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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2264/2002

New Delhi: this the 29th day of September, 2006

**HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE MR.N.D.DAYAL, MEMBER (A)**

Avinash Kumar
S/o Shri Akhileshwar Prasad,
Assistant, OS-8C, Sena Bhawan,
New Delhi-110001
Presently residing at
Adhash Colony, West Patel Nagar
PO : Keshari Nagar
Patna, Bihar. ...Applicant.
(By Advocate: Shri A.K. Behera)

Versus

Union of India through
1. Secretary, Ministry of Defence
Block Raisina Hills, New Delhi-1
2. Joint Secretary (Training) &
Chief Administrative Officer,
C-II Huts, DHQ, PO,
New Delhi-110001.Respondents.

(By Advocate: Mrs. Meenu Mainee)

ORDER

HON'BLE MR.N.D.Dayal, Member (A)

The applicant in this matter is seeking directions upon the respondents to reinstate him on the post of Assistant w.e.f. 14.9.1998 with all consequential benefits and reliefs as well as to quash the letter/order, if any, issued by respondent no.2 or any other competent authority accepting his resignation letter dated 3.9.98.

2. Earlier, the applicant had come before the Tribunal in OA 2264/2002, which was dismissed in limine by the order of the Tribunal dated 29.8.2002. However, WP (C) 1471/2003 filed by the applicant in the Hon'ble High Court of Delhi was allowed and the order of the Tribunal was quashed by order dated 27.2.2004. It was directed that the OA 2264/2002 shall revive and be re-considered and decided afresh after allowing the parties to have their say.

3. The grounds taken in the OA by the applicant have been denied and disputed by the respondents in their counter reply. There is no rejoinder of the applicant on record. We have heard the learned counsel for both sides and

perused the pleadings. As directed the counsel for respondents has submitted the offer of appointment dated 31.7.1997 and appointment letter dated 09.09.1997 which have not been produced with the application.

4. The applicant has submitted that by letter dated 13.3.97 of the Ministry of Defence he was informed of his nomination by UPSC to the post of Assistant on the basis of Assistant Grade Examination 1995. Accordingly the applicant joined South Block, AHQ, in OS-14 as an Assistant on 08.9.97. He worked there for about 2 1/2 months and was then transferred to OS-8C in Sena Bhawan. He was also sent for training at I.S.T.M., New Delhi.

5. On 05.4.98, he proceeded on sanctioned leave. As he became ill at Mumbai with scabies, he sought extension of leave on 12.4.98 which was refused. Later, his parents came to Mumbai for treatment and since he had to look after them, he again asked for extension on 25.8.98 by telegram but it was refused. He rejoined duty on 31.8.98. Photocopies of medical certificates and prescriptions have been enclosed with the application.

6. According to the applicant, by letter dated 03.9.98 he tendered his resignation and proceeded to get his parents treated. (No copy of this letter has been submitted by the applicant). On the advice of his parents, he returned to Delhi and reported for duty on 14.9.98 at Sena Bhawan. However, he was not allowed to join and his subsequent representation went in vain. Thereafter, on the advice of his parents and well-wishers, he sent by registered post a letter dated 01.10.98 (at p.25) withdrawing his resignation. In this letter, he stated that due to his own sickness and that of his parents, he had become mentally perturbed because of which he had tendered resignation on 03.9.98. This took place under compelling and tragic circumstances and now he felt extremely sorry for taking such a drastic step. Thus he sought to explain the reason why he gave resignation and wanted to re-join duty.

7. The applicant has explained that he continued to be sick and was diagnosed to be suffering from DEPRESSIVE DISORDER and ultimately declared fit by Dr. Arvind Bhave at Thane on 07.2.2001. Thereafter, he made another representation on 05.3.2001 referring to the letter dated 01.10.98. and

appealed for sympathetic consideration to allow him to join duty. Medical certificates were also supposed to have been enclosed though no copies are noticed to be annexed with copy of this representation which is at p.63-64 of the OA.

