

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 216 of 2009**

*Thursday*, this the 22<sup>nd</sup> day of October, 2009

**CORAM:**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

P.A. James,  
S/o. P.A. Antony,  
Pukkatt House, Eroor South P.O.,  
Tripunithura

... Applicant.

(By Advocate Mr. P.K. Ramkumar)

v e r s u s

1. Hindustan Organic Chemicals Ltd.,  
Represented by its Chairman and  
Managing Director A.S. Didolkar,  
Harchand Rai House,  
81, Maharshi Karve Marg,  
Mumbai : 400 002

2. The General Manager,  
Hindustan Organic Chemicals Ltd.,  
Cochin Unit, Ambalamughal,  
Ernakulam District.

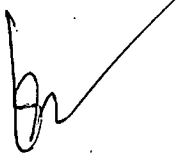
3. Union Public Service Commission,  
Represented by its Secretary,  
New Delhi.

4. The Chief Personnel & Administration Manager,  
Hindustan Organic Chemicals Limited,  
Cochin Unit, Ambalamughal, Ernakulam,  
Ernakulam District.

... Respondents.

(By Advocate Mr. U.K. Devidas for M/s. Menon & Menon)

The Original Application having been heard on 15.10.09, this Tribunal  
on 22.10.09 delivered the following :



**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant earlier working in the Hindustan Organic Chemicals Limited, an organization, a Government of India enterprise, has filed this OA challenging the order dated 09-01-2009 (Annexure A09) whereby his resignation was accepted and order dated 2<sup>nd</sup> July 2009 (Annexure A-15) whereby his representation against the said order dated 09-01-2009 has been rejected. The precise ground for challenge is that the applicant, before his being relieved, i.e. before the jural relationship of master and servant was severed, had sent a request for withdrawal of resignation which had not been duly considered. According to him, the jural relationship continued even beyond 09-01-2009 upto the time his liabilities were adjusted by the employer from the amount due to him, which took place as late as 49 days from 09-01-2009.

2. Brief facts of the case are as follows :

(a) The applicant, who joined the respondents organisation in 1986 as Chemical Operator Grade-III, was functioning as Deputy Manager (Production) with effect from 1.7.2000. As he has certain grievances relating to his non-promotion, he earlier filed Writ Petition(C) No. 28264/2007 before the Hon'ble High Court. However, the same came to be dismissed with the observation that subsequently the petitioner was given promotion with effect from 1.1.2008. Writ Appeal No. 614 of 2009 is however, pending. Likewise, another Writ Petition No. 37925 of 2008 was filed for retrospective promotion and the same was closed on the ground that the applicant had tendered his resignation with effect from 23.12.2008. The applicant has filed Writ Appeal No. 417 of 2009 before the Division Bench against the said decision.

 As stated above, the applicant had submitted an application

dated 23.12.2008 for resignation from service. Annexure A/4 refers. According to him, before he was communicated anything relating to acceptance/relieving, he submitted another application dated 6.1.2009 requesting for withdrawal of resignation. Annexure A/5 refers. Later on, as he fell ill, he had obtained medical certificates from the recognised doctor and when he presented himself on 20.01.09, he was prevented from performing his duties on the ground that by virtue of Annexure A7 order dated 09.01.09 his resignation was accepted and he was relieved after his duty hours on 09.01.09. The applicant had preferred a representation dated 06.02.2009 to the Chairman and Managing Director followed by another communication dated 11.06.2009. The latter was considered by the Chairmain and Managing Director vide Annexure A-15 order dated 02.07.09 and the same was dismissed holding that the applicant had been rightly relieved of his duties on his resignation and his request for withdrawal of resignation cannot be accepted. Again, the order at Annexures A-7 and A-15 are under challenge.

