

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18th December, 2020

W.P. (C) 8937/2020

MANDEEP SINGH

..... Petitioner

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, an Ex-Deputy Commandant of the respondents Border Security Force (BSF), who had joined the respondents BSF on 25th January, 2010, as directly recruited Assistant Commandant, pursuant to the offer dated 18th December, 2009 of appointment by respondents BSF, has filed this petition, (i) impugning the order dated 3rd April, 2018 whereby the respondents BSF approved the resignation of the petitioner from the post of Deputy Commandant, BSF, with effect from 30th April, 2018; (ii) impugning the orders dated 15th January, 2019 and 14th August, 2019 whereby the respondents BSF rejected the applications filed by the petitioner, after the acceptance of his resignation on 3rd April, 2018, for rejoining the respondents BSF as a Deputy Commandant; (iii) seeking mandamus, directing the respondents BSF to consider the case of the petitioner for reinstatement and accept the withdrawal of resignation tendered by the petitioner, as the same was compliant of Rule 26(4)(iii) of the CCS (Pension)

Rules, 1972 (CCS (Pension) Rules); (iv) seeking mandamus, directing the respondents BSF to allow the petitioner to rejoin the service and continue his duty in the same capacity as prior to the resignation, that is, as Deputy Commandant in the respondents BSF.

2. The petition came up first before us on 17th December, 2020, when it was the contention of the counsel for the petitioner that since the question entailed in this petition is the same as is being considered by us in W.P.(C) No.3369/2020 titled ***Dinesh Yadav Vs. Union of India*** and in other connected petitions and which are listed next on 11th January, 2021, notice of this petition be issued and this petition be also taken up on 11th January, 2021.

3. The counsel for the respondents BSF also appeared yesterday and also appears today, on advance notice.

4. However, having gone through the file and having *prima facie* not found the petitioner to be, in the facts of his case, entitled to the reliefs as claimed, even if the question of law may be the same, we asked the counsel for the petitioner to make his arguments.

5. On the request of the counsel for the petitioner, the matter was adjourned to today.

6. The case set up by the petitioner in the petition is, that (i) the petitioner, after joining the respondents BSF on 25th January, 2010 as an Assistant Commandant (DE), when posted at 182 Bn, Samba, Jammu, underwent the YO's Leg-1 (Commando) Course, from 31st October, 2011 to 24th December, 2011 and YO's Leg-2 (Platoon Weapon) Course, from 23rd

April, 2012 to 16th June, 2012 and after completion of his National Security Guard (NSG) Commando Course on 26th April, 2014, from 3rd August, 2014, was deputed to the NSG and while on which deputation, he was promoted as Deputy Commandant; (ii) the petitioner, on 3rd December, 2017, while still on deputation with NSG, was posted at Hqrs. NSG, Mehram, Palam, New Delhi; (iii) while the petitioner was posted at New Delhi, “his mother was suffering from Parkinson disease since 2008 and was undergoing treatment at PGI Chandigarh and various other hospitals. On the other hand, the wife of the Petitioner was posted at Amritsar as Judicial Magistrate staying alongwith her 2 year old child. Therefore, in the best interest of his parents and family the Petitioner vide his application dated 03.12.2017 addressed to the President of India tendered his resignation from the post of Deputy Commandant, BSF requesting that his resignation be accepted on compassionate ground and he may be relieved from service on or before 28.02.2018”; (iv) the petitioner, vide his letter dated 11th December, 2017, also requested the respondents BSF for premature repatriation from NSG to the respondents BSF, on the same ground as mentioned in the application dated 3rd December, 2017 to the President of India, with effect from 31st December, 2017; (v) the respondents BSF, on 31st December, 2017 repatriated the petitioner from NSG to BSF; (vi) the respondents BSF, vide order dated 3rd April, 2018 informed the petitioner that the resignation tendered by the petitioner to the President of India had been accepted and in view of the same, the name of the petitioner would be struck off from service with effect from 30th April, 2018; (vii) accordingly, the petitioner on 30th April, 2018 relinquished the charge of Deputy Commandant, 182 Bn; (viii) “that after the petitioner resolved all his domestic problems which he was

