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

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Date of decision: 06.10.2021

+ **W.P.(C) 11415/2021**

KUMAR SUPRAVIN

..... Petitioner

Through: Mr. Ajit K. Sinha, Sr. Advocate with
Mr. Srijan Sinha, Mr. Rohan Garg
and Ms. Parul Dhurvey, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Gaurang Kanth with Mr. Syed
Husain Adil Taqvi, Advocates for
respondent no.1/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Court hearing convened *via* video-conferencing on account of COVID-19]

CM APPL. 35139-40/2021

1. Allowed, subject to just exceptions.

W.P.(C) 11415/2021 and CM APPL. 35141/2021 *[Application filed on
behalf of the petitioner to place on record additional documents]*

2. With the consent of the counsel for the parties, the writ petition has
been taken up for hearing and final disposal, at this stage itself.

3. This writ petition is directed against the order dated 13.05.2021,
passed by the Central Administrative Tribunal [in short “the Tribunal”] in
OA No.954/2021.

W.P.(C) 11415/2021

1/11

4. The short point, which we are called upon to consider, is: given the facts and circumstances obtaining in the case, has the Tribunal come to a correct conclusion, for the reasons given in the impugned order, that the respondents' decision not to permit the petitioner to withdraw his resignation was tenable.

5. Mr. Ajit K. Sinha, learned senior counsel, who appears on behalf of the petitioner, says that, broadly, two reasons have been given by the Tribunal, both of which are wrong.

(i) Under the extant rules, no period was provided for withdrawal of resignation.

(ii) Second, there was no rule, which could be triggered, whereby respondents could be called upon to relax the rigour of the period provided for withdrawal of resignation.

5.1. In support of his contentions, Mr. Sinha has drawn our attention to Rules 26(4) and 88 of the Central Civil Services (Pension) Rules, 1972 [hereafter referred to as "1972 Rules"].

5.2. On the other hand, Mr. Gaurang Kanth, who appears on advance notice on behalf of respondent no.1/UOI, says that, there is no good reason to intercede in the matter.

6. We have examined the record, after hearing Mr. Sinha and Mr. Kanth for a considerable period of time and concluded that, no interference is required for the reasons given hereafter.

7. However, before we proceed further, it would be relevant to advert to the following dates and events.

W.P.(C) 11415/2021

2/11

7.1. It is evident that, the petitioner has an excellent academic record. The petitioner is an alumnus of Indian Institute of Technology, Delhi. He joined the Indian Administrative Service (IAS) in 1999.

7.2. After nearly 6 years of service in the IAS, the petitioner tendered his resignation on 14.09.2005, which was accepted by respondent no.1, on 07.10.2005.

7.3. Two years hence, the petitioner made representations for being permitted to withdraw his resignation. Representations, in this behalf, were made by the petitioner on 23.08.2007 and 10.09.2007.

7.4. These representations were, however, rejected by respondent no.1 on 07.02.2008.

7.5. The reasons that the petitioner had furnished for being allowed to withdraw his resignation, were broadly, the following: his father had suffered from various medical complications, and he i.e. the petitioner suffered from mental health issues.

7.6. Suffice it to say that, thereafter, the petitioner commenced his battle to get back in service.

7.7. As a matter of fact, after the issuance of rejection order dated 07.02.2008, another order was passed by respondent no.1 on 28.10.2010, which reiterated the fact that, the petitioner's representation for withdrawal of resignation could not be accepted.

8. Being aggrieved, the petitioner approached the Tribunal to agitate his cause. The petitioner's original application preferred with the Tribunal was numbered, as OA No.943/HR/2010. This application was disposed of on

W.P.(C) 11415/2021

3/11

02.06.2011. The operative directions contained in the said order are extracted hereafter:

“17. In fact, the request of the applicant was considered by the State Govt. under the aforesaid Rule had recommended to respondent No. 1. It was pointed out that the applicant had to tender resignation due to compelling circumstances and it was not to avoid initiation of any departmental or criminal proceedings against him. Rather, it was stated that he is an honest, efficient and upright officer, who was facing undue hardship and his reinstatement in service would be in public interest. It was further informed that there were a number of cadre posts lying vacant in the cadre and it would not be difficult to adjust him. Thus, the State Govt. (respondent No. 2) had supported the case of the applicant, stating that it was covered by the provisions of Rule 26 (4), except that the request was delayed.

18. Not. only this, the case of the applicant was also, considered by the Director (DoPT) and the Additional Secretary in Respondent No.1's office as well as in the Deptt. Of Legal Affairs and all these had recommended the case of the applicant for withdrawal of resignation.

