

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2652/2014

Order Reserved on: 21.12.2015
Order pronounced on 08.02.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Ms. Tamanna S. Singh
D/o Sh. Kanwar Shamsheer Singh
Aged about 40 years
Presently out of service
R/o C-291, Asiad Games Village
Ganpat Andalkar Block
New Delhi.

.... Applicant

(By Advocate: Shri Nilansh Gaur)

Versus

1. Union of India
Through its Secretary
Ministry of Finance, Govt. of India
Department of Revenue, North Block
New Delhi.
 2. Chairman
Central Board of Direct Taxes
North Block
New Delhi.
 3. Department of Personnel
& Training
Through its Secretary
North Block
New Delhi.
- Respondents

(By Advocate: Dr. Vikrant Narayan Vasundara)

ORDER

By V. Ajay Kumar, Member (J):

Questioning the action of the respondents in not acceding to the request of the applicant to grant permission to withdraw her resignation from service, which was accepted with effect from 16.01.2008, the applicant has filed the present OA.

2. The seminal facts of the case are that the applicant, an Indian Revenue Service Officer of the year 2002 batch, while working at Shimla as ACIT vide Annexure A3 (Coly.) dated 19.10.2007, in view of her continuous illness and other domestic problems, submitted her resignation from service and requested to relieve her with immediate effect from 01.12.2007 by waiving of the notice period, if required. The resignation of the applicant was accepted by the competent authority vide the Notification dated 16.01.2008, with immediate effect.

3. However, the applicant vide Annexure A5 letter dated 05.10.2011, sought permission to withdraw the resignation from IRS. The respondents, though initially referred the applicant for medical examination, however, vide Annexure A2 dated 09.02.2012 rejected the request of the applicant seeking permission to withdraw her resignation, by stating that the same is not permitted under the relevant rules. The applicant vide Annexure A9 dated 02.04.2012 submitted mercy petition, again seeking to allow her to withdraw her

resignation. When the respondents have not passed any orders thereon, this OA has been filed.

4. Heard Shri Nilansh Gaur, the learned counsel for the applicant and Dr. Vikrant Narayan Vasundara, the learned counsel for the respondents, and perused the pleadings on record.

5. The learned counsel for the applicant, in support of the OA averments mainly raised the following grounds:

- i) The applicant due to her continuous ill health and estranged relationship with her husband, in sheer despair and depression, submitted her resignation from service, which was accepted on 16.01.2008. But as a result, now she is in a pathetic condition, and unable to meet the expenses for her treatment and could not look after her little child, as she had parted with her husband, and hence, in the interest of justice and on humanitarian grounds, her application for withdrawing her resignation is required to be accepted.
- ii) The Annexure A4 Notification, dated 16.01.2008, whereunder the resignation of the applicant was accepted and published in the official Gazette was never communicated to the applicant. In the absence of service of the same, the same cannot have any force and cannot be given effect to.

- iii) The action of the respondents is in violation of the procedure provided under OM No.39/6/57-Ests.(A) dated 06.05.1958 of the Ministry of Home Affairs, New Delhi.
- iv) Since the applicant was not relieved of her duties, the resignation is ineffective.
- v) The learned counsel, in support of his contentions, placed reliance on the following decisions:
 - a) Raj Kumar v. Union of India, AIR 1969 SC 180 (Para 3 Clause (d) of Circular dated 06.05.1958.
 - b) Andhra Bank v. K. Sudha Nagaraj, 1999 SCC (L&S) 793
 - c) Power Finance Corporation Ltd. v. Pramod Kumar Bhatia, (1997) 4 SCC 280.
 - d) Shambhu Marari Sinha v. Project & Development India and Another, (2000) 5 SCC 621.

6. Per contra, the respondents submit that:

- i) The applicant has not fulfilled the conditions laid down under Rule 26(4) of CCS (Pension) Rules, 1972 and DoPT's OM No.F.No.28035/2/2007-Estt.(A) dated 04.12.2007, for withdrawal of resignation.
- ii) Once the application of the applicant for permitting her to resign from service has been accepted and published in the official Gazette, which is a public document, non service of the same on the applicant does not take away its effect. On issuing the same, the relationship of employer and employee came to an end.

- iii) The contention of the applicant that she is not having any knowledge of accepting her resignation is incorrect and against to the record. After the notification accepting her resignation was sent to her through proper channel, the applicant had deposited Rs.78812/- in May, 2008 towards clearing of her pending dues. Hence, it is clear that the applicant was fully aware about the contents of Annexure A4(Colly.).
- iv) The learned counsel for the respondents, placed reliance on the following decisions:
 - a) Raj Kumar v. Union of India, AIR 1969 SC 180 (Para 3)
 - b) P.Lal v. Union of India and Others, (2003) 3 SCC 393.
 - c) Dr. Sabita Shome v. The Union of India, 2013 SCC Online Del 930
 - d) Union of India and Others v. Hitender Kumar Soni, (2014) 13 SCC 204 = 2014 (8) SCALE 743.

