

## CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXX BENCH XXXXX

AHMEDABAD BENCH, AHMEDABAD

O.A No./666/93  
T.A No.

198

DATE OF DECISION 30-3-1994

Shri Jatin Indravadan Vaidya Petitioner

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

Versus

Union of India &amp; others Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. N. B. Patel : 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 Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal

: 2 :

Shri Jatin Indravadan Vaidya,  
54, Nandi Park Society,  
Piplod, Surat-395 007.

: Applicant

(Advocate: Mr.K.C.Bhatt)

Versus

1. The Union of India  
Through:  
The Director General,  
Department of Posts,  
Ministry of Communication,  
Dak Bhavan, Sansad Marg,  
New Delhi-110 001.
2. The Postmaster General,  
Vadodara Region,  
Vadodara-390 002.
3. The Sr.Superintendent of  
Post Offices, Surat Division,  
Surat-395 001.

: Respondents

(Advocate: Akil Kureshi)

ORAL ORDER

IN

O.A./666/93

Date: 30.3.1994

Per: Hon'ble Mr.N.B.Patel

: Vice Chairman

The applicant in this case challenges the legality of the acceptance of his resignation from the post of Postal Assistant, Dumas and prays for a declaration of continuity in service despite such acceptance and for all consequential benefits including back wages.

2. The facts material for deciding the O.A. are not in dispute and may first be set out. The applicant was appointed as a Postal Assistant with effect from 12.4.1986 and, in February, 1992, he was working as Postal Assistant at Dumas. By letter dated 15.2.1992, he served the Department

with a three months' notice for acceptance of his resignation w.e.f. 15.5.1992. It appears that by the letter dated 7.4.1992 (Annexure A-1), the Senior Superintendent Post Offices, Surat Division, Surat, informed the applicant that his resignation was accepted w.e.f. 15.5.1992 i.e. the date from which the applicant wanted his resignation to be effective. It further appears that, before 15.5.1992 i.e. the date on which the resignation was to become effective, the applicant by letter dated 21.4.92 (Annexure A-2) addressed to the Senior Superintendent/Post Office, Surat Division, Surat, withdrew his resignation. In that letter, he also stated that he had tendered his resignation as he was under heavy mental strain in February, 1992 as a result of his stringent financial condition. He stated that he was the only bread-winner for his family-members and, therefore, he was withdrawing his resignation and his request for withdrawing his resignation may be sympathetically considered. There was no reply to this letter (Annexure A-2) addressed by the applicant to the Senior Superintendent of Post Office, Surat. But, by order dated 4.5.92 (Annexure A-3), the applicant was transferred as Postal Assistant at Velachha. The Annexure A-5 dated 19.5.1992 is a letter written by the Senior Superintendent of Post Office to the applicant informing him that since he had not joined at Velachha, he was deemed to have been relieved after "expiry of transit" on 19.5.92 afternoon. This particular letter is referred to as the letter by which the applicant's request for withdrawal of his resignation was rejected.

3. The ground on which the applicant challenges the acceptance of his resignation or non-acceptance of the withdrawal of his resignation is that he had withdrawn the resignation by his letter dated 21.4.1992 much before the date on which the resignation was to be effective, namely, 15.5.1992 and he was perfectly within ~~his~~ right to withdraw his resignation before it had become effective. The applicant also states that, even assuming that his request for withdrawal of resignation was rejected, it was rejected in a totally mechanical and illegal manner without bestowing any consideration to the question whether the case was a fit one for allowing withdrawal of resignation.

4. The main ground on which the application ~~resisted~~, as set out in the written reply filed by the respondents, is that the resignation tendered by the applicant was an un-conditional resignation and that it was accepted after due consideration w.e.f. 15.5.1992. It is further stated that, the acceptance of resignation was conveyed to the applicant by Office Memorandum dated 7.4.1992 and yet he was transferred to Velachha by a subsequent order dated 9.5.1992 because of administrative exigencies. It is further stated that the applicant was deemed to have been relieved w.e.f. 19.5.1992 in view of the joining period ~~in~~ which he was entitled on his transfer to Velachha. In the reply, it is admitted that the applicant had applied for the withdrawal of his resignation by his application dated 21.4.1992, but it is stated that his said request was considered and rejected as per the provision of Rule 161 of the P & T Manual Vol. III.

It is stated that this request was rejected by the communication dated 19.5.1992 which, as already stated, mentions that the applicant was allowed joining period beyond 15.5.1992 and was deemed to have been relieved on 19.5.1992. A reference is then made to the representations made by the applicant on 1.6.1992 and thereafter. It is also contended that the applicant had ~~the of preferring~~ remedy for ~~availing of~~ departmental appeal against the order of acceptance of his resignation and also against the order of the non-acceptance of his request for withdrawal of resignation, and the applicant having rushed to the Tribunal without exhausting the said remedy of appeal, his application was premature and was liable to be rejected.

