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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 35 of 1988.

198

DATE OF DECISION 20.4.90.

Subhash Murlidhar Adhav Petitioner

S/Sri B.K. Salve and D.V. Gangal Advocate for the Petitioner(s)

Versus

Superintending Engineer, Western
Railway Circle, Nagpur. Respondent

Mr R.K. Shetty Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. Shri M.Y. Priolkar, Member (Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement?
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?

l/s
 (G.Sreedharan Nair)
 Vice Chairman.

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW BOMBAY BENCH
NEW BOMBAY.

O.A. 35/88.

Subhash Murlidhar Adhar	...	<u>Applicant.</u>
-versus-		
Superintending Engineer, Western River Circle, Nagpur.	...	<u>Respondent.</u>

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair,
Vice Chairman.

The Hon'ble Shri M.Y.Priolkar,
Member (Admn).

For the applicant- Shri B.K.Salve,
Shri D.V.Gangal, Advocates.

For the respondents- Shri R.K.Shetty, Advocate.

Date of hearing - 18.4.90

Date of Judgment & Order- 20.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant, a Junior Draughtsman under the respondent, Superintending Engineer, Western River Circle, Nagpur, submitted a letter to him on 12.11.1982 stating that on account of his ill-health and domestic difficulties he is unable to continue in his service and treat the said letter as his resignation and to relieve him of his duties at the earliest. The resignation was accepted by the Superintending Engineer by ~~the~~ ^{his} order dated 3.6.1987 wherein it was stated that the applicant is deemed to have been relieved of his duties with effect from 11.12.1982.

2. It is alleged by the applicant that as the resignation was not accepted, he reported for duty on 18.2.87 and submitted a letter to the Superintending Engineer withdrawing his resignation. Since the request was not allowed, he ^{has} filed this application for directing

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the respondent to permit him to join his duties and to declare that the order dated 3.6.1987 is illegal, null and void in view of the withdrawal of the resignation.

3. In the reply filed by the respondent, it is contended that the application is barred by limitation and suffers from the vice of laches since after tendering the resignation on 12.11.1982 he enquired about the same only on 18.2.1985. According to the respondents, the cause of action arose on 12.11.1982 itself.

4. It is stated that the applicant proceeded on Extra-ordinary Leave from 26.10.1982 and after that submitted the application for his resignation on 12.11.1982 and, as such, the applicant had left the service of the respondent of his own. It is further stated that he was not permitted to join duties when he reported for duty on 18.2.1987 in view of the unauthorised absence for about five years following the resignation. It is pointed out that the applicant was not allowed to join duties because the Central Water Commission in their letter dated 2/4 March, 1983 had authorised the Superintending Engineer to accept the resignation with immediate effect and that the applicant cannot take advantage of the administrative delay in accepting the resignation. It is contended that the order dated 3.6.1987 is valid. There is also the plea that p withdrawal of the resignation would not be allowed in view of Clase (iii) of Sub-Rule (4) of Rule 26 of the C.C.S.(Pension) Rules.

5. Admittedly, the applicant was a permanent

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Government servant. It is trite that in case of a Government servant who cannot under the conditions of his service, by his own unilateral act ~~of~~ tendering resignation, a tender of resignation becomes effective and his service will stand terminated only when it is accepted by the competent authority. As such, it cannot be disputed that the tendered resignation can be withdrawn before it becomes effective. Though the tender of resignation was made on 12.11.1982, the applicant has specifically prayed therein for relieving him of his duties at the earliest. The Superintending Engineer, the competent authority, did not accept the tendering of resignation or relieved the applicant of his duties till he issued the order dated 3.6.1987. In the meanwhile, the applicant had submitted the letter dated 18.2.1987 withdrawing the tender of resignation, in response to which the respondent intimated the applicant by the letter dated 20.2.1987 that the request for withdrawal of resignation is under consideration and that he would be informed about the matter in due course. Thus, it is patent that the acceptance of the resignation was made only after the respondent was aware of the withdrawal of the tender of resignation. The direction in the order dated 3.6.1987 that the applicant shall be deemed to have been relieved of his duties with effect from 11.12.1982 cannot be sustained in view of ^{the} withdrawal ^{of} tender of resignation. The plea of the applicant that the order dated 3.6.1987 is illegal has, in the circumstances, to be accepted.

6. It is contended in the reply filed by the respondent that the Central Water Commission had

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intimated the Superintending Engineer by the letter dated 27/4 March, 1983 that there is no objection in the acceptance of the resignation of the applicant. However, the acceptance was done only on 3.6.1987 and, as such, the direction in the aforesaid letter is of no consequence. There is no dispute that it is the Superintending Engineer who is the competent authority to accept the resignation.

It has also to be pointed out that in the said letter from the Central Water Commission, it has been specifically indicated that the resignation becomes effective only when accepted by the competent authority.

7. The plea of the respondents that in view of Clause (iii) of Sub-rule (4) of Rule 26 of the CCS(Pension) Rules, the applicant was not entitled to withdraw the resignation is devoid of merit. According to the said Clause one of the conditions to enable the appointing authority to permit a person to withdraw his resignation is 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 duties, as a result of permission to withdraw the resignation is not more than 90 days. In this case, long before the resignation became effective, the applicant had given the letter of withdrawal. It was without considering the request for withdrawal of the resignation that the order of acceptance of the resignation was issued.

8. In the circumstances, the respondent has to be directed to consider the case of the applicant for withdrawal of the resignation made in the letter dated 18.2.1987 in its proper perspective and having due regard to

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the fact that the resignation had not become effective when withdrawal was sought for, and to issue consequential orders on the request made by the applicant by the letter submitted on the same date praying for joining duty.

This shall be done within a period of one month from the date of receipt of the copy of this order.

9. The application is disposed of as above.

20.4.90
(M.Y.Prblkar)
Member (Admn)

20.4.90
(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/
19.4.90.

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Judgment dt. 20.4.90
Sent to parties on
21.5.90.

S. J. Nair

Judgment dt.
20.4.90 served on Resp.
on dt 21.5.90

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6/6/90

C.P. No. 18/90 fixed
on 24/7/90.

S. J. Nair
11/6/90.