

Fit for Reporting

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A. No. 917/86

DATE OF DECISION: 8.5.92

SHRI JARNAIL SINGH

..

APPLICANT

VERSUS

GOVERNMENT OF INDIA

..

RESPONDENTS

CORAM:-

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (J),

THE HON'BLE MR. K.J. RAMAN, MEMBER (A)

FOR THE APPLICANT: .. SHRI SHANKAR RAJU, COUNSEL

FOR THE RESPONDENTS: .. SHRI O.N. TRISHAL, COUNSEL

1. Whether Reporters of the local papers
may be allowed to see the Judgement?

Yes

2. To be referred to the Reporter ~~as per~~?

(JUDGEMENT OF THE BENCH DELIVERED BY THE
HON'BLE SHRI K.J. RAMAN, MEMBER (A))

JUDGEMENT

The applicant joined as a Head Constable in the Delhi Police on 10-6-1977 and he was confirmed with effect from 25-10-1980. According to the applicant, he fell sick in January, 1985 and had to go on leave on several occasions on medical certificates. It is alleged by the applicant that it displeased the immediate superior of the applicant. It is averred by the applicant that, because of sickness and financial problems, he was disturbed in mind, and submitted the following resignation letter on 10-4-1985, to the Deputy Commis-

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sioner of Police(DCP) :-

"To"

The Dy. Commissioner of Police,
Crime & Rly's: Delhi

Sir,

It is respectfully stated that due to some domestic problems, I am unable to serve more in Delhi Police. I hereby tendering my one month notice to accept my resignation w.e.f. 30-5-1985.

I shall be very grateful to you if your goodself accept my resignation w.e.f. 30-5-1985 (afternoon).

Yours faithfully,

Dated: 10-4-1985

Sd/-
(Jarnail Singh)
No. 80/Crime
Head Const. (Min)
Accounts Branch,
Crime & Rly's: Delhi"

2. Even though the applicant had submitted the above resignation letter, the respondents initiated disciplinary proceedings against him in respect of certain alleged acts of misconduct by order dated 30-4-1985. The applicant has submitted in his application that the resignation letter dated 10-4-1985, tendering resignation with effect from 30-5-1985, had not been accepted before that date i.e. 30-5-1985; even though the resignation letter of the applicant had thus become incapable of coming into force after 30-5-1985, the applicant had, by way abundant caution, submitted an application dated 13-8-1985 to the competent authority withdrawing his resignation letter of 10-4-1985, on the ground that the situation in respect of the applicant had improved and there was no necessity for him to resign from the Police Force. The respondents, however, by the impugned order dated 16-8-1985 accepted the resignation tendered by the applicant "with immediate effect". The impugned order is reproduced below:-

-3-

ORDER

The resignation tendered by H.C. Jarnail Singh No. 80 Cr. (Min.) is hereby accepted with immediate effect, in pursuance of proviso to Rule 25(I) of Delhi Police Act, 1978. His absence period will be decided later on.

Consequent upon the acceptance of resignation of H.C. Jarnail Singh No. 80/Cr. (Min.) the departmental enquiry ordered vide No. 3439-50/CR. C&R dated 30-4-1985 is hereby dropped.

He should clear all the dues outstanding against him and deposit all Government articles including uniform, Appointment Card, Identity Card, C.G.H.S. Card in his possession with the respective stores/branches before leaving the department.

He is in possession of Govt. Quarter No. J-12, Type-B, New Police Lines, Delhi (Special Branch) and will vacate the same within the stipulated period after clearing all the dues pending against him.

Sd/-

(A.K. KANTH)
Deputy Commissioner of Police
Crime & Railways: DELHI 14-8-1985

No. 10360-430/Ettt. C&R dated New Delhi, the 16-8-1985.

Copy to:-

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.....

15. H.C. Jarnail Singh, No. 80/Crime (Min.) through Acctt./C&R for information and necessary action.

AMR

3. The applicant submitted representations on 22-8-1985, 2-9-1985, and 11-9-1985 seeking cancellation of the impugned order dated 16-8-1985. These representations were not accepted, and by the further impugned order dated 21-8-1986, issued on behalf of the Chief Secretary, the applicant was informed that his representation had been rejected. Thereafter, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a declaration that the impugned orders dated 16-8-1985 and 21-8-1986 are void and bad in law, and that the applicant is still continuing in service and is entitled to all consequential benefits including salary, etc.