7. It is also submitted that the mercy petition of the applicant has been disposed of by the competent authority vide Ministry of Finance (Department of Revenue, CBDT) proceedings No.A-39011/9/2007-Ad.VI, dated 2.07.2015, by stating as under:

"2. In this regard, it is stated that a copy of Notification dated 16.1.2008 of accepting your resignation was sent to you through proper channel. As per requirement of the acceptance of resignation, you had deposited Rs.78,812/- in May, 2008 towards clearing of your pending dues. Hence, your contention for not communicating of notification of acceptance of your resignation or you do not have knowledge of it has no merit.

3. Moreover, the conditions laid down under Rule 26(4) of CCS (Pension) Rules, 1972 for withdrawal of resignation and

DOP&T's O.M. No.28035/2/2007-Estt.(A) dated 4th December, 2007 are not fulfilled in your case. The circumstances warranting relocation of period between acceptance of resignation and request to withdraw resignation are also not exceptional.

4. Accordingly, your request/appeal for withdrawal of resignation has been reconsidered by the Appointing Authority and the same has not been acceded to."

8. In the aforesaid backdrop of the facts and submissions made, the only issue required to be answered is that whether the non-service of the Gazette Notification dated 16.01.2008 accepting the resignation of the applicant from service by the competent authority amounts to continuation of the relationship of *master and servant and that the applicant is entitled to seek withdrawal of the said request.*

9. In **Raj Kumar** (supra), on which both sides placed reliance, the facts are that on 31.10.1964, the Government of India accepted the resignation of the appellant. On 29.03.1965, an order accepting the resignation of the appellant from the IAS was issued and the appellant was directed to hand over the charge to the Additional Collector, Kota. He moved a petition in the Hon'ble High Court of Punjab at Delhi (Circuit Bench) seeking quashing of the aforesaid orders. The High Court rejected the petition holding that the resignation became effective on the date on which it was accepted by the Government of India, and a subsequent withdrawal of the resignation was ineffective, even if acceptance of the resignation was not intimated to the appellant. In the appeal filed before the Hon'ble Supreme Court of India, it was observed as under:

"4. The letters written by the appellant on August 21, 1964, and August 30, 1964, did not indicate that the

resignation was not to become effective until acceptance thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Art. 309 of the Constitution which enacts that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation.

5. Our attention was invited to a judgment of this Court in *State of Punjab v. Amar Singh Harika*, AIR 1968 SC 1313 in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has *locus paenitentiae* but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the State of Rajasthan did not, immediately implement the order, and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties.

6. The alternative ground raised by counsel that acceptance of the resignation amounts to dismissal from employment and failure to comply with the requirements of Article 311 of the Constitution vitiates the order accepting the resignation has no form. The order complained of did not purport to be one of dismissal: the Government of India accepted the resignation submitted by the appellant, they did not purport to terminate the appointment for any misconduct on the part of the appellant or as a measure of penalty.

7. The appeal fails and is dismissed. There will be no order as to costs."

10. In **K.Sudha Nagraj** (supra), the question answered was that when the relationship of an employer and employee came to be

terminus. Considering Para 522(ii) of the Shastri Award in Section IV which indicates that in case a permanent employee desires to give up service, he is required to give one month's notice in writing to the Manager and the Manager shall give an order of relieving signed by him. It was held that the dual relationship of the respondent with the appellant as an employee remains undisturbed as the relieving order had not been given by the Manager. Since no identical provision or rule is shown by the applicant which is applicable to his service conditions, this decision has no application.

11. In **Pramod Kumar Bhatia** (supra), the respondent had applied for Voluntary Retirement pursuant to the Scheme framed by the appellant Corporation to relieve the surplus staff. Initially, by proceedings dated 20.12.1994, the Corporation accepted his resignation subject to the clearance of the outstanding dues. The acceptance was to be given effect from 31.12.1994. By letter dated 06.01.1995, he requested for deduction of a sum of Rs.37,521.20 paise out of the outstanding dues payable to him. He also requested that "I once again request you that the formal relieving order relieving me from PFC w.e.f. 31.12.1994 be handed over to me immediately. My service period for which ex-gratia is payable be informed to me and my dues be paid immediately." It was held as under:

"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme.

Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently."

