

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH::NEW DELHI

O.A. No.937 of 1993

7/11th day of November 1993

Hon'ble Mr J. P. Sharma,M(J)

Hon'ble Mr B. K. Singh,M(A)

Shri M. L. Verma

S/o Shri Rameswar Dass

R/o 183, Ghee Mandee

Paharganj

NEW DELHI-110055

... Applicant

By advocate Shri Bakshish Singh,
proxy counsel for Shri L. K.
Upadhyay.

Vs

1. Medical Superintendent
Dr Ram Manohar Lohia Hospital
NEW DELHI

2. Director General
Health Services
Nirman Bhawan
NEW DELHI

3. Union of India
through Secretary
Ministry of Health & Family Welfare
New Delhi. ... Respondents

By advocate Ms Ptotima Mittal,
Proxy counsel for Shri K.C. Mittal

O R D E R :

Hon'ble Mr B. K. Singh,Member(A)


1. This O.A. No.937 of 1993, Shri M. L. Verma as Applicant Versus Medical Superintendent, Dr Ram Manohar Lohia Hospital, New Delhi and Others has been filed under Section 19 of the Administrative Tribunal Act, 1985.

Contd...2

B

2. The Respondent No.1 had appointed the applicant on regular basis to the post of Senior Radiographer w.e.f. 8-10-1979. In 1984, the applicant, due to some personal reasons, proceeded on leave w.e.f. 9-1-1984 to 8-3-1984. He expended leave from time to time beyond 9-3-1984. The Respondent No.1 declined to sanction further leave vide his telegram No.6-299/79/RMLH/EA/PF/12551 dated 2-5-1984 (Annexure A-2 of the paper book). The applicant resigned his job on 10-11-1984 (Annexure A-3 of the paper book). The applicant again requested the Medical Superintendent, Dr Ram Manohar Lohia Hospital, New Delhi to accept his resignation. This letter is dated 13-11-1984 (Annexure A-4 of the paper book). After two years, the applicant has filed a petition on 9-12-1986 to Respondent No.1 to give him re-employment as Senior Radiographer (Annexure A-5 of the paper book). The applicant made another application on 7-5-1987 withdrawing his resignation and requesting Respondent No.1 to allow him to resume his duties by treating his resignation as withdrawn (Annexure A-6 of the paper book). The Respondent No.1, vide his letter No.6-299/79-RMLH(NS)1366 dated 18-1-1986 (Annexure A-7 of the paper book) informed the applicant that his request for withdrawal of resignation could not be accepted.

3. The applicant was charge sheeted for alleged unauthorised absence from duty w.e.f. 8-4-1984. The applicant submitted a reply and denied the charges (Annexure A-8 of the paper book).

 Contd...3

(3)

4. The applicant has prayed that the respondent should be directed to treat the resignation letter submitted by him on 10-11-1984, as withdrawn and to declare the applicant to have resumed his duties w.e.f. 7-5-1987 and to grant him all consequential benefits.

5. A notice was issued to the Respondents who filed their reply and contested the application. In para-4.4 of the counter, the Respondents have stated that resignation tendered by Shri Verma was accepted on 27-11-1984 in the file. Since his whereabouts were not known, the orders could not be served upon him. It has been further stated that he was not granted further leave because a complaint was filed on 14-3-1984 that Shri Verma who had been granted leave, had in fact left the country and was serving in Saudi Arabia.

6. There was further hitch in communicating the acceptance of his resignation although the orders have been passed on the file because there were outstanding dues to be settled and adjusted in the case of the applicant. The learned counsel for the applicant wanted the proceedings to be disposed of expeditiously against the applicant. He has not made any prayer for quashing the same. He said that the applicant had remained on leave on account of acute domestic problems and as such could not be available for resuming his duties. He was of the view that since his resignation has not been accepted and the acceptance has not been communicated to him, he will be deemed to be in service and as



Contd...4

such, he should be allowed to join his duties. The proceedings may continue against him and should be disposed of expeditiously. Ms. Pretima Mittal, proxy counsel for Shri K. C. Mittal, learned counsel for the respondents, argued that there is no question of permitting the applicant to resume his duties.

