

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.No.210/00017/2016

Dated this Thursday the 11th day of April, 2019

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).**

Manish Kumar Meena,
Working as Assistant Commissioner,
O/o Commissionerate of Central Excise,
Mumbai-II, Piramal Chambers,
9th Floor, Jijibhoy Lane, Lalbaug,
Parel, Mumbai - 400 012.
Residing at:
1003, Navchetna B Wing,
Sector 3, CGS Colony, Kane Nagar,
Antop Hill, Mumbai - 400 037. .. Applicant.

(By Advocate Ms.Priyanka Mehndiratta).

Versus

1. The Union of India, through
the Secretary,
Ministry of Finance,
Department of Revenue,
128-A/North Block,
New Delhi - 110 001.
2. The Chairman,
Central Board of Excise & Customs,
Hudco, Vishal Bldg,
Bhikaji Cama Place, North Block,
New Delhi - 110 001.
3. The General Manager,
Northern Railway,
Headquarter Office,
Baroda House,
New Delhi - 110 001.
4. The Chief Commissioner (CCA),
O/o Commissionerate of Central
Excise, Mumbai-II,
Piramal Chambers, 9th Floor,
Jijibhoy Lane, Lalbaug, Parel,
Mumbai - 400 012. .. Respondents.

**(By Advocates Shri R.R. Shetty and Ms.Naveena
Kumai).**

Order (Oral)**Per : Dr.Bhagwan Sahai, Member (A) .**

Shri Manish Kumar Meena working as Assistant Commissioner with Commissionerate of Central Excise, Mumbai-II filed this O.A. on 13.01.2016. He seeks -

- (a) quashing and setting aside of order dated 09.10.2015 of General Manager (P), Northern Railway, Baroda House, New Delhi rejecting his appeal filed against earlier rejection of his technical resignation;
- (b) declaration that his technical resignation is deemed to have been accepted from 16.12.2012 when he was relieved by Respondent No.3 to join his new posting;
- (c) declaration that he is entitled for continuity of service and consequent pay protection in PB-3 at basic pay of Rs.27,810/- with grade pay of Rs.6600/- which was his last pay drawn when he resigned from the Northern Railway; and
- (d) direction to the respondents to sanction the claims mentioned in his request for technical resignation dated 27.11.2012, send his service record to his current employer along with providing of cost of this application.

2. Brief facts of the case:

2(a). The applicant has stated that he belongs to Indian Railway Service of Electrical Engineers 2005 batch. He served with Indian Railways i.e. Northern Railway till December, 2012. Till then he was governed by the Indian Railway Establishment Code (IREC).

2(b). He appeared in the Civil Services Examination, 2011. He had informed the Respondent No.3 about his intention to appear in that examination through proper channel vide letter dated 15.03.2011 (Copy at Annex-A-2). After passing the Civil Services Examination, 2011, he was allotted to Indian Customs and Central Excise Service (Indian Revenue Service-Customs & Central Excise).

2(c). He tendered his technical resignation from the post of Divisional Electrical Engineer (Coaching), DRM Office, New Delhi on 27.11.2012 (copy at Annex-A-3). Before tendering the technical resignation, he had informed the respondents informally about his intention to join the Indian Customs and Central Excise Service and gave advance notice about it on 19.12.2012 (copy at Annex-A-4). However, at the time of tendering his technical resignation, he could not locate

copy of his earlier letter of 15.03.2011 by which he had informed the General Manager (P), Northern Railway about appearing in the Civil Services Examination, 2011. But when he could locate it, he submitted it on 11.12.2012 (copy at Annex-A-5).

2(d). The applicant was relieved vide order dated 14.12.2012 (Annex-A-6) to allow him to join at National Academy of Customs, Excise and Narcotics, Faridabad, Haryana where he was required to report on 17.12.2012. That order also specifically mentioned that a final communication on his resignation letter of 27.11.2012 would follow.

2(e). Before this order of his relief, another order was issued on 05.12.2012 with the approval of the Competent Authority to relieve him to join at the National Academy of Customs, Central Excise and Narcotics, Faridabad. That order also mentioned about tendering of his technical resignation from IRSEE vide letter dated 27.11.2012 about which final communication would follow (Annex-A-7).

The applicant further followed with AGM, Northern Railway for acceptance of his technical resignation. However, after lapse of substantial period of time, he received a letter dated

09.09.2014 under Right to Information Act stating that his technical resignation had not been accepted because he neither gave intimation nor sought prior permission of the Competent Authority for appearing in the Civil Services Examination, 2011.

