

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.83/89

Date of decision 28/02/1989

Shri Narendra Pal SinghPetitioner

Vs.

Union of India throughRespondents
Secretary, Department of
Defence Production and Supply
& Others

For the PetitionerShri G.K. Aggarwal,
Counsel

For the RespondentsShri M.L. Verma,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. KAUSHAL KUMAR, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporter or not? *Yes*
(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who has been working as Senior Technical Assistant (Electronics) in the Directorate General, Quality Assurance, Department of Defence Production and Supply filed this application under Section 19 of the Administrative Tribunals Act praying for the following reliefs:-

(i) To set aside the impugned memorandum dated 3.11.88 whereby the respondents indicated to the applicant

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that his application dated 21st October, 1988 has been accepted by the Competent Authority with effect from 20th January, 1989; and

(ii) to direct the respondents to accept the applicant's withdrawal of his resignation from service and treat the resignation letter dated 21st October, 1988 as null and void for all purposes.

2. He has also prayed for an interim relief to the effect that the impugned order dated 3.11.88 should be stayed and that the respondents should be directed to allow the applicant to continue in service beyond 19.1.89.

3. The application was admitted on 13.1.89, when the Tribunal passed an interim order directing the respondents to maintain status quo as of 13.1.1989.

4. At the outset, it may be mentioned that before filing the present application on 11th January, 1989, the applicant had filed O.A. 2030/88 in this Tribunal challenging his transfer from Delhi to Bombay contrary to medical advice. The said O.A. 2030/88 was disposed of by Hon'ble Shri B.C. Mathur, Vice Chairman on 29.11.88 after hearing the learned counsel for both the parties with the direction to the respondents that "in view of the opinion of the Medical Board, they should cancel the transfer order and keep the applicant in Delhi."

5. The brief facts of the case are as follows. The applicant joined Government service in 1972 as Technical

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Assistant and in 1977 he was promoted to his present post of Sr. Technical Assistant, which is a Group 'B' Non-Gazetted post. He was served with an order of transfer dated 11.3.87 from Delhi to Bombay. As he was unable to go on transfer outside Delhi, he submitted a letter of resignation dated 4.1.88. However, the said letter of resignation was withdrawn on 23.3.88. Thereafter on 4.5.88, ~~On~~ submitted a letter requesting for grant of invalid pension. The respondents referred the matter to the Medical Board which vide its letter dated 30.8.88 did not recommend invalid pension and made the following recommendation:-

" The individual is a case of schizophrenia, which is in remission at present. He is found fit to do simple jobs like recording of orders in the file. He should be allowed to continue in service in Delhi on compassionate grounds to have an advantage of treatment in this hospital."

6. On 13.10.1988, Dr. Ram Manohar Lohia Hospital while confirming that facilities for treatment were available at Bombay also, made the following observations:-

" But Mr. Narendra Pal Singh who has suffered from schizophrenia is at a risk to break down mentally in a new place and new environment."

7. On 6.10.88, the respondents rejected the applicant's request for grant of invalid pension. By a separate order dated 6.10.88, the respondents again directed the applicant to move from Delhi to Bombay by 31.10.88. As the applicant was not in a fit condition to move out of

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Delhi, he submitted a letter of resignation dated 21.10.88 on the ground of " some unavoidable circumstances and some domestic problems".

8. On 24.10.88, the applicant filed OA 2030/88 in this Tribunal against his transfer outside Delhi. The application was admitted and interim stay was granted ex-parte on 24.10.88 till 7.11.88. The respondents were informed of the same on 25.10.88. Accordingly by an order dated 31.10.88, the respondents deferred the transfer till further orders.

9. The applicant has stated that once the threat of transfer was over and the circumstances and problems forcing his resignation no longer existed, the applicant withdraw his resignation vide letter dated 8.11.88. Again he informed the respondents vide his letter dated 5.12.88 that he has withdrawn his resignation letter and requested the respondents to confirm the acceptance of withdrawal by 10.12.88. The applicant sent a reminder dated 15.12.88 and a final reminder on 31.12.88. He did not received any reply. In the meanwhile, the respondents issued the impugned memorandum dated 3rd November, 1988 purporting to accept resignation submitted by the applicant with effect from 20.1.89.

10. The respondents have filed a counter affidavit in which they have contended that the resignation

submitted by the applicant was duly accepted by the Competent Authority on 2.11.88 and he was informed about the same vide memo dated 3.11.88 and the same was duly served on him on 7.11.88. As the applicant wanted to leave the service un-conditionally, his resignation was accepted to be effective with effect from 20.1.89. The resignation was accepted from the prospective date (20.1.89) and the same cannot be withdrawn after its acceptance, even though the same was effective from the prospective date.

