

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 637/92

Transfer Application No: ----

DATE OF DECISION 3-2-1993

A.G.Ketkar Petitioner

Mr.V.M.Bendre Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr.P.M.Pradhan

Advocate for the Respondent(s)

CCRAM:

The Hon'ble Shri Justice S.K.Dhaon, Vice-Chairman

The Hon'ble ~~xxxx~~ Ms.Usha Savara, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? 46
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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(S.K.DHAON)
VC

MD

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH



O.A.637/92

A.G.Ketkar,
2, Lavkush Apartments,
Eastern Express Highway,
Check Naka,
Kopari,
Thane - 400 603.

.. Applicant

-versus-

1. Union of India
through
Chief General Manager,
Maharashtra Circle,
GPO Bldg., Dept. of Telecom,
2nd Floor,
Bombay - 400 001.
2. Chief General Manager(MTCE),
(Maintenance)
Western Telecom Region,
11th Floor, Telephone House,
V.S.Marg, Prabhadevi,
Bombay - 400 028.
3. Telecom District Engineer,
Bombay City Division,
4th Floor, Mohata Market,
Paltan Road,
Bombay - 1.
4. Assistant Engineer CXL(MUX),
Coaxial Carrier Repeter Station,
Tekadi Bungalow,
Opp. 3 Petrol Pumps,
Naupada,
Thane - 400 602. .. Respondents.

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

1. Mr.V.M.Bendre
Advocate for the
Applicant.
2. Mr.P.M.Pradhan
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 3-2-1993
(Per S.K.Dhaon, Vice-Chairman)

On 3-5-1990 the applicant
submitted his resignation to the DET
Bombay V.T. through proper channel.

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For one reason or the other the resignation was not accepted till 2-6-1992. On that day the DET accepted the resignation w.e.f. 3-5-90. The decision of the DET accepting ~~the resignation~~ the resignation of the applicant is being impugned in the present application.

2. The first submission made by the counsel for the applicant is that on 1-6-1992 the applicant had withdrawn his resignation and therefore the DET had no jurisdiction to accept the same on 2-6-1992. It appears that on 1-6-1992 the applicant sent a registered letter not addressed to the DET but to the Asstt.Engineer, Thane. The DET has filed his personal affidavit. He has categorically averred that he had no knowledge of the fact that on 1-6-1992 the applicant had withdrawn his resignation. He has also averred that he had not received any letter of the applicant through registered post. He, however, received a communication on 9-6-1992 under ordinary post. We see no reason to disbelieve the version of the DET. The conclusion, therefore, is inescapable that on 2-6-1992 the DET had no knowledge that the applicant had withdrawn his resignation.

3. Learned counsel has urged that, under the facts and circumstance of the case, it should be assumed that on 1-6-1992 the DET acquired knowledge of the contents of the registered letter. In other words, the submission is that the Post Office should be considered to be the agent of the DET. This contention is not acceptable for more than one reason.

First, as admitted by the applicant himself, even the registered letter was not addressed to the DET when delivered to the Post Office on 1-6-1992. We find no merit in the argument that the applicant had to ~~force~~ send the letter to the DET through the proper channel. The withdrawal of the resignation by the applicant was a matter of moment and there was nothing to prevent him from addressing the letter to the DET directly.

4. Secondly, no law or has been brought to our notice either in the form of a statutory rule or in the form of any direction to the effect that the Post Office would be deemed to be the agent of the department. Neither any practise nor any custom ^{nor} usage has been pleaded in that behalf by the applicant. The normal law is that the Post Office is the agent of sender and not of the addressee. That law would be applicable to the facts of this case.

5. Learned counsel next urged that, in any view of the matter, the acceptance by the DET on 2-6-1992 was void as he had no jurisdiction to accept the resignation of the applicant w.e.f. 3-5-1990. The argument is that he could accept the resignation only either from 2-6-92 or from some prospective date. There is force in the contention ^{with} which we shall deal ^a little later. However, the contention is that since one part of the order is void or bad the entire order must fall. This, ~~in~~ our opinion, is not a sound submission. That part of the order by which the DET accepted the resignation :-

of the applicant is clearly severable from the other part of the order which said that the same shall be ~~effective~~ from 3-5-90. The question of giving either ^a retrospective or prospective effect to the acceptance of resignation would arise only after the resignation has been accepted. Therefore, we ~~reject~~ the contention of the learned counsel that the whole order should be struck down.

4. Shri P.M.Pradhan, learned counsel for the respondent has relied upon paragraph 158(2) of the P&T Manual Vol.III and has urged on its basis that it was competent to the DET to decide the date with effect from which the resignation should become effective. The said paragraph if read as a whole, clearly indicates that no power has been given to any competent authority to accept the resignation from a backdate, power has been given only to give effect to the resignation prospectively. This rule is a wholesome one as it has been framed in the public interest. There may be shortage of hands or there may be ^a situation where the person who has to quit may not be replaceable for the time being. To meet those ~~and other similar~~ situations a power has been conferred upon the competent authority to say that even though he accepts the resignation but the same will be ^a effective from ~~a~~ future date.

5. Shri Bendre counsel for the applicant relies upon paragraph 161 of the

(1)

aforesaid Manual. He urges that, according to it, since the applicant was not relieved of his duties and before this happened he had withdrawn his resignation the mere acceptance of the resignation will not make it effective.

