

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 492 of 1991
T. A. No.

DATE OF DECISION 3-6-1992

Mr M Damodaran _____ Applicant (s)

Mr M Girijavallabhan _____ Advocate for the Applicant (s)

Versus

Union of India, M/o Agriculture ^{re} Respondent (s)
and another

Mr NN Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Y*
4. To be circulated to all Benches of the Tribunal ? *Y*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

In this application filed on 20.3.1991, the applicant has prayed that the order dated 31.7.1989 of Director-in-Charge of the Central Institute of Fisheries Nautical & Engineering Training, Cochin(Annexure-G) purporting to be acceptance of the resignation of the applicant from service w.e.f. 6.3.1989 stating that the applicant would be deemed to have been severed all his connections with the Organisation w.e.f. 6.3.1989(FN) and the order dated 23.8.1990 of the Director-in-Charge rejecting his request made in the letter dated 28.6.1990 for permission to withdraw his resignation may be quashed and that the

respondents may be directed to reinstate the applicant in service with all consequential benefits. The facts of the case can be briefly stated thus.

2. The applicant who possess a Radio Telephone Operators (General) Certificate issued by the Wireless Adviser to Government of India, Ministry of Communications, New Delhi under Rule 10 of the Indian Wireless Telegraphy (Commercial Radio Operators Certificate of Proficiency and Licence to operate Wireless Telegraphy) Rules 1954 framed under the Indian Wireless Telegraph Act was initially appointed as Wireless Supervisor under the second respondent on adhoc basis w.e.f. 29.6.1982. He was declared quasi-permanent from 29.6.1985. As Wireless Supervisor at Cochin in a permanent post, he was to man the inter-communication network system between the shore office of the second respondent and the fishing trawlers and vessels in the outer sea. There is a permanent Radio Station functioning in the office of the second respondent. The Radio Telephone Operators Licence has to be renewed once in 5 years. While the applicant was working at Cochin, he was transferred to CIFNET Unit at Visakhapatnam on 19.10.1984. At Vizag as there was no Radio Station attached to the Unit, he could not fulfil the condition of radio watch keeping service for at least 3 months for renewal of his licence w.e.f. 1.5.1989. He had informed the higher authorities about the necessity of installation of a Radio Station at Vizag. While working at Vizag, the applicant availed of earned leave on personal grounds from 1.9.1988 to 30.9.1988. But in the meanwhile, the applicant was temporarily transferred for a

period of 3 months to CIFNET, Cochin by order dated 15.9.1988.

According to the applicant as he was unwell, he could not join duty at Cochin. He applied for extension of leave. The leave was extended till 5.3.1989. He again applied for extension of leave upto 30.6.1989. However, the applicant did not get any communication regarding the grant or refusal of the leave upto 30.6.1989. As a valid and current Radio Telephone Operators Licence was essential for him to resume his duties as Radio Telephone Operator and as he could not renew licence for the period from 1.5.1989 for want of facility at Vizag where he was posted, the applicant on 26.6.1989 sent a letter to the second respondent stating that as he could not renew his licence owing to lack of facility at Vizag, he may not be competent to hold the post of Radio Telephone Operator, that he has, therefore, ^{he} to resign the post of Wireless Supervisor which was holding and requesting that his resignation may be accepted. The Director-in-Charge vide his order dated 31.7.1989 at Annexure-G accepted the resignation of the applicant w.e.f. 6.3.1989 stating that he would be deemed to have relieved of his duties with effect ^{get} from that date. The applicant thereafter managed to ^{his} [✓] licence renewed upto 1.5.1992 in June 1990. On receipt of the renewal certificate on 28.6.1990 he submitted a letter to the second respondent withdrawing the letter of resignation submitted on 26.6.1989. In the said letter at Annexure-J, the applicant had explained the circumstances under which he was compelled to submit the letter of resignation and had requested that he may be allowed to withdraw his resignation since he

got his licence re-validated. The request made in this letter was rejected by the Director-in-Charge by the order dated 23.8.1990 at Annexure-K. Against these 2 orders at Annexure-G and K, the applicant preferred an appeal to the 1st respondent on 17.9.1990. Finding no response to this appeal, the applicant has filed this application under Section 19 of the AT Act. The impugned orders at Annexures-G and K have been challenged on the ground that they were issued by incompetent authority and that the acceptance of resignation with retrospective effect is illegal and void.

3. The respondents have filed a reply statement resisting leave the application. They have contended that the application upto 30.6.1989 was not sanctioned as the genuineness of the claim of the applicant that he was unwell was doubted, that as it was revealed in inquiry that the applicant was not in station, he was served with a show cause notice as to why disciplinary action should not be taken against him, that it was at that time that the applicant submitted his letter of resignation dated 26.6.1989 which was accepted w.e.f. 6.3.1989, that the acceptance of the resignation of the applicant by the Director-in-Charge has got ex-post-facto approval of the competent authority and that the request for withdrawal of the resignation cannot be allowed in view of the provisions contained in Rule 26(4)(iii) of CCS Pension Rules 1972 as the absence had exceeded 90 days and also because it was suspected that the applicant elsewhere was under employment/during the period of his absence. The respondents therefore contend that the applicant is not entitled

to the reliefs claimed in this application.