facing during the time of his service, he gave a second thought to his decision and vide his letter dated 23.07.2018 he requested the Respondents that he shall be allowed to rejoin the service after voluntary retirement as all his domestic problems have been sorted out based on which the Petitioner had tendered his resignation”; (ix) as per Rule 26(4)(iii) of the CCS (Pension) Rules, a person is allowed to resume duty as a result of permission to withdraw the resignation if the period of absence from the duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty, is not more than 90 days; (x) the petitioner sent his application / request dated 23rd July, 2018 for rejoining, within the period of 90 days, in terms of the said Rule, as he had been relieved from service with effect from 30th April, 2018 and the respondents received the application for withdrawal of resignation on 28th July, 2018, that is, within 90 days; (xi) the respondents BSF, vide their letter dated 7th August, 2018 informed the petitioner that his request for the withdrawal of resignation from the post of Deputy Commandant, BSF was to be addressed to the President of India and not to the Director General, BSF, as had been done in the letter dated 23rd July, 2018 and asked the petitioner to forward a fresh application; (x) the petitioner, as per the letter dated 7th August, 2018 of the respondents BSF, rectified the mistake and vide his letter dated 17th August, 2018 submitted a request to rejoin the service after voluntary retirement, addressed to the President of India; (xi) the respondents BSF, vide e-mail dated 31st August, 2018 informed the petitioner that the application dated 17th August, 2018 submitted by him was defective and to contact the respondents BSF; vide subsequent e-mail dated 3rd September, 2018, the petitioner was informed that the letter dated 17th August, 2018 sent by him

was not for withdrawal of resignation as had been submitted by the petitioner but for the withdrawal of voluntary retirement and which was not the case and asked the petitioner to submit a fresh application to the President of India for the withdrawal of resignation; yet subsequently a letter dated 7th September, 2018 also, was sent by the respondents BSF in this regard; (xii) the petitioner, under the cover of his e-mail dated 14th September, 2018 enclosed an application to the President of India for the withdrawal of resignation; (xiii) the respondents BSF on the same date informed the petitioner that the e-mail of the petitioner could not be placed before the President of India and asked the petitioner to send an application for the withdrawal of resignation to the President of India through '*dak*'; (xiv) the petitioner, vide his e-mail dated 15th September, 2018 informed the respondents BSF that he was out of the country and will send the same through '*dak*' by Monday and the same was also being sent through '*dak*' from abroad; (xv) on 10th November, 2018, police verification was conducted qua the petitioner; (xvi) the respondents BSF, vide letter dated 15th January, 2019 informed the petitioner that his application dated 23rd July, 2018 addressed to the President of India was examined by the headquarters as well as by the Ministry of Home Affairs (MHA) in detail and because of the non-fulfilment of conditions stipulated in Rule 26(4)(iii) of CCS (Pension) Rules, his application for the withdrawal of resignation had been rejected by the MHA; (xvii) the petitioner vide his letter dated 30th January, 2019, addressed to the Joint Secretary, MHA and the Director General, BSF, requested the respondents BSF to again consider his application, on the basis of the performance of the petitioner when in service of the respondents BSF; (xviii) the respondents in response to the letter dated

30th January, 2019 of the petitioner informed the petitioner vide letter dated 14th August, 2019 that his request for withdrawal of resignation had been examined and owing to non-fulfilment of conditions stipulated in Rule 26(4)(iii) of CCS (Pension) Rules, his request for withdrawal of resignation could not be acceded to; (xix) the respondents BSF vide letter dated 18th November, 2019 asked the petitioner to give a fresh consent / willingness to join the respondents BSF; (xx) the petitioner vide his response dated 19th November, 2019 forwarded his consent to the respondents BSF; and, (xxi) nothing further was heard from the respondents BSF.

7. Contending that the Policy with respect to withdrawal of resignation is contained in Department of Personnel & Training (DoPT) Office Memorandum (OM) dated 10th June, 2019 and that the petitioner satisfies all the criteria / conditions laid down therein, this petition has been filed.

