

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 486 of 1992
~~DA XXXXX~~

DATE OF DECISION 10.1.1995.

Shri Jashwantkumar Patel Petitioner

Shri K.C.Bhatt Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V.Radhakrishnan : Member (A)

The Hon'ble ~~Mr.~~ Dr.R.K.Saxena : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *47*
 2. To be referred to the Reporter or not ? *47*
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- no.*

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Shri Jashwantkumar Patel,
Ex.E.D.B.P.M.,
Mota Chekhla,
(Harsol) - 383 305.

...Applicant.

(Advocate : Shri K.C.Bhatt)

Versus

1. The Union of India through
The Director General
Department of Post
Ministry of Communication
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.
2. The Chief Post Master General,
Gujarat Circle,
Ahmedabad - 380 001.
3. The Supdt. of Post Offices,
Sabarkantha Dn.
Himatnagar - 383 001.
4. Shri N.B.Vankar,
Ad hoc E.D.B.P.M.,
Mota Chekhla,
Harsol - 383 305.
Sabarkantha.

...Respondents.

(Advocate : Shri Akil Kureshi)

J U D G M E N T
O.A.NO. 486 OF 1992.

Date : 10.1.1995.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

The applicant was working as Extra Departmental Branch Post Master, Mota Chekhla, from 4.11.1980. He submitted his resignation on 29.1.1992, Annexure-A/1 to be effective from 31.1.1992. According to the applicant he did not hear from the respondents about acceptance of his resignation. He withdrew his resignation on 3.6.1992. According to him — circumstances had changed after he had submitted his resignation on 29.1.1992 and hence he had written letter withdrawing his resignation on 3.6.1992,

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Annexure-A/2. According to him, Superintendent of Post Offices, Himatnagar, accepted his original resignation on 17.6.1992 and the applicant was relieved on 20.6.1992. The applicant preferred an appeal to the Appellate Authority on 17.6.1992 and 29.6.1992 which were rejected, vide Annexure-A/8. The contention of the applicant is that the withdrawal of resignation should not have been [redacted] by the respondents as he was not communicated any decision regarding his first application of resignation until he submitted the withdrawal of resignation. He has quoted the case of K.Santhensam Vs.D.D.G.,A.I.R. 1989 (2) C.A.T. Ernakulam, which held that an employee can withdraw his resignation at any time before he is actually relieved of his duties even if his resignation has been accepted. He has also quoted case of R.K.Satodia Vs. Union of India, A.T.R. 1989 (1) C.A.T. 518, Ahmedabad Bench, stating that the respondents should not take away the right of the petitioner to withdraw the resignation. He also supported his case by the case decided by Chandigarh Bench of Central Administrative Tribunal in Dharam Chand Sharma Vs. Union of India, A.T.C. 1989 (10) P.19, which held that resignation could be withdrawn at any time before it became effective even if it stood accepted by the competent authority. He also supported his case by citing Supreme Court's Judgments' in Jai Ram Vs. Union of India A.I.R.1954, SC.P.584 and Union of India Vs. Gopal Chandra Misra, 1978 (2) S.C.C. 301, which held that it is open to the applicant to withdraw his resignation for voluntary retirement/resignation till the same becomes operative and he relinquishes charge of the post. He has also supported his case with the judgment of Supreme Court

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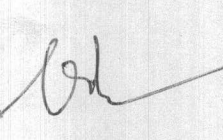
in Balram Gupta Vs. Union of India, A.T.C. 1987 (5) 246.

Hence he claim the following reliefs :

1. The impugned order No.B 2/50/BPM-Mota Chekhala/1992 dated 17.6.1992 of Superintendent of Post Offices, Himatnagar, accepting resignation of the applicant, be quashed and set aside (Annexure-A-4).
2. The appellate order No.Staff/24-19/SK/Corr-I dated 6/9-11-1992, of Director Postal Services, Ahmedabad be quashed and set aside.
3. The respondents authority be directed to reinstate the applicant immediately and treat him as in a service w.e.f. 20.6.1992 with full back wages and all consequential service benefits.
4. The respondents authority be directed to treat the resignation of the applicant as having been lawfully withdrawn.
5. Any other suitable relief may please be granted.


