

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 751 of 2017**

**Present: Hon'ble Mr. Sudhi Ranjan Mishra, Judicial Member  
Hon'ble Mr. Pramod Kumar Das, Administrative Member**

1. Bhupendra Singh, aged about 37 years, S/o Sri Dharampal,  


.....Applicants

VERSUS

1. Union of India represented through The Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi – 110001.
2. Director of Intelligence Bureau (DIB), Ministry of Home Affairs, Govt. of India, North Block, New Delhi – 110001.
3. Joint Director, Subsidiary Intelligence Bureau, Govt. of India, Unit V, Bhubaneswar.

.....Respondents

For the applicant : Mr. R K Rout, counsel.

For the respondents: Mr. G R Verma, counsel

Heard & reserved on : 24.04.2024

Order on : 25.04.2024

O R D E R

Mr. Pramod Kumar Das, A.M.

The applicant challenging the memorandum of charges under Annexure A/13 series, penalty order vide Annexure A/22, appellate authority order dated 11.03.2016 (A/26) and revisional authority order dated 06.06.2017 (A/28) has filed this OA praying for the following reliefs:

- a) The impugned order dated 30.04.2015 to hold disciplinary enquiry along with the memorandum of charges filed under Annexure A/13 series may be quashed being passed in violation of provisions of Pension Rule regarding acceptance of resignation.
- b) The major penalty order dated 07.01.2016 (A/22) which has been passed by the disciplinary authority (Respondent No. 4) on being illegally influenced by the action and ill motive Respondent No. 4 may be quashed by declaring the same as illegal, arbitrary and unreasonable.
- c) The appellate authority order dated 11.03.2016 (Annexure A/26) which has also been passed by the Respondent No. 3 in a pre-decided manner with malafide intention may also be quashed being an outcome of ulterior motive of the Respondent No. 3 & 4.
- d) The revisional order dated 1/6.6.2017 (Annexure A/28) passed by the Respondent No. 2 also be quashed being passed without application of mind and proper appreciation of applicant's case.
- e) The respondents may be directed to extent all service benefits which the applicant have suffered includes financial loss and seniority because of imposition of major penalty award passed on 7.1.2016 filed under Annexure A/22 and applicant may be restored to his position in the seniority list forthwith and may be promoted to the post of ACIO – I w.e.f. 15.07.2015 when his batch mates and persons remained in the seniority list have been promoted to that post. Further the arrears which are to be calculate after restoring the applicant in his promotional post and previous time scale position may also be paid to the applicant.
- f) Any other order(s) as may deemed just and proper may be passed in order to give complete relief to the applicant.

2. The brief facts of the case as inter alia averred in the OA is that the applicant was initially posted at Subsidiary Intelligence Bureau (SIB), Meerut in June 2010 and thereafter was transferred to SIB Bhubaneswar just before completion of his tenure at SIB, Meerut therefore not allowing the applicant to exercise any option for posting as per policy of Annual General Transfer (AGT). It is submitted that the applicant had joined SIB Bhubaneswar on 11.01.2013 and had applied for home state postings in AGT 2013, 2014 and 2017 but his requests for transfers were turned down. It is submitted that due to family duties/responsibilities and service related duties/responsibilities the applicant was under pressure and he had applied for 10 days EL on 08.07.2014 w.e.f. 06.07.2015 to 20.07.2014 mentioning about illness of his wife and newborn baby with an undertaking to join duties after completion of his leave. It is submitted that his leave application was submitted before DCIO, Angul which was forwarded to Bhubaneswar Office on 08.07.2014 but nothing was communicated to him till night of 08.07.2014. It is submitted that the applicant had submitted his resignation before the DCIO Angul at about 10.20 pm and left for his native thereafter. It is submitted that earlier too his applications for EL were rejected by the respondent no. 4. It is submitted that the DCIO, Angul forwarded the resignation letter to the office of Respondent NO. 3 & 4 and they started processing the same without taking into consideration the mental and social condition of the applicant which shows their intention as malafide. It is submitted that while processing the case of resignation, Respondent No. 4 had asked the applicant to deposit Rs. 82,295/- which has been paid over and excess of his entitlement and the applicant had

