

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(8)

O.A. No.1759/1994

Date of decision 11th Sept 95

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)
Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Shri Gurdeep Singh,
s/o Shri Avtar Singh,
A/C/Refrigeration Mechanic,
MES No.507811
R/O M-273, Sarojini Nagar,
New Delhi

... Applicant

(By Advocate Shri S.R.Saini with
Shri N.Kinra)

Versus

1. Union of India,
through the Secretary,
Ministry of Defence(South Block),
New Delhi.
2. Engineer-in-Chief,
Ministry of Defence,
Govt.of India,Kashmir House,
New Delhi.
3. Commandant,
Works Engineer(CWE Utilities)
Delhi Cantt-110010.
4. Garrison Engineer,
Water Supply & Air-Conditioning,
Delhi Cantt-110010

... Respondents

(By Advocate Shri M.K.Gupta)

ORDER

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

The applicant who was working as

Air-Condition/Refrigeration Mechanic with the

respondents from 25.8.1987 had submitted a

resignation letter dated 27.8.1992(Annexure A-5).

His grievance is that in his subsequent letter

dated 28.9.1992(Annexure A-6), he had withdrawn

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the resignation but this was not accepted by the competent authority by the impugned order Annexure A-1 dated 29.9.1992. The applicant had made a representations against the non acceptance of withdrawal of his resignation on 14.10.1992 and 31.10.1992(Annexure A-7 and Annexure A-8) and these were also rejected by the respondents vide their letter dated 20.10.1992(Annexure A-3). Later on he had also filed an appeal to the Engineer-in-Chief vide letter dated 6-4-1993(Annexure A-10). He had also sent reminders to allow him to resume his duty and treat his resignation as withdrawn. By the letter dated 17.12.1993(Annexure A-13), respondents had requested the applicant to furnish certain papers in order to process the matter to which the applicant had complied with and the reply was given by the Annexure A-16 that his case was under consideration with the higher authorities. Later the applicant again reminded by his letter dated 16.8.1994(Annexure A-19) to which he says that no reply had been given. Hence this O.A. The applicant contends that it is settled law that when his earlier letter of resignation was withdrawn before its acceptance by the competent authority had become effective, it stands withdrawn.

and the applicant should be allowed to continue in the job. Shri Saini, learned counsel for the applicant contends that the respondents have given reply at Annexure A-4 dated 25.7.1994 without application of mind and arbitrarily. He relies on the judgment of the Supreme Court in the case of UDI v. Gopal Chandra Misra and others (1978(2) SCC 301. According to the applicant, the competent authority had accepted his request for resignation in his letter dated 27.8.92 on compassionate grounds only w.e.f. 30.9.92 which is evident from the letter dated 29.9.92 (Annexure A.1) His application for withdrawal of resignation dated 28.9.92 had been received by the respondents with effect from when the prior to the date (i.e. 30-9-92) / resignation has been accepted. Therefore, according to the applicant, the respondents cannot object to allow the applicant to resume his duty as Air Condition/Refrigeration Mechanic as there was no resignation. Shri Saini relies on the fact that the applicant was struck off from his strength (S.O.S.) w.e.f. 30.9.92 by which time, in any case, the letter of withdrawal of resignation addressed to the Garrison Engineer, Water Supply & Air Conditioning

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who was his immediate superior officer, could have very well have been forwarded to the competent authority, namely, the Commandant Works Engineer (CWE Utilities). He also relies on D.C.Sharma v. UOI (AIR 1989(1) CAT.302) that even though the competent authority had accepted his resignation, he can withdraw it at any time before he was actually relieved of his duties, which was not till 30-9-92, before which date he had sent his withdrawal of resignation. Therefore, he submits, that in any case, he should be allowed to withdraw his resignation and be reinstated in service.

2. We have seen the reply filed by the respondents and also heard Shri M.K.Gupta, learned counsel on their behalf. The respondents have relied upon the undertaking (Annexure R-II) given by the applicant alongwith his application for resignation

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from service dated 31.8.92(Annexure R-1) which is to the effect that the applicant will not withdraw the discharge application after acceptance. Shri Gupta points out that the competent authority for acceptance of the request for discharge of service is the CWE (Utilities) to whom the request for resignation was addressed, whereas the withdrawal of resignation dated 28.9.92 was addressed only to the Garrison Engineer who was not the proper authority.

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withdrawing the request for resignation (see Balram

Gupta v. UOI (1987 Supplement) SCC 228), which is, therefore, bad.

3. Shri Gupta, however, drew our attention to the fact that in response to a number of further representations made by the applicant and his father (Annexures R-V to R-XIII), the respondents had reviewed his case. In the applicant's representation dated 17.12.1993 he had undertaken that he will forgo his pay and allowances and other dues, if any, from the date of his acceptance of resignation i.e. 30.9.1992 to the date of re-instatement in service by giving an affidavit dated 18.12.1993 (Annexure R-XII). Taking a sympathetic view of the matter and having regard to the provisions of Rule 26(4) of the CCS (Pension) Rules, 1972, Respondent No. 2 had initiated action for obtaining necessary sanction of the Government for accepting his withdrawal of resignation. While this matter was being processed the applicant filed this OA on 23.8.1994.

