

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4589 OF 2014

Union of India & Anr. ...Petitioners

Versus

Sanjay Kumar S. Zumbre ...Respondent

Ms Neeta Masurkar with Ms Nieyaati Masurkar, Mr. S. G. Thakur
and Mr. V. S. Masurkar for Petitioners.

Mr. Janak Dwarkadas – Senior Advocate with Ms Shilpi Jain i/b.
Mr. Nitin Deshpande for Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 06 July 2018

Date of Pronouncing the Judgment : 19 July 2018

JUDGMENT :

1] Heard the learned counsel for the parties.

2] By order dated 18th June 2014, Rule was issued in the petition
and the hearing was expedited. Order dated 18th June 2014, reads
as follows :

“1 Heard.

*2 Perused the record placed before us, documents
relied upon by the appellants and judgments cited.*

3 Rule.

*4 Interim relief is granted in terms of prayer clause
(c).*

5 Hearing is expedited.”

3] The challenge in this petition is to the judgment and order dated 28th March 2014 made by the Central Administrative Tribunal (CAT) allowing Original Application No. 504 of 2009 instituted by the respondent. The CAT has directed the petitioners – Union of India to allow the respondent, who had resigned from his service to rejoin his service, if he offers to resume within two weeks from the date of receipt of the order. The CAT has also directed that the period of the respondent's absence from 12th November 2007 to be treated suitably in accordance with law and in accordance with relevant leave rules.

4] The relevant facts and circumstances in which the challenge arises are set out briefly hereafter.

5] The respondent was a direct recruit IRS Officer of the 1992 batch. Consistent with the service conditions applicable to him, the respondent, vide order dated 23rd June 2007, was transferred to the Guntur Commissionerate at Vishakhapatnam (Vizag) . On 29th June 2007, the respondent, represented against transfer and posting at Vizag and sought for posting at Pune or Aurangabad on the ground of his father's health condition. It is the case of the respondent that since there was no response to the representation dated 29th June

2007, the respondent, on 29th June 2007, did join the duties at Guntur (Vizag). On 9th August 2007 however, the respondent, tendered his resignation from IRS and requested that he be relieved from service by 21st September 2007.

6] The Chief Commissioner, Vishakhapatnam, forwarded the resignation letter to the competent authority on 23rd August 2007 for consideration. It is the case of the petitioners – Union of India that the competent authority accepted resignation on 26th October 2007 and informed about such acceptance to the Chief Commissioner at Vizag, with the further request to communicate the date on which the respondent could be relieved and necessary notification could be issued to the said effect. The Commissioner vide order dated 23rd November 2007, relieved the respondent w.e.f. 12th November 2007 (FN) as a consequence of the acceptance of the resignation by the competent authority. Accordingly, notification no. 67 of 2007 was issued on 7th December 2007 declaring that the resignation of the respondent had been accepted w.e.f. 12th November 2007 (FN).

7] It is the case of the respondent that on 1st January 2008, a new transfer policy was issued by the Central Board of Excise and Customs (CBEC) whereby a new area called as 'Central Area' was introduced. This Central Area was to comprise most of the stations

in the erstwhile West Zone. It is the case of the respondent that since he perceived this new transfer policy to be beneficial to him, the respondent, by letter dated 9th February 2008, withdrew his resignation letter dated 9th August 2007 and urged that he be continued in service. This letter dated 9th February 2008 was faxed to the competent authority for the first time on 12th February 2008.

8] Thereafter, some correspondence ensued between the petitioners and the respondent on the subject of purported withdrawal of resignation which had already been accepted and in pursuance of which, the respondent had already been relieved w.e.f. 12th November 2007. Ultimately, by communication dated 9th September 2008, the petitioners informed the respondent that his request for withdrawal of resignation cannot be accepted.

9] The respondent, after making yet another representation dated 16th January 2009 and receiving no favourable reply, instituted OA No. 504 of 2009, challenging the communication dated 9th September 2008 before the CAT, Mumbai. By the impugned judgment and order dated 28th March 2014, the said Original Application was allowed. Hence, the present petition by the Union of India and others.

