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Central Administrative Tribunal
Principal Bench

O.A. 1202/98

New Delhi this the 4 th day of July, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Dr. Kaushik Banerjee,
S/o Shri Subhas Banerjee,
R/o 19, DDA, SFS Flats,
Dr. Mukherjee Nagar,
Delhi - 110 009.

Applicant.

By Advocate Shri Jog Singh.

Versus

1. Union of India, through
Secretary,
Department of Health,
Ministry of Health and Family
Welfare,
Nirman Bhawan, 3rd Floor,
New Delhi.
2. Director (CHS),
Department of Health,
Ministry of Health and
Family Welfare,
Nirman Bhawan, 2nd Floor,
New Delhi.

Respondents.

By Advocate Shri V.S.R. Krishna.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the letter issued by the respondents dated 21.5.1998 asking him to report back for duty to his parent department immediately as his term of assignment with World Health Organisation (WHO) has expired on 3.3.1998 failing which they have stated that disciplinary action will be initiated against him. They have also stated that the question regarding acceptance of his resignation will be examined only after he reverts to the parent department. The Tribunal by order dated 12.6.1998 had stayed the operation of Para 3 of the impugned order which has been continued from time to time.

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7

2. The applicant who was working with the respondents as Assistant Commissioner (Immunization) was sent on deputation for a period of 11 months with the WHO. According to him, he was sent to the post of "Short Term Professional" with the WHO in view of his experience and expertise in the field of Immunization and eradication of Polio. He submits that he had sent his resignation letter dated 16.1.1998 with one month's notice to take effect from 16.2.1998. Thereafter, he paid the due amounts to the respondents in respect of the Motor Car advance by letter dated 10.3.1998. Shri Jog Singh, learned counsel, submits that the applicant's resignation has already taken effect and the impugned letter dated 21.5.1998 is, therefore, illegal and arbitrary and against the principles of natural justice. He has submitted that the applicant was getting a much better financial ^B terms and otherwise ^{from WHO} from WHO and since the applicant will continue to be in Delhi, his services to the Polio Immunization Programme will also be for the benefit of the country. The learned counsel has also drawn our attention to Para 14.3 of the Consolidated Instructions relating to Foreign Assignment of Indian Experts issued by the Government of India, DOP&T by letter dated 20.6.1991 (Annexure R-1 to the Rejoinder). According to him, this paragraph enables persons like him deputed to the U.N.O or other international organisations or those on bilateral assignments to resign from service without returning to India and to their parent department if they choose to continue on foreign assignment beyond the permissible period except those on assignment under the Indian Technical and Economic Corporation. (ITEC). In the circumstances, he has asked for quashing and setting aside the impugned order dated 21.5.1998. He has relied on **Raj Kumar Vs. Union of India (AIR 1969 SC 180), Nirvair Singh Vs.**

18

Punjab State Electricity Board (1973(1) SLR 277), Jivan Krishna Vs. Union of India & Anr. (1989(2) SLJ 497), M/s J.K. Cotton Spg. & Wvg. Mills Company Ltd. Vs. State of U.P. & Ors. (1990(5) SLR 642) and Kumudchandra P. Shah Vs. Union of India & Anr. (1990(14) ATC 388).

3. The respondents in their reply have controverted the above facts. They have submitted that the applicant was permitted to accept the WHO assignment for a period of 11 months w.e.f. 3.3.1997 and thus the period of his assignment with WHO was upto 3.3.98. Accordingly, on 12.1.1998 a letter was sent to the WHO Representative in India to relieve the applicant so that he can resume his work with them on 3.3.1998. Immediately thereafter, the applicant sent his letter dated 16.1.1998 seeking permission to resign from the Central Health Service for personal reasons. They have submitted that as a routine administrative response the applicant was asked to return the dues outstanding against him and was also informed that the question of his resignation will be examined after that. This was complied with by the applicant. Later, after due examination of the applicant's request for acceptance of his resignation, they have submitted that they sent the letter dated 21.5.1998 asking him to report for duty to his parent department. Shri V.S.R. Krishna, learned counsel for the respondents, has submitted that the applicant's request for resignation is not complete till the same is accepted and he is relieved of his duties. He has submitted that there is no right available to the applicant to give a month's notice for resignation and presume that the same will be accepted by the competent authority after expiry of the notice period because there has to be a specific act of the authority to take a decision to accept or not the request

