



2025:DHC:1033-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.02.2025*

+ W.P.(C) 2816/2022 & CM APPL. 8125/2022

VIVEK KUMAR YADAV

.....Petitioner

Through: Mr. M.A. Inayati, Mr. F.A.
Mirza & Mr. Shoaib Khan,
Advs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Tanveer Ahmed Ansari,
SPC for UOI.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J (ORAL)**

1. This petition has been filed by the petitioner, challenging the Orders dated 05.08.2021 and 29.12.2021 passed by the respondents whereby the application of the petitioner for withdrawal of his resignation from service has been rejected on the ground that the same was made more than 90 days after the acceptance of the resignation, and observing that in terms of Rule 26(4)(iii) of the Central Civil Service (Pension) Rules, 1972 (in short, 'CCS(Pension) Rules'), the same cannot be considered.

2. It is the case of the petitioner that the petitioner had joined the service with the Border Security Force ('BSF') as a Constable in the year 2012. In the third week of December 2020, he received information that his wife had fallen ill and was suffering with pain. He, being worried, applied for leave to attend to his wife, however, the



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same was refused. Out of desperation, the petitioner tendered his resignation on 14/22.12.2020. It is the case of the petitioner that the Commandant of the Battalion had informed the petitioner that if he returns within three months, he shall be allowed to re-join the service. The resignation of the petitioner was accepted by the respondents *vide* Order dated 29.12.2020, to be effected from 31.12.2020.

3. It is the case of the petitioner that the health condition of his wife improved sometime in the second week of March, 2021 and, therefore, he reported for duty again on 23.03.2021 and 24.03.2021, that is, within the three months period, however, he was not allowed to enter the Battalion's premises. The petitioner, therefore, sent a letter dated 04.06.2021 to the Director General ('DG') seeking permission to re-join the service. The petitioner further made a representation dated 03.07.2021 to the Inspector General ('IG') and the Deputy Inspector General ('DIG'), explaining the compelling circumstances under which he had tendered his resignation. The representation dated 03.07.2021 was rejected by the Commandant 174 Battalion BSF, *vide* the Impugned Order dated 05.08.2021, stating that as the application for reinstatement had been made beyond the period of 90 days, the same could not be accepted. Aggrieved thereof, the petitioner sent a letter dated 27.08.2021 to the DG, challenging the Impugned Order dated 05.08.2021. The same as also the previous representation dated 04.06.2021, were rejected by the DG *vide* the Impugned Order dated 29.12.2021, stating that there is no provision for withdrawal of the resignation in the settled rules.

4. The learned counsel for the petitioner, placing reliance on the



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medical documents of the wife of the petitioner, submits that during the COVID-19 pandemic, the petitioner's wife was complaining of pain in the chest and breathlessness. The petitioner, therefore, chose to rush to his wife, and it is only when the wife of the petitioner recovered, that he reported back for service within a period of 90 days, as prescribed under Rule 26(4)(iii) of the CCS (Pension) Rules. He further submits that during the said period, taking into account the COVID-19 pandemic, the Supreme Court had in *Suo Moto Writ Petition (C) No.3 of 2020 In Re: Cognizance for Extension of Limitation* extended the period of limitation for all purposes. He submits that, therefore, similar benefit should be extended to the petitioner as well.

5. On the other hand, the learned counsel for the respondents submits that the petitioner had voluntarily submitted his resignation from service, and despite being counselled by the Commandant, he insisted on the same. It was only thereafter that the resignation was accepted and the petitioner was relieved from service. He submits that the petitioner made a representation to join back the service and for withdrawal of his resignation only on 04.06.2021, which is beyond the prescribed period. He submits that the petitioner is wrongly alleging that he had reported for duty on 23.03.2021 and 24.03.2021. He submits that the application for withdrawal of his resignation, having been made beyond the prescribed period, has rightly been rejected by the respondents. He further submits that the benefit of the order of the Supreme Court, *In Re: Cognizance for Extension of Limitation*, which extended the period of limitation, cannot be extended to the



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petitioner.

6. We have considered the submissions made by the learned counsels for the parties.

7. *Prima facie*, from the medical documents that have been annexed with the petition, it appears that the wife of the petitioner was suffering from chest pain. Due to the then prevailing scare of the COVID-19 pandemic, the concern of the petitioner that he had to be with his wife at the relevant time, cannot be stated to be fanciful or motivated by *mala fide*. In his resignation letter itself, the petitioner has stated that it is due to domestic problems that he wanted to resign from the service. The petitioner had been in service at that time for more than 8 years. He has also claimed that, after the recovery of his wife, he reported back to re-join duty sometime in March, 2021. Though this is disputed by the respondents, but the fact remains that the petitioner did apply for withdrawal of his resignation on 04.06.2021. At that time, the country was facing an emergency situation in the form of the COVID-19 pandemic, and strict adherence to the rules of procedure as prescribed in the CCS (Pension) Rules, therefore, should not be insisted upon.

8. Given the peculiar facts of this case and the fact that at the relevant time the Supreme Court had also extended the period of limitation taking note of the effects of the COVID-19 pandemic, we are of the opinion that the respondents should have considered the case of the petitioner by not remaining bound by the limitation prescribed in Rule 26(4)(iii) of the CCS(Pension) Rules, and the same should have been relaxed as far as the present case is concerned, and



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the case of the petitioner for withdrawal of his resignation should be re-considered by the respondents on its merits keeping in view the service profile and record of the petitioner herein.

9. Accordingly, for the reasons stated hereinabove, the Impugned Orders dated 05.08.2021 and 29.12.2021 are hereby set aside. The respondents are directed to re-consider the application of the petitioner seeking withdrawal of his resignation, on merits. The decision thereon shall be taken by the respondents within a period of eight weeks from today, by way of a speaking order, which shall be communicated to the petitioner.

10. In case the petitioner is reinstated in service, the petitioner shall not be entitled to any pay or allowance for the *interregnum* period, however, he will be allowed to retain his seniority and be entitled to notional fixation of pay. In case the order passed by the respondents is adverse to the petitioner, the petitioner shall be entitled to challenge the same in accordance with law.

11. The petition, along with pending application, stands disposed of in the above terms.

12. We make it clear that we have not expressed any opinion on the merits of the claim of the petitioner for withdrawal of his resignation.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 13, 2025/ab/sk

Click here to check corrigendum, if any