

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1261/2000

New Delhi: this the 8th day of AUGUST, 2001.

HON'BLE MR. S.R. Adige, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

H.K. Meena,
S/o Shri R.P. Meena,
R/o B-Block/Gr. G-20,
INA Colony,
New Delhi-23

.....Applicant.

(By Advocate: Dr. D.C. Vohra)

Versus

Union of India,
through the Secretary,
Ministry of Finance,
Deptt. of Revenue,
North Block,
New Delhi-11

2. Customs Excise & Gold Control
Appellate Tribunal (CEGAT)
through its Registrar,
West Block No. 2,
R.K. Puram,
New Delhi-11

....Respondents.

(By Advocate: Shri M. Chandershekher, Sr. Counsel with
Shri C. Harishanker).

ORDER

S.R. Adige, VC (A):

Applicant impugns respondents' order dated 1.5.2000 (Annexure-A2) and seeks a direction to them to allow him to resume his duties as Assistant Registrar in CEGAT. Consequential benefits and costs have also been prayed for.

2. On the recommendation of UPSC applicant was informed by CEGAT vide letter dated 27.4.89 (Annexure-A3) that he had been selected for appointment as Asstt. Registrar in CEGAT. Applicant accepted the offer and was appointed as Asstt. Registrar in CEGAT on 7.9.89. Vide notice dated 11.4.96 (Annexure-A6) applicant

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was confirmed as Asstt.Registrar in CE GAT w.e.f. 7.9.90.

3. On 19.11.92 (Annexure-R4) he informed Registrar, CE GAT that on the basis of RAS Examination 1989-90 he has been selected for Rajasthan State Commercial Taxation Services and he had to join the H.C.Mathur Institute of Public Administration at Udaipur on 7.12.92. He requested that the aforesaid letter may be treated as notice and he may be relieved as soon as possible. On 22.2.93 (Annexure-R5) he submitted his resignation from the post of Asstt.Registrar in CE GAT effective from 5.3.93 to take up his new assignment and requested that his lien on the post of Asstt.Registrar, CE GAT may be kept alive as per rules.

4. On 5.3.93 (Annexure-R6) Registrar, CE GAT issued a letter conveying the President, CE GAT's decision accepting applicant's resignation dated 22.2.93 w.e.f. 5.3.93 to take up his new assignment as Asstt. Commercial Taxation Officer in Raj.State Commercial Taxation Services. It was also mentioned in that letter that applicant's request for retention of his lien in Tribunal would be considered in due course. Pursuant to the above, applicant joined Raj. Govt. on 6.3.93.

5. On 27.3.93 (Annexure-R7 & R-8) applicant wrote to the President, CE GAT as well as Raj.Govt. that he did not wish to continue with the Rajasthan authorities and requested that he be allowed to rejoin the Tribunal after condoning the intervening period. On 29.3.93 (Annexure-R9) applicant's request was forwarded for necessary action. Eventually Raj.Govt. vide order dated 26.6.96 (Annexure-R11) accepted applicant's

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technical resignation w.e.f. 10.6.96 and relieved him to join his parent department as Asstt. Registrar, CE GAT. On 17.4.97 (Annexure-R12 and R13) applicant wrote similar letters to President, CE GAT and Raj. Govt. stating that as his family members were ill, and Delhi climate did not suit his wife, he wanted to go back to Raj. Govt. and requested that he be relieved by CE GAT for the purpose. The CE GAT vide its letter dated 25.4.97 (Annexure-R14) forwarded applicant's application to Raj. Govt. stating that CE GAT had no objection in joining back provided he resigns from the post and cuts his lien.

6. On 30.4.97 (Annexure-R1) applicant submitted his resignation from the post of Asstt. Registrar, CE GAT stating inter alia that as per para II of CE GAT's direction contained in letter dated 25.4.97, his lien may be cut provided the rule permits. Applicant's resignation was accepted by the President of India as well as the President of CE GAT vide order dated 12.5.97 (Annexure-R2 and R3).