deposited the same vide two DDs dated 18.07.2014. It is submitted that a letter dated 29.10.2014 was issued from the office of Respondent No. 3 & 4 asking the applicant to deposit Rs. 12,000/- for the incomplete 5<sup>th</sup> year service as per bond he had executed at the time of joining in service. It is submitted that after receiving the letter the applicant had submitted detail representation dated 19.11.2014 mentioning about harassment meted out to him for which he had submitted his resignation and also stated that since there is disciplinary enquiry under Rule 16 of CCA (CCA Rule) 1965 pending against him his resignation cannot be processed. It is submitted that vide letter dated 04.03.2015 Respondent No. 4 communicated that his resignation has not been accepted for non payment of Rs. 12000/- and directed the applicant to join duties immediately within 7 days of receipt of the letter. It is submitted that the letter dated 04.03.2015 was delivered on 19.03.2015 at his residence. It is stated that the applicant submitted representation dated 23.03.2015 stating therein that his financial and social condition does not permit him to join in service immediately. He had also requested to dispose of his 20 nos of representation pending before superior authorities. It is submitted that the applicant finally joined in his service on 15.06.2015 at Angul. It is submitted that after joining Respondent No. 4 issued a memorandum of charges dated 30.04.2015 initiating departmental proceeding and to hold inquiry against the applicant under Rule 14 of CCS (CCA) Rules 1965. It is submitted that the applicant vide his representation dated 12.05.2015 requested the respondent no. 4 to start the inquiry as the alleged charges which arises out of his resignation does not exists since he had already joined in the service on 15.06.2015. It is submitted that he

filed another representation dated 06.07.2015 to discontinue the DE as the initiation of DE was for alleged non receipt of Rs. 12000 which is not a cause after joining of the applicant and unauthorized absence was never made an issue by the respondents from 09.07.2014 until the applicant was intimated to join duty on 04.03.2015. It is submitted that without considering the representation of the applicant, Respondent No. 4 proceeded with the inquiry and appointed inquiry officer and presenting officer. It is submitted that applicant submitted another representation dated 04.06.2015 to Respondent No 4 requesting him to review his decision of holding inquiry against him. The applicant then appeared in the proceeding and rebutted all charges against him and pleaded not guilty. It is submitted that the applicant moved Respondent No. 2 to remain present in the darbar dated 20.06.2015 where he exchanged views with Respondent No. 2 and hoped that the proposed inquiry will be dropped. It is submitted that the PO submitted his rejoinder dated 25.08.2015 where he held that with the material evidence the charges against the applicant are sufficient to conclusively prove it. It is submitted that applicant in his argument before the IO refuted all the allegation made in the reply of the PO. It is submitted that Respondent No. 4 continued with the inquiry and submitted a representation that all allegations charges does not exists and became irrelevant therefore there is no necessity of continuing with the inquiry. It is submitted that PO submitted his brief on 28.07.2015 and applicant submitted his reply on the same day. Thereafter PO submitted rejoinder on 25.08.2015 to which the applicant submitted his argument on 31.08.2015. It is submitted that IO submitted his inquiry report on 14.10.2015 vide

memo dated 16.11.2015 and the applicant submitted his representation against the inquiry report on 26.11.2015 raising the ground that during pendency of another disciplinary proceeding, Respondent No. 3 & 4 considered his resignation which is basis of the present disciplinary enquiry which is illegal. He had also requested to shift the disciplinary inquiry to IB headquarter New Delhi for free and fair enquiry. It is submitted that Respondent No. 4 passed order dated 07.01.2016 by imposing major penalty of reduction to a lower stage in the time scale of pay by two stages for a period of three years with immediate effect. It was further ordered that he shall earn increment during the period of such reduction and on expiry of such period the reduction will not have the effect of postponing the future increment. It was also decided that the entire period of his unauthorized absence from duty from 08.07.2014 to 14.06.2015 is treated as dies non for all purpose. It is submitted that vide letter dated 12.01.2016 Respondent No. 4 stated that the resignation of the applicant has been treated as withdrawn. The applicant submitted his appeal dated 21.01.2016 which was disposed of vide order dated 11.03.2016 without considering it in proper way. It is submitted that his revision petition dated 22.11.2016 was also rejected vide letter dated 06.06.2017 disposing of the same in mechanical manner.