8. Today, the counsel for the petitioner has argued, that (i) though, earlier the policy with respect to withdrawal of resignation was contained in the CCS (Pension) Rules but since coming into force of the new pension scheme from 1st January, 2004, the CCS (Pension) Rules had no application, and the DoPT vide its OM dated 10th June, 2019 has promulgated the Policy for withdrawal of resignation of Government servants of Central Civil Services/Posts appointed after 31st December, 2003 covered under the National Pension System (NPS), though the Policy contained in the said OM is the same as earlier contained in Rule 26(4)(iii) of CCS (Pension) Rules; (ii) as per the said policy, the appointing authority may permit a person to withdraw his resignation if the four conditions as stated therein are satisfied; (iii) the request of the petitioner for the withdrawal of his resignation has

been rejected only referring to Rule 26(4)(iii) of the CCS (Pension) Rules, i.e., of being barred by 90 days; (iv) the name of the petitioner was struck off from the rolls of respondents BSF on 30th April, 2018 and the petitioner vide letter dated 23rd July, 2018 applied to rejoin and which was well within 90 days; (v) thus, the reason given for the rejection of the request is not correct and the petition is entitled to be allowed on this short ground alone; (vi) the petitioner thus, satisfies all the four conditions for being permitted to withdraw the resignation and his request has been illegally declined relying on Rule 26(4)(iii) of the CCS (Pension) Rules, though not applicable to the petitioner appointed on 25th January, 2010, pursuant to the offer of appointment by respondents BSF dated 18th December, 2009; and, (vii) reliance is placed on *Balram Gupta v. Union of India* 1987 Supp SCC 228, *Union of India v. Wing Commander T. Parthasarathy* (2001) 1 SCC 158, order / judgment dated 10th September, 2014 of a Co-ordinate Bench of this Court in W.P.(C) No.7671/2013 titled *Ravi Tomar Vs. Union of India*, *Nirmal Verma Vs. MCD* 2005 SCC OnLine Del 381 and *Deepak Vs. Union of India* 2016 SCC OnLine Del 3817.

9. Per contra, the counsel for the respondents BSF appearing on advance notice has argued, that (i) no personnel has a right to withdraw the resignation and it is the decision of the Government of India, whether to allow any personnel to withdraw his resignation or not; (ii) both Rule 26(4) of the CCS (Pension) Rules and the Policy contained in OM dated 10th June, 2019 entail a question of public interest and it is only when the Government of India thinks that the resignation submitted should be permitted to be withdrawn in public interest, that the resignation can be permitted to be

withdrawn; (iii) the counsel for the petitioner is misconstruing Rule 26(4)(iii) of the CCS (Pension) Rules and the OM dated 10th June, 2019 – the same permit the withdrawal of resignation provided, the period between the date of absenting on the acceptance of resignation and the date of joining on acceptance of the withdrawal of resignation is not more than 90 days; the counsel for the petitioner is wrongly construing the period of 90 days as the period within which an application for withdrawal of resignation is to be filed; (iv) the petitioner in the application dated 17th August, 2018, written to the President of India, did not withdraw the resignation but was making a request for being permitted to join after voluntary retirement; and, (v) the said request of the petitioner has already been rejected.

10. The counsel for the petitioner, inspite of his contentions aforesaid, has been unable to change our *prima facie* view as expressed yesterday to the counsel for the petitioner.

11. Since it is the case of the petitioner that the petitioner is governed by the OM dated 10th June, 2019, we chose to reproduce herein below the relevant part of the OM dated 10th June, 2019 herein below:

“2. The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:

(a) 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;

(b) 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;

(c) 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;

(d) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

...

5. *No withdrawal from NPS corpus shall be permissible within a period of 90 days from the date on which the resignation becomes effective i.e. the resignation is accepted by the competent authority and the Government servant is relieved of his duties. However, the aforesaid condition shall not be applicable in case of death of the government servant after the resignation becomes effective.*

...

