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

+ **W.P.(C) 2447/2018**

JAGDIS SARAN

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Anil Dabas, Advocate with
Inspector Sanjay Kumar, CISF.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

30.11.2018

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1. The Petitioner has filed the present petition under Article 226 of the Constitution of India, impugning orders dated 22nd July, 2017 and 26th December, 2017 whereby the Respondents have rejected the representations of the Petitioner and declined to consider his resignation as a 'technical resignation'. Consequently Petitioner's past service of one year and three months in CISF at the rank of Sub-Inspector is not being considered for claiming benefits under CCS Rules (Pension) 1972.

Brief facts:

2. The Petitioner prepared for competitive examinations and applied for recruitment in various services. In 2002, Petitioner appeared in the Central Police Organization (AC's) examination for the post of Assistant

Commandant in the Border Security Force (BSF). Besides, the Petitioner also participated in Central Police Organization (SI's) examination 2002 for the post of Sub-Inspector in Central Industrial Security Force (CISF)

3. On 7th October, 2003, Petitioner was selected for the post of Sub-Inspector in CISF and accordingly he joined the said post on 8th November, 2003.

4. While undergoing basic training at CISF, RTC, Arakkonam, Tamil Nadu, Petitioner received an intimation from Respondent No.4 (DG, BSF) stating that the Petitioner was selected as Assistant Commandant in BSF.

5. On 19th October, 2004, Petitioner submitted an application to the department of Respondent No. 2 i.e Office of the Company Commander Coy CISF RTC Arakkonam, informing them about his selection as Assistant Commandant, BSF. As per the averments in the petition, according to the Petitioner, this letter was returned and he was asked to submit the same at the place of his posting, after the completion of basic training.

6. On completion of the basic training, the Petitioner was posted to CISF unit at Raja Bhoj Airport, Bhopal, Madhya Pradesh. On 16th December, 2004, Petitioner received a letter from DG, BSF whereby he was advised to report to Director, BSF Academy at Gwalior on 31st January, 2005. On the same date Petitioner intimated CISF unit, Airport, Bhopal (through proper channel) about his selection as Assistant Commandant in BSF and requested that his resignation be accepted as '**technical resignation**' and that the

Petitioner be discharged so that he could join as Assistant Commandant in BSF. Two days later, i.e 18th December 2004, Deputy Commandant, CISF forwarded Petitioner's case to Senior Commandant, CISF Unit, BHEL, Bhopal.

7. On 24th January, 2005, Petitioner again submitted a request for acceptance of his '**technical resignation**' and discharge from his services. Petitioner's request was accepted by CISF vide letter dated 30th January, 2005 effective immediately. The said letter reads as under:-

“UNIT SERVICE ORDER PART 1 NO. 04/2005

RESIGNATION FROM SERVICE (STRENGTH DECREASE)

Resignation tendered by CISF No. 033220028 Sub-Inspector Exe. Jagadish Saran, S/o D R Saran of CISF Unit, Raja Bhoj Airport, Bhopal (under the administrative control of CISF Unit BHEL Bhopal) is hereby accepted w.e.f. 30.1.2005 (A/N). The above said individual has been struck off strength from CISF Unit, Raja Bhoj Airport, Bhopal as well as CISF w.e.f. 31.1.2005 (F/N). His other particulars are as under:

Sl.No	PSL No.	CISF No. Rank & Name	Religion and Home State	Whether SC.ST.OBC. General	Whether Direct/Ex-Army
01	N.A	033220028 Sub-Insp/Exe Jagadish Saran	Hindu Rajasthan	OBC	Direct

8. On the next day i.e. 31st January, 2005, Petitioner reported to the new

employer i.e. BSF and joined the post of Assistant Commandant. Petitioner underwent the basic training course and since then he has been serving in BSF.

9. It is to be noted that on 3rd February, 2005, department of Respondent No.2 intimated Respondent No.4 that the Petitioner's resignation from service had been accepted. The said letter reads as under:-

“The Director
BSF Academy Takenpur
Gwalior (M.P)

Subject: FORWARDING OF U.S.O. PART-1 FOR
RESIGNATION FROM SERVICE: REG

A copy of CISF Unit BHEL, Bhopal, Unit Service Order Part-1 No. 04.2005 dated 20.01.2005, accepting therein the resignation from service (CISF) in respect of CISF No. 033220028. Ex-SI/Exe Jagadish Saran of CISF Unit Raja Bhoj Airport Bhopal, is sent herewith for your kind information and necessary action please.

