

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 583/2001 199
T.A. No.

DATE OF DECISION 11-6-02

Rohitashwa Kumar

Petitioner

Mr. S. D. Sharma

Advocate for the Petitioner (s)

Versus

Union of India & Anr.

Respondent

Mr. L. N. Boss

Advocate for the Respondent (s)

Mr. U. D. Sharma

CORAM :

The Hon'ble Mr. H.O. Gupta, Administrative Member

The Hon'ble Mr. M.L. Chauhan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ?

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 ?

(M.L.Chauhan)

Member (J)

(H.O.Gupta)

Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.583/2001

Date of order: 11.7.2002

Rohitashwa Kumar, S/o Sh.Jhabar Singh, R/o 67 Kalyan Nagar, Kartar Pura, Jaipur.

...Applicant.

vs.

1. Union of India through Secretary to the Govt of India, Ministry of Home Affairs, New Delhi.
2. State of Rajasthan through Secretary to the Govt of Rajasthan, Home Department, Jaipur.

...Respondents.

Mr.S.D.Sharma, Counsel for applicant

Mr.L.N.Boss, Counsel for respondent No.1

Mr.U.D.Sharma, Counsel for respondent No.2

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant while serving as an IPS officer in the Rajasthan Cadre, submitted his resignation letter to His Excellency, the President of India on 18.3.91 through proper channel. In this letter of resignation he has expressed number of grounds for tendering his resignation and summed up that he is submitting the resignation due to the fact of harassment and atrocities committed on him. He submitted that his career is damaged beyond repairable point by the conspirators and the highest political and executive authorities of the State. His resignation was not forwarded by the State Government to the Excellency, the President of India for according sanction. Subsequently, he submitted another resignation letter dated 27.3.91 (Annex.A5). The State Govt forwarded the same with their

recommendations to the Central Govt for their acceptance. The Central Govt after examining the same and in consultation with the DOP&T and Ministry of Law accepted the resignation w.e.f. 13.6.91 (Annx.A1). The above Department/Ministry were consulted as there were criminal cases pending against the applicant in various Courts in Rajasthan. Meanwhile, during the pendency of acceptance of the resignation, the applicant contested the Parliamentary Election from 'Tonk' Constituency in Rajasthan as a Janata Dal candidate. After the election in which the applicant lost, he started representing for withdrawal of his resignation on the ground that he had not tendered his resignation 'unconditionally' but the same was conditional and the 'conditional' resignation was doctored by somebody in the State Govt to read it as 'unconditional'. His request was examined in the Ministry and comments of the State Govt were obtained. Since the All India Service (DCRB) Rules, does not provide withdrawal of resignation once it was accepted and a notification issued, his request was turned down with the approval of the Home Minister. The applicant also approached this Tribunal through O.A No.70/92 which was dismissed by this Tribunal on 12.9.94 (Annx.A7). For the completion of facts, it may also be stated here that the applicant approached the National Commission for SC & ST on 4.5.93 and the Hon'ble Member vide letter dated 10.5.93 forwarded his representation to the Ministry for examining the same. The Ministry examined the representation and submitted its report/comments to the Commission and the Commission after holding discussion and hearing the applicant, expressed its satisfaction with the stand taken by the Ministry. Thereafter, the applicant made further representation to the National Commission for SC & ST and the Commission vide its letter dated 14.2.2001 (Annx.A3)

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sought parawise comments from the Ministry which was submitted vide letter dated 16.4.2001 (Annex.A14). The case of the applicant is that during these proceedings, he came to know about the fact that his resignation letter has not been accepted by the competent authority. By way of this O.A, the applicant has prayed for declaring the impugned order dated 13.6.91 (Annex.A1) as void ab initio and is of no legal consequence as the same has not been accepted by the competent authority and has sought further direction to the respondents to allow the applicant to perform his duties and also to grant him pay and all service benefits w.e.f. 14.6.91.

