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

Date of Decision: 05.07.2021

+ W.P.(C) 1835/2021 & CM APPL. 5273/2021

BIJENDER YADAV

..... Petitioner

Through: Mr.M.K. Bhardwaj, Adv.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr.Jaswinder Singh, CGSC for
UOI with Mr.Kavindra Gill, GP for
UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. The petition has been heard by way of video conferencing.
2. The present writ petition has been filed challenging the order dated 14th May, 2019 passed by the Central Administrative Tribunal (CAT) in OA No. 1503/2019. Petitioner also challenges the letter dated 17th January, 2019, 27th November, 2019 and 01st November, 2017 and prays for a direction to the respondents to reinstate the petitioner in service as Scientist 'E' with all consequential benefits.
3. Learned counsel for the petitioner states that the CAT failed to consider that the petitioner had neither resigned nor intended to resign from his post in Defence Research and Development Organisation (DRDO) and the same is evident from the alleged resignation letter dated

10th August, 2017. He emphasizes that the petitioner by way of the said letter had only sought a transfer to a family station as his wife was unwell.

4. He also submits that the CAT erred in holding that the petitioner could not withdraw his alleged resignation inasmuch as Rule 26(4) of CCS (Temporary Services) Rules 1965, permits a government servant to withdraw his resignation prior to its acceptance.

5. A perusal of the paper book reveals that the petitioner was appointed as Scientist 'E' in DRDO, on ad hoc basis, on 09th August, 2016 at an establishment in Gaya, Bihar. He sought extensions to join and finally joined on 10th April, 2017 only i.e. after a gap of nearly eight months. Even after the delayed joining, the petitioner remained absent on various dates on the grounds ranging from his illness to his wife and parents illness as well as due to a new born baby.

6. The petitioner vide letter dated 10th August, 2017 requested the respondents to either transfer him or to accept his resignation. It is pertinent to mention that the petitioner remained absent from service after submitting the letter dated 10th August, 2017. The said letter is reproduced hereinbelow:-

“Subject: Request for Transfer /Notice of Termination of Service to the Post of Scientist E in DRDO issued to appointing authority (DOP,DRDO) under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965.”

Kind Attn: Director-SPIC & Joint Director-Admin

- 1. Reference to your letter DOP/05/56069/115109 dated 30 Aug 2016, 17 Jan 2017 and 22 Mar 2017 regarding appointment to the Post of Scientist 'E' in DRDO.*
- 2. The Extension of adhoc appointment upto 31st Dec 2017 was approved and intimated vide letter no.*

DOP/05/56069/115109 Dated 30Jun 2017.

- 3. Sir Due to my personal family requirements (to take care of my old parents and my wife and new born daughter) my presence is required in Delhi. Earlier I manage things by visiting my home from gaya on weekly or 15 days basis. Sometimes taking helps from relatives. But now it will not possible for me to visit every week due to that far location of site or asking people to support.*
- 4. I request you kindly transfer me in Delhi or nearby Delhi state anywhere in Haryana, Chandigarh, Rajasthan, Uttaranchal if any site is there. If it is not possible in SPIC then kindly consider to give me a transfer in some another DRDO. I need this transfer because Indeed initial 2 years to settle things on family side.*
- 5. In case it is not possible as mentioned in point 4, In terms of Para 3 of reference letters (1) above and in pursuance of sub rule of rule 5 of the Central Civil Services (Temporary Services) rules, 1965, I hereby, give notice to the termination of appointment with effect from the date of expiry of a period of one month from the date of this letter.*
- 6. Hence the undersigned may be released of all duties w.e.f 10th September 2017.*

(emphasis supplied)

7. It is the respondents' case that the resignation was accepted on 01st November, 2017 and communicated on 07th November, 2017 i.e. prior to the petitioner withdrawing his resignation on 02nd November, 2017. The competent authority's letter dated 01st November, 2017 is reproduced hereinbelow:-

- "1. Reference your letter No.SPIC/Admin/VTR-r/2017 dated 08 Sep 2017.*
- 2. Competent Authority has accepted notice given by Sh. Bijender Yadav, Sc 'E', SPIC, Delhi for termination of temporary service under Rule 5 of CCS (Temporary Service) Rules, 1965 with effect*

from 10 Sep 2017 (A/N).

3. A copy of DO Part II containing the casualty of officer's S.O.S. may be forwarded to all concerned alongwith this HQ."

8. In the opinion of this Court the letter dated 10th August, 2017 constitutes a resignation letter. Further, this Court is of the view that the CAT was right in holding that the petitioner cannot withdraw his resignation letter dated 10th August, 2017 after it had been accepted on 01st November, 2017.

9. Upon a perusal of the paper book, this Court is also of the view that a sensitive and highly Specialized Organisation cannot afford to have 'a reluctant and wavering scientist' on its rolls. In any event, no ground for interference in writ jurisdiction is made out. Accordingly, the present writ petition along with pending application is dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JULY 5, 2021

rv/KA