

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,

JABALPUR.

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Original Application No. 555 of 1998
this the 27th day of February 2003.

HON'BLE MR. R.K. UPADHAYA, MEMBER (A)
HON'BLE MRS. MEERA CHIBBER, MEMBER (J)

Smt. Shobhana Bajpai, W/o Sri Ravi Bajpai, aged about 41 years,
Tele-com Office Assistant, under the Telecom District Manager,
Bilaspur, R/o Subhadra Bhawan, Hari Krishna Colony, Near PGBT
College, Bilaspur-RS (M.P.).

Applicant.

By Advocate : Sri S. Paul.

Versus.

1. Union of India through the Secretary, Ministry of
Communication, Govt. of India, New Delhi.
2. Chief General Manager, Telecom, M.P. Circle, Bhopal.
3. Telecom District Manager, Bilaspur (M.P.).

Respondents.

By Advocate : Sri B. Dasilva

ORDER

BY MRS. MEERA CHIBBER, MEMBER (J)

By this O.A., applicant has claimed the following
relief(s):

"(i) The letter dated 12.6.98 (Annexure-A/II) may be
quashed and set aside.

(ii) The respondents may be directed to permit the
applicant for withdrawal of her resignation and allow
her to resum her duty.

(iii) -----."

2. The brief facts as alleged by the applicant are as
follows :



The applicant joined as Telephone Operator with the respondents on 11.11.1980 and her category was changed to Telecom Office Assistant (in short TOA) in the year 1983. It is submitted that she tendered her resignation/as she was not keeping good health to be effected w.e.f. 31.3.1995 on 20.2.1995 (Annexure R-1). The department wrote a letter dated 17.4.1995 to the applicant informing that her resignation be accepted only after depositing the outstanding dues (page 11) and vide letter dated 26.4.1995 it is clear that she deposited all the dues and was accordingly 'No Dues Certificate' issued as well (page 13). However, in spite of depositing her dues, neither she was communicated that her resignation was accepted, nor she was relieved from her duties, but in the meantime since she had fallen sick, she was given a Medical certificate of the Government Hospital stating therein that she needs rest for six weeks for 'Insomnia' (page 12) vide certificate dated 1.4.1995. Thereafter, she continued to be sick and was declared fit to join her duties w.e.f. 28.1.1998, which was evident from page 14 i.e. Fitness certificate. Therefore, the reasons she for which/had given resignation had changed, accordingly she gave an application on 29.1.1998 requesting therein for permission to withdraw the resignation and also to allow to join her duties. This letter was followed by reminder dated 27.2.1998, but vide letter dated 12.6.1998, the respondents regretted her request (page 19), which is challenged by the applicant in the present O.A. She has relied on paras 159 to 161 of P&T Manual wherein the procedure is laid down for resignation and its acceptance. She has further submitted that in the meantime the respondents asked her to explain vide show-cause notice dated 30.3.1998 as to how she had been employed as Managing Director (in short M.D.) of a Private Company without having her resignation formally accepted (page 18), but she could not reply to it as details of the

Company in which she was alleged to have been working as M.D. were not given.

3. The contention of the applicant's counsel ^{is 12} that law on the point of resignation is well settled that till the acceptance is given by the respondents, the applicant could always withdraw her request for resignation and if at all the respondents feel that she had taken a job elsewhere during her employment with them, they can always initiate the disciplinary proceedings, therefore, it was unreasonable and unfair on the part of the respondents to refuse to permit her to withdraw her resignation.

4. The respondents have opposed the O.A. and have stated at the outset that this O.A. is liable to be dismissed on the question of suppression of material fact because the applicant has suppressed the fact that she had given her resignation for taking-up another assignment as M.D. with M/s RSB Credit Capital Limited, which is duly registered under Registrar of Companies Act, which is evident from Annexure R-3 wherein the applicant had applied for new Telephone connection showing herself to be as M.D. of RSB Credit Capital Limited on 8.4.96. Similarly, husband of the applicant namely Sri R.B. Bajpai had also nominated his wife namely Smt. Shobhana Bajpai in the event of his death showing her to be as M.D. of RSB Credit Capital Limited. They have, thus, submitted that these facts clearly show that the applicant had tendered her resignation with the motive to join the said Company as M.D. and it was only after RSB Credit Capital Limited came ^{under 12} some investigation, that the applicant had opted to come back, otherwise her conduct clearly shows that she had herself severed her relations with the respondents because she gave her resignation on 20.2.1995, she never ^{thereafter 12} represented ^{requested 12} for duty, nor intimated the department about her sickness, nor sought any leave and it was only for the first time after

1995 that she gave an application on 29.1.1998 that ^{is B} almost after three years. It is submitted by the respondents that had her ~~intention~~ been to continue with the respondents, she would have either intimated the department about her sickness or at least sought leave of the kind due by submitting medical certificate, but no such medical certificate was submitted to the department prior to 29.1.1998. They have further submitted that she ^{had B} never given her resignation due to bad health, on the contrary the reasons given ^{in B} ~~for~~ her resignation letter was due to domestic and family circumstances, which is evident from Annexure R-1 itself, so now she cannot say that she had given her resignation because of bad health and her health has since improved, therefore, she has a right to withdraw the request for resignation. They have further submitted that when the applicant had given her application for resignation, her papers were processed and she was informed that her resignation can be accepted after she deposits the dues and since she deposited the dues on 26.4.1995, her resignation is deemed to have been accepted from that very day and simply because thereafter she was not communicated any acceptance, it cannot be said that she continued to be on their roll of the respondents. They have further submitted that since the applicant had ^{Should B} ~~abandoned~~ the job on her own, they ~~cannot~~ keep the vacancy vacant for such a long time and had already appointed another person against her vacancy, therefore, the letter whereby her request to withdraw her resignation was rejected ⁱⁿ accordance with law and calls for no interference.

