

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 538/2013

New Delhi this the 18th day of October, 2016.

HON'BLE MR. JUSTICE M.S.SULLAR, MEMBER (J)
HON'BLE DR.BIRENDRA KUMAR SINHA, MEMBER (A)

HARSH RAJPUT

Son of Late Babu Ram Rajput,
r/o House No. 161/A, Rajendra Park,
Near Railway Station,
Gurgaon-122 001

... Applicant

(By Advocate Shri Gopal Agarwal for Shri J.S.Chillar)

VERSUS

1. Union of India
Through the Chairman,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
Hudco Vishala, Bhikaji Cama Place,
New Delhi.
2. The Chief Commissioner of Central Excise,
Bangalore Zone,
P.B.No.5400, Central Revenue Building,
Queen Road, Bangalore-560 001.
3. The Additional Commissioner (P&V)
Office of the Commissioner of Central Excise,
Ministry of Finance, Department of Revenue,
P.B.No.5400, Central Revenue Building,
Queen Road, Bangalore-560 001.

... Respondents

(By Advocate Mrs.Priyanka Bhardwaj)

O R D E R (ORAL)

Justice M.S. Sullar, Member (J)

The matrix of the facts and material relevant for deciding the core controversy involved in the instant Original Application (OA) and exposited from the records is that applicant, Harsh Rajput, was appointed as Inspector of Customs and he joined his duty as such on 29.10.2009 in Bangalore Central Excise Zone. After completion of one and a half months of training period, he submitted his resignation vide letter dated 22.01.2010 to the competent authority, requesting that

the same be treated as his one month's notice and he should be relieved on 22.02.2010. His request/resignation was accepted vide order dated 22.02.2010 by the competent authority. Subsequently the representation dated 18.05.2010 seeking withdrawal of his resignation was rejected by the competent authority.

2. Thereafter, the applicant filed OA bearing no. 3169/2012, which was disposed of, at the admission stage, with the direction to respondent no. 2 to consider the aforesaid representation of the applicant and pass appropriate orders in accordance with rules within a period of two months, vide order dated 25.09.2012 by this Tribunal.

3. In compliance thereof, the representation dated 18.05.2010 of the applicant was considered and rejected vide the impugned order dated 20.12.2012 by Chief Commissioner.

4. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned order, on the following grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

- "5.1 Because the respondents' impugned order is passed ignoring the submissions of the applicant vide his representations specially the contents of his representation (appeal) dated 16/11/2011.
- 5.2 Because the impugned order is passed in utter violations of the provisions of Rule 26 (4) of CCS (Pension) Rules.
- 5.3 Because the reasons given by the respondent(s) in the impugned order is not valid and justifiable in view of the provisions of Rule 26 (4) of CCS (Pension) Rules.
- 5.4 Because undisputedly the applicant was selected on merits through SSC.
- 5.5 Because the applicant's service record is excellent and his work had always been appreciated by his seniors.
- 5.6 Because the applicant had to resign because of the compelling circumstance since there was nobody to look after his ailing mother.

- 5.7 Because keeping in view the peculiar facts applicant's is a fit case for re-instatement under the provisions of Rule 26 (4) of CCS (Pension) Rules.
- 5.8 Because if the applicant is not allowed to withdraw his resignation, under the provisions of Rule 26(4) of CCS (Pension) Rules, it will cause an irreparable loss to him in his career.
- 5.9 Because while passing the impugned order, the respondents are not denying that the posts of Inspectors are still vacant in the Southern region for which the applicant was selected and had been working before submitting his resignation.
- 5.10 Because the applicant has already become overage for any Government job.
- 5.11 Because on the advice of his mother the applicant had subsequently married to a homely girl who can look after his ailing mother in his absence."

5. On the strength of aforesaid grounds, the applicant sought to quash the impugned order/action of respondents in the manner indicated hereinabove.

