

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2177/99

New Delhi this the 1st day of December, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN  
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Shri Mahboob Aslam Khan,  
S/o Shri Mahfooz Aslam Khan,  
R/o D-1/192, Vinay Marg,  
Chnakayapuri, New Delhi-21. ...Applicant

(By Senior Counsel Mrs. Shyamla Pappu with  
Shri R. Krishnamoorthy, Advocate)

-Versus-

2. The Supdt. of Police,  
Govt. of India,  
Central Bureau of Investigation,  
Administrative Division,  
Block No.3, C.G.O. Complex,  
Lodi Road,  
New Delhi-110003.

3. Secretary to Govt. of India,  
Dept. of Personnel & Training,  
New Delhi. ...Respondents

(By Advocate Shri Rajeev Bansal)

Supdt. of Police,  
Special Police Est..  
Central Bureau of Inv't.  
Dhanbad Branch,  
Dhanbad, Bihar.

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant impugns the validity of acceptance  
of his resignation dated 3.6.1998.

Facts in brief:

2. The applicant was appointed as Constable in  
Special Establishment of CBI on 5.6.1997 in a temporary  
capacity and he was sent for basic training at CBI Academy  
for one month. The allegation is that the then MTO, one  
Mr. Jain developed dislike for him and thereby got him  
transferred to CBI (ACB) Patna on 21.7.1997 but the same  
was modified and he was directed to join CBI (AHD) Patna.  
After few months he was released to CBI (AHD) Dhanbad where  
he joined duty but there also he was harassed as Duty

Officer. He wrote a letter on 24.3.98 for transfer and on 25.3.98 for resignation, but he had withdrawn the said resignation letter on 30.3.98. But on 3.6.98 a letter was received by him in which it was stated that his resignation letter dated 25.5.98 was accepted. The applicant submits that he has not submitted any resignation on 25.5.98 but only on 25.3.98, which was subsequently withdrawn on 30.3.98.

3. Questioning the validity of the order of acceptance, i.e., 3.6.98 the applicant filed an earlier OA, being OA No.1316/98, before the Principal Bench of the Tribunal, which was, however, dismissed by order dated 22.7.99. The said order was challenged before the Delhi High Court in CWP No.5144/99, but when the matter came up for hearing the same was withdrawn with liberty to challenge the validity of the acceptance of resignation letter dated 3.7.98 vide order dated 1.9.99, modified on 16.9.99. Hence the present OA.

4. The learned Senior Counsel of the applicant Ms. Shyamala Pappu seeks to contend that in fact the applicant tendered resignation on 25.3.98 but the same was withdrawn on 30.3.98 after realising his mistake in tendering resignation. Hence, the impugned order of accepting the resignation dated 3.6.98 is wholly invalid. The learned counsel, therefore, endeavours to contend that the said acceptance should refer only to the applicant's resignation on 25.3.98 and not to the one dated 25.5.98, as claimed by the respondents.

OM

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5. This contention, in our view, cannot be permitted to be raised. It is clear from the order in OA No.1316/98 that this question was gone into by the Bench and found as under:

"9. A perusal of the resignation letter in original shows that there is an overwriting in date over the figure to give 3 to read 5. The stamp of the CBI Office, Dhanbad showing the date of receipt clearly reads 25.5.98. We are, therefore, satisfied that this resignation letter was submitted by applicant on 25.5.98 and was received in CBI Office, Dhanbad the same day, nothing has been shown to us by applicant to suggest that he intended that the resignation letter take effect from a future date and before that date he withdrew his resignation. Under the circumstances, applicant's claim that he submitted the resignation letter on 25.3.98 (Annexure H) is a clear attempt to hoodwink the Court. Applicant has not come to the Court with clean hands, and, therefore, forfeits any claim for relief."

Thus, a clear finding was given stating that the claim of the applicant that he gave resignation on 25.3.98 was only an attempt to hoodwink the court and that he gave resignation only on 25.5.98. The said order has become final as the Writ Petition filed against the same stood withdrawn. This judgement, therefore, should be construed as res judicata and the applicant is precluded to re-agitate the same question.

6. In our view the applicant is permitted in this case to question only the competence of the authority who passed the impugned order as the High Court while permitting to withdraw the Writ Petition, in its order dated 1.9.99 stated as under:

"Present: Ms. Shyamala Pappu, Senior Advocate with Mr. R. Krishnamoorthi for the petitioner.

CW No.5144/99

Counsel for the petitioner wants to withdraw this petition. She states that she will raise the point with regard to the validity of acceptance of withdrawal dated 3rd June, 1998 before CAT. The Petition is accordingly dismissed with liberty as prayed." 

The same was modified by the order dated 6.9.99, as:

"Accordingly, application is allowed. The order of 1.9.1999 would read "She states that she will raise the point with regard to the validity of acceptance of the resignation dated 3.6.1998 before CAT"."

7. The validity of the acceptance of the resignation should, in our view, refer only to the competence of the officer who passed the order, because the Tribunal in its order dated 22.7.99 in Mehboob Aslam Khan's case has not gone into this question on the ground the same was not taken up in the OA. Presumably, therefore, the High Court permitted the applicant to raise this question in a separate OA.

8. Having considered the arguments of the learned senior counsel on this point, we are not persuaded to accept her plea. In the impugned order dated 3.6.98 the resignation of the applicant was accepted by Supdt. of Police, CBI, Dhanbad. The contention of the learned counsel is that only the appointing authority is competent to accept the resignation. Even assuming, without conceding, that the contention is valid, the appointing authority being Supdt. of Police (HQ) CBI, it cannot be argued that the Supdt. of Police, Dhanbad is an authority lower in rank to him. Nothing is shown to us to accept this plea. Annexure XIV (filed by the applicant) contains a photo copy of the resignation and it is seen that it was



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sent by Fax to Dhanbad. It is also seen that the Superintendent of Police, Dhanbad having received the same had accepted the resignation. In the circumstances, we do not find any substance in the contention of the learned senior counsel. The OA is devoid of any merit, hence it fails. It is accordingly dismissed, with costs of Rs.1,000/- (Rupees one thousand only).

*Gopinathan S. Tampi*  
(Gopinathan S. Tampi)  
Member (Admnv)

'San.'

*OmBijayalalay*  
(V. Rajagopala Reddy)  
Vice-Chairman (J)