2. The respondents in their reply have stated that the applicant had resigned by his letter dated 29-1-1992 saying that he intended to start business. The applicant's resignation was accepted by the respondents on file. However it was not communicated to him because before relieving him the respondents were required to verify the work done by him as E.D.B.P.M. and also complete pre-appointment formalities for the purpose of selecting new incumbant for the post. According to the respondents the applicant got himself relieved on 5-2-1992 by handing over his charge to his sister-in-law Smt. Induben Patel. The respondents could not get any name from the Employment Exchange for the post and hence issued local notification and completed

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the formalities for selection of a new incumbent on 29-5-1992. According to them when the applicant came to know that Smt. Induben his sister-in-law had not been selected for the post he again took the charge from her and sent a letter withdrawing his resignation. He stated in his letter that duty hours in the school when he had got a job were changed to morning and as the timings in the Branch Office were in the afternoon he would be able to perform the duty of E.D.B.P.M. The respondents did not accept the request of the applicant for withdrawal of his resignation because of the fact that duty hours of the school were from 7-10 a.m. to 12.00 noon and the duty hours of the Post Office were from 10.00 a.m. to 13.00 hours and hence one could not look after both the duties at the same time.

3. Mr. K.C. Bhatt during arguments stated that even if the applicant had taken job in school it was permitted under Rule 284 of P & T Manual Vol. IV. He also brought to our notice Rule 8 of the E.D.A. Recruitment Rules wherein school teachers are permitted to be employed as E.D. Agents who are working as teachers should be removed from service only if general public and Gram Panchayat etc., complain in writing that their working simultaneously as E.D.As and teachers is not possible and they should be removed from service only after proper

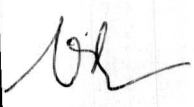


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inquiry and after following the procedure for taking disciplinary action against the Extra Departmental Agents. He pointed out that there was no complaint from any quarter regarding the work of the applicant. On the other hand he produced a letter from Mota Chekhla Gram Panchayat dated 24.11.1994 regarding satisfactory work of the applicant. He has stated that even if the respondents found the work of the applicant unsatisfactory they should have held inquiry before removing him. He again quoted Supreme Court's Judgment in Balram Gupta Vs. Union of India, AIR-1987 SC 2354, wherein it is stated that Government as a model employer should not be too technical and be more flexible in allowing its employees to withdraw resignation or letter of retirement. He also referred to Jairam Versus Union of India (Supra) which lay down that an employee can withdraw resignation before it becomes effective i.e., before it effects the termination of tenure of the post or employment. He also mentioned a number of Judgments of various benches of Central Administrative Tribunal to support his stand. They are as follows :

- (i) A.T.R. 1989 (2) C.A.T. 682 - C.A.T. Ernakulam T.A. NO. K-13/81 (O.P. NO. 7100/85) decided on 17.8.1989. K. Santhensam Vs. D.D.G. etc.,
- (ii) A.T.R. 1989 (1) C.A.T. 518., C.A.T., Ahmedabad - Ravjibhai K. Satodia Vs. Union of India & Ors.,
- (iii) A.T.C. 1989 (10) P.19 - C.A.T. - Chandigarh - Circuit at Jammu. O.A./711/88, decided on 10.2.1989. Dharam Chand Sharma Vs. Union of India & Ors.

Hence he argued that the action of the respondents in not allowing the applicant to withdraw his resignation was illegal, void and bad in law.



