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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1655/2003

NEW DELHI THIS - 3rd - The Day of March 2004.

HON'BLE SHRI S A SINGH, MEMBER (A)

Ex. Constable Balwan Singh No. 1314/NW,
S/o Sh. Kashi Ram,
R/o Vill. & PO Kondli,
Distt. Sonapat, Haryana

(By Shri Sama Singh, Advocate) APPLICANT

VERSUS

1. Govt of NCT Delhi
through its Chief Secretary
Delhi Secretariat, IP Estate,
New Delhi
2. Commissioner of Police,
Delhi Police HQrs.
MSO Building, IP Estate,
New Delhi - 110002
3. The Joint Commissioner of Police
(Northern Range)
MSO Building, IP Estate,
New Delhi
4. Deputy Commissioner of Police,
North West, District, Ashok Vihar,
Delhi.

..... RESPONDENTS

(BY: SHRI AJESH LUTHRA, ADVOCATE)

ORDER

● BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant was enlisted as Constable against vacancy of Scheduled Caste in Delhi Police on 12.10.1990. He put in a letter resignation with immediate effect. This was accepted by the respondents on 28.12.2001 and he was relieved from his duties vide DCP North West District order No. 20691-791/SIP-NWD(PC) dated 28.12.2001.

[Signature]

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2. Subsequently, the applicant put in a request for withdrawal of his resignation and re-induction into the Service . This was rejected. He went for an appeal to the Joint Commissioner, North Range, which did not succeed. Finally, he made a representation to the Commissioner of Police, which was also not accepted.

3. Aggrieved, the applicant is seeking relief for quashing and setting aside orders dated 3.6.2002, 28.12.2001 and 9.9.2002 rejecting his request and representation for withdrawing his letter of resignation and re-induction in the service .

4. The case of the applicant is that his domestic problems had compelled him to tender his resignation. However, a material change in his domestic circumstances enabled him to withdraw his resignation. This was permissible vide CCS Pension Rule 26(4) (iii), as the period of absence was not more than 90 days. Therefore, rejection of his request for withdrawal of the resignation letter, by the respondents, is breach of his right to withdraw, under rule 26(4)(iii).

5. The respondents during oral submissions state that the applicant had forfeited his right for withdrawal of resignation once the jural relationship of master and employee had been severed with the acceptance of his resignation. In support of this argument the respondents relied upon the judgement of Hon'ble Apex Court in North Zone Cultural Centre & Anr. Vs Vedpathi Dinesh Kumar (JT 2003(4) SC 155) wherein it was held as under:

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"In these guidelines, we do not see any requirement which states that even in cases where the resignation is accepted with immediate effect, the same can be withdrawn before such acceptance is communicated to the government servant concerned. On the contrary, in our opinion, these guidelines also indicate that the resignation takes effect the moment the same is accepted."

6. Further the respondents also put forward the apex court judgement in the case of State of Harvna & Others Vs Ram Kumar Mann (JT 1997(3) SC 450) in which it is mentioned that applicant could only withdraw his resignation provided their existence of an enforceable right. This did not exist with the severing of the jural relationship.

7. The respondents further pleaded that CCS Pension Rule 26(4)(iii) only requires the respondents to consider the request of the applicant, which they have considered keeping in view the provisions in sub rule (4) to (6) of Rule 26 CCS Pension Rules. The rules necessitated that the conduct of the applicant during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was in no way improper.

8. The applicant was relieved from his duties on 28.12.2001 and a case was registered under FIR No.79/2002 on 23.2.2002 u/s 420/468 and 471 of IPC in PS Mukherjee Nagar. The applicant was produced before the Addl. Session Judge Court and was let off on bail on furnishing of personal bond & surety bond of Rs. 10,000. The case is still pending. The conduct of the applicant therefore cannot be considered as proper.



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9. In addition the respondents could only permit the applicant to withdraw his resignation in the public interest. In the present case no public interest is being served by re-inducting of the applicant.

10. In view of the reasons the respondent averred that they were perfectly justified in not agreeing to the applicant's request for withdrawal of his resignation.

11. The respondents pleaded that in present application only judicial review was permitted. In this regard they relied upon the judgement of Apex Court in the case of Union of India Vs Vinod Vihari Behera (1996 (1) SLR 299).

12. The applicant strongly rebutted submissions / pleadings made in the OA as well as during oral arguments . It was the case of the applicant that circumstances of his resignation did not involve any reflection on integrity or inefficiency or conduct as such the criminal case registered after he had been relieved of duties had no bearing on his request for withdrawal of his resignation and was permissible under Rule 26(4)(iii) of pension rules.

13. The applicant added that till date no charge had been made out and the case was false. As such he should not be denied his right to withdraw his resignation and re-induction into services. It was the contention of the applicant that the judgements relied upon by the respondents were distinguishable and hence not relevant to the case. Also, as a welfare state , public interest implies keeping persons in employment.

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14. I have heard the learned counsel for the parties and perused the documents brought on record. It is not contested that as long as the jural relationship existed the applicant had locus poenitentiae to withdraw his resignation letter. It is the settled position of the law that the jural relationship was severed with the acceptance of the resignation, hence the only option open to the applicant was to make request for withdrawal of his resignation letter under Rule 26(4) (iii) of the CCS Pension Rules 1972, within 90 days which he has made.

15. The respondents have considered his request for withdrawal of his resignation letter within the statutory provisions provided in sub rule (4) to (6) of Rule 26 of CCS Pension Rules 1972 and rejected the same. The respondents have urged that during the absence period the conduct of the applicant which should have in no way been improper was with the ~~registration~~ registration of a criminal case anything but proper and further his re-induction into the service could not be considered to be in public interest.

16. In a judicial review only the decision making process and not the merits of the decision itself are reviewable as the Tribunal does not sit as an Appellate Court. The applicant has failed to show that there has been wrong of such a nature as to require intervention by the Tribunal and set right the decision making process. Under the circumstances it is not for the Tribunal to substitute its own

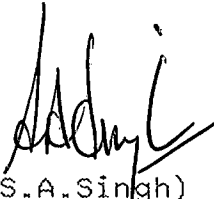
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opinion for that of the respondents. Accordingly the OA must fail.

17. In view of the above, OA having no merits and is accordingly dismissed.


(S.A. Singh)
Member (A)

Patwal/