

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

542/99

Dated this Thursday the 19th day of June, 2003
Subhash S/o Ramrao Shiradhenkar

(By Advocate Shri G.K. Masand)

VERSUS

Union of India & ors.

(By Advocate Shri V.S. Masurkar)

CORAM : Hon'ble Shri V.K. Majotra - Member (A)
Hon'ble Shri Shankar Raju - Member (J)

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

S. Raju
(Shankar Raju)
Member (J)

Central Administrative Tribunal
Mumbai Bench

OA No.542/1999

Mumbai this the 19th day of June, 2003.

Hon'ble Mr. V.K. Majotra, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl)

Subhash son of Ramrao Shiradhonkar,
R/o 23, Sriram Bank Colony,
Purna Road, Nanded-431603.

-Applicant

(By Advocate Shri G.K. Masand)

-Versus-

1. Union of India through the
Secretary, Ministry of
Communication, Deptt. of Telecom,
New Delhi.
2. Chief General Manager,
Maharashtra Telecom Circle,
G.P.O. Building, Mumbai-400 001.
3. General Manager, Telecom,
1st Floor, Telecom Bhavan,
'O' Mile, Civil Lines, Nagpur-440001.
4. Telecom District Manager,
Above Dodavari Hotel, Near ITI,
Nanded-431602.

-Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (JUDGE)

Mr. Shanker Raju, Member (J):

Applicant through this OA has impugned respondents' order dated 22.9.97 and 13.1.99 where his request for withdrawal of resignation and re-instatement has been turned down. He has sought quashment of these orders with direction to the respondents to withdraw the resignation of applicant and he be re-instated in service w.e.f. 28.4.93 with all consequential benefits.

2. Applicant was working as Junior Telecom Officer (JTO). By an order dated 5.11.92 he was transferred from Parbhani to Nagpur where he reported for duty on 20.11.92 and submitted his joining report,

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simultaneously submitting application for leave. It is alleged that applicant was not allowed to join duties and this was informed to respondent No.4. Applicant approached Nade for seeking further instructions.

3. By a letter dated 28.4.93 written to the General Manager, Telecom, Nagpur applicant tendered his resignation by stating "Respected Sir, I S.R. Shridhonkar, JTO is hereby tendering my resignation due to some domestic problems. Kindly accept my resignation at the earliest. I am ready to pay necessary dues against him. Thanking you, yours faithfully, sd/-Shridhonkar, JTO"

4. Applicant, by his communication dated 19.11.96 sought cancellation of resignation and permission to join duties. By an order dated 22.9.97 respondents turned down his request on the ground that although application for withdrawal of resignation dated 19.11.96 was received on 26.11.96 his resignation was accepted by the competent authority on 25.7.96 but applicant could not be relieved due to non-payment of outstanding dues and keeping in view the CBI investigation relating to disproportionate assets and his unauthorized absence from duty resignation was not accepted. Being aggrieved, an appeal was made on 21.11.97 contending that applicant had joined duties at Nagpur and as he was not apprised of acceptance of his resignation the same has not become effective and on non-relieving a resignation can be withdrawn and applicant be deemed to be on duty. By an order dated 13.1.99 respondents

considered the representation and stated that as before receipt of the withdrawal request resignation was accepted and has become effective, there is no merit in the present OA.

5. Learned counsel Sh. Masand, appearing for applicant, by referring to the Ministry of Communication, Department of Telecommunications letter dated 21.12.99 contends that JTO has been designated as Group 'B' gazetted as such by coming into force of BSNL as Group B officers are still retaining lien in the Ministry of Communication and are not permanently absorbed and as the relief is directed against the Ministry of Communication this court has jurisdiction to entertain the grievance. It is further stated on merits by referring to the following cases that the resignation tendered was conditional on account of the illegal transfer of applicant and was tendered in a stage when applicant was not in perfect mental framework. As such, the same cannot be treated as a valid resignation and acceptance thereof would be of no consequence:

- i) Power Finance Corporation Ltd. v. Promod Kumar Bhatia, 1997 (4) SCC 280.
- ii) Manju Gupta v. Haryana Agricultural University, 1990 (3) SLR 68.
- iii) National Thermal Power Corporation Ltd. & Anr. v. S. Phartia, 1996 (6) SLR 201 (AP).
- iv) Union of India v. Gopal Chand Misra, AIR 1987 SC 694.
- v) Balaram Gupta v. Union of India, AIR 1987 SC 694.
- vi) Motiram V. Param Dev & Anr., 1993 (2) SLR 295.
- vii) Balbir Singh Negi v. Union of India, 1996 (2) SLR 614 (SC).

