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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 10585/2016**

CAPTAIN ASHIM SAHA

..... Petitioner

Through: Mr. Aditya Puar with Mr. Anshul  
Duggal, Mr. Altamish Siddiki &  
Mr. Prateek Yadav, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Suparna Srivastava with  
Ms. Nehul Sharma & Ms. Sanjna  
Dua, Advocates for R1 to R4.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE SANJEEV NARULA**

**ORDER**

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**15.11.2018**

1. The Petitioner has approached this Court seeking a direction to the Respondents to withdraw the letter dated 30<sup>th</sup> March 2014 informing him that his application dated 18<sup>th</sup> March 2014 for withdrawal of his resignation had been rejected by the Competent Authority by the letter dated 29<sup>th</sup> March 2014 issued by the Additional Directorate General ('ADG'), Territorial Army ('TA'), General Staff Branch. The Petitioner also seeks the setting aside of the letter dated 30<sup>th</sup> March 2014 sent by the 113<sup>th</sup> Infantry Battalion, TA, Rajput, Kolkata ('the Unit') to the ADG for necessary action containing the Final No Demand Certificate and Part-II Order. Consequentially, the Petitioner seeks direction be issued to the Respondent to reinstate the Petitioner in the service of the TA with all consequential benefits flowing therefrom.

2. It must be mentioned at the outset that, initially, the Petitioner had approached the Armed Forces Tribunal ('AFT') seeking similar relief. By an

order dated 12<sup>th</sup> February 2015 the said petition was dismissed by the AFT Principal Bench on the ground that it had no jurisdiction to entertain the petition. However, the AFT clarified that dismissal order would not prevent the Petitioner from approaching the appropriate forum.

3. The background facts as averred by the Petitioner were that, on 2<sup>nd</sup> September 2000, he was commissioned into the Mahar Regiment of the Indian Army as a Short Service Commission Officer. In September 2005, he exercised his option for release from the service upon completion of the contractual period.

4. On 6<sup>th</sup> September 2012, the Petitioner was commissioned into the TA and posted in the aforementioned Unit. Although the Petitioner was embodied on 12<sup>th</sup> October 2012 to complete one month's initial TA training, the Petitioner filed an application on 16<sup>th</sup> October 2012 for part-time voluntary service in the TA which was duly approved by the Commanding Officer of the Unit. According to the Petitioner, by a letter dated 10<sup>th</sup> November 2012, he was disembodied after successfully completing the required battalion training of one month. On 30<sup>th</sup> December 2012, he sought exemption from completing the remaining annual training cycle due to personal exigencies. This was granted by the Commanding Officer of the Unit.

5. In January 2013, the Petitioner lost his private sector employment, with his employer, Uninor, winding up. In April 2013, the Petitioner started his own business venture in security and risk consulting and education. On 16<sup>th</sup> September 2013, a letter was issued by the officiating Adjutant of the Unit to the Petitioner for embodiment for military service with effect from

21<sup>st</sup> October 2013 to meet operational requirements. According to the Petitioner, on the same date, he applied for placement on the Special Unattached List ('SUL') and he reiterated this request by a letter dated 26<sup>th</sup> September 2013.

6. Admittedly, on 26<sup>th</sup> September 2013 itself, the Petitioner sent his letter of resignation in which he stated as under:

“Sir,

1. Reference my SUL application no. 42855/Pers/SUL/2 dated 26<sup>th</sup> Sep 13(Copy enclosed).
2. Under compelling circumstances I tender my Resignation from Territorial Army which may please be accepted.”

7. On 30<sup>th</sup> September 2013, the Petitioner was informed that his application had been forwarded to the headquarters for further necessary action.

8. According to the Petitioner, on 2<sup>nd</sup> January 2014, he wrote a Demi Official letter to the ADG explaining the circumstances giving rise to his earlier resignation letter and his desire to continue in service. In para 10 of the present writ petition, the Petitioner states that he was “surprised to receive a letter from the Unit dated 17.01.2014, stating that his application for resignation had been accepted, and referencing a letter from ADG TA’s branch, dated 31.12.2013, detailing that the competent authority had accepted his resignation and he was to be relieved not later than 30.03.2014”.

9. Despite knowing of the above letter which clearly told him that he would

be relieved of his duties not later than on 30<sup>th</sup> March 2014, the Petitioner chose to remain silent. In fact, following the aforementioned letter, he was again told by a letter dated 23<sup>rd</sup> January 2014 by his Adjutant that his resignation had been accepted by the ADG by a letter dated 31<sup>st</sup> December 2013 and was instructed to carry out his release medical examination at the earliest. On 7<sup>th</sup> March 2014, the Petitioner wrote to the ADG as under:

“Sir,

1. Reference my Resignation application no.42855/Pers/Resignation dated 26th Sep 13.
2. Treat this above mentioned letter as "cancelled".
3. I hereby withdraw my resignation from Territorial Army.”

