

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. 536 /2006
 This, the ^{30th day of January 2008}

HON'BLE MR. M KANTHAIAH, MEMBER (J)

Ravindra Singh Chauhan,
 Aged about 66 years,
 Son of late Sri Himmat Bahadur Singh,
 Resident of Village and Post Tikar,
 District Raebareli.

Applicant.

By Advocate: Sri S.P.Singh.

Versus

1. The Union of India through
 The Secretary, Ministry of Defence,
 New Delhi.
2. Controller General of Defence
 Accounts, R.K. Puram,
 New Delhi.
3. Chief Controller of Defence
 Accounts (Western Command),
 Chandigarh.
4. Ministry of Home Affairs,
 Raj Bhasha Vibhag, New Delhi.

Respondents.

By Advocate: Sri S.P. Singh for Smt. Jyotesna Pal.

Order

By Hon'ble Mr. M. Kanthaiah, Member (J):

The applicant has filed the Original Application to quash the impugned order dated 3rd July 1970, Annexure 1 and also subsequent letters issued by respondents covered under Annexure-2 dated 21.10.2005, Annexure A-3 dated 29.5.2006 and further to treat him in service till his date of superannuation with all consequential benefits i.e. payment of salary, retrial benefits and also award a sum of Rs. 10 lakhs

as compensation for harassing him and victimizing him for no fault on his part.

2. The respondents have filed counter affidavit denying the claim of applicant.

3. The applicant also filed rejoinder affidavit denying the pleas taken by the respondents in their counter and reiterated the stand taken in his O.A.

4. The ^{Respondents} ~~applicant~~ filed reply to the rejoinder stating that the resignation of the applicant was accepted by the government and thereafter, there was no withdrawal from the applicant within 90 days. They further stated that the applicant filed earlier original application on the file of this Tribunal in O.A. 188/1989 challenging the order dated 3.7.1970 which is Annexure 1 in the present O.A. but, the same was dismissed on 4.9. 1989 and as such the present O.A. is not at all maintainable.

5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for the relief as prayed for.

7. The admitted facts of the case are that the applicant was appointed on the post of Upper Division Clerk (Audit) in the office of respondent No. 2 in the year 1965. After working more than 4 years, he submitted resignation letter dated 1.5.1970 in which he mentioned that he was humiliated and also harassed for using Hindi language in the office. Annexure -6 is the copy of resignation letter. In the resignation letter, he has given one-month advance notice for accepting resignation letter. After receiving the said resignation letter, the respondents have issued letter dated 23.5.1970 under which they asked the applicant to give 3

months advance notice, since he being a quasi permanent employee and also asked ~~to~~ him ^{to} submit un-conditional resignation giving 3 months notice as required under rules. Annexure 7 is the said letter issued by the respondents authorities. Thereafter, the applicant has given his reply covered under Annexure -8 dated 31.7.1970 in which he extended the period of notice as per the objection raised by the respondents and also ^{asked} ~~assured~~ them not ~~to~~ force him against his consciousness. After receiving said reply, the respondents authorities have accepted the resignation of the applicant, has been ^{relied} ~~raised~~ and thus struck off his name from the register w.e.f. 3.7.1970. Annexure A-1 is the copy of the said resignation acceptance letter of the applicant issued by the respondents. Subsequently, the applicant made several representations to the respondent authorities for his reinstatement with back wages and damages. When there was no response from the authorities, he filed O.A. 188/89 on the file of Central Administrative Tribunal, Allahabad Bench under which, he challenged the impugned resignation acceptance order of the respondents dated 3.7.70, which is Annexure A-1 in the present O.A.

8. The applicant filed the said O.A. on the ground that because of harassment caused to him for use of Hindi language in the office, he submitted his resignation but justice demands that he should be reinstated with back wages and damages. Further he took another ground that his conditional resignation has been wrongly accepted, which requires to be reconsidered and on such reconsideration, he should be treated to have continued in service and he should be given a posting with all arrears of salary and also further stated that because of pendency of representations for years together, there was delay in filing the said O.A. But after considering all these grounds and after hearing both the parties, the Tribunal has dismissed with an observation that if the applicant makes out his proficiency in Hindi and is otherwise

suitable, the Government may consider whether they can make use of his services.

9. Against the said dismissal order, the applicant also filed review petition No. 268/89 but the same was also dismissed on 30th August 1994. Thereafter, the applicant made several representations for his reinstatement in service. In respect of his claim of pension was also rejected. Annexure 2 dated 21.10.2005 and Annexure 3 dated 29.5.2006 are such rejection orders issued by the respondents authorities. Thereafter, the applicant has filed this O.A. on 14.11.2006 questioning the acceptance of his resignation covered under Annexure A-1 dated 3.7.1970 and also the recent rejection letters covered under Annexure A-2 dated 21.10.2005 and Annexure A-3 dated 29.5.2006 under which his claim for grant of pension was rejected.

