

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2032/96

New Delhi, this 1st day of May, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Srideba Nanda
562, Pocket E
Mayur Vihar Phase II, New Delhi .. Applicant

(By Shri A.K.Trivedi, proxy for Shri A.K.Bhera,
Advocate)

versus

Union of India, through

1. Secretary
Dept. of Urban Development
Nirman Bhavan, New Delhi
2. Jt. Secretary (Admn.)
Dept. of Urban Development
Nirman Bhavan, New Delhi
3. Director General (Works)
CPWD, New Delhi
4. Chief Engineer, ND Zone i
CPWD, Nirman Bhavan, New Delhi
5. Supdt. Engineer (Hqrs.)
Office of CE(NDZ-i)
New Delhi-ii

.. Respondents

(By Shri K.C.D.Gangwani, Advocate)

ORDER(oral)

By Reddy, J. -

The applicant was appointed as Assistant in CPWD during 1991. He tendered his resignation by letter dated 24.11.94 and sent it for approval to the concerned authority. The said request was made on the ground of domestic circumstances. He has withdrawn his resignation by letter dated 3.2.95 and also requested to treat it as technical resignation under the relevant service rules to enable the benefit of past service in the new post to which he was appointed in CSIR. Meanwhile, the applicant received letter dated 9.2.95 by which the respondents had accepted the resignation of

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the applicant and rejected the request to treat it as technical resignation. It is also the plea of the applicant that he was not paid salary for the period from 3.1.95 to 30.5.95 on the ground that his resignation was accepted and he had already been relieved. The present OA is therefore filed to declare that his service from 3.10.91 to 30.5.95 as Assistant should be carried forward and treat the resignation as technical resignation under Rule 26(1) of CCS (Pension) Rules (for short, the Rules) and for direction to pay salary from 3.1.95 to 30.5.95 with interest @ 18% till the date of payment.

2. It is the case of the respondents that Rule 26 of the Rules, has no application as applicant tendered his resignation on his own volition and the same has been accepted. It cannot also be treated as technical resignation. It is also averred that the letter dated 9.2.95 seeking withdrawal of resignation was not unconditional. It is also contended by the learned counsel for the respondents that the applicant had been selected and appointed in CSIR after he had tendered his resignation and ^{some} _{the} application for appointment to that post had not been routed through proper channel, it would entail forfeiture of his past service.

3. We have given careful consideration to the pleadings. Neither the applicant nor his counsel is present. Shri A.K.Trivedi, proxy counsel requests for adjournment when the case was called on the ground that the counsel for the applicant was unwell. He says that he was informed of the same by the clerk of the learned counsel for the applicant. It is seen that several

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adjournments were taken on behalf of the applicant, on one or the other ground. It is a matter of 1996 and it is clearly printed in the cause list that no adjournment shall be granted. We also do not find this request for adjournment as bonafide as no request for adjournment was made during mention time in the morning. We therefore proceed to dispose of the matter on merits, after hearing the learned counsel for the respondents.

4. The applicant, it is stated in the OA, wanted to appear in the examination conducted by the CSIR for the post of Deputy Stores & Purchase Officer. He therefore requested in 1993 to permit him to appear for the said examination. Accordingly by letter dated 13.6.94 no objection certificate was given to him and thereafter he appeared in the Combined Admn. Service examination. In the meantime, however, he tendered his resignation "on domestic" grounds. Applicant has stated that he was selected in the said examination and decided to withdraw the resignation tendered by him earlier. Accordingly he sent letter dated 3.2.95 requesting to treat the resignation as technical resignation within the meaning of Rule 26 of CCS (Pension) Rules. Admittedly he had not sent the application through proper channel. It is necessary for us to consider Rule 26 of CCS (Pension) Rules. Sub-rules (1) and (2) of the said Rule, read as under:

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service;

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies;

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5. A bare perusal of the above provision makes it clear that unless the resignation is allowed to be withdrawn, the entire service shall be forfeited. Thus the normal rule is that on resignation, the entire service would be forfeited, unless it was withdrawn. The exceptions to this principle are provided in sub rule (2) and they are: (i) the resignation was for the purpose of taking another appointment, (2) with proper permission and (3) the appointment should be under the Government. In the instant case, we find that except the 3rd requirement, the other two conditions were not fulfilled. First, let us examine whether the applicant had withdrawn the resignation. The letter of 3.2.95 appears to be one of withdrawal of resignation. But it is not. In that letter the applicant seeks to withdraw but again to treat the same as one of technical resignation. He wanted to treat it as not one tendered on domestic grounds. Thus for all purposes, the resignation continued, on one ground or the other without 'being withdrawn'. The 1st condition: The applicant clearly stated both in the OA as well as in his resignation letter that it was made on "domestic" grounds. The 1st condition being that it should be for the purpose of taking appointment, the condition is clearly not fulfilled. The applicant places reliance upon the permission granted by the SE, Hqrs. I. No objection was issued by the SE on 13.6.94. This has not been issued by the Ministry or by the Head of the Department, i.e. DG/CPWD. President is the appointing authority of the applicant. Hence the permission should have been issued by the Ministry as the rule speaks of 'proper permission'. The application for appointment should also have been routed through proper channel. Hence, in

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our view, the no objection issued on 13.6.94 was not the 'proper permission' for another appointment, within the meaning of Rule 26 of the Rules.

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6. We are not going into the question whether the 3rd condition, namely whether CSIR was controlled by the Government or not. Assuming the last condition was fulfilled, as the other conditions were not complied with, Rule 26 has no application to the facts of this case.

7. In view of the above circumstances, applicant's request for treating the resignation as technical resignation is not tenable.

8. It is submitted by the applicant that he has not been paid salary from 3.1.95 till he was relieved on 30.5.95. Learned counsel for the respondents submits that the applicant is entitled for the salary so long as he has worked in the department even after his relief on the acceptance of ^{resignation} _{request} on 9.2.95. In the circumstances, we direct the respondents to consider payment of salary for the period during which he had worked in the department till he was actually relieved to join CSIR.

9. The OA is accordingly disposed of. No costs.

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(Smt. Shanta Shastray)
Member(A)

V.Rajagopal Reddy

(V.Rajagopal Reddy)
Vice-Chairman(J)

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