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

\+ **Date of Decision: 24.7.2019**

% **W.P.(C.) No. 8843/2017**

UNION OF INDIA & ORS. ..... Petitioners
Through: Mr. Anil Soni, CGSC.
Versus
PARULBEN KISHORE MANSATAR AND ANR. .....Respondents
Through: Mr. M.S.Rao, proxy counsel for Mr. Vijay Verma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The Union of India has preferred the present petition to assail the order dated 25.1.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A.No. 198/2015. The Tribunal has allowed the Original Application preferred by the respondents, and directed the respondents i.e. petitioners herein to permit the applicant to withdraw his resignation by exercising the power vested in the Government under Rule 38 of the CCS(Pension) Rules.

2. The brief background facts of the case are that the respondent no. 2 was serving as a Sepoy Grade 'D' in the Department of Customs and Central Excise vide order dated 23.12.1994. He got married on 26.2.1995. He tendered his unconditional resignation on 18.1.2010. His resignation was accepted on 5.2.2010, and he was relieved from government service. Thereafter, the respondent no. 2 represented to the petitioner on 15.12.2010 for grant of

permission to rejoin the service on the ground that he had tendered his resignation without proper application of mind. He pleaded his precarious financial conditions on the ground that he has to support his family consisting of himself, his wife, two daughters and two sons. He explained that he had tendered his resignation on a representation by his uncle to join a gas agency business, but after his resignation, the same did not fructify and he was left without any income.

3. The respondents/petitioners herein rejected the request on the ground that the same was made beyond 90 days. The relevant Rule applicable to the respondent is contained in Rule 26(4) of the CCS (Pension) Rules, which reads as follows:-

> "(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)*

4. The aforesaid Rule shows that the appointing authority may permit the

person to withdraw his resignation in public interest provided the conditions enumerated in Clause (4) (i) to (iv) are satisfied. The reason why the respondent's application was sought to be rejected was that it was made beyond the period of 90 days, and did not satisfy the condition contained in Clause (iii) aforesaid.

5. It appears that the respondent first approached the Gujarat Bench of the Tribunal, before which the petitioner stated that the petitioner would be able to reconsider the matter in the light of the provisions contained in Rule 88 of the CCS (Pension) Rules. Rule 88 of the said Rules provides for relaxation, and the same reads as under:-

> *"88. Power to relax*
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> *Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements or that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:*
>
> *Provided that no such order shall be made except with the concurrence of the [Department of Pension & Pensioner's Welfare]."*

6. The DoPT, however, refused to grant permission for relaxation of the Rules for the reason taken note of hereinabove. The Tribunal has allowed the Original Application taking into consideration the circumstances of the respondent.

7. The submission of Mr. Soni, Ld. CGSC is that the Tribunal has exceeded its jurisdiction, since the power to relax is vested in the Government, and it was not for the Tribunal to exercise the said power on its own. Sympathy and

compassion could not have driven the Tribunal to override the Rules, since it would set a bad precedent and there are no judicial unmanageable standards for exercise of the discretion by the Court/Tribunal for grant of relaxation.

8. On the other hand, the learned counsel for the respondent submits that after the impugned order was passed, the petitioner approached the Tribunal for extension of time for compliance. In that regard M.A/100/2169/2017 was moved by the petitioner which came up before the Tribunal on 4.8.2017. On that date it was stated on behalf of the petitioners that they are in the process of implementing the order of the Tribunal, and they are not trying to challenge the order before the higher forum. Respondent has placed on record the order dated 4.8.2017 passed by the Tribunal. It is only thereafter the present petition was filed by the petitioner on or before 22.9.2017.

9. We have considered the submissions of learned counsels and perused the impugned order.

10. In our view, the order passed by the Tribunal cannot legally be sustained since the Tribunal had no jurisdiction to itself exercise the power of relaxation under Rule 88 of the CCS(Pension) Rules. At the highest, the Tribunal could have required the Government to consider the aspect of grant of relaxation in the facts of the case.

11. We would have interfered with the impugned order in the aforesaid circumstances, but for the fact that the petitioner had represented before the Tribunal-when it sought extension of time on 4.8.2017, that it was in the process of implementing the order passed by the Tribunal granting relief to the respondent. On that representation, the time was extended by two months. The petitioner, thus, took advantage of that order granting extension of time and evaded the wrath of the Tribunal which it could have faced for non

compliance of the impugned order.

12. It is unbecoming of the Union of India to make a representation before the Tribunal that it is complying with the order passed by it, and after making such representation and deriving benefit therefrom, to assail the order passed by the Tribunal before this court. The petitioner has made a disclosure in the list of dates that the time for compliance has been extended by the Tribunal vide order dated 4.8.2017, but the order passed by the Tribunal itself has not been placed on record by the petitioner.

13. For the aforesaid reasons, while ruling that the impugned order is illegal, and shall therefore not constitute a precedent for the Tribunal in any other case, we refuse to interfere therewith in the circumstances noted hereinabove. The petitioner should comply with the order passed by the Tribunal positively within the next four weeks. In case there is non-compliance, the respondent shall become entitle to deemed reinstatement with the right to receive salary for the period thereafter.

14. The petition stands disposed of accordingly.

Dasti.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 24, 2019
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