No doubt Rule No.161 opens with the wordings that a resignation becomes effective when it is accepted and the officer is relieved of his duties. Here, we have already indicated that the DET purported to relieve the applicant of his duties with effect from 2-3-1990. It may be that this was not permissible but the intention of the DET was clear that the resignation should take immediate effect.

Moreover in the counter affidavit filed on behalf of the respondents, a case has been set up that after submitting his resignation on 3-5-1990 the applicant disappeared. We are not expressing any opinion on this question for reasons to be found hereafter.

1. Rule 26(4) of the CCS(Pension).

6. Rule 26(4) of the CCS(Pension) Rules empowers the appointing authority to permit a person to withdraw his resignation in the public interest on enumerated grounds. This rule clearly contemplates that the discretion ~~power~~ has to be exercised after the resignation has been accepted and has become effective. Even now, it is open to the applicant to make a proper application to the competent authority ~~praying~~ therein that he may be permitted to withdraw his resignation. If such an application is made, we have no doubt

that the authority will apply its mind and pass an appropriate order.

7. Normally an employee who tenders his resignation with the prayer that the same may be accepted immediately does so with a view to sever, forthwith his relationship with the employer. Normally a resignation does not become effective unless it is accepted. Therefore, in a normal situation a employee continues to be in service till his resignation is accepted or made effective. Thus in a normal situation the applicant would be entitled to be treated as in service till 2-6-1992. Correspondingly the government would be under an obligation to pay him the usual emoluments till that date. In the instant case, the respondents have pleaded that the applicant ceased to attend the office and, therefore, the question of his being paid anything does not arise. In fact, the case set up by them is that the applicant was on leave from 18-9-1989 to 2-5-90 and thereafter he disappeared. Since the material on record is scanty and since we are giving an opportunity to the applicant to agitate his grievance regarding the payment of wages before an appropriate forum, we are deliberately refraining from expressing any opinion on the correctness of the stand taken by the respondents. It will be open to the applicant to make a proper application to the competent authority praying therein that he should be paid the usual emoluments w.e.f. 3-5-1990 to 2-6-1992. If such an application is made, the competent authority

shall enquire into the matter and pass a reasoned order.

8. The last submission made by the applicant is that, the competent authority having not accepted his resignation within a reasonable period, it should have been presumed that the applicant was not interested in pressing the same. We may revert to the letter of resignation. No doubt the applicant desired that the same should be accepted with immediate effect, but he also mentioned the fact that he may be apprised of the dues payable by him. Correspondence ensued between the department and the applicant. He was informed that till the dues were quantified he was at liberty to join the duties. Finally, on 21-3-1991 the applicant was informed of a definite figure. On that day he deposited the amount. However, he surrendered his identity card on 5-8-1991. Therefore, the deck for accepting the resignation was cleared only on 5-8-1991. It is evident that till 5-8-1991 the applicant was consciously pressing his resignation. Otherwise, there was no question of his either making the deposit or surrendering his identity card. In these circumstances, it cannot be said that it should be presumed that the applicant had really withdrawn his resignation.

9. With these observations the application is dismissed but without any order as to costs.

Usha Savara
(USHA SAVARA)
Member(A)

S.K. Zhaon
(S.K. ZHAON)
Vice-Chairman

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

Date of decision:- 20.01.93

RA No.62/93 in
OA No.637/92

Shri A.G.Ketkar ... Petitioner

vs

Union of India & ors... Respondents

CORAM:

THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
THE HON'BLE MS. USHA SAVARA, MEMBER(A)

ORDER

(BY HON'BLE MR.JUSTICE S.K.DHAON,
VICE-CHAIRMAN(J) BY CIRCULATION)

This is an application praying that the judgement dated 3.2.1993 passed by us may be reviewed.

2. The controversy in OA No.637/92 centred round the legality of the acceptance of the resignation of the petitioner. We gave a considered judgement after meeting all the points urged by and on behalf of the petitioner. We took the view that the resignation had been validly accepted and became effective only from the date of its acceptance.

3. We have gone through the contents of the Review Application. It is now urged that, in fact, the D.E.T. had no jurisdiction to accept the resignation. Such a point was neither raised in the OA nor was it urged at the time of hearing. This, it appears to be accepted in the Review Application. We may note that the petitioner (Sh.A.G.Ketkar) submitted his resignation to the D.E.T.

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4. It is contended that the petitioner acquired the knowledge of the fact that D.E.T. had no jurisdiction only after our judgement dated 3.2.1993. Our power or jurisdiction to review our judgements or orders is confined to the provisions of Order 47 Rule 1 Code of Civil Procedure. There is no averment in the Review Application that the petitioner could not acquire the knowledge of the new fact that D.E.T., in fact, had no jurisdiction in spite of due diligence being exercised by him in ascertaining that fact before 3.2.93. None of the provisions of Order 47, Rule 1 CPC is attracted to the facts of the present case.

5. The application is rejected summarily.

6. We are passing this order by adopting the process of circulation which is permissible under the rules.

Usha Savara
(USHA SAVARA)

MEMBER(A)

SNS

20.8.93

S.K.D
(S.K. DHAON)

VICE-CHAIRMAN(J)