10] Mrs. Masurkar, the learned counsel for the petitioners submits that even in terms of Rule 26(4) of the Central Civil Services (Pension) Rules, 1972 (said Rules), there is no vested right in an employee to insist upon permission to withdraw his resignation which has already been accepted. At the most, some discretion is conferred upon the competent authority in the matter. She submits that such discretion cannot be favourably exercised unless there is involvement of any public interest and compliance with the conditions prescribed in clause (i) to (iv) of Rule 26(4) of the said Rules. She submits that in the present case neither was any public interest involved nor were the conditions prescribed in clauses (i) and (iii) fulfilled.

11] Mrs. Masurkar submits that the respondent's resignation was accepted by the competent authority on 26th October 2007 and therefore, this is the date on which such resignation became effective. She submits that in such matters the date of communication of acceptance or the date on which the government servant may have been actually relieved, is not very relevant. She relies on ***Raj Kumar vs. Union of India AIR 1969 SC 180*** and ***North Zone Cultural Centre & Anr. vs. Vedpathi Dinesh Kumar (2003) 5 SCC 455*** in support of this proposition.

12] Mrs. Masurkar submits that even if it is assumed that the resignation of the respondent became effective from 12th November 2007, as contended by the respondent himself, even then, the respondent's request for withdrawal faxed on 12th February 2008 was beyond the period of 90 days from the date his resignation became effective. This means that the respondent himself rendered the compliance of the condition in sub clause (iii) of Rule 26(4) of the said Rules impossible.

13] Mrs. Masurkar submits that the respondent had never indicated in his resignation letter that his resignation had any nexus with his father's health condition. She therefore submits that there is no material whatsoever on record to indicate that the respondent had tendered his resignation for some compelling reasons and thereafter, there has been a material change in the circumstances which had originally compelled the respondent to tender his resignation. She submits that in absence of any such material, the condition in clause (I) of Rule 26(4) also does not stand fulfilled.

14] Mrs. Masurkar submits that the CAT has misconstrued the provisions of Rule 26(4) of the said Rules. She submits that the CAT, in the guise of liberal interpretation, has virtually rewritten Rule 26(4) of the said Rules. She submits that the reasoning of the CAT

that since the petitioners had taken seven months to decide upon the respondent's request on the withdrawal of resignation, the delay on the part of the respondent in making the request for withdrawal of resignation beyond the period of 90 days from the date of such resignation became effective is required to be overlooked, is, a reasoning which is entirely contrary to the statutory rules which govern such a situation. She submits that such a reasoning suffers from perversity. She further submits that the so-called reasons stated by the respondent for withdrawal of his resignation, even if accepted as correct, are reasons which promote his own private interest. Mrs. Masurkar submits that discretion in Rule 26 of the said Rules can be exercised only in public interest and not to further any private interest.

15] For all the aforesaid reasons, Mrs. Masurkar submits that the impugned judgment and order of the CAT is required to be set aside.

16] Mr. Dwarkadas, the learned Senior Advocate for the respondent defends the impugned judgment and order by submitting that an entirely reasonable view has been taken by the CAT and therefore, this Court, may not interfere with the same. He points out that there is ample material on record in support of the respondent's case that the respondent has the responsibility to look after his

ailing father residing at Pune. He submits that there is ample material on record that the respondent, had by legitimate means resisted transfer to Guntur and had even indicated choice of posting at Pune or Aurangabad. He points out that even after transfer to Guntur, the respondent, had made a representation urging reconsideration of his transfer and posting. Since, there was no response to this representation, the respondent, tendered his resignation on 9th August 2007.

17] Mr. Dwarkadas points out that admittedly, w.e.f. 1st January 2008 i.e. within hardly six months from the date of the respondent's transfer to Guntur, there was a change in the transfer policy. The terms of the new transfer policy were beneficial to the respondent and on basis of the same, the respondent, was quite hopeful of securing a transfer at Pune or Aurangabad so as to be close to his ailing father. Mr. Dwarkadas submits that from this, it is quite clear that the respondent, had tendered his resignation for some compelling reasons and had sought for withdrawal of the resignation as a result of material change in his circumstances, which had originally compelled him to tender the resignation.

