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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11084/2016 and CM APPL. 43340/2016

DEEPAK KAUSHIK Petitioner

Through: Mr. Surjeet K. Mishra, Advocate

versus

UNION OF INDIA AND ANR Respondents

Through: Ms. Barkha Babbar, Advocate with
Ms. Dipanjali Tyagi, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **29.11.2017**

1. In this petition, the petitioner has laid a challenge to the order dated 10.02.2016 passed by the respondents/ITBP, accepting his resignation dated 28.01.2016. At the time of accepting his resignation, the petitioner was informed that since he had failed to serve for a period of ten years of regular employment, as per the provisions of Rule 27(1) of the ITBP Rules, 1994, his three months' equivalent salary of Rs.75,756/-, was being deducted from his dues.

2. We may first allude briefly to the facts of the case. On 30.12.2014, the petitioner was appointed on the rank of Head Constable (Tele-communication) in the respondents/ITBP. After completing his training between 11.01.2015 to 09.08.2015 at RTC, Karera, the petitioner was granted 30 days' earned leave w.e.f. 31.08.2015 to 29.09.2015, 15 days'

casual leave w.e.f. 07.10.2015 to 12.10.2015 and three days' casual leave w.e.f. 28.12.2015 to 30.12.2015. On 30.12.2015, the petitioner joined his duties and in less than one month therefrom, he tendered his resignation letter dated 28.01.2016, stating *inter alia* that he was facing family problems and unable to serve in the Force and therefore, may be released at the earliest. The resignation letter of the petitioner was received by the respondents/ITBP on 01.02.2016 and it was forwarded to the Sector Headquarters, Delhi on 06.02.2016. Thereafter, the order dated 10.02.2016 was issued by the respondents, accepting the petitioner's resignation.

3. The petitioner claims that within two days from the date of tendering his resignation, he had serious second thoughts about the same and he wrote a letter dated 30.01.2016, for withdrawing his resignation and for seeking permission to be included in the Force. The aforesaid plea has been disputed by the respondents, who have stated in their counter affidavit that the letter of withdrawal of his resignation was received in the office of the respondents on 25.02.2016 and the petitioner was informed vide letter dated 03.06.2016, that the said request had been rejected by the competent authority on the ground that the provisions of the CCS (Pension) Rules, 1972 permit a permanent employee to join service again but since the petitioner had not become a permanent employee, having failed to comply the tenure of two years, he could not be reinstated in the Force.

4. Aggrieved by the aforesaid decision, the petitioner served a legal notice dated 15.07.2016 on the respondents, which was duly replied to vide letter dated 15.12.2016, reiterating *inter alia*, the position as mentioned above. Dissatisfied with the said reply, the present petition has been filed by the petitioner, for quashing the impugned order dated 10.02.2016.

5. Mr. Surjeet K. Mishra, learned counsel for the petitioner submits that the respondents failed to appreciate that the petitioner had tendered his resignation under compelling circumstances inasmuch as his mother was seriously ill and he was under tremendous mental pressure due to repeated calls from his family members to return home immediately; that in any case, the petitioner had withdrawn his resignation on 30.01.2016, within two days from the date of tendering the same, which was well before the date his resignation was accepted by the respondents and it is settled law that if an employee withdraws his resignation before the date of its acceptance, then he shall be deemed to have remained in service without any break. It is urged on behalf of the petitioner that on the one hand, Section 8 of the ITBP Force Act, 1992 contemplates that no member of the Force shall be at liberty to resign his appointment during the term of his engagement or to withdraw himself from the duties of his appointment, without prior written permission from the competent authority and on the other hand, Section 21 prescribes that any person, who absents himself without leave or overstays the leave granted to him, is liable to be convicted by a Force Court and suffer imprisonment. It is thus contended that though the petitioner had 30 days' earned leave in hand, the respondents had refused to grant him any leave for over one year, which had compelled him to take the extreme step of tendering his resignation.

6. The aforesaid arguments have been countered by Ms. Barkha Babbar, learned counsel for the respondents, who disputes the submission made by the other side that after tendering his resignation on 25.01.2016, the petitioner had withdrawn the same on 01.02.2016. Learned counsel states

that there is no proof of service of the purported letter of withdrawal of resignation dated 30.01.2016, on the respondents. She also disputes the submission made by the other side that the petitioner had not been granted earned leave for one year. Learned counsel submits that having been appointed on 30.12.2014 and on completing his basic training on 09.08.2015, the petitioner was granted thirty days' earned leave from 31.08.2015 to 29.09.2015 with five days' casual leave granted in the month of October, 2015 and three days' casual leave in December, 2015 and therefore, his claim that denial of leave to him by the authority was the main reason for his tendering resignation, is absolutely baseless.

