

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 419 of 1992
~~T.A.NO.~~

DATE OF DECISION 22.10.1996

Shri N.M.Asari

Petitioner

Mr. K.C. Bhatt

Advocate for the Petitioner [s]

Versus

Union of India & others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. A.V.Haridasan, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Shri N.M.Asari, Ex.E.D.B.P.M.Sarsav,
(Vijaynagar) Sabarkantha.
Advocate: Mr. K.C.Bhatt-

Applicant

Versus:

1.Union of India through The Director General,Dept.t of
posts, Ministry of Communication, New Delhi-110 001.

2.Chief Post Master General, Gujarat Circle, Ahmedabad.

3.Suptd. of Post Offices. S.K., Div.Himatnagar-383001.

Respondents-2 O R D E R (Oral) IN O.A. NO. 419 of 1992/

Dated 22.10.1996

Advocate:Mr.Akil Kureshi.

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant was regularly appointed as Extra Departmental Branch Post Master Sarsav by order dated 12.2.1990 w.e.f. 27.10.1989, after due process of selection. According to him, while in service he was forced to tender his resignation on 10.3.1992, Under threat which had to yield. On 3.4.1992 (A-7) the applicant sent a letter withdrawing his resignation alledging that the letter of resignation was forcibly obtained from him. He followed up the matter further by sending a registered noice to the respondents on the same day i.e. 3.4.1992 making it clear that he intended to withdraw the resignation which was obtained under duress. Thereafter he followed up the matter again by a letter dated 22.4.1992 reiterating his stand and requesting that a letter allowing withdrawal of his resignation be sent. Thereafter respondent No. 3 on 22.5.1992 issued the impugned order which reads as follows:

"The unconditional resignation dated 10.3.1992 tendered by Shri Nanjibhai Manghabhai Asari EDBPM Sarsav is hereby accepted with immediate effect".

He was relieved from the post on 6.6.92 A/N. Aggrieved by this, applicant filed an appeal to the Director of Postal Services which was rejected by order dated 6.8.1992. It is aggrieved by that the applicant had filed an application praying that the impugned order dated 22.5.1992 as also the appellate order dated 6.8.1992 may be set aside and the respondents be directed to reinstate the applicant

forthwith with continuity of service and back wages and all other consequential benefits. The applicant has stated that there was no irregularity in the matter of his selection and that forcibly obtaining his resignation and wrongful acceptance thereof after the same was withdrawn were motivated by malice.

2. The respondents in their reply seek to justify the impugned orders on the ground that the appointment of the applicant was made by a mistake of identity of person and that the applicant had in reply to a shows cause notice submitted unconditional resignation as also an explanation dated 13.3.1992 to the effect that he having unconditional resigned from service it was not necessary further to proceed with the show cause notice. The respondents therefore pleads that the action taken by the respondents were in good faith and the applicant does not deserve any relief.

3. We have carefully gone through the pleadings and the meterials placed on record and have also heard the learned counsel appearing on either side. The respondents in their written reply have stated that there was a mistake in the identity of the person on account of similarity of names. There is nothing on record to prove this co/intention. Further in the letter dated 3.4.1992 sent by the applicant in a registered lawyer notice sent on his behalf on the same day and in a letter dated 22.4.1992 the applicant had clearly had consistantly ~~alleged to~~ ^{alleged that} obtained resignation letter was obtained from him under threat and that he had withdrawn the resignation.

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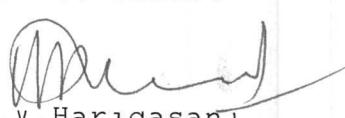
that being so, the respondents could not have relieved the applicant accepting the resignation w.e.f. 22.5.1992 while the applicant had withdrawn the letter of resignation, long before that date. It is well settled by now that the employee can withdraw his resignation before it is accepted by the competent authority and that where the resignation is withdrawn it is not permissible for the competent authority to accept it.

4. In the light of what is stated above we are of the considered view that impugned orders are unsustainable in law and liable to be set aside. We, therefore, set aside the order dated 22.5.1992 and the appellate order dated 6.8.92 and direct the respondents to reinstate the applicant in service forthwith and treat that he continued in service despite the impugned orders and to pay him backwages for the period he ~~was~~^{was} out of service within two months from the date of communication of this order. It is made clear that this order shall not preclude the respondents from taking any action in accordance with law if they still consider that the appointment of the applicant was irregular provided that such action are taken strictly in accordance with law after giving the applicant reasonable opportunity to put forth his case.

There will, however, be no orders as to costs.



(K. Ramamoorthy)
Member (A)



(A.V. Haridasan)
Vice Chairman

Date	Office Report	ORDER
20.1.97		<p>Heard both sides. For the reasons stated in the M.A. time extended for payment of backwages for the relevant period, for a period of two months from 3.1.1997. M.A.35/97 stands disposed of accordingly.</p> <p><i>h.v</i> <i>pv</i></p> <p>(T.N. Bhat) Member(J)</p> <p>(V.Ramakrishnan) Vice Chairman</p> <p>vtc.</p>
18.3.97		<p><u>M.A. 217/97</u></p> <p>Heard. Extension of time for compliance of the directions one more month from 3.3.97 is granted. Making it clear no further extension will be given. M.A. 217/97 is disposed of accordingly.</p> <p><i>pv</i></p> <p>(V.Ramakrishnan) Vice Chairman</p> <p>vtc.</p>

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