

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH, NEW BOMBAY

O.A. No. 338 of 1987.
 T.A. No. -

DATE OF DECISION 6.11.1987.

Shri.A.K.Duraphe Petitioner

Miss.Ganapathy Advocate for the Petitioner(s)

Versus

Union of India & four others. Respondent
Ministry of Home Affairs, New Delhi.

Mr.J.D.Desai (for Mr.Sethna) Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. J.G.Rajadhyaksha, Member (A).

The Hon'ble Mr. M.B.Mujumdar, Member (J)

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.338/87

ASHOK KRISHNARAO DURAPHE,
Near Circuit House,
P.O: SILVASSA-396 230,
Dadra & Nagar Haveli.

.. Applicant.

Vs

1. The Union of India,
through the Secretary,
Ministry of Home Affairs,
Central Secretariat,
New Delhi.
2. The Administrator of Union
Territory of Dadra & Nagar Haveli,
Governor's Secretariat,
Cabo Raj Niwas,
P.O.DONA PAULA - GOA. ..
3. The Collector of
Dadra & Nagar Haveli,
At Silvassa-396 230.
4. The Secretary to
the Administrator of
Dadra & Nagar Haveli,
At : Silvassa - 396230.
5. Shri D.K.Vaghela,
B.E.Civil,
aged about 45 years,
Executive Engineer,
Divn.No.1,
Dadra & Nagar Haveli,
At : Silvassa - 396 230 .. Respondents.

Coram: Hon'ble Member (A) J.G.Rajadhyaksha

Hon'ble Member (J) M.B.Mujumdar

Appearances:

1. Miss.Ganapathy (for
Mr.B.N.Singhvi) advocate,
for the applicant.
2. Mr.J.D.Desai (for Mr.Sethna)
Counsel for the respondents.

JUDGMENT
(Per: J.G.Rajadhyaksha)

Dated: 6.11.1987.

This application dated 5.5.1987 submitted
by the applicant under section 19 of the Administrative
Tribunals Act, 1985 can be decided on a short point i.e.
whether the applicant has validly tendered resignation
of his service/post.

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2. The facts briefly are that the applicant was appointed as a Deputy Engineer in the Public Works Department of the Administration of Dadra and Nagar Haveli by an order dated 24th March, 1971. He had problems which had led to his suspension, a departmental enquiry against him, his reinstatement in service and later his resignation from service. The applicant wrote a Demi Official letter to the Executive Engineer, Public Works Department, Civil Division No.1, Silvassa on 10.3.1986. It contained the following paragraph:

"Considering the contain of your D.O. letter, I hereby submit my resignation from the Government Service. This letter may kindly be treeated as my resignation letter."

The Executive Engineer had written back to the applicant on 25.3.1986 suggesting that the applicant reconsider his letter, as he had expressed his intention to do so in discussion. The applicant wrote a reply on 1.4.1986 reiterating certain incidents and ultimately observing "no right person will continue to serve the administration in present circumstances, in which I have been put".

3. It appears that the resignation letter was processed and ultimately on 23.6.1986 Secretary to the Administrator, Dadra and Nagar Haveli, Silvassa issued with the approval of the Administrator an order which reads as follows:

"Resignation tendered by Shri A.K.Duraphe, Dy.Engineer (Elec) working under the Executive Engineer, P.W.D.Civil Dn.I, Dadra and Nagar Haveli, Silvassa is hereby accepted with immediate effect.

The charge of the Dy.Engineer (Elec) Electrical Sub.Dn.II should be held by Shri B.P.S. Faujdar, Dy.Engineer (Elec) Sub Dn.I. in addition to his own duties till further orders."

The applicant then submitted a representation on 3.7.1986 addressed to the Administrator. He was informed on 26.12.1986 that his representation had been considered by the Administrator and rejected. On 15.1.1987 applicant was asked to vacate the quarters which had been allotted to him and which were in his occupation and possession.

4. The application has been resisted by the respondents who filed their written reply on 12.6.1987 maintaining that the applicant had tendered his resignation and it had been rightly accepted by ~~the appropriate~~ ~~private~~ authority and it had, therefore, become finally effective.

5. The Tribunal has granted an interim order in so far as the quarters were concerned when applicant moved for such an interim order on 6.5.1987. The interim order was continued on 16.6.1987 with the proviso the applicant should pay appropriate rent for occupation of the quarters.