6. The respondents refuted the claim of the applicant and filed reply wherein it was pleaded that he was appointed as Inspector vide offer of appointment letter dated 07.10.2009 and was given posting at Mangalore Customs Commissionerate, as opted by him. He reported for his duty on 29.10.2009 at Mangalore. After completion of one and a half months of training period, he submitted his resignation vide letter dated 22.01.2010 to the competent authority, requesting that the same might be treated as his one month's notice and he should be relieved on 22.02.2010. Meantime, the applicant proceeded on leave w.e.f. 12.02.2010. However, the resignation tendered by him was accepted and he was relieved from duty on 22.02.2010 by the appointing authority. The representation dated 18.05.2010 filed by him was stated to have been rightly rejected by the competent authority.

7. Virtually acknowledging the factual matrix and reiterating the validity of the impugned action/order, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

8. Having heard the learned counsel for the parties, having gone through the records with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the firm view that there is no merit and the instant OA deserves to be dismissed for the reasons mentioned hereinbelow.

9. What cannot possibly be disputed here is that the applicant, joined his duty as Inspector at Mangalore on 29.10.2009. After completion of one and a half months of training period, he submitted his resignation vide letter dated 22.01.2010, which was accepted and he was relieved from his duty vide order dated 22.2.2010 by the competent authority. The subsequent representation for withdrawal of his resignation was rejected vide impugned order dated 20.12.2012 by the appointing authority. Thus, it would be seen that the facts of the case are neither intricate nor much disputed.

10. Such this being the position on record now the short and significant question that arises for our consideration in this case is as to whether the applicant has any legal right to withdraw the resignation, once it was already accepted and he was relieved from service by the competent authority.

11. Having regards to the rival contentions of learned counsel of the parties and having perused the records, the answer must obviously be in the negative in this regard.

12. As is evident from the record that the applicant has voluntarily submitted his resignation vide letter dated 22.01.2010. His request/resignation was accepted and he was relieved from service on 22.02.2010 by the competent authority. That means, the Department has accepted the resignation of the applicant at his own request without any condition or postponement or deferment of the date of acceptance of resignation, as prayed by him. In that eventually, indeed the applicant cannot and should not legally be permitted to seek withdrawal of resignation on the ground of any domestic reasons. This matter is no more 'res-integra' and is now well settled.

13. A Constitutional Bench of the Hon'ble Supreme Court in the case of **U.O.I. and Others Vs. Gopal Chandra Misra and Others AIR 1978 SC 694** and in other cases, titled as **Balram Gupta Vs. Union of India and Another 1987 (Supp.) SCC 228**, **Raj Kumar Vs. Union of India (1970) ILLJ13SC** and **Shambu Murari Sinha Vs. Project & Development India Ltd. and Another AIR 2002 SC 1341** has held that when a public servant has invited by his letter of resignation determination of his employment, his services stand terminated from the date on which the order of resignation is accepted by the appropriate authority and it will not be open to public servant to withdraw his resignation after it is accepted by the appropriate authority.

14. An identical question also came to be decided by the Hon'ble Apex Court in case **U.O.I. & Others Vs. Hitender Kumar Soni (2014) 13 SCC 204**). Having considered the legal right of an employee to withdraw the resignation after its acceptance, it has been specifically ruled as under:-

"9. A perusal of the relevant clauses of the O.M. dated 11.2.1988 discloses that resignation is required to be intimated in writing disclosing the intention to resign the office/post either immediately or from a future date. In the latter case, such future date should be specified. The resignation has to be clear and unconditional. The Respondent did not specify any future date but submitted his resignation in writing giving reasons and his intention to resign is clear and unconditional. Clause (2) contains circumstances under which resignation should be accepted. This **is for the guidance of the concerned officials and does not create any right in the concerned employee to resist acceptance of resignation.** Clause (3) specifies that a resignation becomes effective when it is accepted and the Government servant is relieved of his duties. A careful reading of this clause throws some light as to why the requirement of relieving a Government servant has been indicated in this Office Memorandum. The second sentence of this clause states the normal rule that a Government servant can withdraw his letter of resignation before its acceptance by the appointing authority. The next following sentence spells out that in case the resignation had been accepted by the appointing authority and the employee is to be relieved from a future date, if a request for withdrawal of resignation is received from the employee, the normal rule should be to allow the request to withdraw the resignation. But, even in such a case, the request for withdrawal may be refused but the grounds for the rejection should be recorded and intimated to the Government servant concerned. In continuity, clause (4) considers the case of a temporary Government servant who has a right to opt out of Government service by giving a notice of termination of service as per applicable service rules of 1965. In such a case the Office Memorandum in question relating to acceptance of resignation will not be applicable. The subsequent provision of clause (4) has been held applicable to the Respondent because instead of notice of termination he had tendered a letter of resignation. In such a case as per clause (4), "....he can relinquish the charge of a post only after resignation is duly accepted by the appointing authority and he is relieved of his duties and not after the expiry of the notice period laid down in the Temporary Service Rules".