- viii) J.N. Srivastava v. Union of India, 1998 SCC (L&S) 1251.
- ix) Shambhu Murari Sinha v. Project & Development JT 2000 (6) SC 358.
- x) Union of India v. T. Parthasarthy, 2001 SCC (L&S) 180.
- xi) Narendranath Satpathy v. Union of India, 1988 (1) AISLJ 509 (CAT-Cuttack)
- xii) J.D. Kashyap v. National Seeds Corporation Ltd, 2000 (1) SLR 555 (Delhi).
- xiii) Dharam Chand Sharma v. Union of India, 1989 (2) SLR 692 (CAT-Ch.)
- xiv) Mastram Bhatti v. Union of India, 1993 (8) SLR 236 (HP).

6. It is further stated that the conditions for resignation have not been fulfilled and as the withdrawal has not become effective as the alleged acceptance by the competent authority on 25.7.96 was not communicated to applicant and the same has been manipulated by respondents on the request of applicant for withdrawal on 13.11.96, sitting over his request for resignation for more than three years shows mala fide and as applicant was not relieved the withdrawal of the resignation before the same has become effective cannot be refused and applicant is to be deemed government servant during the aforesaid period.

7. On the other hand, learned counsel for respondents Sh. V.S. Masurkar relying upon the decision of the High Court of Delhi in Ram Gopal Verma v. Union of India, 2002 (2) ATJ 314 and a decision of the High Court where in Writ Petition No.2112/2002 and other Writ Petition in Bharat Sanchar Nigam Limited v. A.R. Patil contended that after coming into force of BSNL all the employees are deemed to be absorbed there

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and in absence of any notification under Section 14 (2) of the Administrative Tribunals Act, 1985 this court has no jurisdiction to entertain this OA as the relief claimed would have to be redressed by the BSNL.

8. On merits as well it is contended that the request of applicant for resignation with immediate effect and was effective from that date. As applicant had absconded from duty by absenting himself and his whereabouts were not known from 23.4.93 to 18.11.96 to the office and as he was absconding for which a publication was notified in the newspaper there is no question of his relieving as he himself has abandoned his service and the resignation which was in-presenti is deemed effective from the date it was tendered on 23.4.93. Moreover, it is contended that the request of applicant was received on 26.11.96 whereas the competent authority had already accepted the resignation on 18.4.93. As such there is no question of withdrawal of resignation having attained finality. He prays for dismissal of the OA.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. In so far as the preliminary objection as to jurisdiction is concerned, we have carefully considered the decisions of the High Courts of Delhi and Mumbai and we find that by notification dated 21.12.99 JTOs have been designated as Group 'B' gazetted officers and in

absence of any option for permanent absorption to 'group 'B' employees in BSNL and the fact that applicant had his lien in the Ministry of Communication on 22.9.97 and before that as well and is seeking relief with regard to Department of Telecommunications, we have jurisdiction in the matter.

11. A Constitutional Bench of the Apex Court in Gopal Chandra's case (supra) made the following observations:

"It will bear repetition that the general principle 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. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal".

In Moti Ram's case (supra) the Apex Court observed:

"As pointed out by this Court, 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general jurisdictions, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. [[See : Union of India Vs. Shri Gopal Chandra Misra & Ors., 1978 (3) SCR 12 at p. 21 : 1978 (1) SLR 521 (SC)]. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it."

Further, Apex Court in Shambhu Murari Sinha's case (supra) observed as follows:

"5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement

vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta v. Union of India 1987 (Supp) SCC 228 : (AIR 1987 SC 2354 : 1988 Lab IC 46); J.N. Srivastava v. Union of India, (1998) 9 SCC 559 : (1998 AIR SCW 4057 : AIR 1999 SC 1571) and Power Finance Corporation Ltd. v. Pramod Kumar Bhatia (1997) 4 SCC 280, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."