6. The contentions of Miss. Ganapathy, Learned advocate for the applicant are that, what applicant wrote was a Demi Official letter addressed to the Executive Engineer and it could not constitute a resignation as long as it had not been addressed to the appropriate authority. She draws our attention to Annexure No.'A'-15 which is the Demi Official letter dated 25.4.1986 from the Executive Engineer to the applicant informing him that the applicant must give one month's notice in proper form to the competent authority for acceptance of his resignation. Obviously, this had not been done, as applicant had no intention of resigning. It is, therefore, her prayer that since there was no valid resignation, it could not have been

accepted by the competent authority and, therefore, the applicant should be treated as not having resigned from service and thus continuing in service even now. She then argued that other consequential reliefs such as pay, arrears of pay, confirmation etc. should follow. She also stated finally that since there was no valid resignation the applicant still had the right to withdraw the resignation and he should be allowed to do so in view of his representation addressed to the Administrator Dadra and Nagar Haveli on the 3rd September, 1986 which is Annexure A-17.

7. Mr.J.D.Desai the learned advocate for the respondents contends that when the applicant wrote the Demi Official letter his intention was very clear. He had every desire to resign from service. If he did not have such firm intention he would have reconsidered his stand in view of the liberty offered to him by the Executive Engineer. He did not do so. There was, therefore, no alternative for the Executive Engineer who was the immediate superior of the applicant but to process the Demi Official letter as if it was a letter of resignation and submit it to the appropriate authority viz. The Administrator of Dadra and Nagar Haveli through proper channel i.e. the Collector of Dadra and Nagar Haveli. The Administrator being the appointing authority and having come into possession of applicant's intention of resigning from service expressed in the Demi Official letter took a decision to accept the resignation and issued the orders which are at Annexure A-1 to the application. Thus the resignation became effective.

8. We have on record the applicant's appointment order at Annexure A-3 which contains a Clause No.6 which reads as follows:

"Before resigning the post he shall have to give one month's notice to the administration failing which he has to remit one month's notice pay before he could be relieved from service".

9. Miss.Ganapathy has cited a few authorities which she feels could help her, we will take notice thereof as follows:

The first one, 1967 S.L.R.823 is the case of R.S.Maniyar v/s. State of Mysore in which the applicant there had resigned from service and was relieved of his duties. He withdrew his resignation and he was reinstated. The decision is more on how to treat his period of absence and where he should be placed in ^{rather} order of seniority/than on the question of acceptance of resignation. One of the Head-notes reads amongst other contents " a resignation becomes effective when the authority competent to make the appointment accepts it and a servant resigning is relieved of his duties. A resignation after it has become effective puts an end to the relationship of master and servant, and the post occupied by a person resigning becomes vacant."

10. The second case cited is reported in All India Service Law Journal, 1976 at page 666. This is the case of Dr.Rajnikant M.Jariwala of Daman V. Sec. (Health) Govt.of Goa, Daman and Diu and others. The Head-note reads as follows:

Resignation:- Govt.Servant submitted his resignation - same can be withdrawn by him before its acceptance - A.I.R.1969 S.C. 180 followed."

Resignation:- Govt.Servant addressed the resignation letter to the authority other than the appointing authority - Resignation would ab initio be void."

This was a decision given by the Judicial Commissioner of Goa, Daman & Diu which stated that for a resignation

to be effective it will have to be specifically addressed to the Lt.Governor, the appointing authority in that particular case.

11. A.I.R.1978 - S.C.694

" Union of India V/s. G.C.Mishra. The relevant portion of the Head-note is "The general principle regarding resignations is that in the absence of a legal, contractual or constitutional bar a "prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government Servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority etc."

This case about resignation of a High Court Judge not help the applicant, as there was a prospective resignation which was withdrawn before its acceptance and the withdrawal was upheld by a majority decision.

A.I.R. 1972 - S.C.1302.

"Raj Narain v/s Indira Gandhi. Here again the ruling is "The service of a Government Servant normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority. It cannot be withdrawn once it is accepted."