7. *Above guidelines / instructions will be applicable only for the Government servants appointed on Central Civil Service/Posts after 31.12.2003 who are covered under the National Pension System (NPS) and for whom CCS (Pension) Rules, 1972 is not applicable. Further, there guidelines/instructions will be applicable till the time the statutory rules regarding withdrawal of resignation for such Government servants are notified."*

12. We find that though, Rule 19 of the Border Security Force Rules, 1969 (BSF Rules) deals with the resignation by an officer of the respondents BSF before the attainment of the age of retirement, there is no provision in the BSF Rules, and none has been cited, regarding the withdrawal of resignation. However we accept the contention of the counsel for the petitioner, not disputed by the counsel for the respondents BSF, that with respect to recruits

till 31st December, 2003, the matter of withdrawal of resignation is governed by Rule 26(4) of the CCS (Pension) Rules and with respect to the recruits from 1st January, 2004, the said matter is governed by the DoPT OM aforesaid. However, since the service in Central Armed Police Forces (CAPFs) including BSF, is materially different from the civil services, we strongly recommend to the respondents BSF and the CAPFs in general to consider enacting their own Rule with respect to withdrawal of resignation, appropriate / apposite to their own requirements. We may mention that neither in the CCS (Pension) Rules nor in the DOPT OM aforesaid is there any requirement of the personnel seeking withdrawal of resignation having the requisite medical fitness and which is of paramount importance in forces. All that can thus be said is that the CCS Pension Rules and the DoPT OM aforesaid are not suitable for application to personnel of CAPFs in the matter of the withdrawal of resignation. However, since the counsel for the respondents BSF has not controverted that the same are applicable, we proceed to adjudicate within the framework thereof.

13. The essential conditions to be satisfied for being permitted to withdraw resignation are, (i) that such withdrawal should be in public interest; (ii) the resignation should have been tendered for some compelling reason and the request for withdrawal should have been made as a result of a material change in the circumstance which compelled the personnel to tender the resignation; (iii) the conduct of the personnel in the intervening period should not be improper; (iv) the period of absence from duty should not be of more than 90 days and the post is still available.

14. Though, the counsel for the petitioner has sung praises of the petitioner and the yeoman service he rendered to the respondents BSF and to the country, including by being selected for the NSG Commando Course and being deputed to NSG, but it is not for the personnel of the force to blow his own trumpet and it is for the force with which the said personnel was employed and the Government of India, to find the human resource in the personnel to be such, as for whom, the door needs to be again opened. Obviously, in the present case neither did the respondents BSF feel that the resources spent on the training of the petitioner is reason enough to let the petitioner in, after he had voluntarily left nor was the Government of India of the said opinion. The petition is also bereft of any pleadings, of the public interest which will be served, by letting the petitioner withdraw his resignation. Once the said condition is not satisfied, the need for seeing whether the other conditions are satisfied by the petitioner or not would not arise. We may otherwise also add that the reins of the country cannot be entrusted to a personnel, who in the past has chosen his own interest over that of the public or the country. The conduct of the petitioner, though still having substantial period of deputation with NSG left and which duties as NSG commando according to the counsel for the petitioner also are of paramount importance to the country, of having paid scant regard to the same in the face of difficulties of his wife and small child and his mother, do not indeed show the petitioner to have put the service before self.

15. The personnel tendering resignation also tend to forget that we are a country of scarcities including scarcities of employment opportunities. Here, advertisements inviting application for a few hundred posts elicit

applications from lakhs. Though, we are a country of scarcities, we are rich in human resource. Holding competition amongst all the applicants demonstrates a difference of barely a shade between the one last selected and the next in line. Tendering of resignation from employment with the government by one, creates vacancy, for which hundreds if not lakhs await an opportunity.

16. We, during the hearing yesterday as well as today, in view of the conditions aforesaid of Rule 26(4) of the CCS (Pension) Rules and/or the DoPT OM, enquired from the counsel for the petitioner, whether not, as disclosed by the first condition, the provision of withdrawal of resignation is meant for those who owing to an extreme provocation take a decision to leave the secure employment, i.e. employment for which lakhs of citizens strive. We further enquired from the counsel for the petitioner, how the averments in the petition as quoted by us hereinabove while recording the pleadings in the petition, satisfy the condition of “compelling reasons” for tendering the resignation. We also enquired, how the compelling reason of the ailment of the mother of the petitioner and of the child of the petitioner being only two years old, resolved themselves between the date the petitioner tendered his resignation, i.e., 3rd December, 2017 and the date, that is, 23rd July, 2018 on which the petitioner first applied for withdrawal.

