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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.C.P. NO. 37/92 in
O.A. NO. 2796/91

DECIDED ON : 6.3.1992

C.R. Sinha

... Petitioner

Vs.

Union of India & Ors.

... Respondents

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THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

For the Petitioner -

Shri B. B. Raval, Counsel

For the Respondents -

Shri P. H. Ramchandani,
Senior Counsel

ORDER (ORAL)

(Hon'ble Mr. Justice V. S. Malimath, Chairman) :

The complaint in this case is that the interim order made by the Tribunal on 26.11.1991 in O.A.2796/91 has been contravened by the respondents. The interim order says that the impugned notification be kept in abeyance for a period of 14 days, if not already published. This interim order, according to the learned counsel for the petitioner, has been continued on the same terms and has been ⁱⁿ enforced all along. It is the case of the petitioner that the impugned notification is one accepting the notice of voluntary retirement of the petitioner. It is also his case that attempt to accept the notice is after the petitioner changed his mind and withdrew the notice of voluntary retirement. The question as to whether the petitioner having withdrawn the notice, the authorities were competent to accept or not the same are all matters which are to be decided in ~~appropriate~~ ^{the} original proceedings ^{any} and it is not proper for us to express ~~our~~ opinion in

this behalf in the present proceedings. We, therefore, limit our attention in these proceedings to the limited question as to whether the interim order has been disobeyed. The petitioner says that as the order has been stayed by the Tribunal, the authorities ought to have treated the petitioner as having continued in service and given the benefit of service in that manner.

2. The case of the respondents, on the other hand, is that the impugned notification was published before the interim order came to be made on 26.11.1991 and that, therefore, the petitioner cannot have the benefit of the interim order. In support of their case they have produced the notification published in the Gazette of India on 23.11.1991. The date of the notification is 24.10.1991, which says that "The president is pleased to permit Shri C. R. Sinha an Officer belonging to Indian Statistical Service who was working as Assistant Director in the Ministry of Health and Family Welfare, to retire voluntarily from Government Service with effect from 28-2-1991 under FR-56(K)." Obviously, the date of the Gazette, i.e., 23.11.1991 is anterior to the date of the interim order. Prima facie, therefore, the respondents ~~should~~ be right in contending that they have not violated the interim order. But Shri Raval, learned counsel for the petitioner, says that the expression, "already published", in the interim order has a particular connotation in the sense that the publication should be available for anyone who intends to avail it. During the course of the arguments, he placed before us a ~~communication~~ communication from the Assistant Controller (Periodicals),

Government of India, Department of Publication dated 19.12.1991 addressed to the petitioner wherein it is stated that the Gazette of India Weekly Part-I Section 2 Sub-section X dated 23.11.1991 Issue No. 47 (with which we are concerned in this case) was made available for public sale on 2.12.1991, as per the records of the department. On the basis of this information, it is maintained by Shri Raval that the Gazette notification cannot be regarded as having been published on the date mentioned in the Gazette, i.e., 23.11.1991, but should be regarded as having the effect of publication only on 2.12.1991, when the Gazette was made available for public sale. The context in which the expression "already published" is used in the interim order, should be examined to understand what was the real intention of the Tribunal in using that expression. The principal contention of the petitioner in the main case is that though he had tendered his resignation, he having withdrawn the same before its acceptance, the authorities have no competence to accept the same after he has communicated his withdrawal. It is also not disputed that after the notice had been accepted, the question of withdrawal may not arise. It is in this context that we should understand what the Tribunal intended to convey when it used the expression "already published". In our opinion, what was conveyed by this expression is that the authority which had the competence to accept the notice, ought to take a decision and published it meaning thereby a point should have been reached ^{when it} ~~and it~~ would no more be possible for the authority to retrace its steps in the

matter of acceptance. It is open to the authority issuing the order regarding acceptance, to change its mind any time, before action is taken to put it out of its control by communicating the same. That is precisely what was sought to be conveyed by the interim order when it used the expression "already published". Everything that was necessary by the competent authority to take a decision was done and it was sent to the press for publication and the Gazette was also duly printed and published on 23.11.1991. Once it was published on 23.11.1991, it was outside the competence of the authority taking the decision to recall that notification and to prevent its publication. That is the crux of the matter. Having regard to the context, the date on which the Gazette became available for sale, is not relevant. We are, therefore, inclined to take the view that the date of publication in this case is 23.11.1991 and not the date when the notification actually became available for sale. Section 23 clause (5) of the General Clauses Act, 1897 of course deals with the publication in the official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made. That is how it is deemed to have come into force on the date on which it was published.

3. We are, therefore, inclined to take the view that ✓ the interim order has not been violated in this case as

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the notification was published before the interim order was made by the Tribunal. Hence, no further action under the Contempt of Courts Act is possible. These proceedings are accordingly dropped.

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C. C. Jain
(P. C. JAIN)
MEMBER (A)

V. S. Malimath
(V. S. MALIMATH)
CHAIRMAN