

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION Nos.657/2017

Dated this Thursday the day of 19th December, 2019

CORAM: Dr. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Shri Armindar Sandhu,
Age 32 years, Son of Inderjit Sandhu,
Ex-Preventive Officer, Mumbai
Customs, residing at 48/D-57,
LSM CHS Manish Nagar,
Four Bungalows,
Andheri (West),
Mumbai - 400 053.

... Applicant

(By Advocate Shri S.V. Marne)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Finance,
Central Board of Customs,
North Block, New Delhi - 110 001.

2. The Principal Commissioner of
Customs (General),
New Custom House,
Ballard Estate,
Mumbai - 400 001.

... Respondents

(By Advocate Shri R.R. Shetty)

O R D E R

Per: Ravinder Kaur, MEMBER (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following

reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same quash and set aside the letters dated 12.01.2015 and 11.05.2016 with all consequential benefits.

(b) This Hon'ble Tribunal may graciously be pleased to hold and declare that the applicant has validly withdrawn his resignation on 27.06.2014 and he be treated as in service on the post of Inspector (Preventive Officer) with effect from 27.06.2014 with all consequential benefits, except back wages.

(c) This Hon'ble Tribunal may further be pleased to direct the respondents to reinstate the applicant forthwith in service on the post of Inspector (Preventive Officer) with effect from 27.06.2014 with all consequential benefits, except back wages.

(d) Costs of the application be provided for.

(e) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2(a) The facts in the case are that the applicant joined service on the post of Inspector (Preventive Officer) on 19.10.2012. In the year 2013, he cleared the Civil Services preliminary examination conducted by UPSC but could not qualify in the main examination of 2013 on account of his shift posting at Airport and

inability to concentrate on studies. He again wanted to appear in the Civil Services examination. He was advised that he would not be able to clear the same if he does not devote full time for studies.

2(b) In these circumstances, he tendered his resignation on 31.03.2014 vide letter dated 28.03.2014. The period of 90 days began from 31.03.2014 and ended on 28th June, 2014. The applicant did not receive any intimation from the office of respondent No.2 regarding acceptance of his resignation. In the meantime, he was suffering from extreme backache and gave intimation about it to his office vide letter dated 20.05.2014, alongwith Medical Certificate dated 07.05.2014 (Annex A-5).

2(c) Later on, he realised the consequences of tendering the resignation and on consulting his parents and others, he decided to withdraw his resignation and in the forenoon of 27.06.2014 sent handwritten withdrawal application by fax to the office of respondent No.2. He also gave a telephone call and informed the office of respondent No.2 about his fax sent for withdrawing the resignation which was confirmed by the office. However, he was informed that the

Commissioner of Customs (General) was on leave. The applicant also sent E-mail dated 27.06.2014 (Annex A-6) at 16:26 hours addressed to the then Commissioner of Customs (General) repeating the contents of the handwritten letter dated 27.06.2014 (Annex A-7). The applicant also submitted a hard copy of his withdrawal letter dated 27.06.2014 on 04.07.2014 on the advice of the then (General) of Customs Commissioner.

2(d) Thereafter, he visited the office of Deputy Commissioner of Customs and requested him to issue a letter for permitting him to resume his duties but he was advised to wait as his withdrawal was under consideration. In the meantime, the applicant cleared the Civil Services preliminary UPSC examination, 2014. However, again he could not clear the main examination held in December 2014.

2(e) Vide letter dated 12.01.2015 (Annex A-1), the applicant was informed that his request for withdrawal of resignation vide letter dated 27.06.2014 was rejected and that he stood relieved from his duties as Preventive Officer w.e.f. 27.06.2014 (FN). That letter Annexure A-1 is under challenge in the present OA.