2(f). The applicant has stated that as per Para 1408 of Chapter XIV of the Indian Railway Establishment Manual, the applicant was required to inform the Head of the Department i.e. Chief Electrical Engineer which he did by submitting the letter of 15.03.2011 to his Personal Secretary. The applicant further states that he served with the Indian Railway for more than 7 years, holding a Group 'A' post, has excellent service record and had given intimation about his intention to appear in the Civil Services Examination, 2011, a copy of which was also submitted in support of his application for acceptance of technical resignation. However, his technical resignation has been rejected claiming that copy of the intimation submitted by him was not available in the official record.

2(g). In fact the Northern Railway did not inform him about rejection of his technical resignation and he came to know about it only in

response to his application filed under the RTI Act. Because of the callous and lethargic attitude on the part of the respondents i.e. Northern Railway, and non-acceptance of his technical resignation, the applicant has suffered non-protection of his last pay along with HRA, TA, DA, Government accommodation, etc. Therefore, this action of the respondents is unjust and unfair and without proper application of mind. Subsequently the applicant also submitted an appeal to the Union Minister of Railways on 25.05.2015 against rejection of his technical resignation. However, no reply has been received by him. Hence this O.A.

3. Contention of the parties:

The applicant contends that -

3(a). he complied with the required stipulations under Para 1408 of Chapter XIV of IREM by duly informing the respondents when he had applied for the Civil Services Examination, 2011. However, in spite of proper action on his part, rejection of his technical resignation by the respondents is wrong. After he had submitted the required intimation to the respondents about his intention to appear in the Civil Services Examination, 2011, to maintain the record properly

in the office and process his case was the duty of the respondents i.e. Northern Railway but because of their callous attitude, his technical resignation has been rejected on unjustified reasons thereby depriving him of his legitimate benefits of pay protection, etc. Therefore, the O.A. be allowed.

In reply, the Respondents No.1,2 and 4 contend that -

3(b). action taken by them in fixing his pay when he joined at the National Academy of Customs, Central Excise and Narcotics, Faridabad has been done correctly. The main contention of the applicant relates to Respondent No.3 and the reliefs sought by him are also from Respondent No.3. As per DOPT OM dated 22.01.1993, necessary guidelines have been issued for condonation of resignation for pay fixation to the effect that to decide the benefit of past service subject to the same conditions as incorporated in DOPT OM dated 17.06.1965 may be allowed subject to these conditions -

(i). at the time of joining the Government servant should intimate details of such application immediately on joining;

(ii). at the time of resignation, the

Government should specifically make a request indicating the date when he would be resigning to take up another assignment with the Government for which he applied for the Government service and that his resignation may be treated as technical resignation; and

(iii). the authority accepting the resignation should satisfy itself that the employee had been in service on the date of the application for the post mentioned and his application would have been forwarded through proper channel.

3(c). On the record of Respondents No.1,2 and 4, no details are available as to whether the applicant had informed the Department about the above 3 conditions at the time of his joining. Since before joining the Central Excise Department, the applicant worked with the Indian Railways, the Indian Railways (Northern Railway) has rejected the request for technical resignation and, therefore, the Respondents No.1,2 and 4 are in no way associated with the action of Respondent No.3 in this regard; and

3(d). as per record of service of the applicant with the Respondents No.1,2 and 4, his pay has been fixed properly and no change can be made in it for which the O.A. has been filed after a

period of almost 4 years i.e. beyond the period of limitation.

3(e). In reply, Respondent No.3 contends that the applicant had appeared in the Civil Services Examination, 2011 without permission of Respondent No.3 and, therefore, no such permission was granted to him as per rules. His technical resignation was never accepted by the Competent Authority. The comments by the Delhi Division of Northern Railway in the letter dated 16.11.2012 were for issue of no dues certificate for taking further action. His application for Group 'A' UPSC examination never reached through proper channel, even his intimation dated 15.03.2011 is not available on record of Respondent No.3 and, therefore, his technical resignation has not been accepted. However, the applicant was relieved on 05.12.2012 to join his new posting for better career prospects and, therefore, relieving him does not mean that the Competent Authority had approved his technical resignation. Hence the O.A. should be rejected.

