

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11444 of 2019

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Arif Raza, male, aged about 60 years, S/o Late Md. Mohsin, R/o Village/Mohalla- Bithan, P.S.- Bithan, District- Samastipur.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The General Manager, East Central Railway, Hajipur.
3. The Secretary, Railway Board, Rail Bhawan, New Delhi.
4. The Chief Personal Officer, East Central Railway, Hajipur.
5. The Divisional Railway Manager, East Central Railway, Hajipur.
6. The Senior Divisional Personal Officer, East Central Railway Danapur.
7. The Assistant Divisional Personal Officer, East Central Railway, Danapur.
8. The Senior Divisional Electrical Engineer/TRD, East Central Railway, Danapur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Alok Ranjan, Advocate
For the Respondent/s	:	Mr. Siddhartha Prasad, Advocate Mr. Kamlesh Tewari, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-07-2019

The Central Administrative Tribunal, Patna has declined to quash the order passed by the respondent Railways dated 27th May, 2011 whereby the request of the petitioner to withdraw his resignation has not been accepted.

2. The petitioner being an ex-serviceman having worked for the Indian Air Force for 15 years was re-employed



in the Railways as a Section Engineer.

3. The petitioner's political ambitions allured him to test his fate by contesting the Bihar Assembly Elections of 2010 for which he tendered his resignation on 28th September, 2010 before the Divisional Railway Manager, East Central Railway, Danapur. The purpose of resignation was clearly intended to contest the Assembly Elections from Hasanpur Constituency of District- Samastipur in Bihar. The resignation was accepted with effect from 29th September, 2010. The petitioner contested the elections and lost the same. The resignation, according to its terms, became effective and it is on 26th of November, 2010, almost one month after the acceptance of the resignation, that the petitioner moved his request for withdrawing his resignation.

4. The said request was declined on 27th of May, 2011. The order passed and communicated on behalf of the Divisional Railway Manager, East Central Railway, Danapur is extracted hereinunder:-

“EASTERN RAILWAY

No. E/Elect/TRD/Retired/VR/Resignation/10,

Danapur, Dated: 27.05.2011

Sri ARIF RAZA (Ex SE/Drg/TRD/DNR)
Bithan Bazar



Post- Hasanpu
Distt.- Samastipur
PIN- 848207

Through: Sr. DEE/TRD/ECR/DNR

Sub:- Withdrawal of resignation in Public Interest.

Ref:- Your application dt. 03.12.2010 & 24.3.2011.

Your application under reference was examined at this end and after consultation of Rules/Instructions issued from time to time, it has been decided that there is no such provision for withdrawal of resignation in terms of Railway Board's letter no. E(NG) I-96/RGI/1 dated 17.02.1997 (RBE No./28/97).

(Arvind Kumar Sharma)
Asstt. Personnel Officer
For Divisional Railway Manager
East Central Railways
Danapur"

5. The request was declined on the strength of a Railway Board letter dated 17th February, 1997.

6. It may be pointed out that according to the Railway Board letter dated 05.08.1977 resignations are acceptable as per the provisions therein extracted hereinunder:

“Resignations:

- (a) In no circumstances shall the resignation of a Railway servant whose conduct is under investigation be accepted without the sanction of the authority competent to dismiss him. In cases in which a Railway



servant has committed an offence for which the penalty is dismissal or removal from service, no suggestion should be made to him to tender his resignation.

- (b) The resignation of Group A & B Railway servants, other than those holding administrative posts, serving on Railways may be accepted by the General Managers. The acceptance of resignation of all other Group A Railway servants shall require sanction of the President and hence, such resignations of Group A & B Railway servants on Indian Railways/Production Units shall be forwarded to Railway Board.
- (c) The resignation of Group C & D Railway servants, shall be accepted by the authority competent to fill the post held by him at the time of resignation.

When a Railway servant working on important post resigns and it would take time to make alternative arrangements for filling the post, the resignation should not be accepted immediately but only when alternative arrangements are made:

[R.B.'s No. E(NG) 65
AG/1/2 of 30-6-66 and E(NG)64 RE/1/36
of 26.10.196

In case a Railway servant against whom an enquiry or investigation is pending (when he has been placed under



suspension or not) submits his resignation, such resignation should not normally be accepted. Where, however, the acceptance of resignation in such cases is considered necessary in the public interest, the same may be accepted with the prior approval of the authority competent to dismiss the Railway servant concerned provided for or more of the conditions laid down below are fulfilled:

- (a) where the alleged offences do not involve moral turpitude;
- (b) where the evidence against the delinquent officer is not strong enough to justify the assumption that if the departmental proceedings are continued the officer would be removed or dismissed from service;
- (c) where the departmental proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation.