17. The counsel for the petitioner, not controverting that there are no specific pleadings in this regard, has today drawn our attention to the letter dated 23rd July, 2020, where also the petitioner is found to have merely stated that he submitted his resignation “due to my domestic problems” and merely pleaded “my domestic problems has been sort out”. The counsel for

the petitioner then drew our attention to a letter dated 18th June, 2020 sent by the petitioner to the Home Minister of India, where the petitioner stated (i) that his mother had been suffering from Parkinson disease; (ii) during the time he was with NSG, the condition of his mother deteriorated; (iii) that his wife was a Judicial Magistrate and his brother was living in Australia and there was nobody except him to look after the health of the mother; (iv) that his two and a half years old son and the deteriorated condition of his mother forced him to take a decision to tender the resignation; (v) that after his resignation he put all his strength to look after his mother as well as his two and a half years old child and within two and a half months sorted out the problems relating to the treatment of his mother; (vi) that his brother who lives in Australia, took the mother with him and therefore, the petitioner could join back the service.

18. What has been stated in the aforesaid letter is much after the rejections dated 15th January, 2019 and 14th August, 2019 of the applications for the withdrawal of resignation dated 23rd July, 2018 and 30th January, 2019 respectively. The possibility of the said letters having been written under legal advice, after a decision to file the petition in the Court had been taken, cannot be ruled out. Moreover again, the pleas are vague.

19. Rather, when we asked the counsel for the petitioner that if the brother of the petitioner had taken the mother to Australia, what was the need for the petitioner to go to Australia, it was first denied that the petitioner went to Australia. However, on attention being drawn to the e-mail dated 15th September, 2018 of the petitioner stating that he could not send the letter of withdrawal of resignation to the President of India by 'dak' owing to being

out of the country, it is stated that the petitioner went to drop his mother to Australia. However, as per the language of the letter aforesaid of 18th June, 2020, it is the brother who took the mother. The two and a half years old child, to look after whom and to be with whom the petitioner claims to have resigned, in two and a half months would barely be that much older and still not independent. Similarly, the nature of Parkinson disease is such, qua which there would be no major change in barely two and a half months. It also defies logic that if the option of the brother of the petitioner in Australia, taking the mother of the petitioner with him to Australia was available, why was it not exercised or considered before the petitioner resigned. We are afraid, the facts pleaded by the petitioner do not satisfy the requirement of 'reasons compelling enough' to tender resignation from a secure employment or a material change, as required by the aforesaid DoPT OM.

20. In our view, tendering and acceptance of resignation from secure employment has an element of finality and irrevocability thereto. The provision for withdrawal of resignation has been made, to take care of resignations submitted under a grave and sudden provocation, which compels the government employee to forego the security of employment and which grave and sudden provocation was at that moment wrongly assessed of having a permanency, and which did not turn out to be so.

21. On the contrary, the entire conduct of the petitioner shows that the decision of the petitioner was a well thought out one. The petitioner submitted the letter of resignation on 3rd December, 2017, when posted at Delhi which is envisaged as a preferred posting and not when posted in a hard area. The petitioner did not in the letter dated 3rd December, 2017, seek

discharge immediately but on or before 28th February, 2018. The petitioner, after nearly 10 days, on 11th December, 2017, in anticipation of his resignation being accepted, sought repatriation from NSG to respondents BSF. The petitioner was not discharged on 28th February, 2018 as had been sought by him and waited patiently till the acceptance letter dated 3rd April, 2018. A period of four months elapsed between the letter of resignation and discharge and the petitioner during the said time did not change his mind. It is thus, not a case of the resignation being owed to any gravity or suddenness but of a well planned out resignation.

