

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 12th day of Dec, 2005.

Original Application No. 1085 of 2002.

HON'BLE MR. D.R. TIWARI, Member (A)

HON'BLE MR. K.B.S. RAJAN, MEMBER (J)

Smt. Nandi Devi, W/o Diwan Singh Bisht, Banglow Khalasi, Railway Electrification, Nawab Yusuf Road, Allahabad, at present reside at L-5, Hauz Kas, Enclave, New Delhi.

.....Applicant

By Adv: Sri. A.K. Upadhyay.

V E R S U S

1. Union of India through General Manager, Railway Electrification, Allahabad.
2. General Manager Signal & Telecommunication, Central Organization, Railway Electrification, Nawab Yusuf Road, Allahabad.
3. Senior Signal & Telecom Engineer, Central Organization, Railway Electrification, Nawab Yusuf Road, Allahabad.
4. Sri V.K. Saxena, Senior Signal & Telecom Engineer, Central Organization, Railway Electrification, Nawab Yusuf Road, Allahabad.

..... Respondents

By Adv: Sri P. Mathur

O R D E R

BY K.B.S. RAJAN, MEMBER-J

Whether the resignation letter stated to have been given by the applicant was of her own volition or by duress is the question that is to be considered in this case. The basic feature to be kept in mind is that the husband of the applicant is

stated to have been unemployed and that she has three children to be brought up and that she was the lone bread winner.

2. Now the facts capsule as contained in the OA.

- (a) The applicant was appointed as a Bungalow Khalasi on 8.11.93. The applicant was posted in the Bungalow/residence of the respondent no.3. The husband of the applicant is ~~an~~ un-employed and also physically handicapped.
- (b) After completion of continuous 180 days, the applicant was granted regular salary and other benefits like other regular employees of Class IV w.e.f. 7.5.1984.
- (c) The respondent no.3 also issued an order on 11.1.95 to give the medical benefit to the applicant and her family members. On 22.12.94, the respondent no.3 also issued an order granted temporary status in the pay scale of Rs. 750-940/-. The applicant was also granted regular pay scale w.e.f. 3.11.1994.
- (d) On 3.5.95, the respondent no. 3 /4 at his residence in which the applicant was working as a Bungalow Khalasi forcibly and under duress asked the applicant to sign in two blank papers.
- (e) The applicant cannot write and read, she can any how put her signature in Hindi.
- (f) On 3.5.95, the applicant and her family members were compelled to leave the premises forcibly. On next day, when the applicant went to office for enquiring the

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version of the respondents, she was told by the official concerned that she had submitted her resignation. The applicant told the official concerned that she neither sought any resignation, nor she wanted to resign from her service. ^{copy of} The so called resignation dated 3.5.95 was given to applicant by official concerned.

- (g) On 4.5.95, the applicant made a representation to the higher authority General Manager, Railway Electrification; the applicant submitted that the resignation was obtained by the respondent no.3 under duress, coercion and forcibly. She has not resigned from service voluntarily.
- (h) The respondent no.2 approved the resignation of the applicant vide letter dated 24.5.1995.
- (i) The applicant filed O.A. no. 627 of 1995 before this Court. The Court was pleased to direct the respondent no.2 to decide the representation of the applicant vide order dated 1.11.2001.
- (j) The applicant submitted the order dated 1.11.2001 to the respondent no.2. The respondent no.2 appointed Sri S.B. Sharma Deputy Chief Signal & Telecom Engineer, as Enquiry Officer in the matter. Sri Sharma issue a letter dated 14.2.2002 to the applicant to submit her explanation regarding resignation.
- (k) The applicant submitted her explanation. The respondent no.2 has rejected the



representation of the applicant vide an order dated 19.4.2004/3.5.2002.

3. The respondents had resisted the OA and their main contention as contained in their counter is as under:-

(a) By virtue of working, if temporary status is acquired by the Bungalow Khalasi, but the same will not confer any right upon them vis-à-vis the other Khalasis. In other words, Rule of temporary Government servant or casual labour does not apply to the class of Bungalow Khalasi. The Principal Bench of this Tribunal in a Full Bench decision in no less terms had held that "even after acquisition of temporary status by a Bungalow peon/Khalasi, his services can be terminated on the ground of unsatisfactory working without holding a departmental enquiry."

(b) Since a decision has already been taken by the administration after the enquiry on the subject in which the allegation of the applicant was not proved, therefore, the question of taking her back in service does not arise at all particularly in the circumstances when the status of the applicant is merely of a Bungalow Khalasi.