5. It is very clear from the above that the applicant wanted his resignation to be effective from 15.5.1992 and the Department had also accepted his resignation so as to take effect from 15.5.1992. It is also clear that, before the resignation become effective on 15.5.1992, the applicant had withdrawn it by his letter dated 21.4.1992 and he had never received any reply as regards his request for withdrawal of his resignation. The letter Annexure A -5 dated 19.5.1992 is referred to, in the reply filed by the respondents, as the letter by which his request for withdrawal of resignation was rejected. However, if we turn to Annexure A-5, it is abundantly clear that, <sup>re</sup> that letter was written to the applicant in response to some application dated 20.5.1992 addressed by the applicant to the Department. Assuming that the applicant had sent a reminder by his communication dated 20.5.1992 of his request for withdrawal of resignation, it is clear that nothing was said in this reply Annexure A-5 about the request of the applicant

for withdrawal of his resignation having been considered and rejected. It is also strange that, though the applicant's resignation is said to have been accepted w.e.f. 15.5.1992, by the letter Annexure A-5, it is stated that he was deemed to have been relieved w.e.f. 19.5.1992. This letter creates a serious doubt as to whether the acceptance of resignation w.e.f. 15.5.1992 was acted upon or not by the Department itself.

6. All this apart, it is stated that the request of the applicant for withdrawal of resignation was duly considered and it was rejected as per the provision of Rule 161 of P & T Manual Vol. III. This is mentioned in para-5 of the reply filed by the respondents. A perusal of Rule 161 of the P & T Manual Vol. III, (copy thereof is annexed as Annexure R-I), on the contrary, shows that there was complete non-application of mind in this case on the question whether the request of the applicant to withdraw his resignation should have been accepted or not. Rule 161 reads as under:-

"A resignation becomes effective when it is accepted and the officer is relieved of his duties. Where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation whether to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation has become effective and the officer is no longer in Government service, the request for withdrawal of resignation should not be accepted, except with the sanction of the Government of India".

7. The very first line of Rule 161 shows that a resignation ~~not~~ becomes effective when it is accepted and the officer is relieved of his duties.

In this particular case, the applicant was deemed to have been relieved from his duties on 19.5.1992, but, even if his date of relief is taken to be 15.5.1992, it is clear that his resignation would ~~not~~ have been effective till 15.5.1992. This being so, the provision of Rule 161 dealing with a situation where the resignation has still not become effective had come into play and, in that event, the Rule states that if the officer wishes to withdraw his resignation and makes a request for withdrawal, it is open to the authority, which means it will be discretionary for the authority, <sup>to consider</sup> whether to permit the officer to withdraw his resignation or to refuse his request for such withdrawal. In this case, therefore, the authority competent to accept the resignation was bound to exercise discretion and to decide whether the applicant should be permitted to withdraw his resignation or not. There is absolutely nothing on the record to show that such discretion was ever exercised by the authority.

8. The Government of India's decision No.3 ~~etc on~~  
<sup>reproduced</sup> Rule 26 of CCS Pension Rules, as ~~produced at~~ page 59  
of Swamy's Pension Compilation (Twelfth Edition, 1992) also gives a complete answer to the contention of the respondents that there was nothing illegal about the acceptance of the resignation of the applicant even though it was withdrawn <sup>before</sup> it became effective or that there was nothing illegal about rejection of the withdrawal of the resignation. Decision No.3 reads as under:-

" A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an

intimation in writing to the appointing authority withdrawing his earlier letter of ~~the~~ resignation before its acceptance by the competent authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing his resignation is made by the Govt. servant before he is actually relieved of his duties, the normal principle should be to allow the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the Government servant concerned".

9. In the present case, the resignation is said to have been accepted on or before 7.4.1992 as evidenced by Annexure A-1 dated 7.4.1992 though it was to be effective from 15.5.1992. Therefore, taking 7.4.1992 as the date on which the resignation was accepted, the date on which the applicant was to be relieved, <sup>was</sup> ~~is~~ still a future date being 15.5.1992 and Decision No.3 quoted above clearly shows that, in such a case, if a request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal <sup>course</sup> ~~principle~~ should be to allow the request of the Government servant to withdraw the resignation. Therefore, in this case the withdrawal of resignation had to be accepted unless the circumstances were so abnormal <sup>as to</sup> ~~that~~ require rejection of the request for withdrawal. Decision No.3 further lays down that ~~if~~, in such a case, if the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the Government servant concerned. In the present case, there is absolutely nothing

to show that the case could not have been dealt with as a normal case as administrative exigencies or some other reason required rejection of the applicant's request for withdrawal of his resignation. Furthermore, there is nothing to show that the grounds for rejection were recorded by the concerned authority, much less that they were intimated to the applicant.

10. We, therefore, find that the rejection of the applicant's request for withdrawal of his resignation is un-sustainable. Consequently, it must be held that the acceptance of resignation of the applicant was ~~bad~~ <sup>in law</sup> and the applicant is entitled to have the orders Annexure-A-1 and A-5 quashed and also to a declaration of continuity of service. The only question then remains for consideration is whether the applicant should be awarded back-wages from the date of his relief till the date of his reinstatement. Mr.Bhatt, for the applicant, did not press the claim for any back-wages and stated that the applicant relinquished his claim in that behalf.

11. In the result, therefore, the application is partly allowed and Annexure A-1 and A-5 accepting the resignation of the applicant and purporting to reject his request for withdrawal of resignation are quashed and set aside. The respondents are directed to reinstate the applicant on his original post, with continuity of service and all consequential benefits, but without any back-wages for the period between the date of his relief till the date of his reinstatement.

: 10 :

The respondents are directed to reinstate the applicant within a period of 15 days from today, failing which they will start paying him his wages on the expiry of the said period of 15 days. The applicant may report to the Sr. Superintendent of Post Offices, Surat Division, Surat for posting orders.

  
(K. Ramamoorthy)  
Member (A)

  
(N. B. Patel)  
Vice Chairman

a.a.b.