2. The case has been contested by the respondents by filing separate reply affidavits. In the reply affidavits, it has been submitted by the respondents that the averments made by the applicant in various paras of this application are more or less the repetition of averments made by him in his earlier O.A No.70/92 which had been properly, comprehensively and effectively controverted by the answering respondent in their reply to O.A No.70/92. It is further submitted that the applicant in the garb of the said Presidential notification dated 13.6.91 on some other grounds is trying to re-open and reagitate the same averments and submissions which had been made by him in the earlier O.A No.70/92. Thus, according to the respondents, since the said controversy about the resignation being unconditional and acceptance thereof by the competent authority had been finally adjudicated by this Tribunal vide order dated 12.9.94 as such the present petition is not maintainable. Regarding acceptance of resignation by the competent authority, it has been submitted that under the Govt of India (Allocation of Business) Rules 1961, issued under Article 77(3) of the Constitution of India, the relevant

subject matter under reference was with the Prime Minister functioning as the Home Minister and the Prime Minister, exercising his powers under the aforesaid Rules, had issued the standing order dated 31.12.90 (Annx.A26) regarding disposal of cases under his charge by indicating the specified matters which will come to him as Home Minister and also directing the rest of the matters will be disposed of by the Minister of State. According to the respondents, since the applicant was holding the post in the IPS below the level of Joint Secretary, when his resignation was accepted, as such the Minister of State was competent to dispose of the matter of acceptance of resignation of the applicant.

3. We have heard the learned counsel for the parties and gone through the pleadings in this case.

4. The only contention raised by the learned counsel for the applicant is that the notification dated 13.6.91 thereby accepting the resignation of the applicant w.e.f. the afternoon of 13.6.91 is ex facie illegal, without jurisdiction and void ab-initio inasmuch as Sh.Subodh Kant Sahai was only a Minister of State (Home) and was not Minister Incharge. He argued that at the relevant time the Ministry of Home Affairs was also headed by the Prime Minister himself therefore he alone was competent to accept the resignation of the applicant on behalf of the President which is not done in the instant case. Thus according to the counsel for the applicant, the resignation accepted by the Minister of State (Home) is invalid and nullity. The learned counsel for the applicant has also drawn our attention to the decision of the Apex Court in the case of Kiran Singh & Ors Vs. Chaman Paswan & Ors, AIR 1954 SC 340 and State of Madhya Pradesh Vs. Syed Qamarali, 1967 SLR SC 228 and argued that the order without jurisdiction is nullity

and the order which has been passed in violation of mandatory provisions of rules are of no legal existence and can be challenged at any time.

5. There is no dispute regarding the aforesaid legal proposition. According to us, the real question which requires our determination is as to whether the present application is barred by the principles of res-judicata in view of the earlier decision rendered by this Tribunal in O.A No.70/92 dated 12.9.94 which has been affirmed by the Apex Court vide its order dated 20.1.95 (Annex.A8).

6. In order to decide this point, we may reproduce paras 4 & 4.1 of the reply filed by respondent No.2 which will clinch the issue in controversy which reads as follows:

"4. That in reply to the contents of sub-paras (1) to (12) of para 4 of the applicant, it is stated that the applicant had earlier filed O.A No.70/92 in this Hon'ble Tribunal seeking, inter alia, the following relief:

'to set aside the impugned notification dated 13.6.91 (Annexure-A1) and letter dated 14.6.91 (Annexure-A2) with all consequential benefits'

The applicant in this present O.A has also sought the same relief as reproduced below:

'to declare that the impugned order dated 13.6.91 (Annexure-A1) is void ab-initio and is of no legal consequence. It may further be declared that the applicant has been illegally prohibited from performing his duties and is entitled to be treated in service continuously and as if he has never resigned from it and is entitled for all service benefits accordingly.'