3. The respondents in their counter inter alia averred that the applicant was transferred from SIB, Meerut to SIB Bhubaneswar in public interest and he had joined on 11.01.2013. It is submitted that after joining at Bhubaneswar applicant had submitted application for transfer to BOI, Munabao, BOI, Jaipur or SIB Jaipur citing various family problems but his

request was not acceded because he had not completed his tenure at Bhubaneswar which was also informed to him vide letter dated 22.08.2013. It is also submitted that contention of the applicant that he was refused leave is not true since on some occasions leave was not granted because he had not sufficient leave to his credit or he had not applied leave in accordance with rules or in official exigencies. It is submitted that the applicant had submitted leave on 08.07.2014 seeking 10 days EL from 09.07.2014 to 18.07.2014 and on the same day he submitted another application resigning from the post of ACIO - II/Exe with effect from 08.07.2014. Since he had submitted two application the competent authority had not taken any action on the leave application as the applicant had left the place of posting without waiting for the decision of the competent authority. It is submitted that in the leave application he had stated that due to his family problem he is not in a position to render his service and his resignation from the post be accepted with effect from 08.07.2014. It is submitted that while examining his resignation application it was found that he owes dues of Rs. 82,295/- towards overpayment of pay and allowances and other of Rs. 12,000/- towards surety board. It is submitted that the applicant deposited Rs. 82,295/- but refused to pay Rs. 12,000/- towards bond money therefore his application for resignation could not be accepted. It is submitted that vide letter dated 04.03.2015 the applicant was intimated that as he did not deposit Rs. 12,000/- his request to resign from the department could not be acceded to and he was also informed about his unauthorized absence from duty since 08.07.2014 and was directed to join duty immediately. It is submitted that the applicant

disobeyed the order of competent authority and joined his posting only on 16.06.2015. It is submitted that charge memo was issued for refusing to deposit Rs. 12,000/- into the government account and for unauthorized absence from duty since 08.07.2014. It is submitted that the disciplinary proceedings were initiated against the applicant in accordance with provisions of rules and no violation of principle of natural justice was done. The applicant was given opportunity to defend himself and after hearing him the punishment order was passed. His appeal and revision was also considered in accordance with rules and disposed of. It is submitted that considering the request of the applicant to withdraw his resignation vide application dated 19.11.2015 the competent authority allowed the same vide letter dated 12.01.2016. Therefore they prayed for dismissal of the OA.

4. The applicant filed his rejoinder reiterating the stand taken by him in the OA.

5. Heard both sides and perused the records.

6. DOPT vide its OM dated 11<sup>th</sup> February 1988 has issued guidelines regarding procedure for resignation from service. The said order is extracted below:

*Subject .: Resignation from Service – Procedure in respect of*

***The undersigned is directed to state that instructions have been issued from time to time on the above subject. These instructions have now been consolidated for facility of reference and guidance of all the Ministries/ Departments of the Government of India.***

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***5. The procedure for withdrawal of resignation after it has become effective and the Government servant had relinquished the charge of his earlier post, are governed by the following statutory provisions in sub-rules (4) to (6) of***



**Rule 26 of the CCS(Pension) Rules,1972. Which corresponds to Art. 418(b) of the Civil Service Regulations:-**

**(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 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.**

**5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body" controlled or financed by the Government.**

**(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order' shall be deemed to include the con-donation of interruption in service but the period of interruption shall not count as qualifying service ;"**

**6. Since the CCs(Pension) Rules, 1972 are applicable only to holders of permanent posts, the above provisions would apply only in the case of a permanent Government servant who had resigned his post. The cases of withdrawal of resignation of permanent Government servants which involve relaxation of any of the provisions of the above rules will need the concurrence of the Ministry of Personnel, Public Grievances and Pensions, as per Rule 88 of the CCS(Pension) Rules,1972.**