7. Learned counsel for the respondents further states that when the petitioner had tendered his resignation on 28.01.2016, the Commanding Officer had in fact counselled him to withdraw the same and stay in service, but he was adamant that he was not interested in continuing. As a result, the petitioner's resignation letter was forwarded to the Sector Headquarters on 06.02.2016 and the same was accepted on 10.02.2016. It was only after about two weeks therefrom that the respondents received the letter of withdrawal of resignation sent by the petitioner, on 25.02.2016, which had to be turned down in view of the provisions of CCS (Pension) Rules, 1972, whereunder only a permanent employees can be permitted to re-join the service and as he had yet to complete his tenure of two years of service, the petitioner had yet to become a permanent employee.

8. We have heard the arguments advanced by learned counsels for the parties and perused the documents placed on record.

9. There is no dispute that the petitioner had tendered his resignation on 28.01.2016, which was accepted by the respondents vide order dated

10.02.2016. The contention of the learned counsel for the petitioner that in less than 48 hours from the date of tendering his resignation, the petitioner had submitted a letter dated 30.01.2016 to the respondents for seeking withdrawal of his resignation letter, is however not borne out by any proof of acknowledgement of the said document in the office of the respondents. There is no reason for this Court to disbelieve the respondents when they state that no such letter was ever delivered in their office and the only document that they had received after 10.02.2016, was the letter dated 25.02.2016, submitted by the petitioner wherein he had sought withdrawal of his resignation letter for the first time. No *malafides* have been attributed by the petitioner to the respondents, which could weigh with us for attributing any motives against the respondents. Therefore, the plea of the learned counsel for the petitioner that his client having withdrawn his resignation well before the respondents had accepted the same, they ought not to have acted on the resignation letter, is without any basis. Nor does the law on this aspect come to the petitioner's aid.

10. No doubt, if an employee withdraws the resignation tendered by him before the employer accepts the same, on or before the date of the said resignation comes into effect, then an employee can have a valid grievance but that is not the case here. In the case of Chand Mal Chayal V. State of Rajasthan reported as **(2006) 10 SCC 258**, it was held by the Supreme Court that an incumbent is entitled to withdraw his resignation before its acceptance, as once his resignation is accepted, there is no jural relationship between the employee and the employer and the employee cannot claim withdrawal of the resignation or reinstatement on the post.

In the case North Zone Cultural Centre & Anr. V. Vedpathi Dinesh Kumar

reported as **(2003) 5 SCC 455**, the Supreme Court had clarified that an undue delay in intimating the employee about the decision taken by the employer on the letter of resignation so tendered, may lead to an inference that the said resignation has not been accepted but it is not open to the employee to withdraw his resignation after it is accepted by the competent authority. In the case in hand, the petitioner's resignation letter dated 28.01.2016 was duly accepted by the respondents on 10.02.2016 and no document has been filed by the petitioner evidencing the receipt of a subsequent letter of withdrawal of resignation, purportedly written by him on 30.01.2016.

11. Moreover, in his rejoinder, the petitioner has not disputed the submission made by the respondents in their counter affidavit that he was granted thirty days' earned leave from 31.08.2015 to 29.09.2015, five days' casual leave in the month of October, 2015 and three days' casual leave in the month of December, 2015. For the petitioner to now claim that the respondents had refused to grant him earned leave and in view of his mother's illness, he was torn between his duties and family commitments and in such circumstances, he was compelled to tender his resignation, is found to be devoid of any merits.

12. It is evident from the documents placed on record that in less than four months from the date, the petitioner had completed his training, he had tendered his resignation. In other words, what to speak of completing his tenure of two years, the petitioner had just about completed service of one year and in such circumstances, he cannot be permitted to invoke the provisions of the CCS (Pension) Rules for seeking reinstatement. There is no other legal ground urged by learned counsel for the petitioner for

assailing the impugned order passed by the respondents, accepting his resignation.

13. We do not find any illegality or arbitrariness on the part of the respondents in accepting the petitioner's resignation letter and declining to entertain the subsequent application purportedly submitted by him, for withdrawal of his resignation. The petition is therefore dismissed alongwith the pending application. There shall be no orders as to costs.

HIMA KOHLI, J

REKHA PALLI, J

NOVEMBER 29, 2017

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