"4.1 That it is submitted that the earlier O.A No.70/92 in

which the applicant had challenged the Presidential Notification dated 13.6.91, by which his resignation had been accepted, had been dismissed by this Hon'ble Tribunal vide order dated 12.9.94 (Annexure-A7). The Hon'ble Tribunal was pleased to hold that the resignation submitted by the applicant was unconditional".

7. Thus, from the portion reproduced above, it is quite evident that the applicant has claimed the same relief in this O.A as was prayed by him in O.A No.70/92. From the perusal of the judgment of this Tribunal in O.A No.70/92 (Annexure-A7), it appears that the applicant has raised two main contentions which were not found favour to the applicant. One of the contention raised by the applicant was that his resignation letter dated 27.3.91 was conditional and the unconditional resignation was doctored ^{by} somebody in the State Govt to read it as unconditional by adding the alphabets 'un' before the word 'conditional'. While negating this contention, this Tribunal in para 9, observed as follows:

"9. The second question as about the letter dated 27.3.91. The letter dated 27.3.91 has been examined by us in detail. We have compared the space between the words, the formation of the letter and other allied matters which are necessary for the consideration whether the letter has been tampered with or not. We are of the view that the alphabets 'un' has not been added subsequently and the respondents have committed no mistake in treating as an unconditional letter of resignation.

8. Regarding the second submission, viz the validity of acceptance of resignation letter dated 27.3.91, the Tribunal in para 12 made the following observations:

12. A person who contests an election even before

acceptance of the resignation had a motive behind him to be a Member of the Parliament and for this very reason, he has not withdrawn the resignation earlier. Apart from that the court would be reluctant to give relief to such person who while continuing in employment and contests the election and thereafter submits that his resignation was conditional and the Govt. has committed an error in accepting it."

9. The Tribunal while dismissing O.A No.70/92 observed as under:

"Here is a case in which an IPS Officer contested the election and that too before the acceptance of the resignation and the issuance of the notification dated 13.6.91. We would not like to come at the rescue of the applicant and will not like to give any relief."

10. Thus, from the portions quoted above, we have no hesitation to hold that the present application has been filed for the same relief as was claimed in O.A No.70/92 decided on 12.9.94. We are also satisfied that the question raised in the earlier O.A No.70/92 was regarding the validity of acceptance of resignation letter dated 27.3.91 vide the impugned notification dated 13.6.91 (Annex.A1) and the Tribunal rendered the decision on merit after hearing the argument on matter in issue. This order of the Tribunal has been upheld by the Apex Court by dismissing the SLP vide order dated 20.1.95 (Annex.A8).

11. That apart, it may also be stated that the plea taken by the applicant in this O.A that the resignation was not accepted by the competent authority was also available to him at the time of filing of the earlier O.A. The said ground having not taken at that time cannot be permitted to raise at this belated stage and shall be deemed to have been omitted by the

applicant.

12. Thus, the present application is barred by the principle of res judicata. Res-judicata by its very words means :- a matter on which the court has exercised its judicial mind and has, after argument and consideration, come to a decision on a contested matter. There should be a final decision. Thus, before an earlier decision can be considered as res judicata, the same must be heard and finally decided the issue of validity or otherwise of the impugned order.

13. The matter is also squarely covered by the decision of the Apex Court in the case of Dr.Krishna Murthy & Anr. Vs. State of A.P & Ors, 1994(3) SLJ 137. In the instant case one Shri Venkatashwarlu, while working as Superintendent was reverted to the post of Senior Assistant. He challenged that order before the A.P Administrative Tribunal by way of RP No.6617/87 which was dismissed on merit by order dated 18.7.88. The review petition was also dismissed. He filed SLP in the Apex Court which also came to be dismissed. Subsequently Venkatashwarlu filed O.As No.2757/92 seeking to consider the representation of the applicant against the reversion from the post of Superintendent to Senior Assistant, without notice, being illegal and O.A No.1380/93 for direction to promote him on the post of Deputy General Manager. The Tribunal by the impugned order dated 31.1.94 allowed the O.As and declared that the reversion of the applicant Venkatashwarlu is in violation of G.O No.590 and therefore, it is illegal and directed to reinstate him as Superintendent. This order was challenged before the Apex Court and the Apex Court while reversing the order of the Tribunal held that we cannot go into the legality whether he was rightly or wrongly reverted as Senior Assistant from the post of Superintendent for the reason that his