**7. Cases of quasi-Permanent Government servants requesting withdrawal of resignation submitted by them would be considered by the Department of Personnel and Training on merits.**

**8. A Government servant who has been selected for a post in a Central Public enterprises/Central autonomous body may be released only after obtaining and accepting his resignation from the Government service. Resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organization.**

**9. In cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'.**

7. The applicant had submitted his request for resignation from service on 08.07.2014. On 18/21.07.2014 the respondents intimated the applicant that his case is under process and he was asked to pay Rs. 82,295/- which was paid by the applicant on the same day in shape of DDs. Thereafter the applicant was asked by the respondents vide letter dated 29.10.2014 to pay Rs. 12,000/- for incomplete 5<sup>th</sup> year as per bond executed by him. Since the applicant refused to pay the said amount vide letter dated 19.11.2014, the respondents vide letter dated 04.03.2015 intimated him that his resignation has not been accepted and the absence from duty since 08.07.2015 is considered unauthorized and also directed him to resume his duties immediately within 7 days. The applicant received the said letter on 19.03.2015 and he joined only on 15.06.2015. Thereafter disciplinary proceeding was initiated against the applicant. In between the applicant submitted representation dated 19.11.2015 requesting to withdraw his application which was considered by the respondents and his was allowed to

withdraw his resignation vide letter dated 12.01.2016. The disciplinary proceeding ended with punishment order dated 07.01.2016 which was confirmed by appellate authority as well as revisionary authority.

8. Resignation from service is a bilateral act. A person may have a right to resign but that resignation is always subject to acceptance. An employer has a right to refuse an employee the right to resign for various reasons. Persons, holding responsible post in public administration, cannot simply resign and walk away. They have certain duties. It is also a matter of contract where notwithstanding the right to resign, that is dependent upon its acceptance. The respondents processed the application of the applicant for resignation and first intimated him to deposit Rs. 82,295/- which was paid by the applicant on the same day in shape of DDs. Thereafter the applicant was asked by the respondents vide letter dated 29.10.2014 to pay Rs. 12,000/- for incomplete 5<sup>th</sup> year as per bond executed by him. Since the action of the respondents in asking for money from the applicant to process his case in a piecemeal and phased manner is not at all appreciable and if they were to ask applicant for money, the same should have been done in a single go. Since the applicant refused to pay the said amount vide letter dated 19.11.2014, the respondents vide letter dated 04.03.2015 intimated him that his resignation has not been accepted and the absence from duty since 08.07.2015 is considered unauthorized and also directed him to resume his duties immediately within 7 days. The two charges in the charge memo relates to the same. It is not clear from records why the respondents waited till 04.03.2015 for declining his offer of resignation. It is further seen that after applicant submitted an application dated 19.11.2015 requesting

to withdraw his application which was considered by the respondents and he was allowed to withdraw his resignation vide letter dated 12.01.2016. As per DOPT OM dated 11<sup>th</sup> February 1988, if an application for withdrawal of resignation is accepted by competent authority and to resume duty, the order' shall be deemed to include the con-donation of interruption in service but the period of interruption shall not count as qualifying service. If the said OM is taken into consideration, the charge for unauthorized absence goes out of picture. The said order was passed on 12.01.2016 after the punishment was imposed. There is no averment from the side of the respondents as to why the letter dated 19.11.2015 of the applicant was kept pending for so long. The said action of the respondents is not in accordance with rules. Therefore when the initial action of the respondents is held illegal, the subsequent action of the respondents in issuing charge memo, holding the disciplinary proceeding, imposing punishment and confirmation of the same by appellate authority as well as revisionary authority is illegal. The same are hereby quashed. Resultantly the period of unauthorized leave may be condoned but the same shall not be treated for qualifying services and will come under the purview of no work no pay.

9. The OA is allowed with above observations. No costs.

(PRAMOD KUMAR DAS)  
MEMBER (A)

(SUDHI RANJAN MISHRA)  
MEMBER (J)

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