

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 309 of 1994
T.A. No.

(S)

DATE OF DECISION 13.07.1994

Shri Tarun Vir Chaudhary Applicant(s)

Versus

U.O.I & Another Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(S.K. DHAON)
ACTING CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 309 of 1994

New Delhi this the 13th day of July, 1994

Mr. Justice S.K. Dhaon, Acting Chairman
Mr. B.N. Dhoundiyal, Member

Shri Tarun Vir Chaudhary
R/o Kalyan Niwas,
Dalhousie Road,
Pathankot (Punjab).

...Applicant

By Advocate Mrs. Meera Chhibber

Versus

1. Union of India through
The Secretary (R),
Cabinet Secretariat,
8-B, South Block,
New Delhi.
2. The Deputy Secretary (Personnel),
Government of India,
8-B, South Block,
New Delhi.

...Respondents

By Advocate Shri M.K. Gupta

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Acting Chairman

The short but interesting question is whether the offer of resignation, as contained in the letter dated 6.3.1993 sent by the applicant, an attache (Group 'A' Class-I) in the Cabinet Secretariat, Research and Analysis Wing (hereinafter referred to as RAW), became effective at any stage.

2. The applicant appeared at the Civil Services Examination of the year 1988. He secured a merit in the All India list. He was given an appointment in the Junior Time Scale of the Indian P&T Accounts and Finance Service Group 'A'. After joining that Service, he was given an option by means of a circular issued by the RAW to join as a probationer in Group 'A' Service of the Cabinet Secretariat. He gave his option of joining the RAW and, therefore, resigned from the Indian P&T Accounts and Finance Service. He joined RAW.

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3. On 6.3.1993, the applicant addressed a letter to the Secretary (R), Cabinet Secretariat, New Delhi. Counsel for the parties are agreed that (R) means RAW. The crucial words in the said letter are these:-

" If I do not receive any correspondence on this till 31st of April, 1993, I will consider that my resignation has been accepted".

4. Before we enter into the facts of the case, it will be convenient to deal with the legal position relating to the acceptance of the resignation of a member of the RAW. Learned counsel for the respondents has placed before us the Research and Analysis Wing (Recruitment, Cadre and Service) Rules, 1975 (the Rules), which have been framed under the proviso to Article 309 of the Constitution. Neither we have noticed any particular provision in them touching the subject of resignation nor any such provision has been brought to our notice. However, Rule 162-A of the Rules, inter alia, provides that the matters which are not specifically covered by the rules or orders issued by the Government in that behalf, the personnel working in the RAW shall be governed by the general rules, regulations and orders issued from time to time and applicable to persons belonging to the corresponding Central Civil Services. We have, therefore, to look into the law as applicable to the members of the Central Civil Services.

5. No statutory rule concerning the Central Civil Services has been brought to our notice by the learned counsel for the parties. However, we have Swamy's Complete Manual on Establishment and Administration for Central Government Offices (IVth Edition). Chapter 41 of this Manual deals with resignation. It is provided under this Chapter that "the resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing

✓ authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation.....".

The above is based on GI, Department of Personnel & Training OM NO.28034/25/87-Estt.- (A) dated 11.02.1988.

6. In Raj Kumar Vs. Union of India, 1968 (3) SCR page 857, the Hon'ble Supreme Court has held:

"When a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant has locus penitentiae but not thereafter".

7. In Union of India Vs. Gopal Chandra Misra, (1978) 2 SCC page 301, it was held:-

"It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/office-tenure terminated, when it is accepted by the competent authority...."

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The office memorandum as applicable to the present case as well as the law declared by the Supreme Court in the aforementioned two cases provide that in a normal situation and in the absence of any statutory rule or regulation to the contrary, the acceptance of a resignation is a must. The relationship of an employer and the employee or the status of an employee as a Government servant will come to an end only upon the acceptance of a resignation. So long as the resignation is not accepted, there is no severance of relationship of master and servant and, therefore, the resigner continues to be a Government servant. It is also clear that a resignation can be withdrawn before its acceptance.

8. The office memorandum as well as the aforementioned decisions of the Supreme Court also emphasise that the resignation must be accepted by either the appointing or the appropriate or the competent authority.

9. Counsel for the respondents has placed before us the original file, although the Department has claimed privilege. We have gone through the papers ourselves and we are satisfied that so far as the members of RAW are concerned, the Prime Minister of India is the appropriate/competent authority as he is the Minister-in-charge. Keeping this fact in view, we have examined the record to find out as to whether the Prime Minister really considered the resignation of the applicant. If yes, on what date?

10. On 07.05.1993, the applicant sent yet another communication to the Secretary (R). By means of this communication, he informed the Secretary: "In view of the above, I hereby withdraw my resignation".

11. We find that the matter engaged the attention of the Prime Minister on 14.06.1994 for the first time. On that day, he agreed with the notings of the officials below him that the resignation of the applicant should be accepted. The record also reveals that the letter

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of withdrawal dated 7.5.1993 of the applicant was received on 11.05.1993. It is thus crystal clear that the resignation was accepted on 14.06.1994 after the receipt of the request of the applicant for the withdrawal of his resignation. If this is correct, the acceptance of the resignation had and has no validity.