(b) The Respondents have contested the O.A. They have submitted chronological sequence of events and stated that vide Annexure R-1, the competent authority had accepted the resignation of the applicant on 6.1.2009 and on 09.01.2009, the applicant filed the withdrawal letter addressed to the DGM (P&A) and left it in the Production Department on 9.1.09. As he had already relieved on 9/1/09 after his office hours, the question of consideration of his withdrawal letter does not arise.

3. Applicant has filed the rejoinder in which he had asserted that his sending the withdrawal letter was on 6<sup>th</sup> January 2009 and as per the High Court finding, acceptance of resignation was only on 9<sup>th</sup> January 2009 and as such, it cannot lie in the mouth of the respondents to contend that the resignation was accepted on 06-01-2009 itself. According to the applicant, the Postal authorities have certified that the registered article No. 392 ( in which the acceptance of resignation was communicated to the applicant) was booked at Ambalamukal PO



on 16-01-2009. Additional reply has also been filed by the respondents contending that the withdrawal request was much after the acceptance of the resignation.

4. Counsel for the applicant argued that the applicant did apply for resignation, vide Annexure A-4 communication dated 23<sup>rd</sup> December 2008, which reads as under:-

*"I wish to discontinue my service in H.O.C. So, I hereby resign from service. Kindly do the needful to relieve me at your earliest."*

5. The applicant has a disabled child (spastic) and due to some pressure from amongst his own colleagues, he had to tender his resignation. This letter, however, was sought to be withdrawn by communication dated 06<sup>th</sup> January 2009 vide Annexure A-5, which reads as under:-

*"Due to some unavoidable personal reasons, I had to submit resignation letter on 23-12-2008. Since my service is short, I have full pleasure in retiring than resignation from service. So, I hereby withdraw the resignation. Kindly do the needful to enable me to complete the service."*

*The inconvenience caused is highly regretted, and may be condoned."*

6. According to the counsel, this letter was handed over on 6<sup>th</sup> itself and by that time there was no sign of acceptance of resignation much less relieving the applicant. The so called approval accorded by the CMD on 6<sup>th</sup> January of resignation of the applicant as displayed in Annexure R1 is stage managed, as the CMD is sitting at Mumbai. Even if the letter dated 6<sup>th</sup> January 2009 withdrawing the request for resignation was seen by the authorities on 9<sup>th</sup> only, then also, the same is before final relieving of the applicant which took place subsequently. According to the counsel, the jural relationship between the



applicant and the respondents, respectively as servant and master continued for a long time till the amount payable by the applicant was adjusted from the amount due to him, which took place as many as 49 days from the date of the so called date of being relieved.

7. The applicant's counsel relied upon the following decisions of the Apex Court:-

- (a) Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia, (1997) 4 SCC 280
- (b) Shambu Murari Sinha vs Project & Development India 2000(5) SCC 621
- (c) North Zone Cultural Centre and another vs Vedapathi Dinesh Kumar (2003) 5 SCC 455
- (d) Srikantha S.M. Vs Bharat Earth Movers Ltd. 2005(8) SCC 314

8. Counsel for the respondent submitted that the applicant stood relieved prior to his filing of application for withdrawal of resignation and hence, the decisions cited by the counsel for the applicants do not apply;

9. As certain doubts existed over the exact date/time of submission of application for withdrawal and issue of Annexure A-9 order stating that the applicant stands relieved after his 'duty hours on 09-01-2009' the following information had been sought from the respondents:-

(a) Whether the applicant submitted his withdrawal letter prior to his being relieved on 09-01-2009;

(b) Whether any communication was addressed to the competent authority by the Production manager regarding withdrawal letter. If so, documentary evidence thereof.

(c) Copy of rules relating to resignation may also be supplied.



10. In compliance with the above directions, the respondents have furnished the following details:

(a) The applicant left after his duty hours at 8.A.M. on 9-1-2009. While leaving after duty he left the letter withdrawing his resignation in the production office of the Company. The Head of the Production Department acknowledged receipt of the letter withdrawing resignation on 9-1-2009 after 9.30 A.M. By the time the Head of the Production Department acknowledged receipt of letter withdrawing resignation, the applicant stood relieved from service.

