

RESERVED

**Central Administrative Tribunal Allahabad Bench  
Allahabad.**

(Circuit Sitting at Uttarakhand (Nainital)  
Allahabad This The 12<sup>th</sup> Day Of 11, 2008.

ORIGINAL APPLICATION NO. 200 OF 2006 (U)

Present:

**Hon'ble Mr. Ashok S. Karamadi, Member (J)**

**Hon'ble Mrs. Manjulika Gautam, Member (A)**

Kamal Nayan, S/o Shri Chintamani, 11/151,  
Kalidas Marg, Upper Jonpur, Kotdwar,  
District Pauri Garhwal (Uttaranchal).

.....Applicant

By Advocate: S/Shri Nikhil Kumar/M.K.  
Sharma.

Versus

1. Union of India through General  
Manager, West Central Railway,  
Jabalpur (M.P)
2. Divisional Railway Manager, West  
Central Railway, Kota Mandal, Kota  
(Rajasthan).

.....Respondents

By Advocate: Shri P.N Rai

**O R D E R**

By Mrs. Manjulika Gautam, Member (A)

This Original Application has been filed  
by the applicant for challenging the order  
dated 15.9.2004 by which respondents have  
accepted the conditional letter of the  
applicant dated 13.9.2004.

2. The facts of the case are that the  
applicant was appointed as Driver in the  
West Central Railway on 9.12.1994 and is  
working on the post since then. The  
applicant is a native of Pauri Garhwal and  
is the eldest son of his parents. He had  
requested the Authorities to transfer him to

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either Moradabad Zone, Delhi Zone or Ambala Zone as his mother was suffering from cancer. Meanwhile mother of the applicant died on 24.8.2004, but news reached him so late that he could not participate in her last rituals, which was his duty as the eldest son. He lost his mental equilibrium and in a mentally disturbed condition, he wrote a letter dated 13.9.2004 (Annexure 5) asking either for a transfer as requested by him or to accept his resignation.

3. Just 5 days after he has written the letter, the applicant realized his mistake, changed his mind and vide letter dated 18.09.2004 & 29.09.2004 (Annexures 6 and 7), he requested for withdrawal of his letter dated 13.09.2004. On the other hand, his letter dated 13.9.2004 was treated as a resignation letter, which was accepted and a publication to this effect was made in the local daily dated 19.9.2004. In the publication, it was stated that the resignation of the applicant had been accepted with immediate effect and notice period required as per Rules has been waived. The applicant filed Original Application No. 1444 of 2005 before Central Administrative Tribunal, Principal Bench, New Delhi, which was dismissed for want of jurisdiction vide order dated 2.8.2005. Accordingly, the present Original

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Application has been filed at C.A.T. Allahabad Bench.

4. Learned counsel for the applicant has in his argument raised several issues. He has cited several Rulings, which say that a letter, which is conditional, cannot be a letter of resignation. He has also stated that the letter of the applicant dated 13.9.2004 should have been treated as 3 months notice and that no order should have been passed before the expiry of 90 days as per Railway Board Rules. Respondents have not given any information to the applicant in writing regarding accepting his resignation and they had sent order dated 15.9.2004 by which they accepted his resignation, not to his local address but to his parental address. Accordingly, the applicant has sought the relief of quashing of impugned order dated 15.9.2004 passed by respondent NO. 2 published in the local daily dated 19.9.2004 and a direction be issued in the nature of mandamus directing the respondents to reinstate the applicant in service and pay his salary regularly and to treat the applicant in continuous service without any break.

5. Learned counsel for the respondents vehemently argued that the Original Application was time barred but according to the record, delay in the matter has been

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condoned, therefore, the matter has to look at on merits. Learned counsel for the respondents stressed the language of the letter of the applicant dated 13.9.2004 in which he had said either he may be transferred to Moradabad or he may be relieved from service as otherwise in case of any accident the responsibility would rest on the railways. In the impugned order dated 15.9.2004, the respondents have accepted that the letter of resignation is a conditional one, but taking into account the threat regarding safety of Railway operations, it has been decided to treat it as a voluntary resignation and also to waive one months mandatory notice period.

6. On perusing the facts of the case and looking at all records, it is clear that a conditional letter was given by the applicant and treating it as a voluntary resignation, his resignation was accepted by the Competent Authority within 2 days. The applicant submitted another letter dated 18.9.2004 whereby he has stated that on account of his mother death, he had become mentally disturbed when he had written the letter dated 13.9.2004, and in the present letter, he has realized the mistakemade by him and has requested for allowing him to withdraw his letter dated 13.9.2004. He has also assured that he will serve Railways loyally. No orders have been passed by the

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respondents with reference to second letter dated 18.9.2004 and his subsequent representation dated 29.9.2004.

7. Several Rulings of the High Court and Apex Court have been cited regarding non-acceptance of conditional letters, resignation being final only after being relieved notice period being mandatory etc. but we have mainly relied on the Railway Board's letter dated 29.1.1991, which covers this case squarely. Para 10 of the said letter reads as under:-

"10. The authority competent to accept the resignation may permit a person to withdraw his resignation in the Public interest on the following conditions:-

- (i) that the resignation was tendered by the Railway servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal has been made as a result of a material change in the circumstances which compelled him to tender his resignation originally.
- (ii) During the intervening period between the date of his resignation and the withdrawal, the conduct of the person was not improper.
- (iii) That the period of absence from duty between the date on which the resignation became effective and the date on which a person was allowed to resume duty as a result of permission granted for withdrawal of resignation, is not more than 90 days.

*M. J. G. M. S.*

(iv) That the post, which was vacated by the person or any other comparable post is available".

8. This Rule provides that before accepting the resignation, a person has the right to withdraw his resignation within 90 days subject to several conditions. Condition No.1 covers in this particular case which shows that the resignation was tendered by the Railway servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal has been made as a result of a material change in the circumstances which compelled him to tender his resignation originally. The circumstances of the applicant in this O.A. completely fit, this provision as when he sent the earlier letter, he was mentally disturbed and after 5 days he changed his mind realized his mistake and made a request for withdrawal of his letter. The Competent Authority has nowhere considered the request to withdraw the letter, which is a fundamental right of the applicant but has passed orders within 2 days accepting the resignation and publishing it in the newspaper. The action of the applicant is as per Rules but the order of the Competent Authority has not taken into consideration the facts given by the applicant in his second letter whereby he has sought to withdraw his earlier letter. He has also

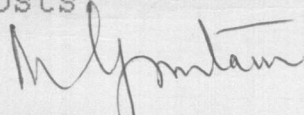
*M. Fontana*


stated that he had written the earlier letter in a disturbed frame of mind and he will serve the Railways loyally in the future. Since Rules provide for withdrawal of resignation letter within 90 days and the facts in this case show that the earlier letter was written under special circumstances, which changed when the applicant realized his mistake, he rectified the same. The Competent Authority has paid no heed to the request of the applicant but has taken the ground that the resignation was accepted because his earlier letter threatened the security of the Railways.

9. We are of the opinion that the case of the applicant is squarely covered under the provision of Railway Board Circular dated 29.1.1991. The impugned order dated 15.9.2004 is hereby set aside and respondents are directed to consider the request and to pass reasoned and speaking orders in accordance with Rules, within a period of 1 month from the date of receipt of copy of this order.

10. With the above direction, the O.A. is allowed.

No costs.

  
Member (A)

  
Member (J)

Manish/-