11. The respondents have also referred to the Office Memorandum issued by the Ministry of Home Affairs on 6th May, 1958 regarding the procedure to be followed in the case of resigantion. According to this O.M., "resignation becomes effective when it is accepted and the officer is relieved of his duties. When a resignation has not become effective and the officer wishes to withdraw, it is open to the authority which accepted the resignation to refuse the request for such withdrawal." Basing on the aforesaid O.M., the respondents have contended that the applicant not an does have legal or constitutional right to withdraw his resignation letter whereas it is within the powers of the Competent Authority to refuse the request for such withdrawal. The applicant's request for withdrawal an

was not accepted by the respondents after consideration.

12. The respondents have also relied upon the following observation contained in the aforesaid O.M. dated 6.5.58 issued by the Ministry of Home Affairs:-

".....It is not in the interest of the Government to retain an unwilling officer in service. The general rule, therefore, is that the resignation from service should be accepted".

They have also contended that it is at the discretion of the Competent Authority to accept or refuse the withdrawal of resignation.

13. We have carefully gone through the records of the case and have heard the learned counsel for both the parties at length. The main issue arising for consideration is whether the applicant could legally withdraw his resignation from Government service before the due date/ withdrawal of and whether the respondents could refuse/ the resignation before the said date.

14. In Raj Kumar Vs. Union of India, AIR 1969, SC 180 at 182, the Supreme Court has observed as follows:-

"Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where 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 concerned has locus paenitentiae but not thereafter."

15. From the aforesaid judgment it will be clear that,

till the resignation is accepted by the appropriate authority, the public servant concerned can withdraw the same. It is pertinent to point out that in Raj Kumar's case, the appellant had submitted his unconditional resignation with immediate effect. In other words, the resignation was not to be effective from a specified prospective date.

16. In Union of India Vs. Gopal Chandra Misra, 1978(2) SCC 301 at 305, a Constitution Bench of the Supreme Court considered the question as to whether a resignation to be effective from a prospective date could be withdrawn before that date. In that case, Shri Satish Chandra while functioning as a Judge of the Allahabad High Court addressed a letter to the President of India on 7th May, 1977 as follows:-

" I beg to resign my office as Judge, High Court of Judicature at Allahabad.

I will be on leave till 31st of July, 1977. My resignation shall be effective on 1st of August, 1977."

17. However, on July 15, 1977, he wrote to the President of India another letter in the following terms:-

" I beg to revoke and cancel the intention expressed by me to resign on 1st of August, 1977, in my letter dated 7th May, 1977. That communication may very kindly be treated as null and void."

18. The receipt of the letter of revocation or withdrawal dated July 15, 1977 was acknowledged by the Secretary, Ministry of Law, Justice & Company Affairs on July 28, 1977. By a separate letter, Shri Satish Chandra cut short his leave and resumed duty as a Judge of the Allahabad High Court on July 16, 1977, and from July 18, 1977, he commenced sitting in the Court and deciding cases.

19. Shri Gopal Chandra Misra, an Advocate of the High
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Court, filed a writ petition in the High Court. In the petition, he had contended that the resignation dated May 7, 1977 of Shri Satish Chandra having been duly communicated to the President of India in accordance with the provisions of Article 217(1), proviso (a) of the Constitution, was final and irrevocable, and as a result, he had ceased to be Judge of the Allahabad High Court with effect from May 7, 1977, or, at any rate, with effect from August 1, 1977; therefore, his continuance to function as a Judge from and after August 1, 1977, was usurpation of the office of a High Court Judge, which was a public office. A majority of 3 against 2 of the Judges, allowed the writ petition. Against that judgment, appeal was filed in the Supreme Court.

20. A majority of the Judges (four against one) of the Supreme Court held that the letter dated May 7, 1977 addressed by Shri Satish Chandra to the President, both in point of law and substance, amounted to a proposal or notice of intention to resign at a future date (August 1, 1977) and not being an absolute, complete resignation operative with immediate effect, could be, and in fact had been validly withdrawn by Shri Satish Chandra through his letter dated July 15, 1977.

21. In arriving at the above conclusion, the Supreme Court examined the meaning of "resignation" and referred to its earlier rulings in Jai Ram Vs. U.O.I., AIR 1954 SC and in Raj Kumar's case.

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22. The Supreme Court referred to the dictionary meaning of "resignation" and to the general juristic sense of that expression as follows:-

"24. 'Resignation' in the dictionary sense, means the spontaneous relinquishment of one's own right. This is conveyed by the maxim : Resignatio est juris propii spontanea refutatio (See Earl Jowitt's Dictionary of English Law). In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means to "cease to hold" the office, or to "loose hold of" the office (cf. Shorter Oxford Dictionary); and to "loose hold of office", implies to "detach", "unfasten", "undo or untie the binding knot or link" which holds one of the office and the obligations and privileges that go with it.