4. We have heard the learned counsel on either side and have also carefully perused the pleadings and the documents produced.

5. The learned counsel for the applicant argued that the order at Annexure-G dated 31.7.1989 by the Director-in-Charge purporting to accept his resignation and ordering that he would be deemed to have severed all connections with the Organisation w.e.f. 6.3.1989 is illegal, unsustainable and void for the reasons that it was issued by an incompetent authority and that an order for retrospective termination of the service in which purported acceptance of a letter of resignation, / did not contain an intention for retrospective resignation is bad in law.

There is no dispute of the fact that the competent authority to accept the resignation in the case of the applicant is the Director. Obviously, Annexure-G order dated 31.7.1989 was issued by the Director ^{incharge} ~~who is~~ an officer below the rank of Director and temporarily looking after the duties of the Director. It is well settled that the resignation of an official from service would be effective only from the date on which the letter of resignation is accepted by the appropriate authority. An officer junior in rank to the competent authority but looking after the duties of the competent authority cannot be said to be the appropriate authority to accept a resignation. Therefore, ^{there is} considerable force in the argument that the impugned order at Annexure-G is invalid for the reason that it was issued by an incompetent authority. That

the Director-in-Charge is not the competent authority to accept the resignation is evident from the memorandum issued by the second respondent to the applicant on 8.6.1991 at Annexure-M intimating him that the acceptance of the resignation had the ex-post-facto approval of the competent authority. Ex-post-facto rectification by the competent authority will not validate the order accepting the resignation and terminating the services of the applicant issued by an incompetent authority. There is another serious infirmity in the impugned order at Annexure-G. The applicant had been granted leave upto 5.3.1989. He had applied for extension of leave on medical ground upto 30.6.1989. Even though in the reply statement it was contended that the genuineness of the claim of illness in support of the leave requested for was doubted, there is no case for the respondents that the leave applied for had been rejected. Therefore the applicant was in service though his leave had not been sanctioned and though he was not actually working beyond 5.3.1989. In these circumstances, the termination of service w.e.f. 6.3.1989 by accepting the resignation with effect from that date is not permitted by any rules. A copy of the letter submitted by the applicant to the Director, expressing his intention to resign has been produced and marked as Annexure-F. It is worthwhile to extract the relevant portion of this letter which reads as follows:

"Sir,

I would like to put forth the following for your kind perusal and necessary action.

Certificate of proficiency Radio Telephony General (Maritime) licence No.659, holding by me has lost its validity on 1.5.89. Renewal of the same could not be carried out for want of required qualifying

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service, during its currency, due to the lack of facilities at Vizag unit. Hence at present I am not holding the authority to handle wireless equipments and unable to resume duty as wireless supervisor. It may take next one or two years before I qualify again for the same through re-examinations.

I therefore has to resign from the post of wireless supervisor. Hence I hereby submitting my resignation and request you to accept the same.

Delay in forwarding the resignation is regretted."

A perusal of the letter would make it clear that it was not on account of unwillingness on the part of the applicant to continue it was in service, but for the reason that he was unable to resume duty as Wireless Supervisor for want of renewal of the required licence that he was constrained to send the letter of resignation. It is evident from the pleadings that at Vizag where the applicant was posted, there was no facility for acquiring the qualifying service in Wireless which was a pre-requisite for renewal of his licence. As the renewal of licence is essential for the continuance of the applicant in service in the post which was holding, it was the duty of the second respondent to extend to him the facility to have the wireless service for the required period in time. It was true that the applicant was transferred for three months to Cochin where he could have had the wireless service but as is evident from the pleadings and the documents that on account of the fact that the applicant was leave which was granted, he could not join duty at Cochin and undergo the training. Under such circumstances, if the competent authority had applied its mind to the fact stated in Annexure-F letter, probably, the competent authority would have suggested that the applicant could still undergo the practical training and get the licence renewed and then resume duty instead of terminating his

services accepting the resignation. The Director-in-Charge did not place the letter of the applicant before the competent authority to take a decision. But instead, he hastened to terminate the services of the applicant by accepting resignation w.e.f. an anterior date. A government servant is within his right to withdraw his letter of resignation before it is accepted by the competent authority. In *Raj Narain V. Smt Indira Nehru Gandhi and another*(AIR 1972 SC, 1302), it has been held that the resignation of a Government servant will take effect only from the date of his acceptance by the competent authority. The Hon'ble Supreme Court in the above judgement has observed as follows:

"....It is necessary to examine whether a government servant's resignation can be accepted with effect from an earlier date. At any rate whether such an acceptance has any validity in considering a corrupt practice under S.123(7). If such a course is permissible, it might enable the government to defeat the mandate of S.123(7). The question as to when a government servant's resignation becomes effective came up for consideration by this Court in *Raj Kumar v. Union of India*, (1968), r SCR 857 = (AIR 1969 SC 180). Therein this Court ruled that when a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority."