4. Arguments were heard and the documents perused. The counsel for the applicant argued that it is inconceivable that a low paid employee, the lone bread winner in her family with the responsibility of bringing up her tender children would submit resignation and in any event, since she made representation for withdrawal much prior to the

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acceptance of her resignation, the resignation should be deemed to have been not in existence at the time when the order of acceptance of the resignation had been passed. On the other hand, the counsel for the respondents submitted that since the full Bench Judgment states that the temporary status of a Bungalow Peon stands on a different footing, challenge against termination of Bungalow Peon does not come under the jurisdiction of the Tribunal. The order dated 6-6-2002 passed by this Bench in OA No. 1681 of 1994 is also relied upon by the counsel for the respondents. He has further submitted that once an inquiry has been held and the facts finding had taken place, there is very little scope of interfering in the matter.

5. First, the contention of the counsel for the respondents. It is true that the full bench had given its verdict but the same relates to termination of a Bungalow Peon. Here the case is one of resignation and its effect when the same was withdrawn prior to acceptance. As such, the Full Bench Judgment is not applicable to the facts of this case.

6. A look at the resignation letter would manifest that same is in monosyllable style. It does not carry any date from which the resignation was to be made effective. The said letter dated 03-05-1995 was immediately withdrawn on 04-05-1995 and

acceptance by the authority was dated 24-05-1995, though with retrospective effect. The fact that it was accepted only on 24-05-1995 is admitted by the respondents vide para 16 of their counter, in reply to para 4.xix of the O.A. The said acceptance letter has not reflected anything about the withdrawal letter dated 04-05-1995. Reference to this representation is made in para 4.xvii of the OA and in reply thereto, the respondents have stated, "in reply to the contents of paragraph 4.xvii of the application it is submitted that the representation of the applicant was duly considered by the respondents in accordance with the direction of the Hon'ble Tribunal but since at the earlier instance, the applicant without waiting for decision had approached the Hon'ble Tribunal, and as such, the same was not decided by the Administration." In other words, the acceptance of resignation was without considering the representation dated 04-05-1995 withdrawing the resignation.

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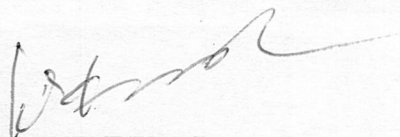
Resignation is the proposed severance of employer-employee relationship. It is trite law that when resignation is given, the same, to be effective, has to be accepted by the employer. It is the moment the employer accepts the notice that the resignation becomes effective. See P. Lal v. Union of India, (2003) 3 SCC 393. After acceptance, the employee should be relieved from duties. Till then, the employer - employee relationship continues. [It is a settled position in law that unless the employee is relieved from the duty after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an

end. (See Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia (1997) 4 SCC 280', as held by the Apex Court in the case of **State Bank of Patiala v. Phoolpati**, (2005) 3 SCC 88, at page 90] Thus before the acceptance of resignation, the employer-employee relationship continues and is not severed. As such, before formal acceptance of resignation, the employee has a right to withdraw, giving cogent reason for the same. (The Apex Court has held in the case of **Nand Keshwar Prasad v. Indian Farmers Fertilizers Coop. Ltd.**, (1998) 5 SCC 461. It has also been held by this Court that it is open to the employee concerned to withdraw letter of resignation before the same becomes effective. And in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority(**North Zone Cultural Centre v. Vedpathi Dinesh Kumar**, (2003) 5 SCC 455). If the withdrawal is prior to acceptance, then the letter of resignation becomes non-operative, unless, the employer on a careful consideration of the letter of withdrawal of resignation, refuses to accept the same and gives effect to the letter of resignation. Cogent reason must be there for such rejection of request for withdrawal. In any event, when a representation for withdrawal of resignation was submitted before acceptance, in the letter of acceptance of the resignation, at least reference to the letter of withdrawal should have figured in, in which event, it could be presumed that tacitly the employer had declined to accept the letter of withdrawal of resignation.

7. As stated earlier, in the case in hand before us, the admitted position is that the resignation letter was dated 3rd May, 1995; the letter of withdrawal of resignation was 4th May, 1995; the

letter of resignation was accepted on 24th May 1995 and while accepting the resignation letter, the authorities had NOT considered the letter of withdrawal of resignation. Thus, it is amply clear that the acceptance of resignation without considering the withdrawal letter is illegal. Notwithstanding the fact that later on some inquiry was conducted, the acceptance of resignation becomes non-est. The applicant is therefore deemed to continue in service.

8. In the end, the OA succeeds. The impugned order dated 19-04-2002 /03-05-2002 is quashed and set aside. The applicant is deemed to be continuing in service. However, she is not entitled to any pay and allowances for the past period. The respondents are directed to reinstate the applicant in service forthwith (latest within one month from the date of communication of this order). Formal order of reinstatement be passed and if the applicant is entitled to any accommodation under the service rules, the same shall be made available to her. No cost.


MEMBER-J


MEMBER-A

GIRISH/-