4. At the time of the admission of this application on 30-10-1986, an Interim Order was issued staying the eviction of the applicant from the quarters allotted to him, pending further orders on this application.

5. The applicant has contended in this application that there was no valid resignation letter for the respondents to accept by the impugned order dated 16-8-1985, since the applicant in his letter dated 10-4-1985 had submitted his resignation specifically with effect from 30-5-1985 and this resignation letter was not accepted before that date, and what is more important, the applicant was allowed to continue and continued in his post beyond 30-5-1985, thus nullifying the effect of the resignation letter. Secondly the applicant has contended that he had withdrawn his resignation letter dated 10-4-1985 by way of abundant caution by his letter dated 13-8-1985, whereas the so called acceptance of the resignation by the impugned order dated 16-8-1985, was received by him later i.e. after his withdrawal of the said resignation. It is

argued that, consequently, the respondents had no right to issue the impugned acceptance of the resignation.

6. In the reply filed on behalf of the respondents, it is alleged that the applicant was habitually absenting himself and that he had on his own submitted his resignation on 10-4-1985. The reply contains a long list of instances of the applicant going on leave on various occasions from 1978 to 1984. In para 6(6) of the reply, it is stated that the applicant was called to appear before the Deputy Commissioner on 26-7-1985 and that the applicant was verbally asked to appear before the DCP on 2-8-1985. It is stated that the applicant proceeded on two days' casual leave for 29 and 30-7-1985 and absented himself thereafter. It is stated that the decision to accept the resignation was taken by the competent authority on 7-8-1985 as would be evidenced from the records. It is ^{further} stated that the order of acceptance of the resignation was signed by the competent authority on 14-8-1985 and issued from the office on 16-8-1985. It is further averred that the applicant's withdrawal application dated 13-8-1985 was actually received in the office of the respondents on 20-8-1985. In other words, it is contended that the resignation ~~had~~ been accepted before the receipt of the letter of withdrawal from the applicant. In the reply it is not denied that the applicant had been attending to his duties even after 30-5-1985 and that the resignation was not accepted on or before this date.

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7. The case has been heard when the learned counsel for the applicant and the learned counsel for the respondents made their submissions at length.

8. The learned counsel for the applicant reiterated the facts and contentions briefly summarised above. He relied on the decisions in the following cases:-

- 1) Narendranath Satpathy v. Union of India & Ors.
A.T.R. 1987(2) C.A.T. 215.
- 2) Vedpathi Dinesh Kumar v. North Zone Cultural Centre, etc. 1991(2) SLR 148
- 3) Smt. Pushpa Aggarwal v. Union Public Service Commission & Others, (A.T.R. 1986 CAT 192
- 4) Punjab National Bank v. Shri P.K. Mittal
1989 (2) SLJ 1(SC)
- 5) Subhash MurliDhar Adhar v. Superintending Engineer, Western River Circle, Nagpur
SLJ 1990(3) (CAT) 419
- 6) Dharam Chand Sharma v. Union of India and Three Others, (1989) 10 ATC 19
K.
- 7) Satheesan vs. Deputy Director General Marine Geology Division, Geological Survey of India and Others
(1990) 12 ATC 55

9. The learned counsel for the applicant further referred to the general guide-lines contained in the ~~xxxxxxxxxxxxxx~~ D.M. No.28034/25/87-Estt.(A) dated 11th February, 1988 of the Government of India, Bharat Sarkar, Ministry of Personnel, Public Grievances & Pensions (Karmik, Lok Shikayat Tatha Pension Mantralaya) Department of Personnel & Training., on the subject of resignation from service and procedure thereof. He in particular relied on paras 2, 3 and 5 thereof.

10. The learned counsel for the respondents sought to contend that there was no question of withdrawal of the resignation letter of the applicant since the resignation letter of the applicant had been accepted before the applicant had sought to withdraw the same. In this connection he relied on the decision of the Allahabad High Court in Jwala Prasad v. State of U.P., AIR, 1954 Allahabad, 638.