Moreover, Apex Court in P. Lal v. Union of India & Others, 2003 SCC (L&S) 289 held as follows:

"27. We have considered the submissions of both the parties. As has been set out, in Shambu Murari case and Bank of India case an employee can withdraw his application for voluntary retirement before the effective date. The effective date would necessarily be the date on which the retirement takes effect. The request, which Respondent 3 had made by his letter dated 5.5.1993, was to be allowed to retire voluntarily with immediate effect. He had also deposited Rs.30,870 in lieu of three months' notice. Thus, so far as Respondent 3 was concerned, the effective date was 5.5.1993. Of course Rule 16 (2-A) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 provides that a notice of retirement had to be accepted by the Government of India. In this case, the Government of India accepted the request on 2.3.1995 and permitted Respondent 3 to retire with effect from May 1993. The moment the Government of India accepted the notice the retirement became effective. The relationship of master and servant came to an end. We are unable to accept the submission that the relationship of master and servant did not terminate till the acceptance was communicated to Respondent 3. It must be remembered that Rules 16 (2) and 16 (2-A) enable a member to retire from service on giving the required notice. Once such a notice is given it merely has to be accepted by the government of India. The moment it is accepted the retirement would become effective. If any other view is taken it would lead to absurd results. Such a view would mean that even though a member who had given a notice for voluntary retirement stopped attending office

and / or gone away abroad and / or taken up some other employment after a number of years of absence the member could claim to come back into service because the Government, for some unforeseen reasons, had not communicated its acceptance. Taken to its absurd length such a member could after superannuation claim that, as the services were not terminated, he was entitled to pension and gratuity on the basis that he had continued in service. The requirement of communication of acceptance would only arise in cases where, even after giving of a notice of voluntary retirement the member continues to work / perform his duties. In such cases the member would need to know from what date he can stop attending office. In cases where the member has by his own conduct abandoned service, the severance of the relationship of master and servant takes place immediately on acceptance of notice. We are unable to accept the submission that the severance of relationship of master and servant cannot take effect until there is an order by the President of India and the same is duly notified in the Gazette. Rules 16 (2) and 16 (2-A) have been set out hereinabove. All that it requires is acceptance by the Government of India and not by the President of India. Admittedly, the request for voluntary retirement has been accepted by the Government of India on 2.3.1995. No provision or rule could be shown which requires such acceptance to be gazetted. On the contrary, as has been set out hereinabove, in its affidavit before the Punjab and Haryana High Court, the Government of Punjab and categorically stated that there was no provision for gazetting an order."

12. If one has regard to the above the issue for consideration is what would be the effective date of acceptance of resignation in the present case? Rule 26 of the CCS (Pension) Rules, 1972 entails forfeiture of past service on resignation. As per Rule 26 (4) the appointing authority may permit withdrawal of resignation if it is tendered for some compelling reasons and during the intervening period the date on which the resignation becomes effective and the request for withdrawal was made, conduct of employee was in no way improper. This is also subject to the time limit, i.e., period of absence from duty between the date on

which resignation becomes effective and date on which the person is allowed to resume duty is not more than 90 days. It is also subject to vacation of the post on which the resignation has been tendered.

13. Applicant admittedly had submitted his joining report on 20.11.92 at Nagpur but thereafter remained wilfully absent except on 28.4.93 when he has submitted resignation letter due to domestic problems. Thereafter applicant had not joined duty and remained absconding.

14. From the tenor of the resignation tendered the same has been tendered due to domestic problems and acceptance was sought at the earliest. In our considered view the aforesaid resignation becomes effective on the date of its being tendered. In absence of any future date for effect of the resignation the same cannot be withdrawn. In view of Gopal Chand Misra's case (supra) the present case is a case of tendering of resignation in-presenti. As per the decision of the Apex Court in P. Lal's case (supra) the relationship of master and servant stood severed on 28.4.93 and for want of communication of the acceptance the resignation cannot be deemed to be ineffective. However, we find that resignation tendered by applicant has been accepted by the competent authority on 25.7.96 and has become effective whereas application requesting to withdraw dated 19.11.96 was received on 26.11.96, i.e., the date when the resignation had already attained finality and became effective. The aforesaid request of withdrawal cannot be legally accepted.

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14. In fact the mere communication by the authority referring to acceptance by the competent authority and its non-communication would not affect in any manner the effective date of resignation in-presenti which has become effective on 28.4.93 itself.

15. In so far as the question of relieving applicant is concerned, this is not a case where applicant despite tendering his resignation continued to perform his duties. Applicant who had submitted his joining report on 28.11.92 has not reported for duty and rather on 28.4.93 after tendering his resignation abandoned his duty. Accordingly, being not on duty there is no occasion for respondents to relieve him, he is deemed to be relieved by his own conduct by abandoning his service without any just cause and information to respondents.

16. In our considered view the effective date of resignation in the present case in view of request of applicant intending to resign with immediate effect is 28.4.93, the date on which resignation has been tendered. As such, withdrawal after such a long period is not as per Rule 26 of the Rules ibid. We do not find any infirmity in the orders passed by the respondents.

17. In the result the OA is found bereft of merit and is accordingly dismissed, without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

"San."