

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+
%

W.P.(C) No. 3494/2016

7th February, 2017

SH. JITENDER KUMAR

..... Petitioner

Through: Mr. N.S.Dalal and Ms. Toral
Banerjee, Advocates.

versus

INDRAPRASTHA POWER GENERATION CO. LTD. & ORS.

..... Respondents

Through: Mr. Sumeet Pushkarna and Mr. P.
Narayanan, Advocates for R-
3/Pension Trust.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Though in this writ petition there are various reliefs claimed of payment of retirement/terminal benefits to the petitioner from the erstwhile employer/respondent no.1/Indraprastha Power Generation Co. Ltd., however the learned counsel for the petitioner on instructions from the petitioner, states that the only relief which is now prayed is for declaration of technical resignation emanating from paras 18 and 19 of the writ petition which read as under:-

“18. That the petitioner tendered his technical resignation and the same was accepted by the respondent no.1 & 2 and consequently petitioner was relived

from the services of respondent no.1. As per Office Memorandum No. 28020/1/2010-Estt(C) dated December, 26th 2013 issued by the DoPT, petitioner is entitled for all retirement/terminal benefits as the petitioner applied through proper channel and on selection, he tendered his technical resignation which is technical formality for administration reasons. Relevant portion of the office Memorandum dated 26th December 2013 is extracted hereunder for the ready reference of this Hon'ble Court:-

“A resignation from the services or post entails forfeiture of entire past qualifying service. The exception is technical resignation which does not result in forfeiture of past service.

14. In cases where a Government servant applied for post in the same or the other Departments through proper channel and on selection, is required to resign the previous post for administrative reasons, the benefits of past service, if otherwise admissible under rules, is given treating the resignation as a “Technical Formality”.

XXXX

Copy of the OM No. 28020/1/2010-Estt(C) dated December, 26th 2013 issued by the DoPT is annexed as **ANNEXURE-P-11.**

19. That references is also made to the Office Memorandum no. 28/30/2004-P&PW (B) Dated 26.07.2005 which is reiterated in the Office Memorandum of DoPT dated 26.12.2013 which provides that *“in cases where government servants, who had originally joined government service prior to 01.01.2004, apply for the post in the same or other department and on selection they are asked to tender technical resignation, the past services are counted towards pension under CCS (Pension) Rules-1972.”* ”

2. The only claim now thus prayed for by the petitioner is that when petitioner is said to have resigned from the respondent no.1, his resignation with the respondent no.1 should only be a technical resignation and not a normal resignation which will entail wiping out of the service record.

3. I completely agree with the arguments urged on behalf of the petitioner inasmuch as, the relevant Office Memorandums of the Central

Government dated 26.7.2005 and 26.12.2013, and which are undoubtedly applicable to the respondent no.1, specifically states that if a person working in a government organization through proper channel applies for being employed in another government organization, then termination of services with the erstwhile employer will only be by a technical resignation with consequences that the services of the employee with the erstwhile employer will be added to the services of the employee with the new employer. In the present case, new employer is a government organization namely Dedicated Freight Corridor Corporation of India Limited (Ministry of Railway) i.e a Govt. of India Enterprises, and therefore the petitioner will be entitled to the benefit of the DoPT Memorandums dated 26.7.2005 and 26.12.2013. Accordingly, it is ordered that from the date of relieving of the petitioner by the respondent no.1, the petitioner's services with the respondent no.1 will be added to the services of the petitioner with Dedicated Freight Corridor Corporation of India Limited (Ministry of Railway), Govt. of India Enterprises by treating the resignation of petitioner with respondent no.1 as a technical resignation. It is also noted that the respondent no.1 had forwarded the application of the petitioner for employment with DFCCIL i.e it was through a proper channel vide letter dated 19.5.2015, and that even the acceptance of resignation of the petitioner is by the letter dated 24.7.2015 of the respondent no.1 showing that acceptance is of the technical

resignation of the petitioner. Therefore, once resignation of the petitioner with the respondent no.1 is only a technical resignation, all the necessary consequences which are available in law by applying the DoPT Memorandums dated 26.7.2005 and 26.12.2013 will be available in favour of the petitioner.

4. In view of the above, this writ petition is allowed and disposed of by observing that the petitioner's resignation with the respondent no.1 will only be a technical resignation and petitioner will be entitled to consequences in terms of the DoPT Memorandums dated 26.7.2005 and 26.12.2013.

5. The writ petition is accordingly allowed and disposed of in terms of the aforesaid observations.

FEBRUARY 07, 2017
ib

VALMIKI J. MEHTA, J