

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 235 of 1986
XXX No.

DATE OF DECISION 17th July 1986

Hari Mohan Petitioner

Mr. E.X. Joseph Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Ms. Avnish Ahlawat Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. H.P. Bagchi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

Judgment:

The petitioner who was working as Junior Engineer (Civil) with the Public Works Department of Delhi Administration has come up under Section 19 of the Administrative Tribunals Act praying that the

respondents may be directed to accept his resignation with effect from 12.10.83. The brief facts that are not in dispute are as follows. The applicant was appointed at a temporary Junior Engineer and joined on 28.1.1982. He had earlier registered himself with the Employment Exchange. On the basis of that registration he was asked to appear before the selection board of the Delhi Development Authority (DDA) and was offered a temporary post of Junior Engineer in the DDA. On 5.9.83 he submitted his resignation "due to some domestic circumstances from the post of JE(C) PWD requesting that his resignation may be accepted with immediate effect." He followed it up by another letter dated 20.9.83 stating that it would not be possible for him to continue beyond 4.10.83. On 22.9.83, the Executive Engineer replied to the effect that his resignation could not be recommended to higher authorities due to non-finalisation of measurement and other work concerning his jurisdiction. On 26.9.83 the applicant referring to the temporary character of his employment stated that he ought to be relieved on 4.10.83 on expiry of one month from the date of submission of resignation. The Executive Engineer at this stage forwarded his resignation and asked him to wait. It appears that actually the applicant had sought resignation to join his new post of JE with the DDA on 12.10.83. He finally wrote to his appointing authority the Superintending Engineer, PWD inviting his attention to his previous letters dated 5.9.83, 20.9.83 and 26.9.83 and stated that he will have nothing to

to do with his job after 12.10.83, on which date itself he joined the DDA. After about 3½ months, on 27.1.84 the applicant was directed to resume his duties with the PWD immediately. On 15.2.84, the applicant was directed by the Executive Engineer to deposit a sum of Rs.1354.25 on account of House Rent Allowance (HRA) and on 8.3.84 he was asked to join office and handover the complete charge without further delay. After some correspondence, he was asked on 18.7.84 to handover the charge properly to the J.E. and the question of recovery of the amount for HRA was also decided in his favour. Since he needed the discharge certificate as required by the DDA, the applicant has filed this application for acceptance of his resignation with effect from 12.10.83.

2. According to the respondents even though the applicant was appointed in a purely temporary capacity, his resignation could not be accepted as the CBI enquiry was pending in regard to the work in his charge and in accordance with the instructions of the Home Ministry, resignations cannot be accepted in those circumstances. The applicant had suppressed the fact of his selection by DDA and had not properly handed over the charge. His resignation letter also suffered from the infirmity of not mentioning Rule 5(1) of the Central Civil Services (Temporary Service) Rules (hereinafter referred to as Rules) and in terms of the offer of appointment, he was obliged to wait for the acceptance of the resignation

They have admitted that the CBI inquiry in regard to the work in his charge was dropped.

3. We have heard the arguments of learned counsel of both the parties and gone through the documents carefully. Two main issues are involved in this case as follows:

(a) Whether the resignation of the applicant is vitiated by the absence of a notice of one month and omission to mention Rule 5(1) of the Rules, and

(b) if not whether the resignation becomes automatically operative after the lapse of one month.

4. So far as the first issue is concerned, the learned counsel for the respondents has drawn our attention to the Government of India's decision No.1 below the Rule 5 of the Rules. According to this "if a temporary Government servant submits letter of resignation in which he does not refer to Rule 5(1) of these Rules or does not even say that it may be treated as a notice of termination of service, the provisions of Rule 5(1) will not be attracted. In such case, he can relinquish his post only after his resignation is accepted and he is relieved of his duties."