[R.B.'s No. E(NG) 1/70/RG/1 of 24.6.1972]

The authority competent to accept the resignation may permit a person to withdraw the resignation in the public interest on the following conditions:

1. that the resignation was tendered by the Railway servant for some compelling



reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal has been made as a result of a material change in the circumstances which compelled him to tender his resignation originally.

- 2 during the intervening period between the date of his resignation and the withdrawal the conduct of the person was not improper.
3. that the period of absence from duty between the date on which the resignation became effective and the date on which a person was allowed to resume duty as a result of permission granted for withdrawal on the resignation, is not more than 90 days;
4. that the post, which was vacated by the person or any other comparable post is available;
5. withdrawal of resignation shall not be accepted where a Railway servant resigns his service or post with a view to take up a private employment or in a company wholly or substantially owned or controlled by the Government or under a body controlled or financed by the Government; and
6. when an order is passed by the competent authority allowing a person, to withdraw his resignation and to resume his duty, the order shall be deemed to include



condonation or interruption in service but the period of interruption shall not count for qualifying service.

[R.B.'s No. F(E)
III/77/PN1/11 of 5-8-1977]

A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, under the Government where service qualifies. Interruptions in service due to the two appointments being at different stations, not exceeding the joining time permissible, under the rules of transfer, shall be governed by grant of leave of any kind due to the employee on the date of relief or by formal condonation to the extent to which the period is not covered by the leave due to him. The provision of this para is not applicable in the case of resignations prior to 1.4.57.

[R.B.'s No. F/(E) III/77/PN1/11
of 5.8.1977]

This is a letter on which reliance has been placed by the petitioner.

The Railways through the Railway Board have issued letters on 27.12.1991 and 30.4.1992 making a provision that a person who has resigned can be re-appointed as a fresh entrant on bottom seniority with the personal approval of the



concerned coordinating Head of the Department. This benefit was, however, curtailed by the Railways in relation to re-appointment in Group 'C' categories vide letter dated 17.02.1997. The same is extracted hereinunder:-

“R.B.E. No. 28/97,

(Supplementary Circular No. 5 To Master Circular No. 21)

Subject: Re-appointment in Group 'C' categories.

[No. E(NG)I-96/RG111, dated 17.2.97

In terms of instructions contained in Board's letter No. E52/RCI/55/3, dated 14.3.55, contended by their letter of even number dated **27.12.91** (Bahri's RBO 1991 Vol. II, 100) and 30.4.92, (Bahri's RBO 1992, Vol. I. P-47) a person who has resigned can be re-appointed as a fresh entrant on bottom seniority with the personal approval of the concerned coordinating Head of the Department (HOD).

2. The matter has been reviewed by the Board in consultation with Department of Personnel and Training. It has now been decided that it is not advisable to reappoint a person either as a fresh entrant or otherwise who had resigned to contest an election on the symbol of any political party or as an independent candidate.”

7. It is in terms of the said Railway Board letter that the request for withdrawal of resignation in public interest was declined stating therein that there is no such provision for withdrawal of resignation in the event a person has voluntarily resigned to contest elections.

8. The petitioner contested the said



communication urging that firstly he had a right to contest the elections as a citizen of India under the Constitution and, therefore, the circular dated 17.02.1997 was in breach of the said Constitutional right of the petitioner.

9. The second ground taken was that in the case of one Mr. Md. Nawaz Alam the respondent-Railways had allowed the acceptance of withdrawal and re-employment to him and, therefore, his case being similar, his request could not have been turned down which amounts to discrimination.

10. The third ground taken by him is that the circular being an administrative instruction cannot override the rules and since the request for withdrawal was permissible as per the rules relied on by the respondents themselves, the withdrawal ought to have been permitted in public interest. For this, the petitioner had relied on the decision of the Hyderabad Bench of the Central Administrative Tribunal in the case of **P. Naresh Kumar Vs. The Additional Divisional Railway Manager, South Western Railway and others**, reported in **2008 (3) CAT) pg 300**.

11. The petitioner had applied for reemployment on the post of PAPO which was contested by the respondent that he had applied for the post of Sorting Assistant



on re-employment and this factual aspect was also canvassed before the Tribunal.

12. It was also contended that the petitioner had filed his request and appeal before the higher authorities, but no heed was paid to it, hence he was compelled to file the petition to seek the enforcement of his rights and extending the benefits to which he was entitled under law.

13. The respondent-Railways contested the claim of the petitioner to urge that as per rules there were no compelling reasons for the petitioner to resign, which is the foremost condition for the consideration of acceptance of withdrawn. For this, reliance was placed by the respondents before the Tribunal on a judgment of the Punjab & Haryana High Court in the case of **Kartar Singh vs. State of Haryana**, reported in **1998 (119) PLJR 448**.