22. Not only so, the petitioner though, wrote a letter dated 23rd July, 2018 delivered on 28th July, 2018, that is, barely a couple of days prior to the expiry of 90 days, purportedly withdrawing the resignation but addressed it not to the President of India to whom the letter of resignation was addressed but to the Director General, BSF. Not only so, though the petitioner sought to withdraw his letter dated 3rd December, 2017, but the letter dated 23rd July, 2018 was on the subject of “joining after voluntarily retirement”. The petitioner, who had written to the President of India knowing fully well that the resignation had to be addressed to the President of India and who, being an ex Deputy Commandant, BSF is expected to know the difference between resignation and voluntary retirement, had in December, 2017 tendered resignation and not sought voluntary retirement but labeled the letter dated 23rd July, 2018 as “joining after voluntary retirement”. We have enquired from the counsel for the petitioner, why should all this not be seen as having been done by design, so as to not be asked to immediately rejoin service and to buy time. There is neither any explanation for the aforesaid in the petition

nor during the hearing. Moreover, if the petitioner indeed expected any action on his letter dated 23rd July, 2018, he would not have, after submitting the same, proceeded to go abroad as he, as per his own documents did. Moreover, the said dates also belie what was argued, that the petitioner had gone to Australia to leave his mother. That means that till the letter dated 23rd July, 2018 was written, the mother was still in India. The petitioner, in the letter dated 23rd July, 2018 did not say that the date of his rejoining should be after he returned from abroad.

23. All the aforesaid facts do not make us believe the case set up by the petitioner, even of the disease of his mother or of his small child and no documents in support whereof, in any case have been submitted.

24. The petitioner appears to be using the employment of respondents BSF as a hop-on and hop-off service wherefrom he can hop-off whenever he desires and hop back on whenever he wishes.

25. That brings us to the Rule / Policy, so far as the aspect of 90 days is concerned. Undoubtedly a literal interpretation thereof is that the period of absence from duty should not be more than 90 days. It is because such a short period is stipulated, that we are of the opinion that the withdrawal of resignation is permitted, when found to have been submitted in a huff and we therefore, have used the expression 'grave and sudden provocation'. Else, normally no material change in circumstances can be expected within a short time envisaged. It cannot also be forgotten that the short time envisaged also takes into its ambit the decision making time in the grant of permission to withdraw resignation. A personnel of the force who has served the force for any duration is bound to know that the decision-making process also takes

time. Thus, the withdrawal of resignation envisaged is nearly immediate, so that even after the time taken in decision-making, the period of absence is not more than 90 days.

26. However, at the same time, the literal interpretation in its application has to permit some play. Thus, in a case where withdrawal of resignation is made, leaving enough and a reasonable amount of time for a decision to be taken thereon but nevertheless there is a delay in taking decision, owing to the said delay, the Rule cannot be permitted to be defeated. However the said play in consideration / interpretation of the provision / policy cannot extend to cases where it is found that the withdrawal of resignation is submitted leaving no time for the authorities concerned to take a decision thereon.

27. The period of 90 days of the petitioner here, was expiring on 29th July, 2018, after taking into consideration 31 days of May, 2018 and 30 days of June, 2018. The respondents BSF received the letter dated 23rd July, 2018 of withdrawal of resignation of the petitioner only on 28th July, 2018 i.e. on the penultimate day of the 90 days. The petitioner having been a member of the force for eight years before his resignation, knew very well that in one day no decision could be taken. Not only so, the petitioner as aforesaid left lacunas in the letter, knowing fully well that in the normal course he will be called upon to rectify the same. As aforesaid, the petitioner also proceeded to go abroad, rather than waiting to be called back. The petitioner is thus found to have acted in a manner so as to have as much absence as he desired, while taking advantage of the technicalities. Anybody *bona fide* wanting to rejoin would have remained in a state of readiness to rejoin immediately on the very next day of being communicated the acceptance of the withdrawal of

resignation. The petitioner on the contrary, has been taking his own sweet time to take advantage of the Rule / Policy and which cannot be permitted.

28. The counsel for the petitioner has also laid much emphasis on the letter dated 18th November, 2019 of the Commandant (Pers) S. Ganesh informing the petitioner that his case in pursuance to the application dated 23rd July, 2018 was being processed for approval of the competent authority and MHA and asking the petitioner to give fresh consent / willingness. On the basis thereof, it was contended that the case of the petitioner is still actively being considered.