2(f) The applicant made representation dated 03.11.2015 (Annex A-8) to respondent No.2 quoting Rule 12(3) of CCS(CCA) Rules, 1965, which provides that resignation can be withdrawn before its acceptance or even in a case where the resignation is accepted and Government servant is relieved from his future date, the resignation can be withdrawn before he is actually relieved from duties. It has been stated that the fax message sent by the applicant withdrawing his resignation was received by respondent No.2 before the time when the applicant was supposed to be relieved from duty.

2(g) But vide reply dated 11.05.2016 from the office of respondent No.2, he was informed that his resignation was accepted by respondent No.2 on 26.06.2014 w.e.f. 27.06.2014 and that he failed to submit the application for withdrawal of resignation before its acceptance and that the application for withdrawal of resignation was after the relieving order. It was further mentioned that the period of 90 days in the resignation letter was over on 26.06.2014 whereas the withdrawal letter was submitted on 27.06.2014. The applicant has challenged this order dated 11.05.2016 (Annex A-2) also vide

present OA.

2(h) The applicant claims that the order at Annex A-2 was delivered at his residence in Mumbai and he came to know about it only in December, 2016 as at the relevant time he was at Chandigarh.

2(i) The applicant has challenged both the impugned letters dated 12.01.2015 and 11.05.2016 on the grounds that they are illegal, arbitrary and void. The case of the applicant was treated in mechanical manner and without recording any cogent reason. The decision of acceptance of resignation on 26.06.2014 was never communicated to the applicant, it came into effect on 27.06.2014 when the applicant was supposed to be relieved and that in the forenoon of same day he had submitted his withdrawal letter by fax. It is further contended that the period of 90 days came to an end on 28.06.2014, therefore the respondent No.2 ought not have accepted the resignation on 26.06.2014. It is further claimed that the period of 90 days has been erroneously calculated from the date of resignation letter i.e. 28.06.2014 ignoring the fact that it was received on 31.03.2014.

3. Alongwith OA, MA No.621/2017 has been filed seeking condonation of delay in filing the present OA whereby it is claimed that the cause of action arose in favour of the applicant on 11.05.2016 when his representation was rejected by respondent No.2 and thus there is delay of about 5 months in filing the OA. It is claimed that the aforesaid letter dated 11.05.2016 was delivered at the residence of applicant at Mumbai in the last week of May, 2016 but he being unemployed, he had gone to Chandigarh and came to know about this letter in December, 2016. Thereafter, he started collecting necessary documents required to file the present OA, consequently resulting in delay.

4. The respondents have filed reply affidavit to the OA as well as the application for condonation of delay, claiming that since the applicant is challenging the order dated 02.12.2014 whereby his request for withdrawal of resignation was rejected, he ought have filed the present OA within one year from the said date. In reply on merits, it is stated that the applicant filed application for resignation on 28.03.2014. His resignation was accepted by the then Commissioner of Customs (General) on 26.06.2014

w.e.f. 27.06.2014 (F.N.) and the order was faxed to the CCO, Zone III on 26.06.2014 at 17.01 hours. The applicant forwarded letter of withdrawal of his resignation on 27.06.2014 which was rejected vide order dated 02.12.2014 and was communicated vide letter dated 12.01.2015. His letter dated 03.11.2015 seeking reinstatement as a Preventive Officer in Mumbai Customs was rejected on 15.04.2016 and intimated on 11.05.2016.

4.1 Relying upon Rule 12(3) of CCS(CCA) Rules, it is submitted that the resignation becomes effective when it is accepted and the Government servant is relieved of his duties.

4.2 It is stated that the period of 90 days completed on 26.06.2014 whereas his application for withdrawal came on 91st day i.e. on 27.06.2014. Further the applicant's resignation was accepted on 26.06.2014 and he stood relieved on 27.06.2014 (FN). Therefore Rule 12(3) of CCS(CCA), 1965 is not applicable to the facts and circumstances of the present case. The respondents further state that in the application of resignation, the applicant has stated as under:-

" I am hereby giving stipulated 90 days notice period,

beginning today i.e. 28.03.2014. However, if possible, I request you to relieve me from Mumbai Customs as soon as possible."

