

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1889 of 2012

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1. Sunil Kumar, Army No.- 427510-A Son Of Sri Baleshwar Tanti Resident Of Village- Krishna Nagar, Koolipara, P.O.- Sahebganj, District- Sahebganj (Jharkhand)

.... Appellant/s

Versus

1. The Union Of India Through the Defence Secretary, Army Headquarter, Defence Headquarter, New Delhi
2. The Chief Of The Army Staff, Army Hq. Defence Hq. New Delhi
3. The Senior Record Officer, Bihar Regiment Akhilesh Karyalaya, Record, the Bihar Regiment, Pin- 900441, C/O 56 APO
4. Commanding Officer, 5th Bn. Bihar Regiment

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. VIVEK PRASAD ,ADVOCATE

For the Respondent/s : M/s. S.D.SANJAY,ADDL.S.G.,SR.ADVOCATE
& RAKESH KUMAR SINHA,CGC

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-04-2016

This intra-Court Appeal is from the judgment and order dated 9-5-2011 passed in C.W.J.C.No.9713 of 2009 by the learned Single Judge of this Court, dismissing the writ petition filed by the writ petitioner-appellant.

2.Heard learned counsel for the appellant and learned Additional Solicitor General, and with their consent the Appeal is being disposed of at this stage itself.

3. The short facts are that the writ petitioner-appellant was recruited as Sipoy in Bihar Regiment. On 19-9-2005 the writ



petitioner-appellant filed an application in the Regimental Headquarter, seeking to retire from Defence Services on the ground of family problems. The Company Commander recommended the same on 21-9-2005. It is not in dispute that on 9-10-2005 the Area Commander in the Regimental Office accepted the letter of resignation and issued instructions for discharge, which was to be effective from 1-6-2006. It was also stated therein that on 7-5-2006 there would be a discharge drill prior to his discharge with effect from 31-5-2006, which date was also fixed. Thereafter, having attended the discharge drill on 7-5-2006, on 15-5-2006 the writ petitioner-appellant attempted to recall his earlier letter dated 19-9-2005 offering to resign. That was not acceded to, and this is how ultimately the matter came up before the learned Single Judge, who, noticing the aforesaid facts, dismissed the writ petition. Hence, the Appeal.

4. Having considered the matter, in our view, the case at hand is simple. The writ petitioner-appellant had sent a proposal to resign. That proposal was recommended for acceptance, and thereafter accepted. He was also informed about the various formalities as also the discharge drill. He accepted those and participated in the discharge drill, and just a week before the date for formal discharge, he sought to withdraw his proposal. This could not have been permitted, inasmuch as this proposal having accepted and acted upon by the

Army, had crossed the stage. It is well-settled that before the acceptance of the proposal, a person has a right to revoke his proposal, but once the acceptance is there, and that is also communicated and acted upon, the proposal cannot be withdrawn.

5. Thus, we find no merit in this Appeal. It is, accordingly, dismissed.

6. Mr. Vivek Prasad, learned counsel for the writ petitioner-appellant submits that the effect of the order of this Court would have disastrous consequences, inasmuch as the writ petitioner-appellant, who has served the Army over eleven years, is left with no remuneration. The Additional Solicitor General points out, in view of the statement in the counter-affidavit, that the writ petitioner-appellant has been granted thirty percent disability pension for life. Thus, the apprehension appears to have been allayed.

(Navaniti Prasad Singh, J)

B.K.Roy/-A.F.R.

(Nilu Agrawal, J)

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