14. The question of withdrawal was also dependent on any public interest being involved and in the absence of the same, the resignation was not liable to be accepted, even otherwise being solely in private interest. It was also urged on behalf of the Railways that the decision to resign was voluntary and the absence of any compelling reason does not meet the conditions stipulated in the Railway Board letter



dated 05.08.1977 referred to by the applicant himself. On the issue of parity with Md. Nawaz Alam, the respondents contended that the resignation in the case of Md. Nawaz Alam was allowed to be withdrawn way back in the year 2001 on different grounds and reasons, whereas in the present case there was no reason to ignore the Railway Board letter dated 17.02.1997. The said letter is neither unconstitutional nor does it violate any fundamental or vested right of the petitioner. The said letter being inviolate cannot be said to be unlawful or unconstitutional.

15. We have heard Shri Chitranjan Sinha, learned senior counsel for the petitioner who has taken us extensively through the brief to urge that apart from the refusal to accept the withdrawal being unlawful, the issue of discrimination and not extending the benefit at par with Md. Nawaz Alam vitiates the decision of the Railways as also that of the Tribunal. The petitioner has also contended that according to the Railway Board Circular, the matter required the personal approval of the Head of Department or the Divisional Railway Manager which does not appear to have been taken and, therefore, also the decision is bad. He has also urged that the resignation was accepted in haste and the same ought to have been considered



after due deliberations which does not appear to have been done, hence also, this Court taking notice of the said fact should set aside the impugned judgment.

16. Having considered the submissions and having perused the affidavits on record as well as the impugned judgment, we find that the resignation tendered by the petitioner is to the following effect:

“To,

The Divl. Railway Managers

East Central Railway

Danapur.

(Through: Proper Channel)

Sub:- Tendering of resignation.

Sir,

I, Arif Raza, Section Engineer/TRD/Danapur, wish to inform you, that I am tendering my resignation with effect from 29.09.2010, as I intend to contest from Hasanpur (140), Samastipur constituency the forthcoming assembly election in Bihar to be held in the moth of October, 2010.

Thanking you.

Yours faithfully,

Dt. 28.09.2010

(Arif Raza)

Section Engineer/TRD

E.C. Railway/Danapur”

17. This fact therefore remains undisputed that the resignation tendered by the petitioner was voluntary and it is



not the case of the petitioner that he had tendered the resignation in haste or without understanding the pros and cons of the said act of resignation. The consequences therefore were well known, and not only this, the petitioner who had contested the Assembly Elections on an Indian National Congress Ticket must have been hopeful of being successful in the elections. In our opinion, had he succeeded in the elections, there was no question of any withdrawal by him. As a matter of fact, the decision to contest the election was with a hope that he would be severing his relationship from the Railways to fulfil his political ambitions. We can safely gather that what motivated the petitioner to resign was his ambition to contest the Assembly Elections and try his luck in the political field. There is no evidence nor any averment of any compulsion on the part of the petitioner to resign. It was his own voluntary choice to achieve a goal that entirely rested on a personal ambition of occupying a seat in the Legislative Assembly. This was an entirely personal decision of the petitioner arising out of an ambition to test his fate on the anvil of popular votes, and it was not a case that he was compelled to opt for the same. The petitioner gives an explanation that as a Citizen of India he has a right to contest an election. The right to participate in a democratic process is one



thing, but a right to contest elections is not a fundamental right. It is optional for a citizen to choose his own goal in life and it was an aspiration of the petitioner to climb a ladder in a different field of public service. The petitioner wanted to quench his personal thirst. An ambition at times inherently has a potential to drive an individual for the fulfilment of his own desires, which necessarily is not a compulsion. It is a shadow of aspiration and the wings of such aspiration are carried to extremes in order to achieve a particular goal. The character of ambition has been well explained by William Shakespeare as “vaulting ambition, which o’erleaps itself”. Such ambitions at times also invite misery. An ambition at times swells like a torrent which can be put off only by a highly enlightened mind. An ambition on the other hand is a desire to achieve higher goals which may be pure in intent and may be for a better future, but the same cannot be termed as a compulsion and still remains a matter of choice. Ambition, therefore, has its disappointments forfeiting the ease of the mind. This is a risk which one takes when one proceeds to achieve his ambitions.

18. The petitioner may have been impelled by an innate desire to serve his own people by choosing to enter public life. It is not necessary to term every ambition as a fault



or a faulty decision, but one who is possessed of an ambition like a mounting desire without the capacity to foresee the consequences and weigh them accordingly, there is likelihood of a disappointment in one's thirst of greatness.