4.3 Regarding the order dated 11.05.2016 on the application seeking withdrawal of resignation, it is submitted that the same was sent to his residential address '*Flat No.D/57, Bldg. No.48 CSM CHS, Manish Nagar, Andheri (W), Mumbai - 400 053*' which is available on record and therefore his contention that he was not at his residential address and got the knowledge of the letter in December, 2016, does not make any sense. It is submitted that in these circumstances, the Original Application is devoid of merits and liable to be dismissed.

5. We have heard the arguments addressed by Shri S.V. Marne, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents at length and have carefully considered the facts, circumstances, law points and rival contentions in the case. We have carefully examined the pleadings and annexes filed by the parties.

6. The moot question for consideration is whether request of applicant to withdraw his application for resignation was received in the office prior or subsequently to the acceptance of

his resignation by the Competent Authority. The record shows that the applicant vide application dated 28.03.2014 submitted his resignation on 31.03.2014. The respondents vide order dated 26.06.2014 accepted his resignation w.e.f. 27.06.2014 (FN). The said order is at Annex R-1 placed on record submitted by the respondents. The same is reproduced as under:-

"No.S/5-163/2014 P & E

Date:26.06.2014

ESTT. OFFICE ORDER NO.114/2014

The resignation tendered by Shri Arminster Sandhu, P.O. From Government service vide his application dated 28.03.2014 has been accepted by the Commissioner of Customs (G), NCH, Mumbai-I. Accordingly, he stands relieved of his duties w.e.f. 27.06.2014 (F/N) from the office of the Commissioner of Customs (General), New Custom House, Mumbai - 400 001.

sd/-

(SIMMI JAIN)

COMMISSIONER OF CUSTOMS (GENERAL)"

7. In view of the above, the order dated 26.06.2014 was to come in operation w.e.f. 27.06.2014 (FN). As per this order, the applicant was to be relieved from his duties w.e.f. 27.06.2014 (FN). The applicant has claimed that vide fax dated 27.04.2014 to respondent No.2 at 3.37am, he had withdrawn his resignation which was prior to the acceptance of resignation on 27.06.2014. As per the order dated 26.06.2014 (Annex R-1), he was to stand relieved from his

duties w.e.f 27.06.2014 (FN).

8. Learned counsel for the respondents has submitted that the fax was received from the applicant in the office as per scheduled time of its opening. It is observed that though the applicant had faxed withdrawal letter at 3.37am, it was also received in the office at the scheduled time of its opening. It is in these peculiar facts and circumstances of the case, where the withdrawal letter from the applicant was received in the office of the respondents at the same time when the resignation was to come in operation on 27.06.2014.

9. Learned counsel for the applicant has submitted that since the applicant had tendered resignation as he aspired to become an IAS officer but when he did not succeed despite his best efforts, he opted for withdrawal of his resignation. The applicant as per rules was entitled to withdraw the resignation before it was accepted and he was relieved from his duties and his name was stuck off from the record. Therefore, in the peculiar facts and circumstances of the case, giving a wider interpretation to the relevant rules, the application of the applicant for withdrawal of

the resignation is required to be accepted and the impugned order dated 12.01.2015 is liable to be set aside.

(i) In support of his contention, he has relied upon the judgment of Hon'ble Apex Court in the case of *Madan Singh Shekhawat Vs. Union of India and Others* reported in (1999) 6 SCC 459 wherein it was observed (para 15) as under:-

"15. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule.

(ii) The Hon'ble Apex Court's observation in the case of *Essen Deinki Vs. Rajiv Kumar, 2002 (8) SCC 400* (para 14) was as under:-

"14. Whilst it is true that the law seems to be rather well settled as regards the "bread-and-butter" statutes and the welfare legislation introduced in the statute-book for the purposes of eradication of social malady, it is a duty incumbent on the law courts to offer a much broader interpretation since the legislation is otherwise designed to prevent perpetration of any arbitrary action and no contra-view thus is plausible. American Express affirms such a view.