10. Thereafter, on 18<sup>th</sup> March 2014, he wrote an application explaining in detail why he wanted to withdraw his resignation. *Inter alia*, he stated that at present his business venture was running successfully and “I can now manage time for territorial army training”. It is this request that was rejected by the competent authority and this rejection was communicated to him by a letter dated 30<sup>th</sup> March 2014.

11. In an additional affidavit filed by the Respondents on 28<sup>th</sup> July 2017, para 6 of the reply earlier filed was sought to be amended to be read as under:

“6. That in the above circumstances, the Petitioner has approached this Hon'ble Court seeking reinstatement in the services of the Territorial Army with all consequential benefits, it is submitted that the relief sought by the Petitioner is not

liable to be granted inasmuch as the Petitioner had submitted application for withdrawal of resignation at a delayed stage i.e. after his resignation was already approved by the competent authority. As per policy on the subject, copy whereof is annexed hereto and marked as Annexure "R-6A" such applications are to be submitted minimum 30 days prior to the date of release whereas, the Petitioner had submitted the application just 12 days before his date of release. This however, was overlooked and the application was processed. The Petitioner in his application has expressed his willingness only to come for training or only during national emergency and wanted to serve on his own terms hence, same was not approved by competent authority. The present Petition is therefore, not maintainable and as such is liable to be dismissed by this Hon'ble Court. A copy of the Territorial Army Regulations, 1948 is annexed hereto and marked as Annexure 'R-7'."

12. The 'Premature Retirement and Resignation Policy in respect of Army Officers' which was enclosed with said affidavit is clear as to the procedure to be followed. Para 29 thereof reads as under:

**"Withdrawal of Application**

29. Decision of competent authority on a request for PR/resignation is final and a request for withdrawal will not be entertained. However, if an officer, whose application for PR/resignation from the Army has been accepted, wishes to withdraw his application due to changed circumstances, he may apply to IHQ of MoD (Army), MS Branch, at least 30 days prior to his date of PR, duly recommended by the Cdrs in chain ie IO, RO and SRO and his request will be decided on merit. Requests for withdrawal of PR/resignation application and cancellation of order for PR/resignation will be submitted along with the undertaking at Appendix B to this letter."

13. At the hearing of this petition on 16<sup>th</sup> October 2017 the Court passed the following order:

“Counsel for the petitioner on instructions states that paragraph 5 of the withdrawal letter dated 18<sup>th</sup> March, 2014 is being misunderstood. The petitioner has expressed his earnest desire to serve the Territorial Army as a part time volunteer. He had never projected and stated that he would not abide by the rules and regulations including the training mandate or other stipulations. He submits that the petitioner was a Short Service Commission Officer and, therefore, was fully aware of his duties and obligations and that as a disciplined member of the Territorial Army, he must comply with the statutory provisions and the rules. On the question of withdrawal of resignation, the petitioner has relied upon some judgments of the Supreme Court relating to voluntary retirement etc., wherein it has been held that resignation letter, even if accepted, can be withdrawn before it becomes effective.

Counsel for the respondents states that she would obtain instructions.

Counsel for the petitioner states that he would file an affidavit that the petitioner would abide all the training schedules and is fully committed to serve the country. The said affidavit would be filed within a period of 7 days and would be taken into consideration by the respondents.

Relist on 16<sup>th</sup> January, 2018.”

14. Pursuant to the above order, the Petitioner filed an affidavit dated 18<sup>th</sup> October 2017. On 29<sup>th</sup> October 2018, an application by the Petitioner for advancing the date of hearing was allowed. The petition was listed for final hearing on 15<sup>th</sup> November 2018.

15. Today, on instructions, learned counsel for the Respondents states that, upon consideration of the said affidavit, the Respondents find no reason to review the decision taken earlier to reject the Petitioner’s application for

withdrawal of his resignation.

16. This Court has heard learned counsel for the parties. The facts which have been set out hereinbefore speak for themselves. The Petitioner cannot possibly plead that he was unaware of the policy concerning withdrawal of resignation/premature retirement. The policy made it clear that if he wished to withdraw his resignation due to changed circumstances, he had to apply “at least 30 days prior to his date of premature retirement.”

17. In the present case, the letter dated 31<sup>st</sup> December 2013, which was received by the Petitioner under cover of letter dated 17<sup>th</sup> January 2014, clearly informed him that he would be relieved on or before 30<sup>th</sup> March 2014. Therefore, he was required to submit his withdrawal letter at least on or before 1<sup>st</sup> March 2014.

18. In the circumstances, with his having withdrawn his resignation only on 7<sup>th</sup> March 2014, the Respondents cannot be faulted for rejecting his request.

19. The Court finds no reason, therefore, to interfere with the impugned orders of the Respondents.

20. The petition is dismissed.

**S. MURALIDHAR, J.**

**SANJEEV NARULA, J.**

**NOVEMBER 15, 2018**

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