4. Shri Gupta submits that the judgment in UDI & Ors v. Gopal Chandra Misra & Others (1978 SCC page 301) is not applicable to the facts in this case as that case dealt with the scope of resignation by a Judge governed under Article 217 of the Constitution where the question of acceptance of the request for resignation did not arise.

According to him, in this case the applicant's

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request for withdrawal from service had to be accepted by the competent authority before it can become effective. Since the withdrawal of the resignation has not been received by the competent authority, but only by the subordinate authority, before his request for resignation was accepted on 29.9.92, the applicant cannot withdraw it as it has already been accepted by the competent authority. Applicant, therefore, has no right for reinstatement in service. He also relies on the decision of the Supreme Court in Balram Gupta v. UOI (1987) (Supp) SCC 228 that some reasons had to be given for withdrawal of the resignation, which is not the case here.

5. We have carefully considered the submissions of both the learned counsel and perused the records of the case.

6. In Gopal Chandra Misra's case (Supra), the Supreme Court has observed as follows :-

It was further reiterated that in the absence of a legal, contractual or constitutional bar, an intimation in writing sent to the appropriate authority by an incumbent of his intention or proposal to resign his office/post from a future specified date, can be withdrawn by him at any time before it becomes effective i.e. before it effects termination of the tenure of the office/post or employment. This general rule equally applies to Government servants and constitutional functionaries, this Court reiterated. The other peculiar essence of Article 217 which was discussed need not detain us in the facts of this case. On the

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principle of general law the offer of relinquishment could have been withdrawn by the appellant before date it became effective if sub-rule (4) of Rule 48-A was not there."

The Court further observed:

"It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without any rhyme or reasons. Therefore, for the purpose of appeal, we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised, the power of the Government may be a salutary rule. Approval, however is not ipso dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason."

In Gopal Chandra Misra's case, the Supreme Court had also made an observation that 'in the modern age, we should not put embargo upon people's choice or freedom. It was also stated that if, however, the Administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter, but the appellant's offer to retire and withdrawal of the same happened in so quick/succession that it cannot be said that any administrative set up

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or arrangement was affected.

The Supreme Court concluded by saying
that :

"the Government or administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case..... The Court cannot, but condemn circuitous ways" to ease out" uncomfortable employees. As a model employer, the Government must conduct itself with high probity and candour with its employees."

7. The aforesaid judgment of the Supreme Court is squarely applicable to the facts of this case. The applicant had requested for accepting his resignation on 27.8.1992 giving domestic problems as a reason for his action on extreme compassionate ground, requesting further that the same may be sanctioned at an early date. Admittedly, his resignation was accepted by the competent authority/which was conveyed to him that it should be effective by letter dated 29-9-1992 which indicated from 30.9.92. Within one month of his request for accepting the resignation, he had submitted/withdrawal of the same by letter dated 28.9.1992. This was addressed to his immediate boss i.e. ^{the} Garrison Engineer and not to the competent authority who was/Commandant, Works Engineer (CWE Utilities). Taking into account the aforesaid observations of the Supreme Court in Gopal Chandra Misra's

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case quoted above, although the government servant cannot be allowed to withdraw a letter of resignation or voluntary retirement at his sweet will, and without reasons, this does not appear to be the case here. Merely because the competent authority had accepted his request for resignation it does not automatically follow that he should be barred from being taken back in service without looking into the facts and circumstances of the case. The applicant in his request for resignation indicated that he had some domestic problems and hence he could not serve the department peacefully. In this request for withdrawal of his resignation, he had again referred to his mental condition and the fact that he was upset, which indicate sufficient reasons. In his subsequent representations he had indicated clearly that his action was a blunder and his father had advised him to withdraw his resignation at once. The time lag between the submission of his resignation and the withdrawal was about a month. It is also not the case of the administration that they had made any alternative arrangement to put someone else in the job on the resignation of the applicant being accepted. The undertaking given by him along with his resignation letter not to withdraw his application after acceptance becomes irrelevant and otiose as it only reaffirms the correct legal position. The fact that

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the applicant had submitted his withdrawal of his resignation to his immediate boss rather than to the competent authority is also of no consequence as the same has been received in the office one day before it was accepted. The Garrison Engineer could have submitted the letter dated 28.9.1992 to the CWE(Utilities) immediately for his consideration before he accepted the resignation on 29.9.1992.

Therefore, taking into account the entire facts and circumstances of the case and keeping in view the observations of the Hon'ble Supreme Court referred to above, we are of the view that this is a fit case where the applicants' request for withdrawal of his resignation should have been accepted by the respondents and he should have been allowed to resume his duties as Air Condition/Refrigeration Mechanic. Accordingly the impugned Annexure A-1 letter issued by Respondent 3 dated 29.9.1992 is hereby quashed and set aside.

9. In the result, the OA is allowed. Respondents 2 and 3 are directed to treat the resignation of the applicant as having been lawfully withdrawn and treat him in continuous service from the date he was relieved of his duties pursuant to the Annexure A-1 letter. Further, the respondents shall treat applicants absence from duty during the intervening period

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from the date he was struck off strength i.e. 30.9.92
till he rejoins service as leave of the kind due
and admissible with or without pay, as the case
may be, in accordance with the rules. The respondents
shall implement this decision within three months
of the receipt of a certified copy of the order.

No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)


11.9.92
(N.V. Krishnan)
Vice Chairman (A)