Member that the respondents rightly invoked the sub-rule 5 of Rule 26 of CCS (Pension) Rules, 1972 and declined to reinstate the applicant by allowing the applicant to withdraw his resignation.

29. In the aforesaid facts and circumstances of the case and the rule position, the reference is answered in the following manner:

- i) That sub-rule 5 of Rule 26 of CCS (Pension) Rules, 1972 is an impediment in exercise of the discretion/ powers conferred upon the Appointing Authority to reinstatement of the Government servant under sub-rule 4 of Rule 26 of the CCS (Pension) Rules, 1972.
- ii) Even if the requirements of sub-rule 4 of Rule 26 of CCS (Pension) Rules, 1972 are fulfilled by the Government servant, but if his case falls within the ambit of sub-rule 5 of Rule 26, the Government servant cannot claim the reinstatement and the Appointing Authority cannot allow the request for reinstatement made by the Government servant.
- iii) That, the applicant failed to fulfil the requirement of clause (ii) of sub-rule 4 of Rule 26 of CCS (Pension) Rules, 1972 in the present case as discussed hereinabove.
- iv) The opinion expressed by the Hon'ble Judicial Member is not in consonance with the scheme of the Rule 26 and the opinion expressed by the Hon'ble Administrative Member that sub-rule 5 of Rule 26 is an impediment in

exercising the power of discretion under sub-rule 4 of Rule 26 is well-founded and I therefore, concur with the opinion of the Hon'ble Administrative Member.

v) I also concur with the opinion of the Hon'ble Administrative Member that the applicant has failed to fulfil the requirements of clause (ii) of sub-rule 4 of Rule 26 of CCS (Pension) Rules, 1972 in the present case.

vi) Consequently, the petition lacks merit and is liable to be dismissed. No interference is warranted with the impugned orders dated 02.04.2013 and 18.06.2013 passed by the respondents.

30. In the result, the OA is dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs.

**(*JUSTICE VISHNU CHANDRA GUPTA*)
MEMBER (JUDL.)**

Dated, the 22nd day of June, 2018

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