

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

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OA No.1119/2004

New Delhi this the 16th day of March, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Kiran Chand Sharma,
R/o F-33, Lado Sarai,
Mehrauli, New Delhi-30.

-Applicant

(By Advocate Shri S.K. Sinha)

-Versus-

1. The Chief Secretary,
Govt. of NCT of Delhi,
I.P. Sachivalaya,
New Delhi.
2. The Medical Superintendent,
Lok Nayak Hospital,
New Delhi-2.

-Respondents

(By Advocate Shri Om Prakash)

O R D E R (ORAL)

Heard the learned counsel.

2. Applicant impugns respondents' order dated 30.3.2000, whereby his resignation has been accepted w.e.f. 20.12.1999. Order dated 2.9.2003 passed in appeal is also assailed, rejecting the request of applicant for withdrawal of resignation.
3. Learned counsel for applicant stated that as per the medical certificate issued from the Government Institution applicant was suffering from illness of anxiety neurosis and was under treatment from 12.12.1999 to 5.8.2000. As such in these circumstances when his mental condition was not stable the resignation tendered was neither spontaneous nor voluntary, as such in the light of the decision of the Karnataka High Court in **S.M. Patil v. Chairman, Local Board Administrative Authority**, 2003 (7) SLR 705 such a resignation cannot be accepted as a valid resignation

to entail severance of relationship of master and servant between Government and applicant.

4. Moreover, it is stated that by a communication dated 13.1.2000 which has been sent through registered AD a presumption is drawn under Section 27 of the General Clauses Act that if a registered AD is directed against an addressee the same would be deemed to be served after expiry of one month. As the registered letter was containing request of withdrawal of resignation of applicant and as before acceptance on 30.3.2000 applicant had withdrawn his resignation same cannot be acted upon.

5. On the other hand, respondents' counsel vehemently opposed the contentions and stated that a medical certificate does not inspire confidence as it has been shown in the medical record that applicant was suffering from anxiety neurosis w.e.f. 12.12.99 how can he come to Delhi during this treatment and tendered resignation on 20.12.99. Moreover, it is stated that the registered post as claimed by applicant had never reached the respondents and they deny receipt of the same, as it is not available on record.

6. Learned counsel states that the resignation tendered by applicant mentions of one Sh. V.N. Sharma as the reason of resignation whereas he stood terminated from service on 31.1.98. In nut shell, what has been stated is that on his own volition applicant when he was in fit state of mind has tendered resignation and for want of any evidence of withdrawal of resignation before acceptance the same is a valid acceptance and accordingly the appellate authority rejected the same, which does not suffer from any legal infirmity.

7. The Apex Court in **Prabha Attri v. State of U.P.**, 2003 (1) SCSLJ 157 while dealing with the resignation which was conditional, relying upon a decision of the Apex Court in **Moti Ram v. Param Dev**, 1993 (2) SCC

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725 ruled that resignation is a spontaneous relinquishment of one's own right. It connotes the act of giving up and this intention is to be unequivocal, unilateral and is to be free from any condition. If a conditional resignation is tendered the same is not legally recognizable and would not be based on acceptance.

8. Moreover, the decision of the High Court of Karnataka (supra), which is binding on me, in absence of any decision of the High Court of Delhi on the issue, what has been held in this case which pertains to a resignation by a person who was not in the perfect state of mind that such a resignation when a person is suffering from mental illness is a nullity in law.

9. As regards medical certificate not being an expert I cannot dwell upon its genuineness or correctness. This has to be referred to a Board by the respondents in their discretion to verify its veracity.

10. Moreover, as regards withdrawal of resignation on 13.1.2000, registered AD slip which has been annexed with the OA clearly shows that a communication has been sent to the respondents on 13.1.2000 and this communication by its relevance is nothing but the request of applicant for withdrawal of resignation. In his letter for withdrawal as well as subsequent appeal there has been a reference to applicant's undergoing treatment for his mental illness as a presumption. Under Section 27 of the General Clauses Act if a registered post is addressed to a particular addressee the service is deemed if it does not come ^{back} within one month. The aforesaid would be a legal service in accordance with established law.

11. However, from the perusal of the appellate order of 2.9.2003 I find that none of the contentions raised by applicant has been paid any heed to. As an administrative authority the fairness in action is a sine qua non and in the wake of principles of natural justice a reasoned order is always

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expected as reasons are prone to judicial review before the competent court of jurisdiction. For want of any reasons a presumption of lack of application of mind or mechanical application of the discretion has to be presumed.

12. Be that as it may, in the wake of a registered letter sent to the respondents withdrawing the resignation before it is actually accepted though may be from a retrospective date and also the fact that medical record exists, this OA is partly allowed. The appellate order is set aside. The respondents are directed to re-examine the entire matter and in this furtherance applicant is also directed to cooperate and to produce material regarding his papers of medical treatment as well as a certificate or any evidence from the concerned post office regarding despatch of his request on 13.1.2000. A detailed and reasoned order is to be passed by the respondents within a period of two months from the date when applicant provides these documents to respondents. In the event respondents decide to allow withdrawal of resignation, applicant would be put back in service and would be entitled to all consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)

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