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made by the applicant. He relies on the judgement of the Supreme Court in Raj Kumar's case (supra) which has also been referred to by the learned counsel for the applicant. He has submitted that the applicant's deputation was only for a period of 11 months and he had to come back on expiry of the term and, therefore, there was no question of automatic resignation of the applicant in terms of his letter dated 16.1.1998. He has also submitted that a perusal of the impugned letter would show that nothing has been stated in it which is contrary to law and the rules and, therefore, the contention of the applicant that the impugned order should be quashed and set aside is baseless and unsustainable and as such the interim order should be vacated and the application should be dismissed.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. The applicant has himself stated that he was sent on deputation to WHO for a period of 11 months in the post of "Short Term Professional". Admittedly, this period of assignment was upto 3.3.1998 which is also clear from the letter issued by the respondents to the WHO Representative in Delhi dated 12.1.1998. The applicant has sought to rely heavily on the fact that he has paid up the due amount to the respondents by way of the cheque enclosed with his letter dated 10.3.1998 following his letter requesting permission to resign w.e.f. 16.2.1998. We, are, however, unable to accept the contention ~~for other reasons~~^{18.} that merely by the request seeking permission to resign and the payment of his dues on

18

Car advance, his resignation is complete. It is also relevant to note that in the letter dated 16.1.1998, the applicant has only sought permission to resign from CHS.

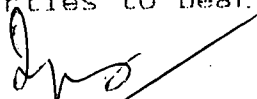
6. In Raj Kumar's case (supra) which has been relied upon by both the parties, the Supreme Court has held that "till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter". It was further held by the Court that undue delay in intimating to the applicant concerned the action taken on the resignation may justify an inference that the resignation has not been accepted. In that case, however, it was held that the resignation was accepted within a short time after it was received by the Government of India, but the State of Rajasthan did not immediately implement the order and relieve the appellant of his duties. However, it was held that the appellant cannot profit by the delay in intimating acceptance or relieving him of his duties. The judgement in Raj Kumar's case (supra) will not help the case of the applicant as evidently the respondents who are the competent authority have not accepted the applicant's request for resignation, which is necessary. This judgement is squarely applicable to the case before us. In the light of the judgement of the Apex Court, we agree with the contentions of Shri V.S.R. Krishna, learned counsel that until applicant's request for resignation conveyed in his letter dated 16.1.1998 has been accepted by the competent authority, the same cannot automatically take effect from 16.2.1998 as contended by Shri Jog Singh, learned counsel.


13

7. In Nirbair Singh's case (supra) relied upon by the applicant, it has been held by the Punjab and Haryana High Court that having regard to the relevant rules of the Board, which is not applicable here, the resignation becomes effective from the day it was submitted and the Court distinguished the facts ^{is} in Nirbair Singh's case (supra). The other two cases cited by the applicant, namely Jivan Krishan's case and Kumud Chandra's case (supra) deal with the question of voluntary retirement under Rule 48 of the CCS (Pension) Rules, 1972 and these will also not assist the applicant in the situation before us. The other cases relied upon by the applicant are also distinguishable on facts.

8. In the facts of this case, we are of the view that the applicant being a Government servant, his case for resignation is fully covered by the decision of the Apex Court in Raj Kumar's case (supra) and acceptance of the request for resignation is necessary by the competent ^{authority} ~~court~~ in accordance with the Rules. In this view of the matter, the claim of the applicant that he should be treated as having formally resigned w.e.f. 16.2.1998 is without any basis and cannot be accepted. Consequently, the impugned Memorandum dated 21.5.1998 issued by the respondents cannot also be faulted as they have only directed the applicant to report for duty to the parent department immediately failing which disciplinary proceedings will be initiated against him.

10. In the result, we find no merit in the application. O.A. fails and is accordingly dismissed. Parties to bear their own costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

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