

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
(CIRCUIT AT PORT BLAIR)

O.A No. 351/000488/2017  
M.A. No. 351/755/2018

Date of Order:

Moti Chander..... Applicant(s)

Mr. G.B.Kumar..... Advocate for applicant (s)

VERSUS

Electricity..... Respondent(s)

Mr. S.K.Mandal..... Advocate for respondent(s)

CORAM

Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. N. Neihisial, Administrative Member

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether it needs to be circulated to other Benches of Tribunal?

**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
(CIRCUIT AT PORT BLAIR)**

O.A No. 351/488/2017  
M.A. No. 351/755/2018

Date of Order: 7.6.19.

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. N. Neihisal, Administrative Member

Shri Moti Chander, son of Shri Gajadhar Prasad  
Resident of Shadipur Village, Port Blair Tehsil,  
South Andaman District.

---Applicant

Versus

1. The Union of India  
Through the Secretary  
Ministry of Home Affairs, Govt. of India  
Central Secretariat, North Block, New Delhi - 110001.
2. The Union of India  
Through the Secretary, Ministry of Power  
Govt. of India, Rafi Marg, Shram Shakti Bhawan  
New Delhi - 110001.
3. The Lieutenant Governor  
Andaman & Nicobar Islands  
Raj Niwas, Port Blair.
4. The Secretary (Power)  
Andaman & Nicobar Administration  
Secretariat, Port Blair.
5. The Superintending Engineer  
Electricity Department  
Andaman & Nicobar Administration  
Vidhyut Bhawan, Port Blair, South Andaman.
6. The Executive Engineer (HQ)  
Electricity Department, Mohanpura  
Port Blair, South Andaman.

----Respondents

For the Applicants: Mr. G. B. Kumar, Counsel  
For the Respondents: Mr. S.K.Mandal, Proxy Counsel

## ORDER

Per: Ms. Bidisha Banerjee, Member (I):

Ld. Counsels were heard and materials on record were perused.

2. We infer from the pleadings that the matter was twice remanded back by the Hon'ble High court and the latest order of the Hon'ble High Court reads thus:

“While setting aside the order dated 16<sup>th</sup> February, 2011, the Division Bench nevertheless made it quite clear that the learned tribunal should make a detailed enquiry starting from the power of the administration to cancel the order allowing withdrawal of resignation under the provision of Rule 26 of the CCS (Pension) Rules, 1972.

It appears, on examination of the impugned order of the tribunal dated 22<sup>nd</sup> June, 2018, that due justice has not been done to this case. There is no finding as to the power of the Administration to revoke its decision to allow withdrawal of resignation. Connected with this were necessary findings whether the withdrawal of resignation was made within time, sufficient reason was shown by the petitioner therein so as to warrant grant of this request and so on.

We think dealing with this issue needs a more holistic consideration so that there is justice to the parties.

With the above observations, we remand the whole matter back to the tribunal to pass a reasoned judgment and order considering the decision of the said Division Bench of this Court along with the observations made in this order preferably within a period of four months of communication of this order.

The order of the tribunal dated 22<sup>nd</sup> June, 2018 is set aside.

This writ application is accordingly disposed of.”

3. In terms of the direction of the Hon'ble High Court as set out (supra), we confine ourselves to decide the correctness of the order passed by the Respondent authorities in canceling the order allowing withdrawal of resignation under Rule 26 of CCS (Pension) Rules, 1972.

4. We note that Rule 26 of the CCS (Pension) Rules reads thus:

**"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."

A bare perusal of the said provision would amply demonstrate that the authorities have been given power to allow the employees to withdraw resignation hedged by certain conditions but no power has been conferred upon the authorities to cancel the order allowing withdrawal of resignation as has been done in the present case. Here, the Superintending Engineer on 25.01.2011 was "pleased to accord the withdrawal of resignation tendered by Shri Moti Chander, Watchman attached to EE(HQ) division under the provision of Rule 26 of the CCS (Pension) Rules 1972" and ordered that "the interruption in service from 24.08.2010 to following the date of resumption of duty is condoned, but shall not count as qualifying service", and having allowed him to join duties by transferring and posting him to Car Nicobar under Executive Engineer (ND), on 16.02.2011 (Annexure-A/12) cancelled the order dated 25.01.2011 with the approval of the competent authority but without according any reasons for such cancellation and thereby turning absolutely volte face, without any authority of law. Since, such a

course is not permitted under rules in terms of which an employee is permitted to withdraw resignation, we quash the order dated 16.02.2011. The Respondent authorities are, however, at liberty to re-examine the issue and pass detailed speaking order if they desire to do so. M.A. 755/2018 is also disposed of accordingly. No costs.

N. Neihial  
Administrative Member

(B. Banerjee)  
Judicial Member

RK