18] Mr. Dwarkadas relies upon ***Balram Gupta vs. Union of India & Anr. 1987 (Supp) SCC 228***, to submit that the interpretation

of the expressions '*compelling reasons*' or '*material change in circumstances*' must be construed liberally and not pedantically. Mr. Dwarkadas submits that in the present case, the circumstances as indicated in Rule 26(4)(i) had been completely fulfilled and there is neither any illegality nor any perversity in the view taken by the CAT in the impugned judgment and order.

19] Mr. Dwarkadas submits that the communication dated 9th September 2008 by which the competent authority rejected the respondent's request for withdrawal of resignation did not state that such request was being rejected because such request was made beyond the period of 90 days from the date the resignation became effective. Relying upon ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi, 1978(1) SCC 405***, Mr. Dwarkadas submits that it is not open for the petitioners to defend the communication dated 9th September 2008 on such a ground, which finds no reflection whatsoever in the said communication.

20] Mr. Dwarkadas submits that factually, the request for withdrawal of resignation was made somewhere on the 88th or 89th day from the date the resignation became effective. Mr. Dwarkadas submits that the resignation became effective only on 23rd November 2007, because it is by communication dated 23rd

November 2007 that the respondent was actually relieved from his services. In any case, Mr. Dwarkadas submits that even if the resignation is held to be effective from 12th November 2007, the request for withdrawal is well within the period of 90 days. On this basis, Mr. Dwarkadas asserts that there was total compliance with the conditions prescribed in clauses (i) and (iii) of Rule 26(4).

21] Mr. Dwarkadas reiterates that the view taken by the CAT is entirely reasonable and therefore, warrants no interference whatsoever.

22] Rival contentions now fall for our determination.

23] There is no serious dispute as regards the facts, which have already been referred to in the earlier part of this judgment and order. The dispute, is mainly in relation to the interpretation of the provisions of Rule 26(4) of the said Rules and its application to the facts and circumstances of the present case.

24] Rule 26(4) of the said Rules which deals with the issue of forfeiture of service on resignation, reads as follows :

“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."*

[Emphasis supplied]

25] The Rule finds place in the CCS (Pension) Rules, 1972, which are basically set of rules dealing with the issue of entitlement and computation of pension to retired servants. From the placement of Rule 26 in the scheme of the said Rules, it is apparent that the objective of the said Rules is to basically make it clear that resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service. Rule 26(4) of the said Rules however provides that the appointing authority, rather than order the forfeiture of past service, may, permit a person to withdraw his resignation in public interest subject to fulfillment of the conditions prescribed in clauses (i) to (iv). Rule 26(5) further provides that the request for withdrawal of resignation shall not be accepted by the appointing authority where a government servant resigns his service or post with a view to taking an appointment in or under a private commercial company or in under a corporation or a company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

26] From the reading of the Rule 26 in its entirety, it does appear that there is no vested right as such in a government servant to insist that he be permitted to withdraw his resignation once the same has been duly accepted and acted upon. At the highest it can

be said that a discretion is vested in the appointing authority to permit such a government servant to withdraw his resignation *in public interest* and subject to compliance with the conditions set out in clauses (i) to (iv) of Rule 26(4) of the said Rules. This according to us, is clear from not only the placement of Rule 26 in the said Rules, but also from the use of the expression '*may permit*' in Rule 26(4).

27] The discretion which Rule 26(4) invests in the appointing authority, no doubt, is not some unfettered or untrammelled discretion. The Rule itself provides that such discretion may be exercised upon satisfaction that some public interest is involved in permitting the government servant to withdraw his resignation, even if such resignation has become effective. The exercise of such discretion is further governed by the conditions prescribed in clauses (i) to (iv) of Rule 26(4). Rule 26(5) indicates the circumstances in which the request for withdrawal of resignation shall not be accepted by the appointing authority. From all this, it is quite clear that no government servant, who has resigned from service or the post, can claim any vested right to withdraw such resignation and resume in the government service. From the perusal of the impugned judgment and order, we find that the CAT, has failed to construe the provisions of Rule 26 from this

perspective.

