

5

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 138 OF 1991

Date of decision: 6.8.1993

Dr. Satya Bir Singh Mallik Applicant

Versus

Union of India and others Respondents

For the Applicant ... M/s. P.V. Ramdas, B.K. Panda,
D.N. Mohapatra,
M.K.B. Rao, Advocates.

For the Respondents ... Mr. Ashok Mohanty,
Standing Counsel (R ly.)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
&

THE HONOURABLE MR. M.Y. PRIOLKAR, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? No
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

....

J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order dated 1st November, 1990, contained in Annexure-10, and to give a declaration that the Office Order dated 26th February, 1991, contained in Annexure 14, is illegal and without jurisdiction.

2. Shortly stated, the case of the petitioner, is that he is a Scientist, Grade S-2 in Agricultural Research Service and he is at present working as Scientist (Economic Botany) in the National Bureau of Plant Genetic Resources (N.B.P.G.R for brevity) posted at Cuttack. This is an Organisation under the Indian Council of Agricultural Research, New Delhi (for short 'I.C.A.R.'). The Petitioner completed his M.Sc (Agriculture) in July, 1969. He specialised himself in Genetic & Plant Breeding. The Petitioner functioned as Senior Research Assistant in Government of Uttar Pradesh from 28-11-1970 to 22-9-1971. While the petitioner was working in Harayana Agricultural University, he made an application for the post of Grade S -2 Scientist of the Agricultural Research Service under the I.C.A.R. By order dated

16th March, 1988, the petitioner was appointed as a Scientist S-2 and was posted at Cuttack on a scale of pay of Rs. 1100 - 1600/- (pre-revised). The Petitioner joined the post on 10th October, 1988. The Petitioner, Vide Annexure 6 dated 19/21.4. 1990 was allowed to draw Rs. 3,700-5,700/-. Since the advance increment claimed by the petitioner in his letter dated 10th September, 1990 addressed to the Director, N.B.P.G.R., New Delhi was not allowed, the petitioner vide Annexure 8 tendered resignation. Thereafter, the petitioner, vide his letter dated 5th October, 1990 withdrew his resignation, this is contained in Annexure-9. According to the petitioner, since he had withdrawn the letter of resignation, contained in Annexure 9, communication dated 1st October, 1990 accepting the resignation, contained in Annexure-10, should be quashed and it is further prayed to give a declaration that he is entitled to the pay scale of Rs. 3,700-5,700/-. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that since the petitioner was appointed

as a fresh appointee, he does not carry with him the financial benefits received from HAU and rightly, the concerned authority had fixed his pay scale at Rs.3000-5000/- and the order giving him protection in the scale of pay, in the grade of Rs.3700-5700/- was issued by mistake and therefore, the order was rectified vide Annexure-11 which is not illegal. Further case of the Opposite Parties is that, though the letter accepting the resignation contained in Annexure 10 was issued on 1.11.1990, yet, the decision to accept his resignation was taken by the appropriate authority much prior to 9th October, 1990. According to the Opposite Parties, once the resignation has been accepted it cannot be withdrawn. Therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.V. Ramdas learned counsel appearing for the petitioner and Mr. Ashok Mohanty, learned Standing Counsel. Before we deal the merits of this case, it is worthwhile to mention that Mr. Ramdas learned counsel appearing for the petitioner, on instructions, did not press prayer No.2. Therefore, this Bench has confined itself to express its opinion

in regard to prayer No.1 i.e. to quash Annexure 10 accepting the letter of resignation of the petitioner. Vide Annexure 8 dated 10th September, 1990, the petitioner stated his grievance regarding illegal fixation of his pay and in the concluding paragraph it is stated as follows:

"It is under the circumstances, I am pressed to resign from the Post of Scientist (S-2). This may be considered as one month notice and I may be relieved on or before 9.10.1990 so that I can join my parent Institute at HAU Regional Research Station, Uchoni, Karnal on 10.10.1990 positively".

Vide Annexure 10 dated 1st November, 1990, the petitioner was informed that resignation of Dr. Malik (Petitioner) is accepted with effect from 9th October, 1990 (AN) or the actual date of his release whichever is later. This order is impugned in this application.

5. Undoubtedly, a particular Government officer is at liberty to withdraw his resignation before it is accepted. But such withdrawal is not permissible after the resignation is accepted. Therefore, the moot question ^{that} needs be determined as to when was the resignation accepted. At the cost of repetition it may be stated that Annexure 10

was issued on First November, 1990 though the

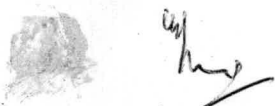
petitioner had expressed his intention to have the resignation effected from 9th October, 1990. True it is that in their counter, the Opposite maintained that decision has been taken to accept the resignation prior to 9th October, 1990 though the communication conveying acceptance of resignation was made on 1st November, 1990. Even though in the impugned order it is stated that the resignation is effective from 9th October, 1990 or from the actual date of release whichever is later, yet till 7th May, 1991 the petitioner had not been relieved. This application was filed on 7th May, 1991 and it came up for admission before the Division Bench on 8th May, 1991 and the Division Bench ordered that status quo as on date should be maintained. Ultimately vide order dated 19th September, 1991 the Bench ordered that stay order passed by this Bench shall continue until further orders. In the Affidavit filed by the petitioner, at paragraph 3, it is stated as follows:-

"That I have not been relieved from service as yet and further I have been receiving the salary till the Month of June, 1991".

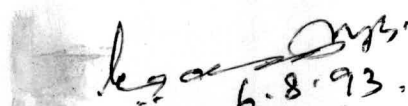
Soon after receipt of the order contained in Annexure 10, the petitioner was not relieved from his duties

but he was allowed to continue. In the peculiar facts and circumstances of the case, we have no hesitation in our mind to say that the concerned authorities did not like to part with the petitioner or dispense with the services of the petitioner. Incidentally, it may be mentioned that in the counter specific date has not been mentioned as to when the decision was taken to accept the resignation. The averment finding place in the counter in this regard appears to be vague. Therefore, in the peculiar facts and circumstances of the case stated above, we feel inclined to quash the Annexure 10 and hold that the letter of resignation submitted by the petitioner is deemed to have been withdrawn and he may be allowed to continue in service.

6. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.



MEMBER (ADMINISTRATIVE)



6.8.93.
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty

6.8.1993

