

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

ORIGINAL APPLICATION NO. 865 of 1988

Smt. Supriya Vivek Bhavsar,
Office Assistant,
C/o C.B.Kale, Advocate,
Shree Niwas, Kardal Saphale,
P.O.-Umberpada,
Tal-Palghar(Thane),
PIN: 401 102.

.. Applicant

v/s.

1. The Telecom District Engineer,
Tarabai Park,
Telephone Bhaven,
Kolhapur
Pin: 416 003.
2. General Manager,
Telecom Maharashtra Circle,
Bombay-400 001. .. Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar
Hon'ble Member(A), Shri M.Y.Priolkar

Appearance:

1. Shri C.B.Kale,
Advocate for the
applicant.
2. Shri K.G.Srinivasan,
Assistant General Manager,
for the respondents.

ORAL JUDGMENT:-

Dated: 4.1.1989

(PER: Shri M.B.Mujumdar, Member(J))

On 1.12.1982, the applicant Smt. Supriya Vivek Bhavsar was appointed as Office Assistant in the office of Telecom District Engineer, at Sangli. On 1.10.1984 she was transferred to Kolhapur in the office of the Assistant Engineer Trunks. On 30.5.1987 she submitted

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her resignation requesting that her resignation be accepted with effect from 30.6.1987. That letter of resignation was addressed to the Telecom District Engineer(TDE), Kolhapur. On 22.6.1987, she sent a letter to the Telecom District Engineer, Kolhapur stating that she had sent her resignation due to unavoidable circumstances of ill-health and domestic reasons and as the circumstances had changed, she was withdrawing her resignation. She requested that she may be permitted to resume her duty as early as possible, by treating the letter of resignation as cancelled. By letter dated 24.6.1987 the TDE accepted the resignation of the applicant with effect from 24.6.1987 and directed that her name be struck off the strength of the District with effect from the same date i.e. 24.6.1987.

2. On 17.7.1987, the applicant made a representation against the acceptance of her resignation with effect from 24.6.1987. That representation was rejected by the TDE, Kolhapur by his letter dated 25.7.1987. The applicant preferred an appeal against that order to the General Manager Telecom, Bombay who rejected it on 6.5.1988. On 17.11.1988, the applicant has filed the present application challenging the order of the TDE by which her resignation was accepted with effect from 24.6.1987. She has also prayed that she be treated to be in service from that date and she should be given arrears of pay and other benefits on that basis. By our order dated 17.11.1988 the application was admitted

and the respondents were directed to file their reply on 4.1.1989 i.e. today. The respondents were further informed that the application may be disposed of finally on the same day i.e. today.

3. Accordingly the respondents have today filed their reply. They have pointed out that the applicant had given a letter of resignation to the Assistant Engineer Trunks, Kolhapur on 23.6.1987 at about 10.00 a.m. He forwarded it to the Telecom District Engineer, who received it on 29.6.1987. But before that the resignation submitted by the applicant was already accepted with effect from 24.6.1987. Other facts mentioned in the reply are not relevant for our purpose.

4. We have heard Shri C.B.Kale, learned advocate for the applicant and Shri K.G.Srinivasan, Assistant General Manager(Staff), Maharashtra Circle, Bombay. After considering the arguments and the facts and circumstances, we are of the view that the Telecom District Engineer, Kolhapur was not justified in accepting the resignation of the applicant by letter dated 24.6.1987.

5. Admittedly, the applicant had submitted a letter dated 23.6.1987 at 10.00 a.m. withdrawing the resignation to the Assistant Engineer Trunks, Kolhapur. It appears that the Assistant Engineer Trunks forwarded that letter to the Telecom District Engineer, Kolhapur on 27.6.1987 and it reached the TDE on 29.6.1987. But before that by his letter dated 24.6.1987, the TDE had

accepted the resignation of the applicant with effect from 24.6.1987. It is not clear why the Assistant Engineer Trunks took so much time for forwarding the letter of withdrawal of resignation to the TDE, Kolhapur, ^{to whom it was addressed}. The offices of both of them are situated at Kolhapur itself. If the Assistant Engineer Trunks would have been careful enough to send the letter to the TDE on the same day the latter might not have accepted the resignation by his letter dated 24.6.1987.