28] Clause (iii) of Rule 26(4) of the said Rules, in terms provides that the appointing authority, even where it finds that there may be some public interest involved in permitting a government servant whose resignation has already been accepted or has become effective to withdraw the same, must ensure that the period of absence from duty of such government servant between the date of which the resignation became effective and the date on which such government servant is allowed to resume duty as a result of permission to withdraw the resignation *is not more than 90 days*. From this, it follows that the appointing authority cannot exercise discretion in terms of Rule 26(4) and permit a government servant whose resignation has already become effective to withdraw such resignation if the period of absence of such government servant as between the date on which his resignation became effective and the date on which he is permitted to resume duties exceeds 90 days.

29] Mr. Dwarkadas however submits that since, a government servant, whose resignation has become effective, will have no control over the time which the appointing authority might take to decide upon his request for withdrawal of resignation, the provisions of clause (iii) of Rule 26(4) of the said Rules have to be

construed pragmatically and not pedantically.

30] There can be no serious dispute with Mr. Dwarkadas's contention that rules of this nature have to be pragmatically construed. However, even the pragmatic construction as proposed will warrant that the government servant, who seeks to withdraw his resignation which has already become effective, at least makes his request for such withdrawal of resignation within a period of 90 days from the date such resignation became effective. It is well within the control of such government servant to make such request within 90 days from the date his resignation became effective.

31] The provision in clause (iii) is conceived in public interest. If no such ceiling is provided, public interest is bound to suffer, because, the government servant, whose resignation has already become effective, may then, insist upon withdrawal of the same and to resume into government service after some indefinite period. Since, Rule 26(4) purports to make an exception to the general rule that a resignation once accepted and made effective cannot be permitted to be withdrawn, such provision, cannot be construed with the liberality proposed by the CAT so as to render the provisions of clause (iii) of Rule 26(4) and the time lines stated therein, virtually redundant or otiose.

32] Therefore, in order that the appointing authority may exercise its discretion in public interest and permit a government servant to withdraw his resignation which has already become effective, the government servant concerned must at least submit his request for withdrawal within period of 90 days from the date such resignation became effective. Otherwise the government servant for reasons attributable to himself will render compliance with the condition in clause (iii) impossible.

33] In order to determine whether the respondent in the present case, had submitted his request for withdrawal of resignation within 90 days from the date such resignation became effective, it is necessary to determine the date on which such resignation became effective in the facts and circumstances of the present case.

34] At least *prima facie*, rulings in *Raj Kumar* (supra) and *North Zone Cultural Centre* (supra) support Mrs. Masurkar's contention that resignation becomes effective on acceptance, even though, such acceptance may have been communicated later. In the present case, there is no dispute that the respondent's resignation was accepted by the competent authority on 26th October 2007, though, it may have been communicated later. Therefore, if 26th October 2007

is taken as the date on which the respondent's resignation became effective, then, it is apparent that the respondent's request for withdrawal of such resignation on 12th February 2008, is well beyond the prescribed period of 90 days in clause (iii) of Rule 26(4). This means that the respondent, by his own omission brought about a situation wherein compliance with the condition prescribed in clause (iii) of Rule 26(4) was rendered impossible.

35] In *Raj Kumar* (supra), the petitioner a member of the Indian Administrative Service resigned on 30th August 1964 and asked the government to relieve him from service. On 31st October 1964, the Government accepted the resignation and requested the Chief Secretary to intimate the date on which the petitioner was to be relieved of his duties so that formal notification could be issued in that behalf. The petitioner, thereafter changed his mind and by letter dated 27th November 1964 requested the Chief Secretary to recommend acceptance of withdrawal of his resignation from IAS. He also addressed a separate letter to the Government of India intimating that he was withdrawing his resignation from IAS. On 29th March 1965, an order accepting the petitioner's resignation from IAS was issued and the respondent was directed to handover the charge to Additional Collector Kota. The petitioners challenged the communication dated 29th March 1965 on the ground that the

petitioner had withdrawn his resignation before the resignation had become effective. Since such contention did not find favour with the Rajasthan High Court, the petitioner, appealed to the Hon'ble Supreme Court.

36] The Hon'ble Supreme Court, dismissed the petitioner's appeal by pointing out that in the absence of any rule under Article 309 of the Constitution of India that an order accepting the resignation to be effective, must be communicated to the person submitting his resignation, the resignation of the petitioner, became effective no sooner the same was accepted by the Government of India. The Hon'ble Supreme Court in fact held that the petitioner cannot profit by delay in intimating the acceptance of his resignation or in relieving him of his duties.