11. We have very carefully considered the records and the rival contentions in this case.

12. The facts of the various cases cited by the learned counsel for both the sides appear to be rather different from the facts of the present case. At any rate, none of them pertains to the case of resignation covered by the Delhi Police Act in the circumstances in which the present applicant had submitted his resignation.

13. In the present case, the applicant had submitted the resignation letter dated 10-4-1985 reproduced above (para 1 supra), specifically with effect from 30-5-1985. He had clearly stated that his resignation would be with effect from 30-5-1985, after one month's notice. It is not a resignation letter with an unspecified future date of coming into effect. Admittedly, the resignation letter of the applicant as above had not been accepted by the appropriate authority on or before 30-5-1985. The applicant continued to be on duty, which was admitted by the respondents in their reply, wherein it has even been stated that he was called to meet the Deputy Commissioner of Police in July and August 1985 and that, he had proceeded on casual leave in July, 1985. Factually therefore, the applicant had continued to perform his duty beyond 30-5-1985, as if there had been no

resignation letter. The respondents ~~have indeed~~ accepted this fact. The question here is whether in such a situation, there was any ~~live~~ resignation letter before before the appropriate authority on 14-8-1985/16-8-1985. ~~which could~~ which can be legitimately accepted, and that too with "immediate effect", as has been done by the impugned order dated 16-8-1985.

14. When we raised this question, the learned counsel for the respondents could not give any clear reply. We, therefore, requested the learned counsel to produce before us the statutory provisions or rules in regard to resignation by the subordinate members of the Delhi Police Force. The learned counsel produced before us the following extracts from Section 25 of the Delhi Police Act, 1978:-

"25. Circumstances under which police officer of subordinate rank may resign

- (1) Resignation of any police officer of subordinate rank may be accepted only by the officer empowered to appoint (the officer so empowered to appoint being hereafter in this section referred to as the appointing authority) officers of such subordinate rank.
- (2) A police officer of subordinate rank who intends to resign from police service shall give to the appointing authority notice in writing to that effect and shall not be permitted to withdraw himself from duty unless he has been granted permission to resign by such authority and two months have elapsed from the date on which he tendered his resignation.
- (3) Provided that the appointing authority may at his discretion permit a Head Constable or a constable to withdraw himself from duty on his crediting to the Government two months' pay in lieu of notice.

(3) A Head Constable or a constable who has agreed to serve for a specific period may not be permitted to resign before the expiry of the period.

(4) Inspectors, Sub-Inspectors or Assistant Sub-Inspectors of Police whose appointments involve training at any Police Training College or Police Training School may not be permitted to resign within three years from the date of their successfully completing the training.

(5) No police officer of subordinate rank whose resignation has been accepted by the appointing authority shall be permitted to withdraw from duty until he has fully discharged all debts, due from him as such police officer to Government or to any police fund and has surrendered his certificate of appointment, arms, accoutrements, uniform and all other Government property in his possession and has also rendered a complete account of all Government money and property for which he is responsible.

(6) Notwithstanding anything contained in this section if any police officer of subordinate rank tenders his resignation on medical grounds and produces a certificate signed by the police surgeon or any other medical officer authorised by the Administrator in this behalf declaring him to be unfit by reason of disease or mental or physical incapacity for further service in the police, the appointing authority shall forthwith permit him to withdraw from duty on his discharging or giving a satisfactory security for the payment of, any debt due from him as such police officer to Government or to any police fund.

Provided that he shall forthwith return the certificate of appointment, arms, accoutrements, uniform and all other Government property in his possession before he is permitted to withdraw from duty.

L.S.M.

(7) If any such police officer of subordinate rank resigns or withdraws himself from the duties of his office in contravention of this section, he shall be liable on the orders of the appointing authority to forfeit all arrears of pay then due to him in addition to the penalty to which he may be liable under Section 22 or any other law for the time being in force.

(8) Every such police officer on leaving the service in the Delhi police as aforesaid shall be given by the appointing authority a Discharge Certificate in such form as may be prescribed."