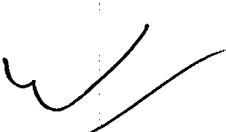
6. The law on this point is well established. A Government employee can withdraw his resignation before it is finally accepted by the competent authority. In *Shri Satish Chandra v. Shri Gopal Chandra Misra and Others* (1978(1) SLR 521), a judge of the Allahabad High Court wrote a letter to the President of India on 7.5.1977 intimating his resignation from the office with effect from 1.8.1977. On 15.7.1977 he wrote another letter to the President for revoking his earlier letter and commenced deciding the matters in the court from 16.7.1977. One advocate filed a Writ Petition in the High Court under Article 226 of the Constitution of India contending that the resignation of Shri Satish Chandra having been communicated to the President of India, it had become final and irrevocable and that the continuance of Satish Chandra as a Judge of the High Court thereafter was an usurpation of the office of a High Court Judge, which was a public office. The High Court allowed the petition holding that Satish Chandra was not competent

his
to revoke a letter of resignation. On appeal the Supreme Court reversed that decision holding that as Satish Chandra had resigned from a future date the act of resignation was not completed because he did not terminate his tenure before future date and he could at any time before that prescribed date withdraw the resignation.

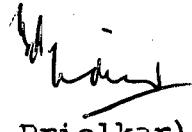
7. The above case is referred to in Balram Gupta v. Union of India and another A.I.R. 1987 SC 2354. In that case, as in this case the respondents relied on the guidelines showing that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. It was pointed out by the appellant that on the persistent and personal requests of the staff members, he dropped the idea of voluntary retirement. The Supreme Court did not see how that could not be a good and valid reason. According to the Supreme Court, "In the modern age we should not embargo upon people's choice of freedom". Coming to the facts of this case, the applicant had withdrawn her resignation by addressing a letter to the TDE, Kolhapur on 23.6.1987. It was not her fault that Assistant Engineer Trunks who was the sub-ordinate of TDE did not forward that letter to the TDE for four days. Hence in our opinion withdrawal of resignation by the applicant was proper and legal and the TDE, Kolhapur was not justified in rejecting that withdrawal on 24.6.1987.

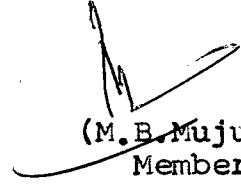
8. Shri Kale, learned advocate for the applicant has relied on two more cases. The first is a judgment of the Himachal Pradesh High Court in Taran Tej Singh v. State of Himachal Pradesh and Others, 1978 (2) SLR 846. In that case the applicant was a temporary Government servant. He had resigned by letter dated 23.8.1968. No official decision on that letter was taken till 24.10.1969. In the meanwhile on 28.2.1969 the applicant withdrew the resignation. He sent several reminders with regard to the withdrawal of his resignation. Ultimately on 24th October, 1969, the resignation was accepted with retrospective effect from 7.1.1968. The Himachal Pradesh High Court held that after the applicant had withdrawn his resignation, there was nothing on the date of its acceptances and hence the authorities were not justified in accepting the resignation. In result the petition was allowed and impugned order was quashed with a direction that the applicant be deemed to be continuing in service. The second case relied upon by Shri Kale is a judgment of the Cuttack Bench of this Tribunal in Sambhunath Panda v. Union of India and Others, 1987(1) SLR CAT 741. It is held in that case that acceptance of resignation after submission of an application for withdrawal is illegal. The applicant in that case was treated to be in continuous service and he was given ~~not~~ emoluments as per rules.

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9. We, therefore, quash and set aside the Memo No.QB-11/62 dated 24.6.1987 of Telecom District Engineer and direct that the applicant be treated to be in continuous service with effect from 24.6.1987 with all consequential benefits, including payment of arrears of pay and allowances from that date till she is actually taken back in service. Respondents to comply with this directions within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.


(M.Y. Priolkar)
Member(A)


(M.B. Mujumdar)
Member(J)