(b) The letter of withdrawal was therefore, not forwarded to competent authority.

(c) Copy of the rules of resignation attached.

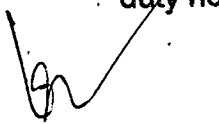
11. From the pleadings and details furnished, the following situations emerge.

(a) The applicant's duty ended at 8.00 A.M. on 09-01-2009 whereafter, he had submitted his application dated 6<sup>th</sup> January 2009 withdrawing his resignation addressed to Dy. General Manager (P & A) through proper channel, i.e. the Production Department. Obviously, this letter was handed over to the Production Manager's office, as is evidenced from the endorsement made on the said letter vide Annexure R-1, which reads as under:-


9 JAN 2009

This letter addressed to DGM (P&A) received in Production Office on 9-1-09 is forwarded for necessary action as per company rules.

12. The letter accepting the resignation of the applicant was also signed on 09<sup>th</sup> January 2009 stating inter alia "Accordingly he stands relieved after his duty hours on 09-01-2009".



13. To a pointed question to the counsel for the respondents as to what are the duty hours at the production department and DGM (P&A), the reply was that the production department functions round the clock and the office of DGM (P & A) functions from 09.30 hours. In that case, as the duty hours of the applicant were over by 8.00 A.M. on 09-01-2009, submission of the withdrawal letter to the production department (clearly stating therein 'through proper channel') by the applicant was immediately thereafter, which is clear from the information furnished by the respondents as stated above. In any event, the same had been acknowledged by Production Manager by 9.30 hours. And, the Establishment wing of the respondents' organization starts functioning only from 09.30 hours, as verbally confirmed by the counsel for the respondents. Thus, the signing of the impugned order dated 9<sup>th</sup> January 2009 (Annexure A-4), stating that the applicant stands relieved after his duty hours on 09-01-2009 cannot be prior to 09-30 hours, (in other words, prior to the handing over of the withdrawal letter by the applicant). Again, the relieving of the applicant from service has to undergo the process of "Exit interview" even before putting forth the application before the competent authority for acceptance of resignation, which obviously had not taken place. Thus the prescribed procedure had not been followed. Further, it is clear from Annexure A-12 and A-13 documents that the said letter accepting the resignation of the applicant was despatched to the applicant only on 16<sup>th</sup> January 2009. Normally, a relieving order is issued by a positive process of handing over taking over where certain documents/items are entrusted with the individuals. In the absence of the same, a relieving order is issued by hand to the individual. In the instant case, there is no proof to that effect. Albeit the letter communicating the acceptance by the competent authority of resignation of the applicant and the so called 'relieved' from duties was signed on 9<sup>th</sup> January 2009, the same was sent to the applicant

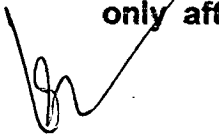


by post only on 16<sup>th</sup> January 2009, which the applicant received on 19<sup>th</sup> January 2009. In the rejoinder, the applicant had averred that he was ill for a few days and when he presented himself on 20<sup>th</sup> January after he became well from his illness, he was not permitted to attend the office. Be that as it may, non communication of the acceptance of resignation does not make the resignation inoperative provided there is in fact an nonacceptance before withdrawal, vide Para. 16 of judgment of the Apex Court in **North Zone Cultural Centre and Another vs Vedpathi Dinesh Kumar 2003(5) SCC 455**.