5. Coming to the facts of the case, it is clear that in his letter dated 15.9.83, the applicant had not mentioned anything about Rule 5(1) or notice of one month. In his letter dated 20.9.83, however, he stated as follows "I have submitted my resignation on 5.9.1983" but no action has so far been taken by your goodself to forward to the Superintending Engineer,

P.W.D., Circle No.VI, (DA), New Delhi for his acceptance. It is, therefore, impressed upon you that in special circumstances it is invariably impossible for me to continue my service in this Department by 4th October, 1983 (emphasis supplied)".

6. It is clear that by referring to the date 4.10.83 with reference to his letter 5.9.83, one month's notice was clearly given. In his third letter dated 26.9.83 he stated as follows:

"Please refer to my resignation letter dated 5.9.83 according to the terms of appointment letter for a temporary employee one month notice on either side is to be given. Please take note that I shall deem to have been relieved on 4.10.83 (AN) that is after one month of my intimation to resign from the post of JE in case no reply is received from you."

7. In this letter he has clearly referred to the Rules governing the temporary employees thus the three letters taken together would clearly show that applicant had not only given one month notice but impliedly referred to the rules governing the temporary employment. Since it was on 3.10.83 that the EE forwarded his resignation to the competent authority, i.e., the Superintending Engineer and no action had been taken on three letters till 3.10.83, when the matter came before the competent authority after 3.10.83 all the three aforesaid letters of the petitioner have to be read together. Accordingly, we do not see much purpose in labouring the technical point about non-mentioning of Rule 5(1) or notice of one month in his original letter of resignation. Reading his three letters of 5.9.83,

20.9.83 and 26.9.83, we are inclined to believe that the applicant has amply fulfilled the basic requirements of submitting the resignation letter reasonably satisfactorily.

8. The second issue whether the resignation by a temporary government servant becomes automatically operative after one month or it has to be accepted before it becomes operative has been unambiguously decided by the Hon'ble High Court of Madras in N.S. Subramaniam Vs. Union of India, 1970 SLR 181 Paras 7,10,11 and 14 from the judgment as quoted below will make the position clear:

"7. The first question which is involved is whether the petitioner was only a temporary Government servant, because it was only then that R.5 of the Central Civil Service (Temporary Service) Rules, 1949, or the corresponding Rules of 1964 would apply. If he was not a temporary servant, but was a permanent Government Servant it is not disputed by the learned Public Prosecutor that a different set of rules would apply. Those rules were found at pages 12 and 13 of the compilation of the Fundamental Rules and the Supplementary Rules made by the Government of India, 3rd Edn.1963. According to those rules, a permanent government servant can resign his post, but "a resignation becomes effect when it is accepted and the officer is relieved of his duties". In other words, the resignation cannot become effective till it is accepted and the officer is relieved of his duties". If the petitioner was a permanent government servant, his resignation could, therefore, not commence at any date earlier than 24/25.10.1966 when the order on that date was issued. Hence, the crucial question at the outset is whether the appointment of the petitioner was temporary or permanent....

10. The following is the communication dated 14.4.1965 of the petitioner to the Director of the Government of India Tourist Office, Madras-2:

"In continuation of the letter cited above, I would like to inform you that I have not received either any communication so far the acceptance of my resignation in

October 1964 or posting to any place after the expiry of my leave. I therefore request you to treat this as my final resignation of my post and arrange to pay me at an early date my security deposit and other amounts due to me."

11. It is clear that the above communication may be taken as a notice under R.5 given by the petitioner to the authorities and that his services became terminated on the expiry of one month of the notice that is to say, with effect from 15.5.1965. Sh. V.Gopinathan, however, would urge that this is not the meaning of R.5 of the rules and that the rule is subject to the instructions at pages 12 and 13 of the compilation and that the resignation would become effective only when it was accepted and the order of acceptance was communicated to the petitioner namely 21.11.1966. Learned counsel submits that the words in Rule 5 are merely "shall be liable to termination" and cannot be interpreted as meaning that after the expiry of one month of the notice the services became automatically terminated.....

