

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 433 of 1999.

Dated this Tuesday, the 5th day of December, 2000.

Dinesh Keshav Kamath, Applicant.

Smt. V. S. Dighe, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. D. Vadhavkar for Advocate for
Shri M. I. Sethna, Respondents.

CORAM : Hon'ble Shri B.S. Jai Parameshwar, Member (J).

Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.


B. S. JAI PARAMESHWAR
MEMBER (J)

OS*

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Dinesh Keshav Kamath,
Residing at C-2/10,
Ashok Chakravarty Co-Operative
Housing Society Ltd.,
Tarun Bharat Society Road,
Andheri (East),
Mumbai - 400 099.

... *Applicant.*

(By Advocate Smt. V.S. Dighe)

VERSUS

1. The Union of India
represented by the Ministry
of Finance, Deptt. of Customs,
New Delhi.
2. The Commissioner of Customs (Gen.),
New Custom House,
Ballard Estate,
Mumbai - 400 001.
3. The Asstt. Commissioner of Customs,
(Personnel & Establishment Deptt.),
New Custom House, Ballard Estate,
Mumbai - 400 001. ... *Respondents.*

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).

OPEN COURT ORDER

PER : Shri B. S. Jai Parameshwar, Member (J).

Heard Smt. V. S. Dighe, the Learned Counsel for the applicant and Shri V. D. Vadhavkar for Shri M. I. Sethna, the Learned Counsel for respondents. Mr. Bramhakumar, U.D.C. from the office of the respondents was present with the records.

2. During the year 1998, the applicant was working as a Preventive Officer on ad hoc basis with the respondents

department. He remained unauthorisedly absent from duties w.e.f. 13.03.1996. Then the Assistant Commissioner of Customs, (Preventive Gen.) issued a memo dated 18.04.1996 (exhibit-C, page No. 22) directing the applicant to report for duties failing which action would be initiated against him under the rules.

3. The applicant submitted letter dated 02.05.1996 tendering his resignation for the post of Preventive Officer. A copy of the letter dated 02.05.1996 is at exhibit-D. The Deputy Commissioner of Customs, Personnel & Vigilance Department, accepted the resignation tendered by the applicant vide its Establishment Office Order No. 194/96 dated 07.06.1996.

4. On 31.01.1997 the mother of the applicant made a representation to condone the lapses and to permit her son to report for duty. A copy of the representation is at exhibit-J, page 30.

5. On 18.02.1997 the applicant's mother submitted a representation to the Member, Central Board OF Excise & Customs, New Delhi, to permit her son to resume duty. A copy of the letter is at exhibit-L page no. 33.

6. On 11.03.1997 the applicant submitted a letter seeking permission to withdraw the resignation dated 02.05.1996.

7. In reply to the letter dated 18.02.1997, the Assistant Commissioner of Customs, Personnel & Establishment Department,

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informed the applicant that his request was considered in consultation with the D.O.P.T. and the D.O.P.T. opined that it was not a fit case for grant of permission for withdrawal of resignation in relaxation of the rules. A copy of the letter dated 20.11.1998 is at exhibit "D" page 51.

8. The applicant has filed this application for the following reliefs :

- "8.a) a direction to the Respondents and in particular to Respondent No.3 that the applicant be granted permission for withdrawal of his resignation dated 2nd May, 1996 being exhibit "D" hereto and for a further direction that the applicant be allowed to resume his duties as Preventive Officer, as before;
- b) a direction to the Respondents that the Applicant's past benefits including leave salary, etc. be restored to him, and
- c) In the alternative and without prejudice to the prayers (a) and (b) above, for a direction that the Respondents do re-appoint the applicant in his original post."

9. The main contention of the applicant is, that during the year March, 1996 upto February, 1997 he was suffering from mental depression. That he was not in a position to understand what he was doing. That he had not intended to submit his resignation to the post. That he was under treatment ^{under} ~~of~~ Homeopathic Doctors and after recovery, he approached the authorities and found that his resignation had already been accepted. His contention is, that in his letter of resignation dated 02.05.1996 he had mentioned that he was resigning the post on health grounds and, therefore, it was obligatory on the part of the respondents to make enquiry as to whether the applicant was in a clear sound of mind to submit his letter dated 02.05.1996. Further, an attempt has been made to convey that the respondent authorities have not at all

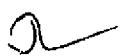


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accepted his resignation submitted on 02.05.1996 and that the letter of acceptance of resignation dated 07.06.1996 was not at all handed over to him or communicated to him. In this connection, the Learned Counsel for the respondents produced the records.