3(f). During hearing of the case on 05.03.2019, the Respondent No.3 was directed to submit verification report on the signature of the then Secretary to the Chief Electrical Engineer, which

appear on copy of the letter of the present applicant dated 15.03.2011 informing about his intention to appear in the Civil services Examination, 2011. On that letter, the then Secretary to CEE, had minuted on 22.03.2011 for processing the case on case file.

3(g). In response to that Respondent No.3 has submitted that acknowledgement at page 14 of the O.A. (Annex-A-2) on application of the present applicant dated 15.03.2011 was of Shri I. Pathak, Dy. CEE and Secretary to the Chief Engineer. However, the letter of the applicant dated 15.03.2011 was not received by Respondent No.3.

4. Analysis and conclusions:

We have carefully perused the O.A. memo along with its Annexes, rejoinder of the applicant, reply and additional reply filed by the respondents, and considered the arguments advanced by both of them. From it the following conclusions emerge.

4(a). The applicant joined the Indian Railway Service of Electrical Engineers with Northern Railway in 2005 and continued there till December, 2012. As per stipulations under the service rules, the applicant submitted intimation about

his intention to appear in the Civil Services Examination, 2011 to the General Manager (P), Northern Railway, Baroda House, New Delhi on 15.03.2011. As admitted by the respondents in their submissions dated 11.04.2019, this intimation had actually been received and acknowledged by then Shri I.N. Pathak, Dy. CEE and Secretary to Chief Electrical Engineer. Therefore, the contention of the applicant in this regard is correct. Once he had intimated the Respondent No.3 through proper channel about his intention to appear in the above examination, thereafter it was the responsibility of the respondents' office to preserve the record with due and proper care and process the case of the applicant at subsequent stages.

4 (b). It seems that the office of Respondent No.3 did not take the required proper care of this intimation submitted by the applicant and because of their careless handling of his letter, they now take the stand that it is not available on record. However, this amounts to taking an unnecessarily petty and insensitive approach on this issue. Subsequently when the applicant came to know about his selection through the Civil Services Examination, 2011 and his allotment to the Indian

Revenue Service, Group 'A', he submitted his technical resignation to Respondent No.3 on 27.11.2012. On 19.10.2012, the applicant had also submitted advance notice to Chief E.E., Northern Railway, Baroda House, about tendering of his technical resignation because of his allotment to the Indian Customs and Central Excise Group 'A' service. A photocopy of this letter on page 15 of the O.A. also indicates its receipt and acknowledgement by the respondents.

4(c). He further informed the General Manager (P), Northern Railway on 11.12.2012 which was also received in that office. By the subsequent letters from Headquarters Northern Railway, Baroda House dated 05.12.2012 and from office of DRM dated 14.12.2012, the applicant was duly relieved to join at the National Academy of Customs, Excise and Narcotics, Faridabad on 17.12.2012. Both these relieving letters also specifically mentioned about the technical resignation tendered by the applicant vide letter dated 27.11.2012, and that a final communication on it would follow.

4(d). From these details it is clear that the applicant had duly informed the Respondent No.3 about his intention to appear in the Civil Services Examination, 2011. On his selection he

had informed the Respondent No.3 about his intention to resign from the service of Northern Railway, and on his reporting about his allotment to the Indian Revenue Service of Customs and Central Excise, the Competent Authority of the Northern Railway permitted him to be relieved to join at the National Academy of Customs, Excise and Narcotics at Faridabad.

4(e). Thereafter not accepting the technical resignation of the applicant by Respondent No.3 on very superficial grounds is not at all justified, especially when the office of the latter itself failed to preserve the application of the applicant and process it properly and when the applicant has only shifted from one service to another under the Government of India. This only reflects a very insensitive and callous approach of that office. Therefore, the stand of Respondent No.3 that the applicant had not informed in advance of his intention to take the Civil Services Examination, 2011 and had not sought permission to appear for it is misleading, it is a false averment and it cannot be accepted.

4(f). In view of these facts, the contention of the applicant is correct. It is accepted. Therefore, the O.A. is allowed, the applicant is

entitled for acceptance of his technical resignation from the post of Divisional Engineer, Northern Railway from the date of his relief from the Northern Railway on 14.12.2012 along with all consequential benefits, such as protection of his last pay drawn, etc as mentioned in his letter of 27.11.2012. The respondents shall issue a proper communication about acceptance of his technical resignation from 14.12.2012 and send with it the last pay certificate and full service record of Shri Manish Kumar Meena to his present employer i.e. Commissionerate of Central Excise, Mumbai-II for further necessary action. Parties to bear their respective cost.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

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