14. The Apex Court in the case of **Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia, (1997) 4 SCC 280**, has held as under:-

**"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."**

15. In the instant case for the crucial question for consideration as to whether the applicant stood relieved before his filing the letter of withdrawal of resignation, the sequence of events as discussed above goes to show that the letter relieving the applicant was issued only after the filing of the letter withdrawing the resignation. It is not the case of the respondents that the applicant was informed in advance of their proposal to relieve him by 9<sup>th</sup> January 2009. Of course, the date of acceptance of resignation on 6<sup>th</sup> January 2009 cannot be held to be untrue though as such contended by the counsel for the applicant as the CMD is functioning in Mumbai. It could easily be presumed that through Fax such an approval had been obtained. In any event, that is not the crucial stage. What is crucial is the time of relieving, which in this case is only after the submission by the applicant of his letter withdrawing his





letter of resignation.

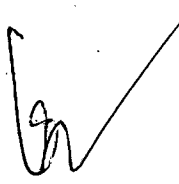
16. Yet another point highlighted by the counsel is that it was after 49 days that the dues payable by the applicant were adjusted from out of the amount due to him by the respondents. It is the contention of the applicant that till such time the conditions of clearing of dues are fulfilled, the jural relationship between the applicant and management continued.

17. The following decisions of the Apex Court deal with case of voluntary retirement/resignation and withdrawal thereof before the individual was relieved. Consistently, in all such cases, the view of the Apex Court is that an individual has full right to withdraw his application for voluntary retirement/resignation, before he is relieved:-

**"(a) Srikantha S.M.v. Bharath Earth Movers Ltd.,(2005) 8 SCC 314 :** In this case, the Apex Court has defined the term, "resignation" in the following words:-

**12.** Now, let us consider the controversy on merits. The term "resignation" has not been defined in the Service Rules. According to the dictionary meaning, however, "resignation" means spontaneous relinquishment of one's own right. It is conveyed by the Latin maxim *Resignatio est juris propii spontanea refutatio*. (Resignation is a spontaneous relinquishment of one's own right.) In relation to an office, resignation connotes the act of giving up or relinquishing the office. "To relinquish an office" means "to cease to hold the office" or "to leave the job" or "to leave the position". "To cease to hold office" or "to lose hold of the office" implies to "detach", "unfasten", "undo" or "untie" "the binding knot or link" which holds one to the office and the obligations and privileges that go with it.

(In *UCO Bank v. Sanwar Mal*,(2004) 4 SCC 412 the difference between resignation and retirement has been succinctly brought out as, 'resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service.)



(b) *Union of India v. Gopal Chandra Misra* (1978) 2 SCC 301 wherein the apex court has held that a complete and effective act of resigning an office is one which severs the link of the resigner with his office and terminates its tenure.

(c) In *Balram Gupta v. Union of India* 1987 Supp SCC 228: In this case, the employee withdrew his notice of voluntary retirement on account of persistent and personal requests from the staff members. But the prayer for withdrawal was not allowed by the employer on the ground that it had already been accepted by the Government. Moreover, Rule 48-A(4) of the Central Civil Services (Pension) Rules, 1972 precluded the government servant from withdrawing his notice except with specific approval of the appointing authority. The Apex Court held that it was not proper for the Government not to accede to the request of the employee. The Apex Court said, "In the modern age we should not put embargo upon people's choice or freedom" and further added:

"In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardise Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways 'to ease out' uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees." wherein the Apex Court has held, "this Court reiterated the principle in *Gopal Chandra Misra* and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to government servants."

(d) In *Punjab National Bank v. P.K. Mittal* 1989 Supp (2) SCC 175 :

In this case, an employee resigned from service of the Bank by a communication dated 21-1-1986. It was to be effective from 30-6-1986. The Deputy General Manager who was the competent authority under the Service Regulations, accepted the resignation as per the letter of resignation i.e. with effect from 30-6-1986. The employee, however, received a letter from the Bank on 7-2-1986 informing him that his resignation letter had been accepted by the competent authority with immediate effect and consequently he was being relieved from the service of the Bank with effect from that day i.e. from 7-2-1986. The employee, therefore, filed a petition challenging the validity of the

purported acceptance of his resignation with effect from 7-2-1986 and for a direction to the Bank to treat him in service up to 30-6-1986 by granting all consequential benefits. The matter, however, did not end there. On 15-4-1986, the employee addressed a letter to the Bank purporting to withdraw his resignation letter dated 21-1-1986. The question which came up for consideration was as to whether the subsequent development could be taken into account and whether the employee continued in service in view of the withdrawal of resignation dated 15-4-1986. Accepting the contention of the employee that he continued in service, the Court held that his resignation could take effect from 30-6-1986 or on expiry of three months' period provided in the Service Regulations and before that period he could withdraw the resignation. Since he had withdrawn the resignation before 30-6-1986, he continued to remain in service with the Bank.