10. The respondents have filed a reply. They submit that they were not aware of the health condition of the applicant at the time when he submitted his letter of resignation. He was a beneficiary of C.G.H.S., therefore, there was no obligation on him to approach a homeopathic doctor. It was for the first time in February, 1997 an attempt was made that the applicant was under mental depression. The respondent authorities made enquiries as to the genuineness of the certificates produced by the applicant and however, have considered sympathetically the representation submitted by the applicant and they took a decision in consultation with the D.O.P.T. The letter dated 20.11.1996 at exhibit 'T' by which his request for withdrawal of resignation has been rejected, has not been challenged in this application.

11. Normally, a Government servant is eligible for withdrawal of resignation before its acceptance by the competent authority. When once resignation is accepted, that is the end of the matter. In fact, the Learned Counsel for the respondents, during the course of his arguments, relied upon the decision of the Hon'ble Supreme Court in the case of Rajasthan State Electricity Board & Others V/s. Brij Mohan Parihar reported in 2000 SCC (L&S) 904, to contend that the conduct of the parties ^{and while so} ~~has~~ ^{has to be} taken into consideration by the Hon'ble Supreme Court ~~and~~



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held in that case that the respondent was himself absent after tendering his resignation, wherein he had made clear that the resignation would be effective from 25.11.1983. After a lapse of four years, he came for reporting for duty. In that case, the authorities had not passed an order accepting the resignation. As no specific order accepting the resignation ~~was~~ ^{had been} made in that case, the single Judge and the Division Bench of the Hon'ble High Court took the view that the applicant should be deemed to have been in service. This opinion of the Hon'ble High Court was negatived by the Supreme Court with the following observations :

"4. We are not inclined to subscribe to this view. The respondent tendered his resignation vide his letter dated 10.10.1983 in which it was mentioned clearly that the resignation would be effective from 25.11.1983. He absented himself from duty for four years from that date and reported only on 22-8-1987. This conduct itself on the part of the respondent is sufficient to indicate that he treated himself to have resigned from the post which he was holding, with effect from 25-11-1983, particularly when he himself thereafter demanded payment of gratuity and other post-retirement benefits."

12. It is for the first time the applicant stated that he was suffering from mental depression only in February, 1997. Admittedly, the applicant was absent from 13.03.1996. When his immediate superior directed him to report for duty, he has not send any letter stating about his condition of health. Further, between 13.03.1996 and 02.05.1996 the applicant has not informed the department about his condition. He straight away submitted his letter of resignation dated 02.05.1996. That has been accepted by the respondents department by their letter dated 07.06.1996.

13. The contention of the applicant that he was not aware of the acceptance of his resignation cannot be accepted for the simple

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reason that the applicant as well as his mother while submitting the representations to the respondent authorities had themselves enclosed the letter of acceptance of resignation. If really the letter of acceptance of resignation dated 07.06.1996 was not in their possession, it was not known how they got that letter to enclose alongwith their representations. Even the applicant himself has furnished a copy of the letter accepting his resignation alongwith his representation dated 11.03.1997.

14. In that view of the matter, the respondent authorities have taken proper decision in not accepting the request of the applicant for withdrawing his letter of resignation dated 02.05.1996.

15. The applicant in his representation dated 11.03.1997 has cited two instances of Ms. Geeta Ravindran and Ms. Geeta Nair, who were allowed to resume duty after a lapse of four years ^{period} subject to the condition that the interregnum will not be treated as qualifying service for pension and gratuity.

16. We find no merits in this O.A. The O.A. is liable to be dismissed and accordingly it is dismissed.

17. However, we make it clear that this order does not come in the way of ^{be} respondents considering the case of the applicant for re-appointment in accordance with the rules. Records returned to the counsel for respondents.

Shanta
(Smt. SHANTA SHAstry)

MEMBER (A).

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B. S. JAI PARAMESHWAR
(B. S. JAI PARAMESHWAR)
MEMBER (J).
S. 12/2002