8. The Ministry of Defence on 14.6.2001 (p.65-66) informed the applicant that he was absent from duty for five months and reported on 31.8.98. The notice submitted by him on 3.9.98 was under Rule 5(1) of CCS (Temporary Services) Rules, 1965 stating that was no more interested to continue as an Assistant in AFHQ (Civil Service) and that after expiry of one month, his services may be treated as terminated. (A copy of notice is annexed at R.II). After tendering such notice on 03.9.98, the applicant had chosen to remain absent and reported for duty only for one day on 4.9.98. Since the applicant had exercised his right for termination under Temporary Service Rules, his services stood terminated w.e.f. 02.10.98 (AN) on expiry of a period of one month from the date of notice. It was clarified that there was no provision in the Rules to permit a temporary government servant, who had given notice under Rule 5(1) for termination of his service to withdraw the same after expiry of the notice period. Therefore, the request of the applicant dated 5.3.2001 for reinstatement in service was not accepted.

9. The applicant has argued that his resignation was not accepted and no decision was communicated in that regard until this letter dated 14.6.2001 was sent to him. The resignation had therefore not become effective as per law before he withdrew it, because that is possible only when it is accepted by the competent authority and the decision is communicated. The applicant admits that Rule 5 of CCS (Temporary Services) Rules, 1965 does not provide specifically for withdrawal of resignation, but this would not operate against the law in that regard. Equity lies in favour of the applicant as his parents were seriously ill and his mental state was not right because of which he had tendered resignation.

10. In their counter reply, the respondents have stated that the applicant joined the Department as Assistant in Group 'B' non-gazetted post, in a

temporary capacity (on probational basis) on 08.9.97. He was on probation for two years. Unlike resignation from service which requires acceptance, the notice given under Rule 5(1), Temporary Service Rules, 1965 became effective automatically on the expiry of the prescribed period of one month. To support such contention an extract of this Rule and also GOI MHA OM dated 25.5.1966 has been annexed at Annexure R-I and R-III. It is further stated that these Rules do not provide for reinstatement of an employee who has terminated his services of his own volition by such notice.

11. A preliminary objection has been taken that the OA is not maintainable due to delay of four years as the applicant had resigned in 1998 but he had approached the Tribunal only by OA 2264 in 2002. The medical reasons given by the applicant sometimes as scabies DEPRESSIVE DISORDER etc. are inconsistent and not tenable. The certificate of Dr. Arvind Bhave is dated 7.2.2001 but refers to his examination of the applicant on 10.9.98, 2 ½ years earlier to state that he had found him suffering from Depressive Disorder but does not say that during this period he was not of sound mental health. Besides applicant sent his representation on 5.3.2001, 2 ½ years after the doctor had examined him on 10.9.98. Therefore the reasons advanced and leave sought by the applicant from time to time on various grounds was not found convincing to be granted and also the absence in subsequent period is unacceptable. When the applicant came to office on 14.9.98 he did not come for joining duty and hence it is not correct that he was not permitted to join. The letter dated 01.10.98 to withdraw the notice written from Patna was received on 12.10.98. In this letter, he stated that he had tendered his resignation whereas in fact he had asked for termination of service under the Temporary Service Rules which became effective from 02.10.98 (AN). An administrative DO Part-II order was issued on 21.10.98 regarding termination of the applicant's service from 02.10.98.

12. The respondents have, therefore, concluded that since acceptance of resignation is not a condition precedent for severance of the applicant's services with the Government when no resignation was submitted but merely termination

of services was sought by giving notice under Rule 5(1) of CCS (Temporary Services) Rules, 1965 which does not require acceptance nor provides scope for withdrawal after the service stands terminated by expiry of the period of one month, the question of withdrawal of resignation does not arise. In the letter dated 01.10.98 sent from Patna by the applicant, he seems to have referred to the notice dated 03.9.98 as his resignation for the first time and thereafter in subsequent letters. It carries no specific statement of withdrawal of the notice.

13. The learned counsel for the applicant emphasizes that it is not in dispute that the applicant was a probationer with a two year period of probation. Evidently, the respondents have themselves referred to the applicant in these terms. It is further pointed out that the applicant has himself, in his notice dated 03.9.98 stated that he was appointed as Assistant on probation which is also not disputed. As such we find no difficulty in accepting that the applicant was initially appointed on probation for two years. Further the appointment was under nomination by Staff Selection Commission on the basis of an examination. This is also borne out by the offer of appointment as Assistant dated 31.7.97 and the actual appointment order dated 09.9.97.