29. We have however, enquired the sanctity of the said communication of Commandant (Pers) S. Ganesh of the respondents BSF. The application of the petitioner dated 23rd July, 2018 with reference where to the letter is written, had already been rejected vide letter dated 15th January, 2019. We have enquired from the counsel for the respondents BSF, whether any enquiries have been made from Commandant (Pers.) S. Ganesh, of the basis of sending the communication. The counsel for the respondents BSF states that since he is appearing on advance notice, he has no instructions. However, we cannot act on the basis of a letter of a Commandant level officer, after the President of India has already conveyed his decision.

30. Vide letters dated 15th January, 2019 and 14th August, 2019, the petitioner had already been informed of the withdrawal of his resignation having not been acceded to. Commandant (Pers) S. Ganesh has no authority to thereafter seek fresh willingness of the petitioner.

31. That brings us to the judgments referred to by the counsel for the petitioner. **Deepak** supra was a case of a Constable, who while still undergoing training pursuant to recruitment, under an impulse of depression occasioned by domestic responsibilities and illness of his parents, submitted his resignation but realized his mistake immediately on meeting his family and applied for the withdrawal of the same within about 15 days. It was in these facts that the petition was allowed. **Nirmal Verma** supra was the case of a Headmistress in a Municipal Corporation of Delhi (MCD) school who submitted the resignation to contest the MCD election and withdrew the same on losing the election. The withdrawal of resignation in that case was sought to be rejected on the ground of the petitioner, despite being a government servant, having indulged in politics. The decision of the Court thus, was on the said aspect and not qua Rule 26(4) of CCS (Pension) Rules supra, which was mentioned only as entitling the withdrawal of resignation. In **Ravi Tomar** supra, the order directing the acceptance of the application for withdrawal of resignation had been passed in the peculiar facts of the case, where the respondents had chosen not to spell out the clear reasons for not exercising the discretion in favour of the petitioner while accepting similar applications of other officers.

32. The other two judgments of the Supreme Court, that is, **Balram Gupta** supra and **Wing Commander T. Parthasarathy** supra, have been cited on the aspect of fickle mind but that is not the question here. Rather in **Balram Gupta** supra, it was held that ordinarily permission to withdraw resignation should not be granted unless the person concerned is in a position to show that there has been a material change in circumstances in consideration of

which notice was originally given. The petitioner is not a person of fickle mind but a person who treats service to the country as a hop-on / hop-off service.

33. The counsel for the petitioner has also contended that once the law permits the withdrawal of resignation, the same should be allowed.

34. In this respect, the counsel for the respondents BSF is correct that Rule 26(4) of the CCS (Pension) Rules as well as the Policy do not confer any right. The word used is 'may'. The discretion is still with the government and unless the discretion exercised is found to have been exercised in violation of the Rule / Policy or in a *mala fide* manner, no ground for interference is made out.

35. We also find that the Supreme Court recently in ***Union of India Vs. Subrata Das*** MANU/SC/0109/2019 was concerned with requests for withdrawal of earlier requests for Premature Separation from Service of the personnel of Indian Air Force, governed by the Human Resource Policy dated 5th August, 2011. It was held (i) entry into and departure from the service of Air Force is in terms of the Air Force Act, 1950 and Rules framed thereunder and is not a matter which lies at the sweet will of the member of the Air Force; (ii) the organizational efficiency of the armed forces of the Union is of paramount importance; (iii) in interpreting the provisions of the Policy including the withdrawal of a request for premature separation, it is necessary to emphasize that an officer who is granted premature separation takes away an existing vacancy which could have been provided to another officer of the Air Force; (iv) permitting an absolute right to withdraw from the approved premature separation may, it is apprehended, lead to the use of

premature separation from service as a tool to escape transfers to sensitive appointments; (v) the right to withdraw a request for premature separation from an armed force is not absolute or unconditional and is not a matter of right; a withdrawal can be permitted only by way of exception and on extreme compassionate grounds; and, (vi) administrative judgment of the authorities of the Air Force is not to be lightly interfered with.

36. The aforesaid judgment of recent origin reaffirms our view hereinabove.

37. There is no merit in the petition.

38. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 18, 2020

‘gsr’..