19. The word "compel" means to force or to urge irresistibly like a strong man compelling a weak person to perform some action against his wishes or better judgment. There is an element of coercion in compulsion and it is in this light that the phrase "compelling reasons" as used in the Railway Board circular of the year 1977 has to be understood. The entertaining of an application for withdrawal has to be analyzed on the basis of any compelling reason that existed for tendering the resignation.

20. In the instant case, as noticed above, and which is evident from the perusal of the resignation letter of the petitioner, there was no compelling reason for the petitioner to resign from his services. He was comfortable and he had not been compelled by his officials or any circumstances relating to his service or even his family circumstances so as to gather a compelling reason. The plain and simple reason expressed by the petitioner in his letter to resign was his desire to contest the Assembly Elections. There is nothing on record that the



Railways compelled him to contest the elections. The employer, therefore, did not create any situation of compulsion nor any other factor of compulsion in fact did exist as a reason for the petitioner to resign. The resignation was to facilitate the desire of the petitioner to try his luck in the Assembly Elections which in no way can be assumed as a compulsion for resignation. The petitioner very well knew that he could not contest the elections without resigning from his services. Consequently, we are of the firm opinion that there was no compelling reason either existing or created that may be construed as a reason for resignation.

21. Added to this is the letter dated 17.02.1997 which is a conscious decision taken by the Railways. The said decision as circulated only substantiates the reasoning that a desire to contest an election is not a compelling reason and, therefore, to extend a benefit of re-employment as a Category 'C' employee on a permission to withdraw resignation would not be available in these circumstances as the desire to contest an election cannot be termed as a compelling reason. This is the only correct way in which the letter dated 17.02.1997 can be interpreted in order to arrive at a reasonable decision.

22. A person undertaking the risk of contesting an election is virtually gambling with his own fate which is not



a compulsion by any norms. A personal ambition to become a public representative is not a compulsion and is rather a choice. The Railways, therefore, appropriately declined to allow the withdrawal of the resignation.

23. The authority competent to accept resignation may permit a person to withdraw the resignation in public interest on the conditions referred to as extracted hereinabove. Thus, withdrawal is also subject to public interest.

24. We find the present cause to be of private interest, inasmuch as, it is the petitioner's own decision to resign for contesting an election. There is nothing to indicate as to how public interest would suffer if the withdrawal is refused. It may be possible in a case that the services of a personnel may be such that his departure may be indispensable. There is no material placed by the petitioner as to why his services would, once dispensed with, cause loss to public interest. The nature of employment of the petitioner and his request for deployment as a group-C employee nowhere reflects that his earlier continuance was indispensable. The work of the Railways has not been hampered in any way so as to treat it a matter of public interest. As a matter of fact, no element of public interest did exist so as to permit withdrawal. The conclusion, therefore,



drawn by the tribunal is correct and does not call for any interference.

25. The argument that the resignation and the withdrawal did not have the acceptance of the appropriate authority need not be analyzed any further as we have already arrived at the conclusion that the resignation could not be withdrawn and for that purpose it has become final. There being no other possible conclusion, we further find that the request of withdrawal has been communicated on behalf of the Divisional Railway Manager who is the competent authority. There is, therefore, no incompetence that can be located in the exercise undertaken by the Railways to reject the request of withdrawal.

26. It was vehemently urged that the case of the petitioner should be treated at par with that of Md. Nawaz Alam. We find from the averment of the Railways contained in Paragraph 12 of the counter affidavit that Nawaz Alam had resigned due to unavoidable circumstance vide his letter dated 31st December, 1999 and due to his family problems he wanted to withdraw his resignation that was approved extending him the benefit of redeployment on 15.02.2001. From the said averment and the communication with regard to the redeployment of Md. Nawaz Alam, we do not find the facts to



be exactly similar as alleged by the petitioner in order to appreciate the argument of parity as raised in the petition. We may, however, put on record that even if it were so, then too we find that the letters of the Railway Board quoted hereinabove do not permit the withdrawal of resignation in this peculiar circumstance where a person has voluntarily resigned to contest elections. There cannot be a parity if there was an irregularity committed by the Railways in the redeployment of Md. Nawaz Alam. We, therefore, cannot approve of this argument as this would be constitutionally invalid. We have, therefore, interpreted and drawn our conclusions on the basis of the law as it exists which we find to have been rightly applied on the facts of the present case to non-suit the petitioner.

27. The letter of 1997 makes it clear that redeployment benefit and acceptance of withdrawal would not be permissible where a person has chosen to contest an election on the ticket of a political party. We find this to be a reasonable decision which is in tune with the ingredients relating to the provision of resignation as referred to hereinabove as this reason is not a compelling reason. Consequently, the 1997 circular cannot be said to be unlawful or unconstitutional.

28. For all the aforesaid reasons, we do not find



any merit in the writ petition, which is hereby rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29.07.2019
Transmission Date	

