
(2021) 03 CAT CK 0056

In the Central Administrative Tribunal

Case No : Original Application No. 333 Of 2020, Miscellaneous Application No. 2383 Of 2020

Ashish Udaar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 11-03-2021

Acts Referred:

Citation : (2021) 03 CAT CK 0056

Hon'ble Judges : A. K. Bishnoi, Member (A); R.N. Singh, J

Bench : Division Bench

Advocate : Nimish Chib, Hilal Haider

Final Decision : Disposed Of

Judgement

R. N. Singh, Member (J)

1. Learned counsel for the applicant, at the outset, submits that the applicant has been working under the respondents on the post of Tax Assistant and he made a representation to the competent authority for acceptance his resignation from the said post. However, such request/representation was rejected by the respondents vide order dated 19.09.2019 (Annexure A-1) and communicated to the applicant vide communication dated 04.10.2019 (Annexure A-1/colly).

2. Learned counsel for the applicant submits that his request for resignation has been rejected in terms of Para(2)(ii) of DoP&T OM No. 28.034/25/87-Estt (A) dated 11.02.1988 by the competent authority. He further invites our attention to the para-wise reply filed on behalf of the respondents wherein the respondents have incorporated the provisions of Para 2(ii) of the said OM dated 11.02.1988 as under:-

"Where a Government servant, who is under suspension, submits a resignation, the competent authority should examine, with reference to the merit of the disciplinary case pending against the Government servant, whether it would be in the public interest to accept the resignation. Normally, as Government servants

are placed under suspension only in cases of grave delinquency, it would not be correct to accept a resignation from a Government servant under suspension. Exceptions to this rule would be where the alleged offence do not involve moral turpitude or where the quantum of evidence against the accused Government servant is not strong enough to justify the assumption that if the departmental proceeding were continued, he would be removed or dismissed from service, or where the departmental proceedings are likely to be protracted that it would be cheaper to the public exchequer to accept the resignation."

3. Learned counsel for the applicant further submits that subsequent to filing of his rejoinder, the respondents have revoked the applicant's suspension and therefore, the very reason for rejection of applicant's request for accepting his resignation is no more in-existence.

4. In view of the aforesaid, learned counsel for the applicant submits that the present OA may be disposed of with liberty to the applicant to prefer a fresh representation to the competent authority for acceptance of his resignation from the aforesaid post within two weeks and on making such representation and with a direction to the respondents to consider and to dispose of the same in a time bound manner.

5. To such request of the learned counsel for the applicant, there is no objection from Sh. Hilal Haider, learned counsel for the respondents.

6. However, Ms. Niharika Tomar (Applicant in the aforesaid MA) submits that this Tribunal should not allow the resignation of the applicant inasmuch as her case seeking maintenance from the applicant is pending before the Court of Competent Jurisdiction and if applicant's request for acceptance of resignation is allowed by this Tribunal, she may suffer irreparably.

7. However, in view of the aforesaid facts and circumstances, we are of the considered view that if the applicant's request as in para 4 above is accepted, no prejudice is likely to be caused to the respondents or to the aforesaid applicant, Ms. Tomar.

8. In view of the aforesaid, without going into the merits of the claim of the applicant, the present OA is disposed of with liberty to the applicant to prefer a fresh representation to the competent authority for acceptance of his resignation from the post of Tax Assistant, if so advised, within two weeks from today and if such application/representation is received by the respondents within such time, the respondents are directed to consider and to dispose of the same by passing an appropriate reasoned and speaking order, as expeditiously as possible, and in any case within eight weeks from the date of receipt of such representation.

9. OA is disposed of in the aforesaid terms. No costs.

10. Pending MA also stands disposed of accordingly.