It may not be out of place to mention that the above mentioned Ex. SI Exe has been issued an offer of a post of Asstt. Commandant in the B.S.F and was required to report on 31.01.2005.”

10. Later, Petitioner became aware that he was governed by National Pension Scheme (NPS) instead of CCS Rules (Pension) 1972 and that his past service in CISF as Sub-Inspector was not being included for the purpose of considering his entitlements under the CCS Rules (Pension)

1972.

11. Petitioner made representations dated 9th March, 2017 and 23rd June, 2017 to Respondent No.4 and requested for consideration of his past service under the CCS Rules (Pension) 1972. The said representations were rejected by Respondent No.4 vide impugned letter dated 22nd July, 2017 which reads as under:-

“Please refer to Headquarters letter No. 4853-54 dated 22 March, 2017 and letter No. 7029-30 dated 24 June, 2017.

02. Referred above letter and documents received from Shri Jagadish Saran, Dy. Commandant (Tpt) (IRLA No. 105 9 0188) Sector Headquarters, Border Security Force, is returned herewith in regard to the order issued by CISF Unit, Bhopal vide letter No. 203 dated 31.1.2005 of the officer referred as ‘Resignation from Service’ of the officer. While as per rules, taking benefit of existing service, in the event of the acceptance of Technical Resignation by the concerned department, the advantage of adding prior service/prior service benefit.

03. Therefore, the officer should be informed that the matter should be forwarded with the Technical Resignation letter so that the matter can be referred to higher authorities for further necessary action.”

12. The Petitioner being aggrieved by the response of Respondent No.4 preferred another representation to Respondent No.2 dated 31st August, 2017 which was also rejected vide impugned letter dated 26th December, 2017. Relevant portion reads as under:

“08. AND WHEREAS, in compliance of the directions of the Hon'ble Court the request of the petitioner dated 31.08.2017 has been examined in depth at CISF HQrs as per the provisions contained in Rule 26(2) of CCS (Pension) Rules, 1972 and DoPT OM M. No. OM No. 13/24/92- Estt. (Pay-I) dated 22.01.1993.

09. AND WHEREAS, as per the terms and conditions laid down vide DOPT OM dated 22.01.1993 if a government servant applies for a post in the same or other department before joining Government service and on that account the application was not routed through proper channel the benefit of counting of former service may be allowed in such cases, subject to fulfillment of the following conditions.

i The Government servant at the time of joining should Intimate the details of such application immediately on their joining.

ii The government at the time of resignation should specifically make a request that his resignation may be treated as Technical Resignation.

iii The authority accepting are resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel.

10. AND WHEREAS, the petitioner does not fulfill the terms / conditions as per the Clause (i) of DoPT O.M. Dated 22.01.1993 hence request of the individual to treat his resignation as technical resignation has been considered and regretted being devoid of merit.

11. AND WHEREAS, If the petitioner produced any documentary evidence, in support of his claim that he had intimated to the department immediately on his joining about his recruitment and application process thereof concerning BSF CISF may be reconsider his requested for treating his resignation as technical resignation for counting the former

service to avail the consequential benefits.

12. This disposes of the representation dated 31.01.2017 to WP No.10482/2017 FILLED BY SHRI Jagdish Saran, Dy. Directions/ judgment order dated 27.11.2017 of the Hon'ble Delhi High Court.”

13. Petitioner being aggrieved by the non-consideration, filed Writ Petition being W.P.(C) No. 10482/2017 before this Court. The same was heard and disposed of vide order dated 27th November, 2017, directing the Respondents to dispose of the representations of the Petitioner within a period of four weeks under written intimation to the Petitioner. The representations having being decided against the Petitioner, the present petition has been filed impugning the orders of rejection.

Submission of the Parties:

14. Mr. Chhibber, learned counsel appearing on behalf of the Petitioner, during the course of his submissions has referred to the counter affidavit filed by Respondent No.1-3 and relying on the averments made therein, he has urged that the Respondents acknowledged the receipt of the Petitioner's intimation/request for 'technical resignation'.