5. We have heard both the counsel and perused the pleadings as well.

6. The point in this case is whether the applicant could have withdrawn her request for resignation in view of the fact that there was no positive acceptance by the respondents. We

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have applied our mind to the facts as well as law both. If this case is seen on the basis of facts, we would agree with the respondents that their action was justified because, admittedly, after giving resignation in February '95, the applicant never gave any application for leave, nor informed the department about her sickness, therefore, it can easily be deducted that she had given resignation with the intention to leave the job and since the applicant never approached the department thereafter and deposited her dues also in April '95 itself, naturally they thought that the applicant is no longer interested in continuing in job. It is also clear from the perusal of her resignation letter that the ^{the reason is} resignation given therein was not due to bad health, but was due to family problems, therefore, it cannot be said that the applicant had given her resignation due to ill-health. The counsel for the respondents has relied on 1995 (2) Suppl. SCC 582 in re. State of U.P. & Ors. Vs. Ved Prakash Sharma to stress that the conduct of the parties is also very relevant as that would show the intention of the parties. We would agree with the respondents to the extent that the applicant's intention are clear from her conduct that she wanted to sever her relation with the respondents, ^{however} This judgment would not help the respondents inasmuch as this was a case of contract, whereas the applicant is a Government servant and is governed by the rules made by the respondents themselves. If we see law on the subject, it is clear that till the resignation is accepted by the respondents, it is open to the employee to withdraw the resignation. In the instant case, letter dated 17.4.1995 annexed by the respondents as Annexure R-2 shows that the respondents had informed the applicant that her resignation will be accepted only after depositing outstanding dues against her, therefore, it is clear that the resignation was not accepted till 17.4.1995

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as it was yet to be accepted. More-over, it is an admitted case that she was never communicated that her resignation has been accepted, on the contrary, there are documents to show that the respondents are still treating ^{Robert} to be on their roll. For example - letter dated 30.3.98 called the explanation from the applicant as to how she could accept the job of M.D. of a Private Company named RSB Credit Capital Limited, registered by Registrar of Companies, M.P. till her resignation was formally accepted by the competent authority. This clearly shows that till this date, the respondents have not yet accepted her resignation formally. It is also seen that she was even shown in the seniority list issued on 1.9.1997 (Annexure RJ-1). Had the respondents treated her as having resigned in 1995 itself, they would not have been shown her in the seniority list of TOAs (Phones) Gr.I of Bilaspur Telecom District as on 1.7.96 or would have ^{stated} stated resigned against her name, but her name shown at sl. no.25 in the said seniority list does not show any such observation. Therefore, it is clear that she was still to be treated on their roll. It is further seen that the letter dated 9.6.95 as mentioned by the respondents in their order dated 12.6.1998 has not been annexed with the Counter reply and the letter which has been annexed is only 17.4.95 which stated that her resignation will be accepted, meaning thereby that action of accepting the resignation was still to be undertaken and since thereafter no order was passed accepting her resignation, it cannot be said to be deemed acceptance of resignation especially in view of para 158(2) of P&T Manual Vol. III (page 29) wherein it is clearly stated that the competent authority should decide the date with effect from which the resignation should become effective. Similarly in para 159 also, it is stated that on ^{the} account of being adjusted, the competent authority will intimate the acceptance of the resignation and the date from which the resignation should become effective, but admittedly, in the

present case neither any such order was issued by the competent authority, nor communicated to the applicant, therefore, in view of the law laid down by the Hon'ble Supreme Court, applicant could withdraw the request for resignation. In this connection, it would be relevant to refer to 1987 (2) SCC 301 Union of India & Ors. Vs. Gopal Chandra Misra wherein it was held that in the absence of anything to the contrary in the provisions governing terms and conditions of the employee/post, proposal to resign can be withdrawn at any time before it becomes effective i.e. before it effects termination of the tenure of the office/post/employment. The same view was reiterated in AIR 1987 SC 2345 in the case of Balram Gupta Vs. Union of India & Ors. and the same view is being reiterated by the Hon'ble Supreme Court in subsequent judgments as well. Therefore, so long the law on the subject is in favour of the applicant, the order dated 12.6.98 has to be quashed and set aside. The respondents are directed to permit the applicant to join back. However, since the applicant had been absent from February '95 continuously without giving any application for leave or intimation regarding her sickness, *as stated by the respondents, B* it will be open to the respondents to initiate the disciplinary proceedings against her for the said absence and on the question of taking-up another job while being in the Government service, *also B also* we, ~~however~~, make it clear that admittedly the applicant had not performed any duty with the respondents after February '95, therefore, she would not be entitled to any back wages.

7. With the above directions and observations, the O.A. is partly allowed with no order as to costs.


(Mrs. Meera Chhibber)
Member (J)


(R.K. Upadhyaya)
Member (A)