14. The GOI MHA OM dated 25.5.1966, relied upon by the respondents, speaks of notice of termination of service given by a temporary government servant under Rule 5(1) of the CCS (TS) Rules, 1965 as well as a letter of resignation with or without any reference to this rule, also by a temporary government servant. This OM clarifies that a letter of resignation would require acceptance by the competent authority to become effective but such letter should not have any reference to the Rule 5(1) of the CCS (TS) Rules, 1965. The notice dated 3.9.98 given by the applicant relies entirely upon this Rule and carries no mention of resignation.

15. The learned counsel for the applicant has relied upon GOI MHA OM dated 26.8.67 contained in Chapter 41 of Swamy's Complete Manual on Establishment and Administration for Central Government Offices 9th Edition-2003 p.588. In this OM, the question as to whether Rule 5 of the CCS (TS) Rules, 1965 should be

invoked in the case of persons appointed on probation has been dealt with. The same is reproduced below:

"Non-applicability of Rule 5 for termination of service in the case of probationers/persons on probation – A question has arisen whether this rule should be invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), has been provided. The position is that the CCS (TS) Rules do not specifically exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), it has been decided, in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment it would be desirable to terminate the services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5(1) of the CCS (TS) Rules, 1965. [G.I. MHA, OM No.4/10/66-Ests. (C) dated the 26th August, 1967]"

It is, therefore, seen that although the CCS (TS) Rules, 1965 do not specifically exclude probationer or person on probation as such, in cases where a provision has been made in the letter of appointment regarding termination of service without any notice during or at the end of the period of probation (including extended period if any), it would be desirable to terminate the services of the probationer / person on probation in terms of the letter of appointment and not under Rule 5(1) of the CCS (TS) Rules, 1965. This OM appears to relate to termination of service of a probationer by the government but does not specifically deny the option of a probationer to also avail of the same.

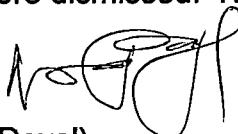
16. Thus we have a situation where the applicant, who was a probationer, did not write a letter of resignation but sought termination of his service under Rule 5(1) of the CCS (TS) Rules, 1965. Even if it is presumed that the notice dated 3.9.98 given by him was merely a letter of resignation it carries a reference to Rule 5 (1) of the CCS (TS) Rules, 1965 under which termination of service was sought. The CCS (TS) Rules, 1965 do not specifically exclude probationer or person on probation although it is desirable that in the case of a person on probation the service be terminated in terms of the conditions, if any, in that regard included in the appointment letter. A perusal of the terms of appointment in para 2 of the offer letter dated 31.7.97 reveals that sub para (iii) is as under:

"(iii) During the probation period, the appointment may be terminated at any time by a month's notice given by either side,

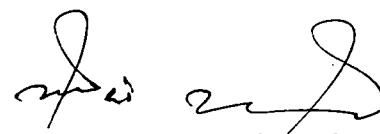
namely the appointee or the appointing authority. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired period thereof."

A plain reading of the notice dated 3.9.98 shows that termination of service has been sought after a month as per Rule 5(1) of the CCS (TS) Rules, 1965 which is similar to specific condition for seeking termination incorporated in the offer of appointment at para 2 (iii) thereof. A question arises as to whether the notice dated 3.9.98 served by the applicant should be regarded as invalid as it does not refer to the specific condition contained in the offer of appointment. However, it is well settled that if the relevant provision exists but it is not mentioned or a wrong provision is mentioned it would not vitiate the communication.

17. In the result, we are unable to appreciate the argument advanced by the learned counsel for the applicant that the applicant had submitted a resignation which required to be not only accepted but also implemented by severing the employer employee relationship in order to become effective. In this view of the matter, the reliance placed on the judgement of the Hon'ble Supreme Court in Srikantha S.M. vs. Bharath Earth Movers Ltd. (2005) 8 SCC 314 would not be of assistance to the applicant. As such the application cannot succeed and is therefore dismissed. No costs.



(N.D. Dayal)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

/kdr/