"25. In the general juristic sense, also, the meaning of "resigning office" is not different. There also, as a rule, both the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (See, e.g. American Jurisprudence, Second Edn., Vol. 15A, page 80), although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office, which implies cessation or termination of, or cutting as under from the office. Indeed, the completion of the resignation and the vacation of the office, are the casual and effectual aspects of one and the same event."

23. The Supreme Court construed the letter dated May 7, 1977 sent by Shri Satish Chandra to the President of India as merely an intimation or notice of the writer's intention to resign his office as Judge, on a future date, viz., August 1, 1977. For the sake of convenience, the Court called this communication as a prospective or potential resignation. It was then observed that before the arrival of the indicated future date, it was certainly not a complete and operative resignation because, by itself, it did not and could not, sever the writer from the office of the Judge, or terminate his tenure as such.

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24. The Supreme Court further observed that such a futuristic communication or prospective resignation does not, before the indicated future date is reached, become a complete and operative act of 'resigning his office' by the Judge within the contemplation of proviso (a) to Article 217(1).

25. In Gopal Chandra Misra's case, the Supreme Court has summed up the principle as follows:-

"The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the 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 the employment."

26. In this context, the Supreme Court referred to its earlier decision in Jai Ram's case in which the plaintiff, who was working as a clerk in the Central Research Institute, Kasauli, wrote to the Director of the Institute on 7th May, 1945 to the following effect:-

"Sir, having completed 33 years' service on the 6th instant, I beg permission to retire and shall feel grateful if allowed to have the leave admissible."

27. The Director refused permission on the ground that the plaintiff could not be spared at that time. The plaintiff renewed his prayer by another letter dated 30th May, 1945, and also asked for leave preparatory to retirement from June 1, 1945 or the date of his availing the leave, to the date of superannuation which was specifically stated to be November 30, 1946. This

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request was also declined. Two subsequent requests to the same effect were also not agreed to. On May 28, 1946, the plaintiff made a fourth application repeating his request. This time, the Director of the Institute sanctioned the leave preparatory to retirement on average pay for six months from June 1, 1946 to November 30, 1946 and on half average pay for five months and 25 days thereafter, the period ending on May 25, 1947. Just 10 days before this period of leave was due to expire, the plaintiff on May 16, 1947 sent an application to the Director stating that he had not retired and asked for permission to resume his duties immediately. In reply, the Director informed him that he could not be permitted to resume his duties as he had already retired, having voluntarily proceeded on leave preparatory to retirement. The plaintiff made representations. Ultimately, the Government of India, by letter dated April 28, 1948, rejected his representation, repeating the reasons intimated by the Director earlier to the plaintiff.

28. The Supreme Court held that although the plaintiff on his own application, obtained leave preparatory to retirement, yet there was nothing in the Rules which prevented him from changing his mind at any subsequent time and expressing a desire to continue in service, provided

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he indicated his intention before the period his leave expired. The following observations made by the Supreme Court are relevant:-

" It may be conceded that is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but, he can be allowed to do so as long as he continues in service and not after it has terminated."

29. It is thus abundantly clear that the general principle enunciated by the Supreme Court in Jai Ram's case and in Gopal Chandra Misra's case 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. The Supreme Court in Gopal Chandra Misra's case has observed that "this general rule is equally applicable to Government servants and constitutional functionaries." (Emphasis supplied)

30. In the instant case, the applicant submitted his prospective resignation, which was to take effect from 20.1.89. It was open to him to withdraw the resignation at any time before 20.1.1989 which was the specified prospective date. Therefore, the acceptance by the respondents of such a resignation from 20.1.89/legal effect.

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31. In Central Inland Water Transport Corporation Ltd. Vs. Baroja Nath, AIR 1986 SC 1571 at 1619, the Supreme Court has considered the question whether the provisions of Rule 9(i) of the service rules made by the said Corporation are ultra vires of Article 14 of the Constitution. Rule 9(i) provides that the employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice. Rule 11 which deals with resignation provides that employees who wish to leave the Company's services must give the Company the same notice as the Company is required to give them under Rule 9. The Calcutta High Court declared that Rule 9(i) in its entirety was ultra vires of Article 14 of the Constitution. The Supreme Court observed that the High Court overlooked that Rule 9 also conferred upon a permanent employee the right to resign from the service of the Corporation. It was further observed as follows:-

" By entering into a contract of employment, a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign."