37] The relevant observations in paragraphs 4 and 5 read as follows:

*"4. The letters written by the appellant on August 21, 1964, and August 30, 1964, did not indicate that the resignation was not to become effective until acceptance thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. **On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Art. 309 of the Constitution which enacts that for an order accepting the***

resignation to be effective, it must be communicated to the person submitting his resignation.

5. Our attention was invited to a judgment of this Court in [State of Punjab v. Amar Singh Harika](#) AIR 1966 SC 1313 in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the Officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. **But when a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority.** Till the resignation, is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. **Apparently the State of Rajasthan did not immediately implement the order and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating**

acceptance or in relieving him of his duties.”

[Emphasis supplied]

38] The aforesaid position is reiterated in *North Zone Cultural Centre* (supra). In that case, the government servant, tendered his resignation on 18th November 1988 with effect from the same date. On 21st November 1988 he sent a telegram withdrawing that resignation. On 1st December 1988 the government servant was telegraphically informed that his resignation had been accepted on 18th November 1988 itself. In such facts, the learned Single Judge as well as the Division Bench of the Punjab & Haryana High Court ruled in favour of the government servant holding that the government servant had the right to withdraw his resignation before the acceptance was communicated to him or before he was relieved from service. The Hon'ble Supreme Court however, relying upon *Raj Kumar* (supra) reversed the Punjab & Haryana High Court. The Hon'ble Supreme Court held that non communication of the acceptance does not make the resignation inoperative provided there is in fact acceptance before the withdrawal.

39] Thus, on the basis of the authorities in *Raj Kumar* (supra) and *North Zone Cultural Centre* (supra), it is possible to accept the contention of Mrs. Masurkar that the respondent's resignation in the present case, became effective from 26th October 2007. It is significant to note that even the respondent in his resignation letter

dated 9th August 2007 had requested that he be relieved from service by 21st September 2007. If therefore, 26th October 2007 is taken as the date on which the respondent's resignation became effective, then certainly, the respondent's request for withdrawal of such resignation made only on 12th February 2008, rendered compliance with the condition in clause (iii) of Rule 26(4) impossible. In such a situation, neither could the respondent have insisted nor could the CAT have ordered the acceptance of the respondent's resignation.

40] In the pleadings before the CAT, the respondent had however taken 12th November 2007 as the date on which his resignation became effective. Taking into consideration the circumstance that the communication dated 23rd November 2007, by which the respondent was communicated that he stands relieved w.e.f. 12th November 2007 (FN), as well as the stand of the petitioners themselves in their communication dated 9th September 2008 suggesting that 12th November 2007 was the date on which the respondent's resignation became effective, we may now examine the matter so as to determine whether the respondent's request for withdrawal of his resignation can be said to have been made within 90 days from 12th November 2007.

41] Admittedly, the respondent's request though curiously dated as 9th February 2008, was for the first time faxed to the competent authority only on 12th February 2008. Even if 12th November 2007 is excluded for the purpose of computation, the respondent's request for withdrawal of resignation faxed on 12th February 2008, is clearly beyond the prescribed period of 90 days. The respondent's half hearted contention that such request was made on 88th or 89th day is contrary to records or rather, contrary to ordinary principles of mathematical computation. Clearly therefore the respondent, by making his request for withdrawal of resignation beyond the prescribed period of 90 days from the date on which his resignation became effective, has rendered compliance with the condition in clause (iii) of Rule 26(4), an impossibility. In such a situation again, neither could the respondent could have insisted nor could the CAT have ordered the acceptance of the respondent's request of withdrawal of his resignation.

42] Thus, although we respectfully disagree with the view taken by the CAT that the provisions of Rule 26 have to be construed in an extremely liberal manner because such provisions have been made for the benefit of employees, we find that even by adopting the most liberal construction, it is quite clear that the respondent, by making his request for withdrawal of the resignation beyond the

period of 90 days from the date his resignation became effective, rendered compliance with the condition prescribed in clause (iii) of Rule 26(4) impossible. In such a situation, the CAT, was not justified in extending the statutory period granting relief to the respondent.