7. It is admitted by both the parties that the acceptance of resignation has not been formally communicated to the applicant. The plea of the respondents is that his (applicant's) address was not known since he had left India and had gone to Saudi Arabia. It is only in 1987 that he appeared and pressed for withdrawal of resignation. The learned counsel for the applicant felt that he remained away from duty because of pressing domestic problems. A study of the file reveals that no positive decision has yet been taken regarding the resignation. The resignation might have been accepted on paper but the same has not been communicated to the applicant. The matter, therefore, is still open. It is also a fact that the applicant resigned his job on 10-11-1984, as Senior Radiographer in view of pressing domestic problems and he wanted to be relieved immediately (Annexure A-3 annexed with the application). Again on 13-11-1984, he requested Medical Superintendent, Dr Ram Manohar Lohia Hospital, New Delhi to accept his resignation and grant him leave which might have accrued in his leave account.

8. On December 9, 1986, the applicant sent a letter to the Medical Superintendent, Dr Ram



Contd...5

(17)

Manohar Lohia Hospital, New Delhi saying that he may be given re-employment in view of his experience as a Radiographer. In this he has given his Registration No. as AB/4084/86 with the educational qualification as BSC, certificate in Radiography and Radio Therapy of two years from Moulana Azad Medical College and Irwin Hospital, New Delhi and 10(ten) years total experience in the line. This letter shows that the applicant know that his resignation has been accepted in the file though not communicated to him. This is the reason why he made a prayer to grant re-employment. The memo of charge sheet served is Annexure A-1. The proceedings have been initiated under Rule(3(i)(ii) of CCS(Conduct)Rules,1964. The withdrawal of resignation is dated 7-5-1987.

9. It has been admitted by the Respondents that his case for re-employment was sympathetically considered but was not acceded to. It has also been stated in the counter that the request for re-employment is a clear proof of knowledge on the part of the applicant that his resignation has been accepted. It has been repeatedly asserted by the Respondents that since he was not available in India and his correct address in Saudi Arabia was not known, no communication was made to him.

10. The first relief sought for is to quash the charge sheet served on the applicant. The respondents, during the course of arguments, have stated that the charge sheet was issued inadvertently and that they do not want to proceed with this. This being so, the first relief sought for becomes infructuous.

Contd...6

11. As regards the second relief sought for is that his resignation may be treated as withdrawn and he may be allowed to resume his duties w.e.f. 7-5-1987. The Respondents have stated in their counter and also stated during the course of arguments that his resignation was accepted retrospectively w.e.f. 8-4-1984 when he remained on unauthorised leave away from his duty and away from the country in Saudi Arabia. The resignation was submitted on 13-11-1984 and was accepted retrospectively w.e.f. 8-4-1984.

12. The Hon'ble Supreme Court in the case of Shri Yaspal Kapoor Versus Union of India have held the view that the resignation will be effective from the date it is tendered.


The question of adjustments of dues, No Demand Certificate etc. can be considered even after the resignation is accepted. Thus in the case of the present applicant, the resignation was accepted w.e.f. 8-4-1984, the date on which he remained absent from duty unauthorisedly. Thus, there is no question of granting this relief.

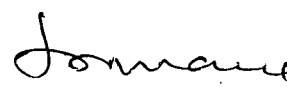
12. The applicant knew about his resignation having been accepted and that is the reason why on December 9, 1986, the applicant submitted a letter to the Medical Superintendent, Dr Ram Manohar Lohia Hospital, New Delhi, giving his bio-data seeking re-employment. All this confirms that the applicant knew about the acceptance of resignation. The communication of acceptance of resignation was (as stated by the respondents) could not be communicated to the applicant because his address in Saudi Arabia was not known.

Contd...7

13. In view of the aforesaid facts and circumstances, the application is dismissed as devoid of any merit or substance.

There will be no order as to costs


(B. K. Singh)
Member(A)


(J. P. Sharma) 18.11.93
Member(J)