(iii) In the case of *Union of India and Another Vs. Wing commander T. Parthasarathy*, reported in *2001 SCC (L&S) 180* while relying upon its own judgment in the case of *Punjab National Bank Vs. P.K. Mittal*, reported in *1990 SCC (L&S) 143*, the Hon'ble Apex Court dealt with the case of resignation made to become effective from a future date and held that the

resignation which was accepted to be in effect from a future date namely 31.08.1986, therefore it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31.08.1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective.

10. As per OM dated 11.02.1988 issued by Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi, a resignation becomes effective when it is accepted and the Government servant is relieved of his duties. In a case where the Government servant sent an intimation in writing to the appointing authority for withdrawal of his earlier application for resignation before its acceptance by the Appointing Authority, the resignation will be deemed to have been automatically withdrawn.

11. However, in the case where the resignation has been accepted by the Appointing Authority and the Government servant is to be relieved from a

future date, if the Government servant makes request in writing for withdrawing the resignation before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. This rule position has been admitted by the respondents in the impugned order (Annex A-1) whereby the application of the applicant for withdrawal of resignation was rejected. However, the respondents have not dealt with the aspect, that in the present case, the resignation was accepted vide order dated 26.06.2014 w.e.f. 27.06.2014 (FN) and the withdrawal of resignation was also received in the office on 27.06.2014 (FN)

12. It is mentioned in the impugned order that since the applicant had tendered resignation vide letter dated 28.03.2014 giving stipulated 90 days notice period w.e.f. 28.03.2014 itself, therefore as per the respondents the period of 90 days got completed on 26.06.2014 whereas he had submitted his withdrawal on 27.06.2014. However, we do not agree with this view point of the respondents in view of the fact that though the resignation was tendered by the applicant vide letter dated 28.03.2014 and it is mentioned therein that the

stipulated period of 90 days notice is to be counted w.e.f. 28.03.2014 itself. However, this application itself was submitted with the respondents by the applicant on 31.03.2014. Therefore the period of 90 days has to be computed from 31.03.2014 itself and not from any prior date. In these circumstances, the period of 90 days had yet not expired on 27.06.2014 but on 28.06.2014.

13. Moreover, if the resignation of the applicant was to be accepted with effect from a future date i.e. 27.06.2014, the applicant had every right to withdraw the same before he was actually relieved from his duties w.e.f. 27.06.2014 (FN). As observed in the present case, the letter of withdrawal of resignation by the applicant was received in the office at the same time when the applicant was due to be relieved. As such both the actions were simultaneous, which is a peculiar circumstance. The legislature allowing the applicant to withdraw his resignation prior to its acceptance is a beneficial legislation and therefore in the view of the observation of the Hon'ble Apex Court in the case of Madan Singh (supra), these provisions are to be interpreted liberally so as to give a

wider meaning rather than a restrictive meaning which would negate the very object of the rule.

14. In the peculiar facts and circumstances of the case, since the withdrawal of resignation was communicated to the respondents on 27.06.2014 at the scheduled time of opening of the office when the resignation of the applicant was to come into operation, the applicant deserves to be given benefit of the same. As observed above, neither the OM dated 11.02.1988 nor the impugned order has dealt with the situation which emerged in the present case. Therefore in our considered opinion the applicant is entitled to the relief claimed as he is deemed to have validly withdrawn his resignation on 27.06.2014.

15. Consequently, the Original Application is allowed. The impugned order dated 11.05.2015 (Annex A-2) whereby the application for withdrawal of resignation was rejected and communicated to the applicant vide Annex A-1 dated 12.01.2015 is hereby quashed and set aside. The respondents are

directed to reinstate the applicant forthwith in service on the post of Inspector (Preventive Officer) w.e.f. 27.06.2014 with all consequential benefits other than back wages. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

ma.

JD
20/12/19