(e) In *J.N. Srivastava v. Union of India (1998) 9 SCC 559* a notice of voluntary retirement was given by an employee on 3-10-1989 which was to come into effect from 31-1-1990. The notice was accepted by the Government on 2-11-1989 but the employee withdrew the notice vide his letter dated 11-12-1989. It was held that withdrawal was permissible though it was accepted by the Government, since it was to be made effective from 31-1-1990 and before that date it was withdrawn.

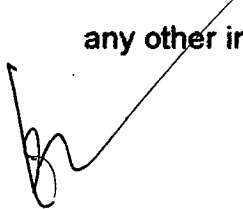
(f) In *Shambhu Murari Sinha v. Project and Development India (2000) 5 SCC 621 (Shambhu Murari Sinha I)* an application for voluntary retirement of an employee dated 18-10-1995 was accepted by the employer vide letter dated 30-7-1997 with further intimation that "release memo along with detailed particulars will follow". The workman was actually relieved on 26-9-1997. In the meanwhile, however, by a letter dated 7-8-1997, he withdrew the application dated 18-10-1995, by which he sought voluntary retirement. It was held that the effective date of voluntary retirement was 26-9-1997 and before that date it was permissible for the workman to withdraw his retirement. The appellant was, therefore, held entitled to remain in service.

(g) In *Shambhu Murari Sinha v. Project and Development India Ltd. (2002) 3 SCC 437 (Shambhu Murari Sinha II)*, the view taken in

*Shambhu Murari Sinha I* was reiterated. It was held that when voluntary retirement was withdrawn by an employee, he continued to remain in service. The relationship of employer and employee did not come to an end and the employee had *locus penitentiae* to withdraw his proposal for voluntary retirement. He was, therefore, entitled to rejoin duty and the Corporation was bound to allow him to work."

18. In all such cases, withdrawal of resignation/voluntary retirement letter had been liberally allowed by the Apex Court. In the instant case also, since the applicant's letter of withdrawal is anterior to the relieving of the applicant, the same ought to have been processed by the respondents, whereas, as per the information received, on an assumption that the letter of withdrawal had been received from the applicant after his being relieved, the same was not further processed.

19. In the normal course, the applicant would have retired on 31<sup>st</sup> May 2009. The difference is just four months and 22 days. In view of the fact that the act on the part of the respondents in not permitting him to resume duty on 20<sup>th</sup> January 2009 on the ground that his resignation had already been accepted and he was relieved of his duties after duty hours on 09-01-2009 is to be held as illegal, the applicant should be deemed to have continued in service till 31<sup>st</sup> May 2009 and the period between 20<sup>th</sup> January to 31<sup>st</sup> May 2009 has to be regularized either by grant of leave or by any other way as rules provide for. If no leave is available, he may not be entitled to any pay for the said period on the basis of 'no work no pay'. The applicant is entitled to count the service for the purpose of terminal benefits if any applicable to him. Other terminal benefits as available to any other individual shall be available to him.



20. Respondents are directed to pass suitable orders in this regard and make available the dues if any, to the applicant within a period of two months from the date of communication of this order.

21. O.A. is disposed in terms of the above. No orders as to costs.

(Dated, the 22<sup>nd</sup> October, 2009)

  
**K. NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

  
**DR. K B S RAJAN**  
**JUDICIAL MEMBER**

cvt.