12. The Secretary (R) had no jurisdiction to accept the resignation and the Prime Minister alone could do so. Article 77 (3) of the Constitution provides that the President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business. Neither it is averred in the counter-affidavit filed on behalf of the respondents that under the Rules of Allocation of Business, the Secretary (R) had been authorised to accept the resignation of an official of the RAW nor any rules to that effect has been brought to our notice. On the contrary, a reading of Rule 4 of the Allocation of Business Rules, 1961, as amended upto 30.06.1989 (placed for our perusal by the counsel for the applicant) depicts a different picture.

13. Rule 4 says:-

"4. Allocation of Departments among Ministers-

(1) The business of the Government of India allocated to Cabinet Secretariat is and, shall always be deemed to have been, allotted to the Prime Minister.

(2) Subject to the provisions of sub-rule(1), the President may, on the advice of the Prime Minister, allocate the business of the Government of India among Ministers by assigning one or more departments to the charge of a Minister.

(3) Notwithstanding anything contained in sub-rule(1) or sub-rule(2), the President may, on the advice of the Prime Minister -

(a) associate in relation to the business allotted to a Minister under either of the said sub-rules, another Minister or Deputy Minister to perform such functions as may be assigned by him; or

(b) entrust the responsibility for specified items of business affecting any one or more than one Department to a Minister who is in-charge of any other Department or to a Minister without portfolio who is not in charge of any Department.

14. No rule contrary to the aforequoted rule has been brought to our notice by the counsel for the parties. It is apparent from a persual of Rule 4 that the Government of India (Allocation of Business) Rules, 1961 do not and did not authorise any official to exercise the power conferred upon the Minister-in-charge. This is corroborated by sequence of events, as have taken place in the present case. If the Secretary (R) was competent and had the necessary jurisdiction of accepting the resignation of the applicant, there was no necessity to take up the matter to the Prime Minister. The notings indicate that such a necessity was felt and in fact the officials realised their mistake in not putting up the matter before the Prime Minister.

15. Counsel for the respondents has relied upon paragraph 31 of the decision of the Supreme Court in the case of Samsher Singh Vs. State of Punjab & Another, (1974) 2 SCC page 831. The said paragraph reads thus:

" Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the Governor, that the executive power shall be exercised by the President or the Governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (see Halbury's Laws of England 4th Ed. Vol.I, paragraph 748 at page 170 and Carltona Ltd. Vs. Works Commissioner)".

The contents of paragraph 31, if read by themselves, may enable the learned counsel for the respondents to contend that even in the absence of any definite provision in the Rules of Business and in the Allocation Rules, the act performed by the official employed in

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the Prime Minister's Secretariat, namely, the Secretary (R) was constitutionally performed and the decision taken by him was legally taken as the officer of the Ministry. However, in paragraph 48, the position is clarified. We consider it appropriate to extract the contents of the said paragraph:-

"The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor is the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor".

A combined reading of the aforesaid paragraphs leads to the conclusion that a Minister or an official must

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be authorised, under the Rules of business, to give a decision and such a decision, if given, is a decision of the President.

16. Did the offer of resignation, even without acceptance, ipso facto become effective from 30.04.93 in view of the crucial words, as extracted in paragraph 3 above? Our answer is no and the reasons are as follows.

17. In his letter dated 6.3.1993, the applicant had made it clear that if he did not receive any correspondence till 30.04.1993, he would consider that his letter of resignation has been accepted. We have already indicated that the Secretary (R) had no jurisdiction to accept the resignation and the Prime Minister alone could do so. The question, therefore, would be whether the letter of resignation really reached the competent authority, namely, the Prime Minister on or before 30.04.1993. The record, as already mentioned, answers this question

say in the negative. Therefore, it cannot be said that the resignation of the applicant was impliedly accepted by the competent authority on or before 30.04.1993.

18. On 24.04.1993, the applicant sent another communication to the Secretary (R), Cabinet Secretariat. In this communication he mentioned the fact that he had sent his resignation in March, 1993 with the intention of being reverted to his parent cadre of Indian P&T Accounts and Finance Service Group 'A'. He had pleaded that the question of his option of being reverted to his parent department should be considered before a final decision is taken upon his letter of resignation.

19. The letter dated 06.03.1993 contained an unconditional offer of resignation. That offer stood modified by the letter dated 23.04.1993. Therefore, the unconditional offer of resignation stood withdrawn. There is nothing on record to show that, inspite of the non-fulfilment of the contents of the letter dated 23.04.1993, the applicant intended to quit the RAW on 30.04.1993.

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20. The application succeeds in part. We direct the respondents not to treat the resignation dated 6.3.1993 of the applicant as effective and also direct them to treat him to be in the service of the RAW. Since the memos dated 27.07.1993 and 17.08.1993 were issued as a consequence to the alleged acceptance of the resignation of the applicant, the same too shall not be given effect to.

21. There shall be no order as to costs.

B. N. Dhoondiyai

(B.N. DHOUNDIYAI)

MEMBER (A)

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(S.K. DHAON)
ACTING CHAIRMAN

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