4. Mr. Akil Kureshi learned counsel for the respondents stated that after he had submitted his resignation on 29.1.1992, he had unilaterally handed over charge to his sister-in-law Smt. Induben. He had claimed that he was submitting his resignation to do business while actually he joined a private school as a teacher. The Department had accepted the resignation of the applicant on file on 3.2.1992 and on 4.2.1992, the Employment Exchange was asked to submit names for fresh selection. As the Employment Exchange could not sponsor the name immediately local notification was issued on the basis of which selection was made on 29.5.1992. According to Mr. Akil Kureshi when the applicant came to know ^{sister in law} that his ^Z Smt. Induben had not been selected he submitted his withdrawal of resignation on 1.6.1992. This was put up to competent authority who did not accept his withdrawal application. From the behaviour of the applicant his intention was clear. He had relieved himself on 5.2.1992, to join as a teacher in the private school. He was not interested in continuing as E.D.B.P.M. Moreover, the timings in the school and the timing of the Post Office were more or less same and hence it was considered by the Authorities that same person could not do both the jobs at a time. It is true that teachers are appointed as E.D. Agents but that is done when timings between the school and Post Office do not clash. In the present case, timings of the school and Post Office were clashing and as such the applicant was not expected to do justice to the job as E.D.B.P.M. Hence he request for withdrawal of


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resignation, was not accepted by the Competent Authority and he was informed of both the acceptance of resignation and rejection of withdrawal of resignation application on 17.6.1992. He pointed out a letter received from the school, Annexure-A/3, regarding timings of the school which has not been contested by the applicant. The applicant continues as teacher even today. In view of these facts he prayed for rejection of the application.

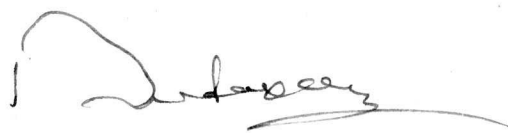
5. We have heard both the counsel for the parties and gone through the various judgments cited by Shri K.C.Bhatt.

6. It is true that various judgment cited by Shri K.C.Bhatt give general preposition that withdrawal of resignation before it is accepted and person is relieved of his job may be allowed but that general preposition has to be seen in the context of circumstances in each particular case. In the present case the behaviour of the applicant in submitting his resignation on 29.1.1992, to be effective from 31.1.1992, and handing over charge of the post to Smt. Induben immediately thereafter on 5.2.1992 without waiting for any order shows that he was not interested to work as E.D.B.P.M. He had joined a private school Gayatri Vidyamandir on 6.1.1992 and it appears that he continues to work there even now. It has also been stated by the school authorities by letter dated 13.12.1992, Annexure-A/3, that he (the applicant) is a full time worker in the school and the working hours are from 7.10. a.m. to 12.00 noon. Being a full time worker in a school, the respondents could not again appoint him as E.D.B.P.M. It is true that teachers are appointed as E.D.Agents but only if they are doing part time job and not full time job.



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However, it has been stated by the respondents that the Post Office working hours are of 10.00 a.m. to 12.00 noon, clashing with timings in the school when the applicant is working as a full time teacher and hence the applicant could not be expected to perform his duties as E.D.B.P.M. in a proper way. It is for these reasons that withdrawal of resignation was not accepted. The other reason was that the resignation had become effective on the expiry of 31.1.1992. The applicant had also handed over the charge on 5.2.1992. Thus, the acceptance of resignation (though on file on 3.2.1992) was the only alternative. The delayed communication of acceptance of resignation will not change the situation. However, it is for the appointing authorities to consider and accept withdrawal of resignation based on the circumstances of the case. Though Shri K.C. Bhatt, had alleged malafides — he had not been able to establish the same. In these circumstances, we do not find any defect in the decision taken by the respondents in not accepting the withdrawal of resignation application tendered by the applicant. The applicant has not been able to give any valid reasons for the withdrawal of his resignation. In the circumstances, we do not find any merit in the prayer of the applicant and as such the O.A. stands rejected and disposed of accordingly. No order as to costs.


(Dr. R. K. Saxena)
Member (J)


(V. Radhakrishnan)
Member (A)

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