reversion order has become final and it operates as a res-judicata in these proceedings against him. Ultimately, the Apex Court observed that "Under these circumstances, we are clearly of the opinion that the Tribunal was wrong in giving direction to reinstate Mr. Vekatashwarlu as Superintendent and to give him consequential benefits. The appeal is accordingly allowed.

14. In the instant case, the legality and validity of acceptance of the resignation letter Annx.A1, once decided in the earlier O.A No.70/92 rightly or wrongly and such decision has been upheld by the Apex Court by dismissing the SLP, the issue regarding acceptance of the resignation has become final and it operates as res-judicata in this proceedings against the applicant.

15. Thus, we are of the view that this application is barred by the principle of res-judicata and filing of this application is abuse of the process of Court.

16. In the counter affidavit, the respondents have taken the plea that the resignation submitted by the applicant was accepted as per the provisions of law and as per work allocation among the Home Minister and the Minister of State (Home) at the relevant time and the Minister of State was empowered to accept the resignation of the applicant. The learned counsel for the respondents has also drawn our attention to various documents more particularly Annx.A25 and Annx.A26 appended with the application. Annx.25 is a letter dated 9.8.2001 written by Sh.R.K.Singh, Joint Secretary (CS) to Sh.Ram Sundar Das, Member of Parliament (LS). From the reading of this letter, it is evident that the instruction regarding work allocation between Home Minister (in the instant case, this Ministry was under the then Prime Minister at that time) and Minister of State (Home) during the relevant time, the

Minister of State was empowered to take decision in respect of matters connected with officers below the rank of Joint Secretary (Super Time Scale). Since the work allocation among Minister and Minister of State in the same Ministry is only an internal adjustment, a notification to that effect is not necessary and the Minister of State was competent to take a final decision in the matter. Annx.A26 is an office order dated 31.12.90 regarding distribution of work between Prime Minister (as Home Minister) and Minister of State (Home). The relevant portion of this letter is reproduced herein below:

"The Prime Minister has approved the following work distribution between himself (as Home Minister) and Minister of State (Home) with immediate effect.

Following matters will come to the Prime Minister (as Home Minister).

(i)

(ii)

(xii) Matters relating to officers of All India Central/Other Services of the level of Joint Secretary (super time scale) and above including their transfers and posting.

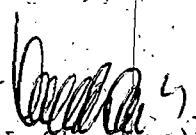
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The rest of the matter will be disposed of by Minister of State (Home)."

17. The learned counsel for the respondents argued that as per clause (xii) of the said order, the matter relating to the officers who were ~~not~~ holding the post at the level of Joint Secretary (super time scale) and above in the IPS were required to be sent to the Prime Minister. When resignation of the applicant was accepted, he was not holding the post in the IPS at the level of Joint Secretary (super time scale), as such

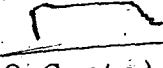
there was no legal requirement that his resignation ought to have been placed before the Prime Minister for acceptance in view of the work distribution between the Prime Minister and Minister of State (Home). Thus, such matter was required to be disposed of by the Minister of State (Home) therefore, such action is perfectly legal and justified.

18. However, since we have held that the O.A is barred by the principle of res-judicata, we are not inclined to adjudicate the new ground regarding the competency of acceptance of the resignation of the applicant at this belated stage. For the reasons stated here in above, this application fails and accordingly dismissed with no order as to costs.



(M.L.Chauhan)

Member (J)



(H.O.Gupta)

Member (A).