(Emphasis supplied)

32. A provision like that of resignation or voluntary retirement contained in the rules should be interpreted with a certain amount of flexibility and the surrounding circumstances and the human element involved

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cannot be lost sight of. This view gains support from the decision of the Supreme Court in Balram Gupta Vs. U.O.I. & Another, AIR 1987 SC 2354. Balram Gupta's case related to withdrawal of notice of voluntary retirement and not of resignation as in the instant case. However, the Supreme Court observed that the question of withdrawal of resignation should be treated as on par with withdrawal of voluntary retirement. In that case, the appellant, who had been working as an Accountant in the Ministry of Information and Broadcasting, New Delhi, wrote to the Director of Photo Division on 24th December, 1980 seeking voluntary retirement on 31st March, 1981 and requesting that his notice may please be treated with effect from 1.4.1981. By an order dated 20th January, 1981, the Government allowed him to retire voluntarily from service prospectively with effect from the afternoon of 31st March, 1981. In the meanwhile, the appellant changed his mind and wrote to the Government on 31st January, 1981 withdrawing his notice of voluntary retirement. He stated in his letter that he had dropped the idea of seeking voluntary retirement and he, therefore, requested the authorities that his request for 'resignation' might be treated as cancelled and the notice given by him treated as withdrawn. The appellant, however, was not allowed to do so. He was relieved by an order dated 31.3.81. It was stated in the said order that his request contained in the letter dated 31st January, 1981 of withdrawal of his application for voluntary retirement has also been considered and found not acceptable.

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33. It was contended before the Supreme Court that once notice was given, it became operative immediately, if it was received by the Government and automatically brought about the dissolution of contract after the expiry of the notice period. Rejecting this contention, the Supreme Court observed as follows:-

" The dissolution would be brought about only on the date indicated, i.e., 31st of March, 1981; upto that the appellant was and is a Government employee. There is no unilateral termination of the same prior thereto. He is at liberty, and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, as a Government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation."

(Emphasis supplied)

34. It will be noticed from the aforesaid observations that the Supreme Court treated withdrawal of notice of voluntary retirement at par with letter of resignation. In this context, the Supreme Court also relied upon its earlier decisions in Raj Jumar's case and Gopal Chandra Misra's case and observed that in the facts of the case before them, "the resignation from the Government service was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus."

35. That a liberal approach in cases of withdrawal of voluntary retirement and resignation is called for is clear from the following observations in Balmiki Gupta's case:-

" In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the

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flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. 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."

36. We may also refer to the judgment of the Bangalore Bench of this Tribunal in M.S. Narasinha Murthy Vs. Collector of Customs & Others, 1988(2) ATLT (CAT 109) in which the aforesaid decisions of the Supreme Court were followed and the Tribunal set aside the order passed by the respondents rejecting the applicant's request for withdrawal of his notice for voluntary retirement. In that case, the Tribunal accepted the contention of the applicant that he had submitted his letter seeking voluntary retirement while he was in a disturbed state of mind and, therefore, he was entitled to withdraw the same.

37. In the instant case, the undoubted factual position is that the applicant had earlier submitted a letter of resignation in January 1988 which he withdrew in March 1988. On that occasion he prayed for grant of invalid pension. This was, however, not agreed to. The compelling circumstances for submitting a letter of resignation was his proposed transfer from Delhi to Bombay. The respondents allowed him to continue at Delhi till October, 1988, when he was again asked to go on transfer to Bombay. He challenged this order before this Tribunal in OA 2030/88 which was allowed

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by Shri B.C. Mathur, Vice Chairman in his judgment dated 29.11.88. The applicant submitted his second letter of resignation on 21st October, 1983, on the ground of "some unavoidable circumstances and some domestic problems." The applicant has stated that the unavoidable circumstances and domestic problems were none other than his inability to move out of Delhi owing to his illness. The fact of his having submitted a fresh letter of resignation on 21st October, 1988, has also been mentioned in the judgment delivered by Shri B.C. Mathur, Vice Chairman. According to the second letter of resignation dated 21st October, 1988, the notice period would have expired only three months after that date, i.e., on 20th January, 1989. Admittedly, the withdrawal of resignation was prior to that date. In the facts and circumstances of the case, the acceptance of resignation with effect from 20th January, 1989 by the impugned letter dated 3rd November, 1988 will not have any legal effect or legal consequences. We are of the opinion that the applicant was legally entitled to withdraw his offer of resignation with effect from 20th January, 1989.

38. In the result, we order and direct as follows:-

- (i) The order dated 3.11.88 passed by the respondents accepting the resignation of the applicant from service with effect from 20th January, 1989 is set aside.

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(ii) The respondents are directed to allow the applicant to continue in service with effect from 20th January, 1989 treating the offer of resignation as null and void for all purposes.

(iii) The applicant will be entitled to consequential benefits including the arrears of pay and allowances.

(iv) The respondents are directed to comply with the above directions immediately on the receipt of a copy of this order.

(v) There will be no order as to costs.

K. Kumar
28/2/89
(KAUSHAL KUMAR)
ADMINISTRATIVE MEMBER

Kumar B
28/2/89
(P.K. KARTHA)
VICE CHAIRMAN(J)