10. In our considered view, the part of clause (4) extracted above makes a distinction between the right of a temporary Government servant to sever his connection from Government service by giving a notice of termination and that of a temporary Government servant who chooses not to give such notice but opts to submit a letter of resignation. In

the case of notice of termination the concerned employee can relinquish the charge of the post on expiry of the period of notice, but, such right will not be available to a temporary employee in case he tenders a simple resignation. The reason is obvious because a resignation requires acceptance by the appointing authority and till then his right to relinquish is impinged by the requirement, to be relieved of his duties. On a joint reading of clauses (3) and (4) it can be safely inferred that depending upon the facts and circumstances of a case and nature of request made in a resignation letter, the Government has the power to accept the resignation so as to bring about a severance of relationship of master and servant with immediate effect. But in cases where the letter of resignation itself specifies a future date for being relieved or where, as indicated in clause (2) the concerned Government servant is engaged on work of importance etc., the resignation may not be accepted straightaway. It is in such circumstances only that Government may exercise its power to accept the offer but defer the date from which resignation would become effective. The normal rule, however, remains that Government has the power to accept a resignation with immediate effect. In case the Government for some reasons wishes to defer or specify the date from which resignation would become effective, it is entitled to take work from the concerned Government servant till he is relieved in accordance with the facts and requirements of the case. The letter of Government accepting an offer of resignation itself should normally be conclusive for deciding whether the Government has opted for immediate termination of service by accepting the resignation or has deferred such termination to a future date. Only in the latter eventuality the relationship of master and servant shall continue till the concerned Government servant is relieved of his duties. In the instant case, the letter of acceptance clearly shows that termination of Respondent's service as per his offer of resignation was not deferred to any future date and hence there was no requirement to relieve him of his duties. Even the peculiar facts of this case show that the Respondent while on probation had already abandoned his temporary service for almost 8 months and had not cared to report for duty in spite of several requests. In such a situation, it would be impossible to relieve an absconding employee of his duties and if the reasoning of the High Court is accepted such employee, even if he has tendered resignation, must be continued in service till he is actually found or till he presents himself to be relieved of his duties. Such a view would be impractical and run against larger public interest.

11. There may be cases where an employee resigning from service has gone in hiding or is in jail custody etc. The construction placed upon the relevant clauses of the O.M. dated 11.2.1988 by the High Court will render the provisions unworkable, hence such construction needs to be avoided.

12. The word, "relieving" itself must be understood in the ordinary parlance because it is not defined in the O.M. or in the relevant rules as is apparent from the judgment of the High Court. The meaning of the word "relieve" given in the Law Lexicon (2nd Edn. 1997 by P. Ramanatha Aiyar) is - "to free or clear a person from an obligation". This result manifests itself from the order accepting the resignation because no reservation has been made by the Government that the Respondent has to continue in service till any particular time or till being relieved. Hence, in the instant case, there was no obligation on the Government to write a formal letter that the Respondent has been relieved. Even if such requirement had been there, in the case in hand it would be an empty formality. The wholesome writ jurisdiction was not required to be exercised in the facts of the present case keeping in view the conduct of the Respondent in escaping away from his duties without obtaining leave when he was only a temporary employee under probation".