19. It is noticed that Respondent No. 1 had rejected the request of the applicant on the ground that resignation once accepted, it will open a pandora's box and lead to flood gates for similar requests. *This* apprehension was allayed when, on query by the PMO office, as to how many similar cases had been received during the last 10 years, and it was pointed out that there was only a single such instance. It was also brought to notice that there was a precedent wherein, one Shri A.R. Mahajan, who belonged to the Indian Foreign Service, was allowed to withdraw his resignation under the provisions of Rule 26(4) *ibid*. Thus, the impugned order is not sustainable being

contrary to the factual position with regard to earlier precedents and recommendation given in favour of the applicant. Resultantly, the impugned orders dated 7.2.2008 (Annexure A-3) & 28.10.2010 (Annexure A-9) are hereby quashed and set aside.

20. We find that the case of the applicant is fully covered by the provisions of Rule 26 (4), except that the period of absence from duty after the resignation became effective is about 1 year and 11 months, while the prescribed period is ninety days. In this behalf, respondent No. 1 is competent to grant relaxation under Rule 88 of the CCS (Pension) Rules, 1972, which reads as under:

"88 Power to relax

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, the Ministry or Department, as the case may be, may; by order for reasons to be recorded in writing, dispense with or relax the requirements of 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."

21. In view of the above discussion and taking into consideration that the State Govt. had realized the competency, honesty & efficiency of the applicant time & again and recommended his case for a favourable consideration for relaxation of rules, the Respondent no.1 directed to reconsider the case of the applicant for grant of relaxation, as his case has been considered at different high levels from time to time to and recommended for grant of permission to withdraw resignation by the applicant due to hardship faced by him. Needless to state that if a decision is taken in favour of the applicant, he will be allowed to join duty and the intervening period will be decided as per applicable rules/instructions.

This direction be complied with within a period of 2 months from the date of receipt of a copy of this order.”

8.1. It is this order of the Tribunal [i.e., order dated 02.06.2011], and subsequent events, which lent hope to the petitioner.

9. Evidently, thereafter, there was an internal discussion at various levels of the Government as to, whether the petitioner’s request for withdrawal of resignation should be accepted.

9.1. An internal note of the Secretary (Personnel) dated 31.01.2012 has been cited by Mr. Sinha, which, *inter alia*, records that, the petitioner’s request ought not be accepted, as, first, the petitioner has been out of service [at that particular point in time], for six years; second, it would not be known, the persons he has had association with [during the period when he was out of service] and the deleterious impact such association would have had on his mind; and third, the petitioner has lost out on experience, which could have been garnered while he was in service.

9.2. This apart, the aforesaid note also records that, if the petitioner is reinstated in service, he will seek seniority and other benefits, which will continue till he retires. The note goes on to state that, if the petitioner is deprived of the seniority and service benefits, he would feel frustrated and demoralized, which would affect his performance.

9.3. Thus, according to this note, the view taken was that, the petitioner had vacillated, and therefore service could not countenance such tendency in its officers.

9.4. However, the aforesaid view appears to have undergone a change, with the change in the incumbent Secretary. Thus, it resulted in a note being generated by another Secretary (Personnel) on 27.01.2014, wherein it is recorded that, having regard to the hardships undergone by the petitioner, his case [qua withdrawal of resignation] could be reconsidered.

9.5. The note of the Secretary (Personnel) dated 27.01.2014 also received support from the Minister of State (PP), wherein he, *inter alia*, broadly, alludes that the power of relaxation, being available, should be exercised in favour of the petitioner. The note of the Minister of State (PP) was generated, on 30.04.2014.

9.6. The record shows [something which is not in dispute] that, the matter, thereafter, was escalated to the Department of Personnel & Training (DoPT). The DoPT, vide order dated 28.04.2015, opined as under:

“I am directed to refer *to* the Government of Haryana letter No. 20/43/2005-2S (1) dated 14/6/2013 on the above mentioned subject.

2. The issue regarding withdrawal of resignation by Sh. Supravin Kumar, Ex- IAS has been re-considered by the Department of Personnel and Training. It is conveyed that the request of Shri Supravin Kumar, ex-IAS for withdrawing resignation from service has been rejected.”

9.7 The DoPT had addressed the aforesaid communication dated 28.04.2015, to the Chief Secretary, Government of Haryana.

9.8. Mr. Sinha informs us that, after acquiring knowledge of the communication dated 28.04.2015 the petitioner received yet another communication dated 25.05.2016, which reiterated the position taken by the DoPT on 28.04.2015.

10. It is in this background that, the petitioner approached the Tribunal in the instant O.A. i.e., O.A. No.954/2021

10.1. As noted above, Mr. Sinha says that, the Tribunal has erred and /or misdirected itself in law and therefore reached an erroneous conclusion.