14. Different conclusions will ensue according to the answer to the question whether rule 5 applies or the instructions at pages 12 and 13 apply. If the instructions at pages 12 and 13 apply, it will not be open to the Government servant to leave his post till his resignation is accepted and he is relieved of his duties, and if any loss occurs to the Government as a result of his leaving his post prematurely, he will have to make good the loss to the Government. But he is not under any such obligation, if rule 5 of the Central Civil Services (Temporary Service) Rules applies. It is, therefore, clear that the two sets of rules cannot co-exist and they are mutually exclusive. In this view of the matter, I am unable to accept the submission of the learned counsel that Rule 5 is subject to the instructions at pages 12 and 13. The position therefore is that the petitioner ceased to be in government employment on 15.5.1965, and if so, as already stated, no sanction was required. The rules of 1965, came into force only on 25.5.1965 and therefore they would not seem to apply. In any case the corresponding provisions are identical".

8. From the above, it is clear that the question of acceptance of resignation will arise only in case of permanent Government servants and not in case of temporary employee.

9. The plea of the respondents that even though he is a temporary government servant and he has resigned under rule 5 of the Central Civil Services (Temporary Service) Rules his resignation has to be accepted first before it becomes operative in accordance with the Clause 9 of the Memorandum (Annexure R-1 to the counter-affidavit) of his appointment cannot be accepted. It is a well established principle that in any contract of appointment, if any term is against the statutory rules, that term of the contract will be invalid to that extent. The statutory rights of the Government servant cannot be taken away by the terms of the appointment.

10. It is interesting to note that even the Chief Engineer, Public Works Department in his letter (annexed to the petition) of February 1986 addressed to the Superintending Engineer, who was the appointing authority of the petitioner had advised him "as far as this office is concerned, it is felt that the date of acceptance of resignation may be taken on the expiry of one month from the date of resignation submitted by the official".

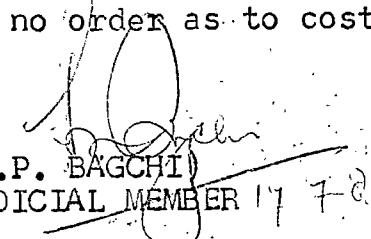
11. The learned counsel for the respondents has drawn our attention to the Ministry of Home Affairs' Office Memorandum No.39/17/69/Estt A of 18.6.1970 in which it has been laid down that the resignation should not be accepted while some enquiry or some investigation is in progress and

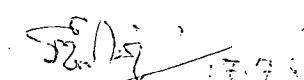
accordingly he has argued that since a CBI enquiry was going on regarding the works in the Incharge of the JE, his resignation could not be accepted till the CBI enquiry was dropped. We feel that provisions of the Administrative instructions cannot take away the statutory provision of automatic acceptance of the resignation of a temporary Government servant after one month. The office Memorandum of 18.6.1970 will apply in case of Permanent Government Servants where the resignation becomes effective only after it is accepted and charge of office is taken over. As a matter of fact, in case of a temporary Government servant it is the Government who has the liberty of removing a temporary Government servant with one month notice without going through the process of disciplinary proceedings. As regards the dust which has been raised by the respondents on the plea that the applicant had not properly handed over the charge on the expiry of the notice period, we feel that any 'ceremony' of formal relieving is not necessary on the expiry of the notice period in case of temporary Government servant. The Government of India's decision No.8 below Rule 5(1) of the Rules reads as follows:

"(8) No formal relieving is necessary on expiry of notice period - It has been decided that once a notice is issued to a temporary employee under Rule 5(1) of C.C.S.(T.S.) Rules, 1965, he ceases to be in Government Service on the expiry of one month from the date on which the notice was served on him. The question of formally relieving him on the due date does not arise. It should

be ensured that no such employee is allowed to be in Government Service (DG., P&T, New Delhi No.29/3/69-SPB.II dated the 23rd July, 1970)".

12. In the facts and circumstances discussed above, we allow the petition and direct that the applicant should be deemed to have been automatically relieved and discharged from the post of Junior Engineer, Public Works Department with effect from 4.10.83. This is without prejudice to the validity of official duties discharged by him and salary received by him in accordance with law as a Junior Engineer between 5.10.83 and 12.10.83. There will be no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER 17/7/83


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER