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Central Administrative Tribunal
New Bombay Bench :Panaji

O.A.174/89.

From : Hon'ble Sri G.Sreedharan Nair,
Vice Chairman.

To

The Hon'ble Shri M.Y.Priolkar,
Member(Admn) for consideration
and return.


(G.Sreedharan Nair)
Vice Chairman.

For Reporting/~~Not for Reporting.~~

See. Thanks.

S.P.Singh/
12.7.90.

I agree entirely



VC

13-7-90

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW BOMBAY BENCH
CIRCUIT COURT AT PANAJI :GOA.
O.A.174/89.

Shri P.P.Mytheen ... Applicant.
-versus-
Union of India and ors ... Respondents.

P R E S E N T :

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

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

For the applicant- Shri G.R.Sharma, Advocate.

For the respondents- Shri H.R.Bharne, Advocate.

Date of hearing - 11.7.90.

Date of Judgment and Order- 13.7.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant, a Junior Engineer under the respondents, applied for leave and for permission to leave the country for Baharain. By the order dated 5.8.83, he was granted 31 days' Earned Leave. On 8.12.1983, the applicant was called upon to produce the necessary certificate from the Embassy/Consulate to the effect that he is not employed. On 5.1.1984, he wrote to the Chief Engineer tendering his resignation with effect from 11.1.1984. It was stated therein that the resignation was being tendered to look after the business of his father. It is alleged that since nothing was heard of from the respondents, on 26.8.1986, he called on the Chief Engineer and submitted a letter stating ^{that as} ~~since~~ the resignation has not been accepted he would report for work, and requesting posting. It is stated that though reminders were sent to the Chief Engineer, no reply was given to the applicant. The applicant alleges that he submitted an appeal to the Secretary to the Government of Goa, Public Works Department, and that during the pendency of the same the Chief Engineer passed the order dated 14.2.1989 accepting the resignation of the applicant with effect from that date.

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2. The applicant prays for quashing the aforesaid order of the Chief Engineer and for a direction to the respondents to reinstate him in service with all consequential benefits.

3. It is urged that since the offer of resignation was withdrawn long before 14.2.1989, the impugned order is bad in law.

4. In the affidavit filed by the Chief Engineer by way of reply to the application, it is contended that the application is barred by limitation and that the relief claimed does not fall within the purview of this Tribunal and, as such, the application is not maintainable. It is stated that the applicant did not report for duty on the expiry of the period of leave sanctioned to him but submitted the letter of resignation on 5.1.1984. It is admitted that the order accepting the resignation was issued only on 14.2.1989. The explanation offered is that certain clarifications and procedural formalities were not complied with by the applicant, and hence the delay. It is contended that the applicant should be deemed to have resigned from service with effect from 11.1.1984 and that in any event since he did not report for duty on 9.9.1983 he should be deemed to have deserted or abandoned his post. It is pointed out that from the date of the resignation of the applicant the post was duly filled in and that it is only with a view to assert his right over the post that the applicant has later submitted the withdrawal of the resignation.

5. The short question that arises for determination is whether the order dated 14.2.1989 issued by the

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Chief Engineer accepting the resignation tendered by the applicant, with effect from that date, is sustainable.

6. It is trite that a tender of resignation, when it requires acceptance to be effective, can be withdrawn by a civil servant, before its acceptance. Till the resignation is validly accepted, it cannot be disputed that the civil servant continues in service.

7. Though by the letter dated 5.1.1984, the applicant tendered his resignation to be effective from 11.1.1984, he had withdrawn the same and reported for duty on 26.8.86. However, no orders were passed on the request for withdrawal of the resignation. Nor was the applicant permitted to join duty. This continued for a pretty long time during which the applicant is ^{seen} ~~seemed~~ to have sent repeated letters to the Chief Engineer reiterating his request. Since no action was taken by the Chief Engineer, ultimately, the applicant had to make a representation before the Secretary to the Government, Public Works Department, which also was of no avail. It was during the pendency of the said representation that the impugned order was passed on 14.2.1989 accepting the resignation "with immediate effect, i.e., from the ~~date~~ date of issue of this order". There is absolutely no satisfactory explanation offered in the affidavit filed by the Chief Engineer by way of reply to the application for this inordinate delay in taking action on the tender of resignation that was made more than five years back. At any rate, when the Chief Engineer was aware that the offer of resignation had been withdrawn by the applicant by his letter dated 26.8.1986, which he was entitled in law to do, there was no question of acceptance of the resignation with effect from 14.2.1989.

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No doubt, there is a reference in the impugned order ^{that} "no genuine reasons have been cited to consider withdrawal of his resignation". This is not a case where the request related to withdrawal of a resignation that was tendered ^{and} duly accepted. The withdrawal was made at a time when no action was taken by the competent authority on the tender of resignation. In the tender of resignation, the ground urged was that the applicant wants to be by the side of his father to look after him and his business. However, he urged in the various letters following the letter for withdrawal of resignation that being non-employed he finds it extremely difficult to maintain his family comprising of 6 members and that he is suffering from mental torture and prayed for permission to resume duties so as to avoid frustration in life. The Supreme Court in the decision in Balram Gupta vs. Union of India (1987 (Supp) SCC 228) has observed as follows :

" 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."

8. We cannot accept the submission of the counsel of the respondents that ~~since~~ this is a case of abandonment of service on the part of the applicant and hence he is not entitled to any relief. Assuming that the applicant was unauthorisedly absent from service, it was open to the respondents to initiate proceedings

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and terminate the services of the applicant on that ground. Admittedly, the applicant was continuing in the service of the respondents till 14.2.1989 when the impugned order accepting his resignation from that date was issued by the Chief Engineer.

9. The plea of limitation is without merit as the application is filed within an year of the impugned order.

10. We hold that the order dated 14.2.1989 issued by the Chief Engineer accepting the resignation of the applicant with effect from that date cannot be sustained in law. Since the applicant has reported for duty on 26.8.86, the applicant should be treated as having withdrawn the tender of resignation and shall be deemed as in continuous service from that date. The period of absence of the applicant prior to that date shall be treated as Extra-ordinary Leave, as requested by the applicant himself in his letter dated 26.8.1986. The applicant shall be admitted to duty forthwith, and shall be ^{considering the circumstances of the case} allowed the consequential benefits. However, the backwages is restricted to the period from ~~the date of~~ 3.3.89, the date of filing of the present application.

10. The application is disposed of as above.

[Signature] 13.7.90
(M.Y.Priolkar)
Member(Admn)

[Signature] 13.7.90
(G.Sreedharan Nair)
Vice Chairman.

SP Singh/
12.7.90.