10.2. Mr. Kanth, on the other hand, says that, at the point in time the resignation was accepted in 2005, there was no rule in place which permitted withdrawal of resignation. Therefore, according to Mr. Kanth, the observations made in the impugned order by the Tribunal have to be seen, in that perspective.

10.3. As regards the power to relax the period of 90 days prescribed for withdrawal of resignation, Mr. Kanth contends that, since a decision has been taken at the highest level, it is clear that, there is no scope, in the given circumstances, to exercise discretion in favour of the petitioner.

11. We have heard the learned counsel for the parties at length and perused the record with counsel's assistance.

11.1 It is obvious that, the petitioner may have taken, perhaps, a hasty step in resigning from the IAS but since then much water has flown under the bridge.

11.2. Mr. Kanth cannot but accept that, even if there was no rule in place permitting withdrawal of resignation in 2005, thereafter, in 2011, a rule was

W.P.(C) 11415/2021

8/11

put in place, whereby a resignation could be withdrawn, albeit, in a given timeframe.

11.3. We may also note that, it is Mr. Sinha's contention, though, that, Rule 26(4) of the 1972 Rules, concerning withdrawal of resignation was always available.

11.4. Having regard to the submission made on this aspect [as noticed above], one may only observe that clause (iii) of Rule 26(4) of the 1972 Rules prescribes, as noticed above, a timeframe of 90 days for a person to recant i.e., withdraw his resignation.

11.5. We may note that, Rule 26(4) of the 1972 Rules and Rule 5(1A)(i)(c) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 are *pari materia*.

11.6. Therefore, if the aforesaid rule were to be applied to the petitioner, he could have withdrawn his resignation only within the period of 90 days, from the date it is accepted. It is not in dispute that, the petitioner overshot that time, by 1 year and 11 months.

12. It is in this context that, Mr. Sinha submitted that respondent no.1 ought to have exercised its powers of relaxation, as provided in Rule 88 of the 1972 Rules, because of the stated undue hardship suffered by the petitioner.

12.1 In support of this plea, as adverted to above, Mr. Sinha has relied upon the earlier order of the Tribunal dated 02.06.2011; the relevant part of which is extracted hereinabove.

W.P.(C) 11415/2021

9/11

12.2. As noticed above by us, after the order the Tribunal had passed on 02.06.2011, there was an internal discussion at various levels of the Government. The position taken by the officer of the rank of Secretary (Personnel) on 31.01.2012 presented one perspective, while the position taken by another officer [albeit, of the same rank], on 27.01.2014, recommended consideration of the petitioner's case on account of hardship suffered by him. As observed above, the position taken by the latter [i.e. on, 27.01.20214] received the support of the Minister of State (PP), on 30.04.2014; however, when the matter was put before DoPT, it took a contra view on 28.04.2015, which was reiterated on 25.05.2016.

13. Given the aforesaid position, it is clear that, the utility that the petitioner would have for the service, is over. The petitioner has been out of service for 16 long years. The matter has to be considered, not only from the point of view of the petitioner but also from the point of respondent no.1 i.e., the Government of India as to, what contribution he would make, at this juncture.

13.1. This is not to say that, the petitioner does not have potential at an individual level or capacity to progress in life, however, from the point of view of respondent no.1, the petitioner's induction in service is not merited. This decision was taken for the first time on 07.02.2008, which was reiterated on 28.10.2010.

13.2. Although, these two decisions [i.e., orders dated 07.02.2008 and 28.10.2010] were overturned, as noticed above by us, on 02.06.2011, after

reconsideration, respondent no.1, in 2015 and 2016, has reached the conclusion that, the petitioner's request cannot be entertained.

13.3. Therefore, while we agree with Mr. Sinha that, the rule [i.e., Rule 26(4) of the 1972 Rules] did permit withdrawal of resignation, even according to him, it could have been withdrawn only within the prescribed period.

14 Mr. Sinha's contention, that, respondent no.1 ought to have exercised its powers under Rule 88 1972 Rules, and thus, ignored the delay of nearly 1 year and 11 months, to begin with may have had some weight, had the petitioner not relied only on respondent no.1 to pass an order in his favour.

14.1. The Tribunal, vide its order dated 02.06.2011, had accorded 2 months to respondent no.1 to consider the petitioner's case. There was, undoubtedly, a delay on the part of respondent no.1, but it was not as if the petitioner could not have approached the relevant forum for expediting the process.

15. Given the foregoing circumstances, while we agree with the conclusion reached by the Tribunal, *via* the impugned order dated 13.05.2021, although, for the reasons given hereinabove by us.

16. The writ petition is, accordingly, dismissed. Consequently, pending application shall also stand closed.

17. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

OCTOBER 6, 2021 / tr *Click here to check corrigendum, if any*
W.P.(C) 11415/2021

11/11