(Emphasis added)

15. A perusal of the above provision shows that the resignation of a subordinate police official like the applicant had to be accepted before it became effective. Sub-Section (2) above is of vital importance in the present context. This provides for a mandatory notice to be given by the officer who intends to resign from the Police Force. Further, it is clearly provided that he shall not be permitted to withdraw himself from duty unless he had been granted permission to resign by such authority and two months have elapsed from the date on which he tendered his resignation letter. There is a further proviso under Section 25(2) for payment of two months' pay in lieu of notice. The impugned order dated 16-8-1985(vide para 2 supra) is stated to have been issued in pursuance of proviso to Rule 25(1) of the Delhi Police Act, 1978. No such rule has been produced before us. Presumably, the reference in the above order is to proviso to section 25(2) of the Act, extracted above. But there is no claim from the respondents that two months' pay in lieu of notice was taken from the applicant before the order was issued.

16. In this case, according to the applicant, he gave the resignation letter on 10-4-1985 with a specific stipulation that it should be accepted with effect from 30-5-1985, i.e. less than two months from the date of the letter. It does not appear that the respondents had examined this resignation letter in the light of the provision of the law extracted above. If they had done so, they would have asked the applicant to resubmit his resignation letter with a proper period of notice, or they would have asked him to pay two months' salary in lieu of notice or whatever is the differential amount. There is no claim that this was done.

17. In order that the resignation of the applicant became effective with effect from 30-5-1985, two conditions had to be fulfilled:-

- 1) Firstly, the resignation should have been accepted by the appropriate authority; and
- 2) Secondly the provisions of Sub-Section 2 of Section 25 above were complied with by the applicant.

In this case it is on record that both the above pre-conditions for the effective resignation of the applicant had not been fulfilled. The resignation letter of the applicant never became effective with effect from 30-5-1985, and he had been allowed to continue on the post for much more than two months' period provided for under Section 2 of Section 25 supra. Therefore, on 16-4-1985 when the impugned order was passed, there was no live or effective resignation letter from the applicant which could be given immediate effect, as is stated in that order. The impugned order of acceptance of the ~~citizen~~ ^{Deposed} resignation letter was also not in accordance with the specific mandatory provisions of Section 25 of the Delhi Police Act, 1978, as pointed out above.

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18. When we enquired from the learned counsel for the respondents as to when the resignation letter of the applicant became effective, he stated that it became effective from 30-5-1985. If that was so, then the impugned order dated 16-8-1985 has to be struck down, since it says that it came into "immediate effect". In any case, factually, the resignation of the applicant had never ~~become~~ effective on 30-5-1985 or even afterwards, and he continued to officiate in his post till the issue of the impugned order on 16-8-1985.

19. According to the guide-lines of the Government of India referred to in para 9 above, a resignation ~~becomes~~ effective when it is accepted and the Government servant is relieved of his duties. In the present case, the nature of the resignation letter dated 13-4-1985 was such that it could become effective on a particular date i.e. 30-5-1985, or not at all.

20. It is also noticed that there has been a long delay between the date ~~of~~ submission of the resignation letter of the applicant (10-4-1985) and the date of issue of the impugned order. No acceptable explanation is available from the side of the respondents for such a long delay, unless ~~it~~ had something to do with the disciplinary proceedings which had been going on against the applicant. If the disciplinary proceedings had ~~anything~~ to do with the further issue of the impugned order, the latter is ~~vitiated~~ on account of being based on extraneous considerations. If the applicant had committed alleged acts of mis conduct, the respondents ~~were~~ free to take suitable disciplinary action against the applicant, but they ~~could not infringe~~ the

the mandatory provisions of the Delhi Police Act, and seek to accept an otiose resignation letter given by the applicant a long time ago.