7. Well over two years later on 6.12.99 applicant wrote a letter (Annexure-R 15) to respondent No.1 requesting him for permission to withdraw his resignation dated 30.4.97. Thereupon on 14.12.99 he again wrote to CE GAT (Annexure-A10) stating that as he was not confirmed on the post of ACTO by the Govt. of Rajasthan and they had not been able to fix his pay as per Vth Pay Commission and count his past service for pensionary benefits till date, he be permitted to join CE GAT back as requested in his application dated 6.12.99. This

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was followed by another representation dated 16.12.99 (Annexure-A11) in a similar vein.

8. Applicant's representation was rejected by the President, CE GAT vide letter dated 29.12.99 (Annexure-A12) on the ground that his application has not been routed through proper channel.

9. Thereafter applicant submitted another representation dated 17.1.2000 (Annexure-A13) through proper channel followed by yet another representation dated 19.4.2000 (Annexure-A14). Along with said representations (Annexure-A13 & A14) forwarded by Raj. Govt. they sent a letter dated 25.1.2000 (Annexure-A15) stating that they had no objection in applicant's joining back on substantive basis as the applicant was not confirmed on the post of ACTO at the time of re-employment and his re-employment is not sustainable and is void ab initio and it would be in applicant's interest if he is taken back in his parent department. Meanwhile applicant was submitting representations dated 21.2.2000 (Annexure-A16) dated 26.4.2000 (Annexure-A20) and dated 25.4.2000 (Annexure-A22).

10. Applicant's prayer for being allowed to come back to CE GAT was rejected by impugned order dated 1.5.2000 (Annexure-A2), a copy of which was furnished to applicant vide letter dated 2.5.2000 (Annexure-A23) giving rise to the present OA.

11. We have heard applicant's counsel Dr. D. C. Vohra and respondents' counsel Shri Chandershekar assisted by Shri C. Hari Shankar.

12. The main arguments advanced by Dr. Vohra are that applicant who was selected as Asstt. Registrar, CE GAT through UPSC and was appointed as such on 27.4.89 and was

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subsequently confirmed on 7.9.90^{with a right} to retain his lien^{he} on the post of Asstt. Registrar, and thus^{he} had a right to rejoin his duties as Asstt. Registrar on release from his present assignment as ACTO, Rajasthan where he has not been confirmed, and from which he desired release. It is contended that applicant's lien could not be terminated by an administrative instruction dated 1.5.2000 when his lien upon the post of Asstt. Registrar had been confirmed by statutory rules namely FR- 14 A. It has been contended that termination of applicant's lien is tantamount to termination of his Govt. employment which is not permissible without following the due process of law and furthermore the applicant could not be left without a lien.

13. These grounds have been contested by respondents who point out that after acceptance of applicant's resignation by them, the relationship of employee and employer between them and applicant was severed and applicant therefore no longer had any lien on the post of Asstt. Registrar.

14. We have considered the matter carefully.

15. As pointed out above, applicant submitted his resignation as Asstt. Registrar, CEGAT vide his letter dated 30.4.97 (Annexure-R1) and the same was accepted by the President of India as well as by the President of CEGAT vide order dated 12.5.97 (Ann.-R2 & R3). The aforesaid resignation submitted by applicant was on his own volition and it is not his case that the same was obtained from him through fraud or misrepresentation or under duress. The aforesaid resignation having been accepted by President of India as well as the President of CEGAT, the relation^{ship} of employer and employee between

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respondents and applicant stood severed.

16. During the course of hearing applicant's counsel Dr. Vohra contended that ^{the} resignation submitted by applicant on 30.4.97 was only a technical resignation to enable him to join the post of ACTO under Rajasthan Govt., and applicant's lien against the post of Asstt. Registrar, CE GAT would continue till he acquired lien elsewhere. It is therefore argued that as the applicant had not been confirmed as ACTO under Raj. Govt. and had not acquired lien there, his lien against the post of Asstt. Registrar, CE GAT still continued, to which he could still return. Reliance in this connection was placed on various FRs including FR-12 A; FR-13 and FR-14, and various Govt. instructions issued from time to time to each FR.