10. Though the applicant has challenged the impugned orders covered under Annexure A-1 dated 3.7.70, Annexure -2 dated, 21.10.2005 and Annexure 3 dated 29.5.2006, the main relief which he is seeking is in respect of acceptance of his resignation covered under Annexure -1 dated 3.7.70. Without quashing the said impugned order covered under annexure A-1 3.7.70 , the applicant has no case to claim any relief either to challenge Annexure A-2 dated 21.10.2005 or Annexure A-3 and also claiming of any pensioner benefits. Thus, the applicant has to establish his main case in respect of the arrears for quashing the impugned order covered under Annexure A-1 dated 3.7.70 under which, the respondents authorities have accepted the resignation of the applicant.

11. In respect of the main relief of the applicant to quash the impugned order covered under Annexure A-1, it is the case of the respondents that the same was subject matter in earlier O.A. 188/89

dated 4th September 1989, which was dismissed. They further argued that when once, the claim of the applicant covered under Annexure 1 dated 3.7.70 was decided by the Tribunal in earlier O.A., it is not open to the applicant to re-agitate the same issue and subject matter by filing the present O.A.

12. Admittedly, the applicant challenged the present impugned order dated 3.7.1970 covered under annexure A-1 in earlier O.A. 188/89 and the Tribunal has given finding on all the issues raised by the applicant for accepting his resignation by the respondents authorities. When once the dispute was decided and settled by the Tribunal, it is not open to him to re-agitate on the same subject by filing a fresh application. It is also not in dispute that against the dismissal of the said earlier O.A., he also moved review application but the same was also dismissed. When the subject matter in the present O.A. and also in the earlier O.A. 188/89 between the same parties is one and the same, naturally the principles of resjudicata applies.

13. The learned counsel for the applicant argued that because of subsequent cause of action for non-implementation of earlier order, a fresh cause of action arises and in those circumstances, the applicant is justified in filing a fresh O.A. It is his contention that in the earlier judgment, the Tribunal has given direction to the respondents authorities for reconsideration of his claim but when there was no response from the respondents authorities, and such circumstances, itself creates a fresh cause of action for filing the present O.A. and thus justified filing of present O.A.

14. In support of it, he relied the following decision reported in
2006 DGLS-829 between State of Haryana & Ors. versus M.P.

Mohla.

15. On perusal of the earlier judgment in O.A. 188/89 admittedly, the claim of the applicant in respect of impugned order dated 3.7.70 was dismissed. There was observation from the bench stating that if the applicant makes out his proficiency in Hindi language and is otherwise suitable , the government may consider whether they can make use of his services and such observation, does not imply for reinstatement of the applicant after cancellation of his earlier resignation or cancellation of the orders covered under dated 3.7.70 under which the Government accepted the resignation of the applicant. The applicant is justified in advancing his arguments that because of the direction given in the earlier O.A., and for non implementation of the same by the respondents authorities , a fresh cause of action arises, if the Tribunal allowed such claim made in the O.A. or for any consideration for his reinstatement after cancellation of accepted resignation. But none of such claims of the applicant had been allowed by the Tribunal. Further, such observations that if the applicant makes out his proficiency in Hindi and is otherwise suitable , the government may consider whether they can make use of his services does not imply for his reinstatement to say that because of such direction, a fresh cause of action arose for him for filing the present application. In those circumstances, when the O.A. itself was dismissed and thereafter, his efforts to review the said judgment and order by way of review application was also dismissed and in such circumstances, with such observation of the Tribunal, no fresh cause of action arises for the applicant for challenging the same impugned order and also claiming the same relief which he made in his earlier O.A. Thus, the claim of applicant is barred by the principles of resjudicata and further the above citation is not helpful to support the case of the applicant.

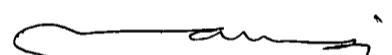
16. The learned counsel for the applicant also contended that the conditional resignation is not at all resignation and in support of it he

relied on the following decision reported in **(2003) 1 SCC ,701 Dr. Prabha Atri Vs. State of U.P. and Others.** When the plea of conditional resignation has raised by the applicant in the present O.A. when decided in earlier O.A. , now again probing into the same is not at all maintainable by way of this O.A. As such, the said citation is also not helpful to the applicant.

17. In view of the above discussions, the applicant is not entitled for any relief in respect of impugned order covered under Annexure -1 which is the main relief, in respect of acceptance of his resignation by the Government. Since the applicant failed to prove his main case, he is not entitled for ancillary reliefs covered under Annexure 2 and annexure 3 in respect of pensioner/benefits. Thus there are no merits in the claim of the applicant for any of the reliefs as prayed for and as such, the O.A. is liable for dismissal.

15. In the result, the O.A. is dismissed. No costs.

v.


(M. Kanthaiah)
Member (J)

30.01.2008