

Central Administrative Tribunal, Principal Bench

Original Application No. 711 of 1997

New Delhi, this the 10th day of November, 2000

Hon'ble Mr.V.K.Majotra, Member (Admnv)

Shri O.P.Bhatia, B-2/43, Janakpuri, New
Delhi-110058 - Applicant

(By Advocate Shri I.K.Sharma)

Versus

1. Secretary, Department of Telecommunication
Sanchar Bhavan, Government of India, New
Delhi-110001.
2. The General Manager, M.T.N.L., Northern
Telecom Region, Kidwai Bhavan, New
Delhi-110050.
3. The Chief General Manager, Mahanagar
Telephone Nigam Ltd., Khurshid Lal Bhavan,
New Delhi-110050. - Respondents

(By Advocate Ms.Gitanjali Goel)

O R D E R

This O.A. was made on 21.3.1997. It is alleged that the respondents have not allowed the applicant to join his duties as per their letters dated 8.9.1989 and 4.6.1990 (Annexures-A-3 Colly:). He has alleged that the respondents prevented him from joining/resuming his duties on 22.9.1989 and 13.8.1990. He submitted his resignation dated 18.8.1988 (Annexure-A-2), whereafter he made his request for withdrawal of his resignation on 6.9.1996. However, the respondents did not take any decision on his request for withdrawal of his letter of resignation.

2. The applicant was a Junior Engineer. According to him he fell sick from January, 1984 and remained on medical leave up to September, 1984. He was transferred vide order dated 1.9.1984, against which he represented and remained on medical leave, which was not granted. He submitted his resignation vide Annexure-A-2 18.8.1988 which has not been accepted till now and his

request for withdrawal of the same dated 6.9.1996 (Annexure-A-4) has also remained unresponded. The applicant has sought a direction to the respondents to allow him to join his duties consequent on his withdrawal of resignation dated 18.8.1988 and another direction to the respondents to sanction leave to him on the medical grounds.

3. In their counter the respondents have stated that the applicant did not join at his place of posting and absented himself unauthorizedly since 1984. If at all any cause of action had accrued to the applicant that was in 1984 or at the most in 1989/ 1990 (Annexure-A-3 Colly.) when he was asked to join his duties. According to the respondents the present application is clearly barred by limitation. The applicant has been absent unauthorizedly from his duties for over 12 years while no Government servant can be granted any leave for a continuous period exceeding five years. The respondents have also submitted that the applicant cannot take advantage of his own wrongs by not joining duties for more than 12 years and reserve their rights to take action against the applicant as per law.

4. I have heard the learned counsel of both sides and seen the material available on record.

5. The learned counsel of the respondents took objection that this OA is badly barred by limitation, the cause of action having arisen in 1984 since when the applicant remained absent from duty. According to the learned counsel of the respondents the import of Annexure-A-3 Colly. is that the applicant's request for resignation dated 18.8.1988 had not been accepted and the applicant had been on unauthorised absence from duty since 10.9.1984 and he must join his duties immediately

failing which disciplinary action would be taken against him as per rules. The learned counsel of the applicant stated that the applicant had attempted at joining his duties when he went to meet the respondents on 22.9.1989 and 13.8.1990 but he was not allowed to join duties. The learned counsel of the respondents contended that even if for argument sake it is accepted that the applicant had met the respondents on 22.9.1989 and 13.8.1990 at the most it should cover the limitation upto 13.8.1990 only and not beyond. The learned counsel of the applicant could not state anything beyond applicant's effort to meet the respondents on 22.9.1989 and 13.8.1990 in regard to the objection relating to limitation. The applicant had absented himself since September, 1984. He had been transferred and the transfer order had not been cancelled. Even if the contention of the applicant that he had tried to meet the respondents on 13.8.1990 to join his duties, he has not been able to explain the delay in approaching the Tribunal for redressal of his grievance. He made the OA on 21.3.1997 which is certainly badly time barred.

6. The applicant submitted his resignation on 18.8.1988. He made application after 8 years thereafter i.e. on 6.9.1996 (Annexure-A-4) seeking permission to withdraw the resignation and to join his duties. Resignation from service or a post under Rule 26 of Central Civil Services (Pension) Rules, 1972 entails forfeiture of past service unless it is allowed to be withdrawn in the public interest by the appointing authority. Under the very same rule, withdrawal of resignation cannot be allowed beyond a period of 90 days. Not only that the applicant had not withdrawn his resignation within 90 days of 18.8.1988, it was never accepted by the appointing authority. The applicant

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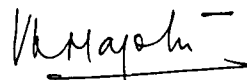
does not have an ad-infinite right for withdrawal of resignation after such a long time.

7. The learned counsel of the applicant has referred to the cases of Narendra Pal Singh Vs. Union of India and others, 1990(2) SLR 614 and S.Lourduraj Vs. Union of India and another, ATR 1992 (2)CAT 99 in support of his case. I find that the facts of the present case are clearly distinguishable from those of afore-stated cases. Certainly, the ratio of these cases are not applicable to the present case.

8. The applicant has remained absent continuously since September, 1984. According to him he remained on medical leave from January, 1984 to September, 1984. He was asked to join duties vide letters dated 8.9.1989 and 4.6.1990 but he remained absent without any sanctioned leave till date. I agree with the respondents that no favourable dispensation can be accorded to a person who has remained absent from duty for over 12 years when even as per the rules no Government servant can be granted leave of any kind for a continuous period exceeding five years.

9. Having regard to the above discussion, I am of the considered view that the applicant has attempted at misusing ^{of} the process of law and made this frivolous application. Not only the present OA is badly time barred, it is devoid of merit as well.

10. In the result the OA is dismissed, however, without any order as to costs.



(V.K. Majotra)
Member (Admnv)