17. FR 2 states that the FRs apply, subject to the provisions of Rule 3 to all Govt. servants whose pay is debitable to Civil Estimates and to any other class of Govt. servants to which the President may, by general or special order, declare them to be applicable. Applicant having submitted his resignation and the same having been accepted by the President of India as well as by President of CE GAT, he ceases to be a Central Govt. servant with effect from the date the resignation had been accepted and under these circumstances cannot claim protection of FRs. No doubt, FR-9(13) defines lien to mean the title of a Govt. servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he was appointed substantively, but it

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is clear that such a title would subsist only till such time as the person concerned remains a Govt. servant and would be terminated upon resignation being submitted by that individual and the same being accepted by Govt.

18. It is true that Govt. of India Order No.2 below FR-13(not printed) in Swamy's Pension Compilation of FRSR (13th Edition, 1997) provides for retention of lien in the parent department in case of Govt. employees getting employed in other departments but these Orders refer to Central Govt. departments and offices and not those of State Govts. These Orders provide that in case of permanent Govt. servants, their lien may be retained in the parent department/office for a period of 2 years, and within that period they should either revert to the present deptt./office or resign from the parent deptt./office, but in the present case even the two year period, reckoned from 12.5.97, had long expired when applicant on 6.12.99 requested for permission to withdraw his resignation dated 30.4.97.

19. During course of hearing, Dr. Vohra strongly asserted that applicant's resignation dated 30.4.97 was only a technical resignation to enable him to join the Raj. Govt. FRSRs and the Govt. orders issued from time to time thereunder do not distinguish between a "technical" resignation and a resignation.

20. It is true that Govt. Decision No.1 below Rule 26 CCS(Pension) Rules describes when resignation would be a technical formality and when it subsists. Those orders relate to the manner in which pay will be fixed in new posts in cases where the Govt. servants apply for posts in the same or other departments through proper channel and on

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selection they are asked to resign the previous posts for administrative reasons, and would not have any application to the present case because applicant was not going from one Central Govt. office to another Central Govt. office, but from a Central Govt. office to a State Govt. which has its own rules for pay fixation.

21. It would, therefore, follow that as the applicant had submitted his resignation on 30.4.97 and the same was accepted by the competent authorities on 12.5.97, the relationship of employer and employee between respondents and applicant stood severed w.e.f. 12.5.97 and as no action was taken by applicant to withdraw his resignation within the prescribed period under Rule 26(5) CCS (Pension) Rules, applicant's resignation became final. As applicant himself had resigned from Central Govt. service, the question of consulting UPSC and/ or issuing a show cause notice to him before issue of impugned order dated 1.5.2000 rejecting applicant's prayer to be allowed to come back to service of CEGAT, does not arise.

22. Respondents cannot be legally faulted for holding that applicant does not retain any lien in CEGAT and hence he has no enforceable legal right to return to the same.

23. In support of his arguments, Dr. Vohra has cited various rulings including State of Orissa Vs. Dr. (Ms) Binapani Dei & Ors. AIR 1967 SC 1269; M. Gopalakrishna Naidu Vs. State of MP AIR 1968 SC 240; Mahabir Prasad Vs. State of UP AIR 1970 SC 1302; B.D. Gupta Vs. State of Haryana AIR 1972 SC 2472; and H.L. Trehan & Ors. Vs. UOI 1988 (2) SCALE 1376 which reiterate the legally well established principle that there can be

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no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Govt. servant without complying with the rules of natural justice by giving the Govt. servant concerned an opportunity of being heard. However, none of those rulings are applicable in the facts and circumstances of the present case, having regard to the fact that applicant on his own volition resigned from Central Govt. service on 30.4.97 and his resignation was accepted by the competent authority on 12.5.97. Nor indeed does the ruling in T.R.Sharma Vs. Prithvi Singh AIR 1976 SC 376 also relied upon by Shri Vohra advance applicant's claim.

24. In fact in Raj Kumar Vs. UOI & Ors. 1968 (3) SCR 857 a 3 Judges Bench of Hon'ble Supreme Court has held categorically that when a public servant has invited, by his letter of resignation, the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority. Applicant's resignation having been accepted by the President of India as well as President of CE GAT vide order dated 12.5.97, it is clear that the relationship of employer and employee between respondents and applicant stood severed and applicant's lien against the post of Asstt. Registrar, CE GAT accordingly stood terminated. Under the circumstance he has no enforceable legal right to compel respondents to take him back on duty in CE GAT at this stage.

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25. The OA is dismissed. Interim orders are vacated. No costs.

A. V. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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