12. As against these cases we have seen A.I.R. 1969 S.C.180 the case of Raj Kumar v. Union of India.

Here the Head Note says that when a government servant resigns and the resignation is accepted by the Government, withdrawal of resignation is not permissible, even before communication of order of acceptance. It is significant here to read paragraph 1 of the judgment delivered by Justice Shah. It reads as follows:-

"The appellant belonged to the Indian Administrative Service and was in August 1964 posted as Collector and District Magistrate, Kota. On August, 21, 1964 he addressed a letter to the Chief Minister, Rajasthan, setting out several grievances and finally stated - "In conclusion I would only request that the Government may do me the kindness of accepting my resignation from the service which I am submitting separately as I am convinced that it would be impossible to continue in such an atmosphere without "being humiliated from time to time". He also addressed a letter dated August 30, 1964, to the Chief Secretary to the Government of Rajasthan submitting his resignation "from the Indian Administrative Service for early acceptance", and requested that it may be forwarded to the Government of India with the remarks of the State Government. The State Government recommended that the resignation be accepted. On October 31 1964, the Government of India accepted the resignation of the appellant and requested the Chief Secretary to the Government of Rajasthan "to intimate the date on which the appellant was relieved of his duties so that a formal notification could be issued in that behalf".

In that case again the applicant changed his mind and submitted a letter for withdrawal of his resignation. That was not accepted, therefore, he moved the High Court of Punjab at Delhi for the issue of a writ of certiorari. The High Court rejected the petition holding that the resignation became effective on the date on which it was accepted by the Government of India and a subsequent withdrawal of resignation was ineffective, even if acceptance of a resignation was not intimated to the appellant. When the matter went to the Supreme Court the decision was as cited above. Thus none of the decisions help the applicant.

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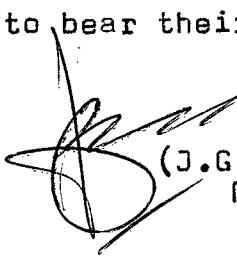
12. With these two points of view what becomes clear is that if even in the case of a member of the Indian Administrative Service, a resignation not addressed to the appointing authority viz. the President of India, but addressed to the Chief Minister and the Chief Secretary of the State in which he is serving can be processed and can become effective, there is no reason why the resignation submitted by the applicant by Demi Official letter addressed to his immediate superior the Executive Engineer but clearly notifying his intention to resign from service cannot be processed by the State Government i.e. the Administration of Dadra and Nagar Haveli and accepted by the appointing authority viz. Lt.Governor and Administrator of Dadra and Nagar Haveli. Similarly, if once the resignation is accepted the question of its withdrawal does not arise as ruled in the final citation given above. The same rule should apply to this case which is very much parallel to that one, and therefore, any intention of withdrawing the resignation which the applicant might express at a later date whether/a formal representation or by a D.O. letter would not be valid at all.

13. Considering the contentions of the learned advocates for both the sides and also perusing the entire records we are firmly of the view that what applicant submitted on 10.3.1986 through a D.O.letter was in fact his resignation from service. Therefore, its acceptance ordered on 23.6.1986 i.e. after a lapse of more than 3 months as against the period of one month's notice required by rules is also valid and legal. It is significant that applicant was offered

a chance to consider withdrawal of his resignation if he so desired or to reconsider the matter. The applicant had steadfastly adhered to his approach that he did not want to remain in service any more and he wanted to resign therefrom. In the circumstances, we do not see any justification in the application and the contentions of the applicant that he had not tendered a proper and legal resignation and that he should be treated as being in government service even now.

14. We, therefore, order that -

- 1) that the application filed by the applicant is dismissed.
- 2) The interim relief granted by our orders dated 6.5.1987 and 16.6.1987 is hereby vacated.
- 3) The applicant should vacate the quarters which are in his occupation.
- 4) The applicant of course, is liable to pay rent according to rules until the date he vacates the said quarters.
The respondents may recover it out of amounts due to the applicant from them.
- 5) Parties to bear their own costs.


(J.G. RAJADHYAKSHA)
Member(A)


(M.B. MAJUMDAR)
Member(J)

Delivered in open Court today.


(J.G. RAJADHYAKSHA)
Member(A)

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-: 10 :-

After this judgement was delivered,
Miss.Ganapathy, learned advocate prays for a six
week stay to the operation of the judgment. Mr.
Sethna for Respondents has no objection.

We order that the execution of our
judgment should not be done till 18.12.1987.
Copies of this order be given to Respondents.

(J.G.RAJADHYAKSHA)
Member(A)

(M.B.MUJUMDAR)
Member(J)