21. The respondents had submitted for our perusal a File No. 12/10/85-Part-I, in which the notings start from 12-7-1985. In order to find out what action was taken on receipt of the resignation letter dated 10-4-1985, from the applicant, seeking acceptance of the resignation with effect from 30-5-1985(afternoon), we perused the file. We found a long note dated 25-4-1985 recorded by the Head Clerk followed by the note and order of ACP/HQ and DPC/C&R, dealing with the question of acceptance of the applicant's resignation. Pertinent extracts from these are reproduced below:-

From the perusal of his previous records during his 8 years service about availing of leave, it appears he does not want to serve more. For the very purpose he has tendered his resignation. His resignation may please be considered in the light of G.O. India's instructions mentioned in para 69/N.

In case it is considered that his resignation is accepted then his D.E. proceedings ordered may be dropped and his period of absence will be considered as leave of the kind due.

Orders are solicited whether his resignation is accepted or D.E. proceedings may be continued as ordered please.

Sd/- Raj Kumar
Head Clerk
25-4-1985

ACP/HQ

I think in the instant case the resignation may be accepted. D.E. proceedings dropped, because the charge on which E.E. is being conducted relate to long period of absentism, followed by Medical certificates and leave

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has been concerted as Medical leave and the Head Constable is again absent from 12-4-85 on Medical grounds and is not likely to join, as he has tendered resignation.

Sd/- I.I. Kapoor
26-4-1985

DCP/C&R

D.E. proceedings may continue and be completed expeditiously.

Sd/- R.C. Kohli
DCP/C&R
30-4-1985

22. The following notes are recorded on Serial Nos. 9 and 10 in the file:-

"Reference order at para 6/N. The application of resignation submitted by H.C. Jarnail Singh No. 80/Crime may be perused at Flag C (File No. 14/13) Spl.). His application was put up on Note sheet paras 33 to 52/N (Flag D). In this respect the orders passed may kindly be perused at Para 52/N of File No. 14/13/Spl. (F.D.). Submitted for favour of perusal and orders please.

Sd/-
16/7

ACP (HO)

H.C. Jarnail Singh, No. 80/Crime had submitted his resignation vide (P-133). This was not accepted as a D.E. was pending. The DE was also initiated for his absence on various reasons. He is again absent. A person who is not keen to serve adopts this attitude. The D.E. is also not on serious charges of moral turpitude, etc. I think that he may be called to appear in person and if he is still keen to leave the Department, resignation may be accepted and D.E. dropped.

For orders please.

Sd/-
18/7

(S)

DCP

Yes

Sd/-

19/7"

23. It is very clear from the notes reproduced above that the resignation letter dated 10-4-1985 of the applicant had actually been put up to the authorities concerned soon after receipt, seeking orders on the same. The recommendations of the Head Clerk dated 25-4-1985 and of the ACP/HQ dated 26-4-1985 (before crucial date of 30-5-1985) was conspicuously rejected by the DCP, who ordered pursuit of the disciplinary proceedings. It is further specifically made clear that in the note of ACP(HQ) reproduced above, the said resignation was not accepted as D.E. was pending. From this there can be no doubt that this is not a case where, on the submission of the resignation letter, no action was taken either to accept or not to accept the resignation. On the other hand, this is a case where the resignation letter seeking resignation with effect from 30-5-1985, was considered by the appropriate authority who deliberately decided not to accept the same, on the ground that a departmental enquiry was pending against the employee. In other words, there was a clear non-acceptance or rejection of the resignation letter dated 10-4-1985 submitted by the applicant, and on such non-acceptance or rejection, the resignation letter became otiose and did not

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survive. There was, therefore, no question of accepting this resignation letter on a later date when the date specified by the applicant was long past. Thus, the records of the respondents themselves support the view we are taking above in this case.

24. In the light of the above discussion, we allow the application and pass the following orders:-

- i) The impugned orders dated 16-8-1985 and 21-8-1985 are set aside.
- ii) The applicant shall be allowed to join duty forthwith, and at any rate, before the expiry of one month from the date of receipt of a copy of this order by the respondents.
- iii) The period from the date of issue of the impugned order dated 16-8-1985 accepting the resignation letter of the applicant, to the date of joining duty by the applicant as above, shall be treated as duty for all purposes in respect of the applicant, except that he shall not be entitled for arrears of wages for the said period.
- iv) There will be no order as to costs.

K.J. Raman
(K.J. RAMAN)
Member (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN (J)