15. He further submits that since Respondents acknowledged the above fact there is no basis for them to deny the Petitioner the benefit of his past service. Mr. Chhibber has also referred to the letter dated 18th December, 2004, which is an internal communication written by Deputy Commandant, CISF to the Senior Commandant, CISF whereby an application of the Petitioner was forwarded for necessary action. He refers to the subject line

of the said letter which reads as:

“Sub; Information pertaining to selection as Astd. Commandant and **acceptance of technical resignation.**”

16. The counter affidavit of the Respondent Nos. 1 to 3 also encloses the letters dated 16th December, 2004 and 24th January, 2005 written by the Petitioner requesting for the acceptance of his resignation as ‘technical resignation’. Therefore, the receipt of the said letters by the Respondents is not in dispute.

17. Mr. Chhibber has further argued that the Petitioner’s technical resignation was duly accepted vide order dated 30th January, 2005 and the impugned orders do not take this aspect into consideration and thus the rejection of his request is frivolous. He also drew our attention to para 11 of the order dated 26th December, 2017 that records CISF’s willingness to reconsider the request of the Petitioner for treating his resignation as technical resignation, provided the Petitioner is able to produce documentary evidence in support of his claim that on joining BSF, he had immediately intimated to the Department about his recruitment and application process with BSF.

18. Learned counsel of the Petitioner accordingly submits that the authority has failed to look into its own records and notice the receipt of the letters dated 16th December, 2004 and 24th January, 2005.

19. Mr. Chhibber further submits that the CCS Pension (Rules) 1972 contain

a beneficial provisions for such persons who have switched over from one government department/ service to another. He states that declining the benefits of past service would result in causing monetary loss to the Petitioner, as he would then not be governed by CCS Pension (Rules) 1972 and accordingly prayed that the impugned orders be set aside.

20. Mr. Anil Dabas, learned counsel appearing on behalf of the Respondents, on the other hand, argued that the Petitioner was not entitled to take the benefit of his past service with CISF, as he had not complied with the conditions stipulated in the DoPT OM dated 22nd January, 1993. The relevant portion thereof reads as under:-

"2.1 Technical Resignation

2.1.1 As per the Ministry of Finance OM No. 3379-E.III (B)/65 dated the 17th June, 1965, the resignation is treated as a technical formality where a Government servant has applied through proper channel for a post in the same or some other Department, and is on selection required to resign the previous post for administrative reasons. The resignation will be treated as technical resignation if these conditions are met, even if the Government servant has not mentioned the word "Technical" while submitting his resignation. The benefit of past service, if otherwise admissible under the rules, may be given in such cases. Resignation on other cases including where the competent authority has not allowed the Government servant to forward the application through proper channel will not be treated as a technical resignation and benefit of past service would not be admissible. Also, no question of benefit of a resignation being as a technical resignation arises in case of it being from a post held on ad- hoc basis.

2.1.2 This benefit is also admissible to Government servants who have applied before joining the Government service and on that account the application was not routed through proper channel. The benefit of past service is allowed in such cases subject to the fulfillment on the following conditions;

(i). The Government servant should intimate the details of such application immediately on their joining;

(ii). The Government servant at the time of resignation should specifically make a request, indicating that he is resigning to take up another appointment under the government for which he applied before joining the government service;

(iii). The authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel."

21. To buttress this argument, the Respondents' counsel relied upon the decision of this Court dated 17th November, 2016 passed in W.P.(C) No. 1249/2016 titled as ***Deepak Kumar v. Office of the District and Sessions Judge (HQs) & Ors.*** His submission is that since Petitioner had not given any intimation about the process of the application with BSF, in terms of Clause 2.1.2 (i), it is evident that he had not fulfilled the conditions stipulated therein and thus he was not entitled to the benefit of technical resignation.

22. Mr. Chhibber, in the rejoinder submitted that the objection of the Respondents was erroneous and misplaced as the Petitioner had fulfilled all

the conditions laid down in the OM's dated 22nd January, 1993 and 17th August, 2016. He further submitted that the Petitioner had intimated about his selection to the competent authority at the initial stage and had also applied for technical resignation, through proper channel, and this is manifest from the communication dated 18th December, 2004 which we have taken note of in the preceding paragraphs.

Analysis

23. On perusal of the counter affidavit of Respondent Nos. 1 to 3, it becomes unambiguously clear that Respondents do not dispute the receipt of letters dated 16th December, 2004 as well as 24th January, 2005.