15. Therefore, it is held that once the applicant has voluntarily tendered his resignation and it was accepted without any condition and deferment by the competent authority, then he is not legally entitled to withdraw the resignation on domestic grounds and to rejoin the duties. The contrary pleas pleaded by the applicant in the OA "*stricto-sensu*" deserve to be and are hereby repelled. On the contrary the ratio of law laid down in the aforesaid judgments is *mutatis mutandis* applicable to the present controversy and is the complete answer to the problem in hand.

16. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As indicated hereinabove, in compliance of order dated 25.09.2012 passed in OA no. 3169/2012, by

this Tribunal, the competent authority has considered the representation and rejected the claim of the applicant by passing a impugned detailed and reasoned order dated 20.12.2012, the operative part of which is as under:-

- “6. The representations have been examined in terms of DOPT OM No. 28034/25/87 Estt. A dt.11.2.88 and O.M. No.28034/4/94 ESTT A dt. 31.5.94 of CCS (Pension) Rules it is stipulated that “it is not in the interest of Government to retain an unwilling Government servant in service”. The general rule, is that request for resignation of a Government servant from service should be accepted, except in certain cases where disciplinary proceedings are pending against the individual. A resignation become effective when it is accepted and the Government servant is relieved of his duties. However, if a Government servant who had submitted a resignation, send an intimation in writing to the Appointing Authority withdrawing his earlier letter of resignation, before its acceptance by the appointing authority or before his relief (sic relieve) on acceptance of his resignation, the same will be deemed to have been automatically withdrawn. In the instant case the request for withdrawal of resignation has been made after relief (sic relieve) from the appointed post on acceptance of the applicant’s resignation.
7. The procedure for withdrawal of resignation after the resignation has become effective i.e. after the Government servant is relieved of his earlier post, is governed by the statutory provisions of sub rules (4) to (6) of Rule 26 of CCS (Pension Rules) 1972. But the same has to be read in conjunction with Para 6 of Government of India decision printed below the said rule. Para 6 of the GOI decision while discussing about the relaxation for withdrawal of resignation reads as follows ‘since the CCS (Pension Rules) 1972 is applicable only to holders of permanent posts, the provisions under Rule 26 (4) would apply only in the case of permanent Government servants who had resigned his/her post’. Even otherwise Rule 2 of CCS (Pension Rules), 1972 clearly stipulate that these Rules will apply to Government servants who are appointed on or before the 31st of December, 2003. Since Shri Harsh Rajput was appointed much later, these Rules do not apply in his case.
8. As per Rule 3(j) of FRSR (Part III), a government servant in permanent employment means an officer who holds “substantively” or provisionally substantively a permanent post or who holds a lien on a permanent post or who would have held a lien on permanent post had the lien not be suspended.
9. Shri Harsh Rajput was appointed to “officiate” in the post of Inspector with a probationary period of two years. Shri Harsh Rajput joined this department on 29.10.2009 and

was relieved on 22.2.2010 on acceptance of resignation. It is seen that the applicant has worked only for three and a half months in the department. He neither completed his probationary period of two years nor passed the departmental examination for confirmation in the said post as enumerated in his appointment order.

10. In view of the foregoing facts and circumstances, it is seen that there is no provision to consider the request for reinstatement in service in the grade of Inspector of Central Excise.
11. The request of Shri Harsh Rajput for withdrawal of resignation after his relief (sic relieve) cannot be acceded to."

17. Meaning thereby, the competent authority has examined the matter in the right perspective and negated the claim of the applicant in this regard. Applicant has failed to plead or urge, as to how, and in what manner the impugned order dated 20.12.2012 is arbitrary or illegal. As a consequence thereof, the impugned indicated order is legally valid, deserves to be, and is hereby maintained in the obtaining circumstances of the case.

18. No other point, worth consideration, has either been urged or pressed for by the learned counsel for the parties.

19. In the light of aforesaid reasons, as there is no merit, the OA is hereby dismissed. However, the parties are left to bear their own costs.

(Dr. BIRENDRA KUMAR SINHA)
MEMBER (A)

(JUSTICE M.S.SULLAR)
MEMBER (J)

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