

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No.

95/91

198

~~XXXXXXXX~~

DATE OF DECISION 13.8.1991

Shri N.Janakiram Rao.

Petitioner

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman,

The Hon'ble Mr. P.S.Chaudhuri, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether in needs to be circulated to other Benches of the Tribunal ?

(U.C.SRIVASTAVA)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 95/91

N. Janakiram Rao,

... Applicant

Vs.

Union of India, New Delhi & Ors.

... Respondents.

Coram: Hon'ble Shri Justice U.C. Srivastava, Vice Chairman
Hon'ble Shri P.S. Chaudhuri, Member (A)

Appearance:

Applicant in person.

Respondents by Mr. P.M. Pradhan.

Oral Judgement

Dated: 13.8.1991

¶ Per Shri U.C. Srivastava, Vice Chairman ¶

1. As only a short question is involved and the case has engaged the attention of the Bench earlier on two days and the pleadings have been exchanged, we admit this case and are disposing of it finally.
2. The applicant who was in the service of Central Excise Department, for certain disputes and differences between himself and his superiors for some reason or the other which it is not necessary to indicate as it has been mentioned by him or in the reply, ~~tendered~~ ^{also} his resignation on 18.8.1989. It is ^{also} not necessary to mention what was mentioned in the application for resignation as he entered into some sort of political propositions but at the end of the letter he stated " kindly acknowledge the receipt of the same and settle all my dues at the earliest. This may be taken as one month's advance intimation." The Dy. Collector, P & E, Central Excise, Bombay vide order dated 21.8.1989 accepted the same without delay w.e.f. 21.8.1989. The applicant withdrew his resignation letter vide letter dt. 14.9.1989 i.e. within the period of one month mentioned in his letter of resignation. In spite of that withdrawal it was not accepted saying that the resignation has already been accepted.

3. The resignation has been challenged on a variety of grounds including that the Dy. Collector was not the appointing authority and so was not competent to accept the resignation. Obviously, the post which the applicant was holding was of Inspector, Central Excise and the Dy. Collector is not the appointing authority for Inspectors of Central Excise. Obviously, the acceptance should not have been made by the Dy. Collector, Central Excise and the acceptance of the resignation by her was without jurisdiction. Even otherwise, as one month's notice was given by the applicant, the resignation could not have been accepted before the expiry of the period of one month. Before expiry of the period he ~~has~~ withdrawn his resignation.

4. Mr. P.M. Pradhan, learned counsel for the respondents made a reference to the case of Punjab National Bank, (1990) 12 ATC 683. That case does not support the contention which has been raised by the respondents. In the said case ^{in the} regulations of the Punjab National Bank there was a proviso which empowers the Bank to reduce the period, or remit the requirement, of such notice. But it was held that :

" The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation."

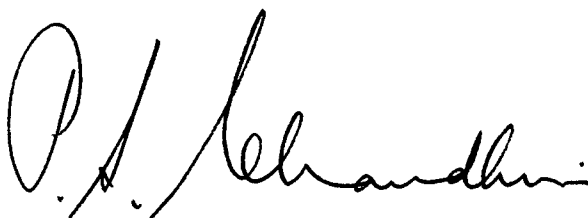
Practically the same situation arises in this case. Before expiry of the period the applicant withdraw his resignation. Resignation would have come into effect only after a period of one month. It could not have been accepted, but it was accepted by an authority who could not have accepted it, within






three days. It obviously amounts to termination of service by an authority who was not competent to do so.

5. In the circumstances the application deserves to be allowed. The order dated 21.8.1989 is quashed and the applicant will be deemed to be in continuous service. As the applicant has not done any work during this period he will not be entitled to any back wages from the date his resignation was accepted upto today and the same period shall not be treated as having been spent on duty. In the circumstances of the case there will be no order as to costs.


(P.S. CHAUDHURI)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE CHAIRMAN.

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

REVIEW PETITION NO.13/92
in
ORIGINAL APPLICATION NO.95/91.

N. Janakiram Rao
Inspector,
Central Excise, Bombay-I,
Collectorate, M.K. Road,
BOMBAY - 400 020.

.. Applicant.

V/s.

Union of India, through
the Secretary,
Department of Revenue,
Ministry of Finance,
NEW DELHI.

Collector of Central Excise,
Bombay - I, Central Excise Building,
M.K. Road, Churchgate,
BOMBAY - 400 020.

Mrs. Indrani Dutt Majmudar, the then
Deputy Collector of Central Excise,
and presently Deputy Collector of
Customs, New Custom House,
BOMBAY - 400 038.

.. Respondents.

Coram : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman.
Hon'ble Shri M.Y. Priolkar, Member (A).

TRIBUNAL'S ORDER ON REVIEW
PETITION BY CIRCULATION.

Date : 3.4.92

This is a belated Review Application with a prayer for condonation of delay against our Judgment and order dated 13.8.1991 in Original Application No.95/91 alongwith the application filed by the original applicant. Now the respondents to this application ^{pray for review of our judgment} quashing the order by which the resignation of the applicant was accepted and directing that he is deemed to be in continuous service without any backwages for the period during he is not worked. Although sufficient cause for condonation of delay has not been given and only assertion has been made and application is liable to be rejected on this ground but the same is disposed of on merits. The case was heard and disposed of after hearing

O.A.95/91.

the arguments of the parties and the scope of Review Application is limited and no rehearing is permissible. The ~~considerations~~ ^{condoning} raised were heard and thereafter the case was disposed of. It appears that by mistake the order of ~~continuing~~ the delay was not transcribed and that is why the respondents to the original application have taken its benefit and challenged the order on the same ground.

2. The original applicant had filed an application for condonation of delay. The orders of accepting resignation of the applicant were passed on 21.8.1989 and the application was filed only on 30.7.1991 i.e. after little late with 2 years thereafter. The applicant has explained that his representations were made by his father and even applicant has also made representation to the Member (Personnel), Central Board of Excise and Customs on 12.2.1990 and the same was dated 2.12.1989 pending. He has also written a letter ^{also} to the OSD (Grievances) and ~~prayed for~~ by letter dated 16.1.1990 for consideration of his case sympathetically. It was only on 6.12.1990 ^{he was informed that} his request for reinstatement in service ~~but it cannot be considered,~~ thereafter he wrote a letter to the Secretary to President of India on 28.1.1991 but this application was filed within one year from the date of rejection of his representation. It was a fit case for condonation of delay and that is why it was condoned but by mistake ~~if~~ the order was not transcribed and accordingly the delay should be taken to be condoned. We do not find any ground to recall our judgment and accordingly the Review Application is rejected.

(M.Y. PRIOLKAR)
MEMBER (A).

(U.C. SRIVASTAVA)
VICE CHAIRMAN.