24. These two letters clearly mention that Petitioner is seeking acceptance of his technical resignation. It is also not in dispute that the said request of the Petitioner was processed as a technical resignation. This is apparent from the inter office communications whereby the Petitioner's request for acceptance of technical resignation were forwarded by the Deputy Commandant to the Senior Commandant.

25. This resignation was subsequently accepted by order dated 30th January, 2005. This order does not state that the request for resignation has not been accepted as requested for. In case CISF had accepted the resignation as a regular one and not as a 'technical resignation', it ought to have been specifically mentioned in the order. Further, this acceptance was forwarded by department of Respondent No.2 to Respondent No.4 vide letter dated 3rd February, 2005, contents thereof have been reproduced above.

26. It is, therefore, apparent from the contents of the aforesaid letter that the resignation of the Petitioner was indeed accepted as a technical resignation. If the Respondents had any objection to such a request, they ought to have raised such an objection at the stage of acceptance of the resignation, and stated so in clear and categorical terms. At this belated stage, the Respondents cannot take a technical plea pertaining to a procedural non-compliance on part of the Petitioner in fulfilling the conditions of the OM dated 22nd January, 1993 and 17th August, 2016, to avoid granting of benefit of more beneficial provisions under CCS Pension (Rules) 1972.

27. In the case of **Sardar Amarjit Singh Kalra (dead) by L.Rs. v. Pramod Gupta (Smt.) (dead) by L.Rs** 2003 (3) SCC 272 and **The State of Punjab v. Shamlal Murari** (1976) 1 SCC 719, the Apex Court has categorically held that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice.

28. The Learned Counsel for the Respondents has also relied upon the judgment of this Court titled as **Deepak Kumar v. Office of the District and Sessions Judge (HQs) & Ors.** No doubt the Court had an occasion to consider the applicability of the OM dated 22nd January, 1993, however, the Petitioner therein had approached the court praying for grant of technical resignation. On the other hand, in the instant case the request for technical resignation was processed and accepted by the Respondents on 30th January, 2005. Therefore the ratio of the decision mentioned herein above is not applicable to the present case.

29. It is not only important to understand the purport and the intent of the said OM's but it is also imperative to give a harmonious interpretation to the provisions of the OM's. The Government has, in fact, under the above-mentioned OM laid down guidelines/instructions regarding technical resignation, to give benefit to Government Servants of their past services. The benefit of the past service is subject to the conditions laid down therein. Clause 2.1.2 deals with the government servants who had applied for another government service, before joining a particular Department of the Government. In such cases, the benefit of past service is allowed, subject to fulfillment of the conditions mentioned therein.

30. In the present case, the Petitioner joined CISF on 8th November, 2003 and served therein till such time the Petitioner had not been selected as Assistant Commandant, BSF. It was only on 15th July, 2004, that the Petitioner received an intimation from BSF confirming his appointment, about which he promptly informed Respondent No.2 vide communication dated 19th October, 2004. In reply to the said communication the Petitioner was asked to submit the same at the place of his posting. Thereafter, the Petitioner submitted an application on 16th December, 2004 followed by another letter dated 24th January, 2005 for acceptance of his technical resignation. It is pertinent to note that on 16th December, 2004, the Petitioner, in fact, received a final confirmation of his selection with BSF and he notified Respondent No.2 about the said communication without any delay i.e. on the same date itself.

31. Respondent No.2 thereafter processed the resignation as 'technical resignation' and therefore the Respondents were duly intimated about the Petitioner's selection in BSF. It is imperative to note that on the date of joining CISF, Petitioner's appointment in BSF was not confirmed. Accordingly, the Petitioner was not in a position to inform Respondent No.2 about his selection in BSF prior to joining CISF.

32. In view of the above, since Respondent No.2 has processed the application and accepted the Petitioner's resignation as a technical resignation, being fully aware of the Petitioner's selection with BSF, there is no rationale in the Respondents decision to deny the Petitioner the benefits stemming from his past services.

33. Accordingly, the Writ Petition is allowed.

34. The impugned orders dated 22nd July'2017 and 26th December 2017 are set aside. The Respondents/BSF are directed to consider the resignation with CISF as 'technical resignation' and grant consequential benefits including the Petitioner's pension under CCS Pension (Rules) 1972.

SANJEEV NARULA, J

S.MURALIDHAR, J

NOVEMBER 30, 2018

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