43] From the perusal of the communication dated 9th September 2008 by which the respondent's request for withdrawal of his resignation was rejected by the competent authority, we find that there is specific reference to the condition in clause (iii) of Rule 26(4) of the said Rules, as one of the grounds for rejection of the request. In addition, the competent authority, may have stated some more reasons in support of its decision not to accept the respondent's request for withdrawal of resignation which had already become effective. However, from the reading of the communication dated 9th September 2008 in its entirety, we cannot say that that the ground of non compliance with the condition in clause (iii) of Rule 26(4) was not even one of the grounds for rejection of the respondent's request. In such circumstances, the principle in case of *Mohinder Singh Gill* (supra) will not apply.

44] This is also not a case where the respondent can seriously claim any prejudice on account of any ambiguity in reference to the ground based upon the non fulfillment of the condition in clause (iii)

of Rule 26(4). The respondent, was quite aware that the request for withdrawal of resignation had to be made at least within 90 days from the date the resignation became effective, if not earlier. This is possibly the reason why the respondent dated his request as 9th February 2008 so as to create an impression that such request was in fact made within the period of 90 days. However, there is no dispute that though the request letter was dated 9th February 2008, the same was, for the first time was communicated to the competent authority by fax only on 12th February 2008. Secondly, the respondent, has time and again insisted that the request was made on 88th or 89th day from the date the resignation became effective. Factually this is found to be incorrect. From all this, it is quite evident that the respondent was fully aware that his request for withdrawal of resignation had to be made within a period of 90 days from the date his resignation became effective, in the least. Now that the record bears out that no such request was made by the respondent within the prescribed period of 90 days, the CAT, was not at all justified in granting any relief to the respondent.

45] The reasoning of the CAT that because the petitioners took seven months to take a decision on the respondent's request for withdrawal of resignation which had already become effective, the delay on the part of the respondent in making his request for

withdrawal of the resignation beyond the statutorily prescribed period of 90 days can be condoned, is a reasoning, which we are unable to endorse. Rule 26 nowhere prescribes any time limit upon the competent authority to take a decision in the matter of request from a government servant for withdrawal of his resignation. Rule 26 does not provide for any legal fiction to the effect that such request be deemed to be accepted or rejected upon the expiry of any specified period. No doubt, merely because no period has been prescribed, that does not mean that the competent authority can unreasonably delay taking decision. Such decisions have to be taken within a reasonable period. However, even assuming that the period of seven months in the facts and circumstances of the present case, constitutes some delay on the part of the competent authority, that by itself, is certainly not a ground to extend the statutorily prescribed period in clause (iii) of Rule 26(4) or to condone the delay on the part of the respondent in not submitting his request within the statutorily prescribed period.

46] The CAT has held that '*the rigour of 90 days time limit in rule has to be construed liberally*', since this is a beneficial legislation. According to us, when the Rule is quite clear there is no scope for extension of time limits under the guise of liberal interpretation. It is settled position in law that when the provisions of the statute are

quite clear, the courts or the tribunals, cannot, under the guise of any liberal interpretation, rewrite the provisions of the statute or render any provisions of a statute redundant or otiose.

47] On the aspect of compliance with the condition in clause (I) of Rule 26(4) of the said Rules, relying upon the authority in *Balram Gupta* (supra), it is possible to sustain the finding of the CAT that in the present case, there was some material on record to say that this condition stood complied with. However, mere compliance with the condition in clause (i) would not suffice in a matter of this nature. There is no material placed on record that there was any public interest involved in permitting the respondent to withdraw his resignation which had already become effective. In any case, in the absence of compliance with a condition in clause (iii) of Rule 26(4), there was no question of the respondent insisting upon the acceptance of his request for withdrawal of his resignation which had already become effective.

48] For all the aforesaid reasons, we are satisfied that the directions issued by the CAT in the impugned judgment and order are in excess of the jurisdiction vested in it. Such directions, virtually require the petitioners to act in breach of Rule 26(4) of the said Rules. Accordingly, we set aside the impugned judgment and order

and make Rule absolute in terms of prayer clause (b) of the petition.
In the facts and circumstances of the present case, there shall be no
order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

**Sunita
Kishandas
Chandka**

CHANDKA

Digitally signed
by Sunita
Kishandas
Chandka
Date: 2018.07.19
15:07:21 +0530