Since the letter of resignation was not accepted by the competent authority on 6.3.1989 because the letter itself was sent only on 26.6.1989, we have no hesitation to hold that the impugned order at Annexure-G terminating the services of the applicant w.e.f. 6.3.1989 in purported acceptance of the letter of resignation by the Director-in-Charge who is not the competent authority has no legal validity. Therefore, the letter of resignation submitted

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by the applicant has not been accepted by the competent authority and there is no valid termination of the services of the applicant by such acceptance.

6. The applicant after getting his licence renewed applied to the Director on 28.6.1990(Annexure-J) explaining the circumstances under which he was compelled to send a letter of resignation and requesting that he may be re-admitted to duty. The request made in this letter was turned down by the impugned order at Annexure-K again by the Director-in-Charge informing him that his request for withdrawal of resignation could not be considered at that stage. In the reply statement, the respondents have contended that the withdrawal of the resignation of the applicant could not be accepted for the following reasons:

- a) the period of his absence from duty between the date on which the resignation became effective and the date on which the individual wanted to withdraw the resignation exceeds 90 days. His resignation was accepted with effect from 6.3.89 and he applied for withdrawal vide letter dated 28.6.90. Withdrawal of resignation is not permitted as per rule 26(4) (iii) of CCS Pension Rules 1972 if the absence exceeds 90 days.
- b) It is also suspected that he was under employment during the period of his leave/absence. As per rule 26(5) of the CCS Pension Rules 1972 also his request for withdrawal cannot be accepted.

Rule 26 of this CCS Pension Rules deals with the forfeiture of the resignation. Sub Rule 4 of Rule 26 reads as follows:

"The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

- i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the

request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

- ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;
- iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;
- iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available."

Rule rule 5 of Rule 26 reads as follows:

"Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government."

The contention of the respondents that
since the period of absence from duty between the date of resignation of the applicant and the date on which he sought permission to resume duty exceeded 90 days and for that reason, according to Rule 26(4)(iii) permission to withdraw his resignation cannot be granted, has absolutely no merit in the circumstances of the case. As stated earlier, since the letter of resignation has not been accepted by the competent authority and since we have already held that the Annexure-G acceptance of the resignation with retrospective effect has no legal validity, it cannot be said that the resignation has become effective and therefore the Clause(iii) of Sub Clause 4 of Rule 26 of CCS(Pension)Rules do not come into operation. As the resignation was tendered by the applicant was for compelling reasons as observed by us earlier,

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all the conditions mentioned in Rule 26 of the CCS(Pension) Rules are unsatisfied in this case. The contention of the respondents that as it was suspected that the applicant was under employment during the period of his leave/absence as per Rule 26 (5) of the CCS(Pension) Rules, the request could not be accepted also has to be rejected because even in the letter of resignation at Annexure-F, the applicant had made it clear that he was forced to tender for the resignation for the reason that by not extending the facility of wireless service to enable him to get his licence renewed, he has been incapacitated to hold his post and thus to tender.
It was under these circumstances that he was forced to his resignation. Therefore, sub rule 5 of Rule 26 also does not come into operation.

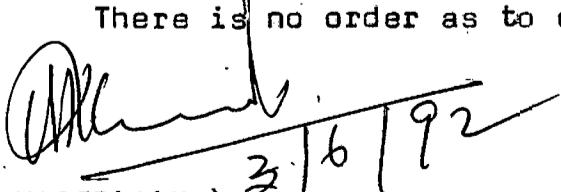
7. The respondents have contended in the reply statement that as the respondents were not convinced about the genuineness of the claim made by the applicant that he was unwell, they had issued a show cause notice as to why disciplinary action should not be initiated against him for unauthorised absence and that as in the meanwhile the applicant tendered his resignation, instead of taking a disciplinary action against him, his services were terminated by accepting his resignation. We do not find any justification for such an action. If the respondents felt that the claim made by the applicant for leave on medical ground was not genuine, it was open for them to reject the leave application or if the applicant had remained absent unauthorisedly to initiate disciplinary proceedings against him.

That circumstance does not justify termination of the services of the applicant by purported acceptance of the resignation with effect from a date on which the applicant had never intended to resign from service.

8. In the conspectus of facts and circumstances, we are convinced that the impugned orders at Annexure-G and K are unsustainable for the reasons discussed above and that they are liable to quashed. Since the applicant was driven to the necessity of submitting a letter of resignation solely for the reason that he could not renew his licence not on account of his shortfall on his part, we are of the view that on the renewal of the licence and on his withdrawal of his letter of resignation he is entitled to be taken back to service, condoning the interruption in service. But we make it clear that the period of interruption ~~would~~ not count as qualifying service as terms of sub rule 6 of Rule 26 of the CCS (Pension) Rules.

9. In the result, the application is allowed, the impugned orders at Annexures-G and K are quashed and the respondents are directed to reinstate the applicant in service within a period of one month from the date of communication of this order, condoning the interruption in service between 26.6.1989 and the date of reinstatement in terms of sub rule 6 of Rule 26 of the CCS (Pension) Rules.

10. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

3/6/92


(NV KRISHNAN)
ADMVE. MEMBER