Since in the present case neither the request for resignation nor the acceptance thereof were conditional, this decision also has no application.

12. In **Shambu Murari Sinha (supra)**, it was held as under:

"5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18-10-1995 was accepted by the respondent-management by their letter dated 30-7-1997, the appellant was not relieved from service and he was allowed to continue in service till 26-9-1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7-8-1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdrawn the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta v. Union of India, 1987 (Supp.) SCC 228 : (AIR 1987 SC 2354 : 1988 Lab IC 46); J. N. Srivastava v. Union of India, (1998) 9 SCC 559 : (1998 AIR SCW 4057 : AIR 1999 SC 1571) and Power Finance Corporation Ltd. v. Pramod Kumar Bhatia (1997) 4 SCC 280, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."

In this case, it was only held that the resignation, in spite of its acceptance, can be withdrawn before the effective date, i.e., the date till which the appellant was allowed to continue in service. Since the applicant even as on the date of application for resignation was on leave and hence, the question of her continuation in service beyond the date on which her resignation was accepted does not arise.

13. In case of voluntary retirement, the issue of application and its acceptance and the communication thereto was answered by the Hon'ble Apex Court in **P.Lal** (supra). The Hon'ble Apex Court in para 27 of the said decision, held as under:

"27. We have considered the submissions of both the parties. As has been set out, in Shambhu Murari's case and Bank of India's case, an employee can withdraw his application for voluntary retirement before the effective date. The effective date would necessarily be the date on which the retirement takes effect. The request, which Respondent No. 3 had made by his letter dated 5th May, 1993, was to be allowed to retire voluntarily with immediate effect. He had also deposited Rs.30,870/- in lieu of three months' notice. Thus so far as Respondent No. 3 was concerned the effective date was 5th May, 1993. Of course Rule 16(2A) of the All India Services (Death-cum-Retirement) Rules, 1958 provides that a notice of retirement had to be accepted by the Government of India. In this case, the Government of India accepted the request on 2nd March, 1995 and permitted Respondent No. 3 to retire with effect from May 1993. The moment Government of India accepted the notice the retirement became effective. The relationship of master and servant came to an end. We are unable to accept the submission that the relationship of master and servant did not terminate till the acceptance was communicated to Respondent No. 3. It must be remembered that Rules 16(2) and 16(2A) enable a member to retire from service on giving the required notice. Once such a notice is given it merely has to be accepted by the Government of India. The moment it is accepted the retirement would become effective. If any other view is taken it would lead to absurd results. Such a view would mean that even though a member had given a notice for voluntary retirement stopped attending office and/or gone away abroad and/or taken up some other employment after a number of years of absence the member could claim to come back into service because the Government, for some unforeseen reasons, had not communicated its acceptance. Taken to its absurd length such a member could after superannuation claim that, as the services were not terminated, he was entitled to pension and gratuity on the basis that he had continued in service. The requirement of communication of acceptance would only arise in cases where, even after giving of a notice of voluntary retirement the member continues to work/perform his duties. In such cases the member would need to know from what date he can stop attending office. In cases where the member has by his own conduct abandoned service the severance of the relationship of master and servant takes place immediately on acceptance of notice. We are unable to accept the submission that the severance of relationship of master and servant cannot take effect until there is an Order by the President of India and the same is duly notified in the Gazette. Rules 16(2) and 16(2A) have been set out hereinabove. All that it requires is acceptance by the Government of India and not by the President of India.

Admittedly the request for voluntary retirement has been accepted by the Government of India on 2nd March, 1995. No provision or rule could be shown which requires such acceptance to be gazetted. On the contrary, as has been set out hereinabove, in its affidavit before the Punjab & Haryana High Court, the Government of Punjab had categorically stated that there was no provision for gazetting such an order."

14. In **Dr. Sabita Shome** (supra), the facts are that the petitioner joined service as a probationer against the post of Specialist Grade-II on 21.02.1994. Neither confirmation nor extension of the probation was conveyed to her on completing one year service. Till 12.04.1998 continued to perform duties and remained unauthorisedly absent from 13.04.1998 to 17.02.2000. Thereafter, she joined back on 18.02.2000. She was chargesheeted for the offence of unauthorised absence. During pendency of the inquiry, she submitted a resignation on 5.06.2004, which was accepted by the competent authority on 29.03.2005. on 21.06.2006 she sent a representation praying that she be permitted to withdraw the resignation, which was not accepted by the Department, which led to file a petition before the Tribunal, which was dismissed. When the same was challenged in the Hon'ble high Court, it observed as under:

"6. The issue whether the petitioner stood confirmed or she was still on probation when she submitted her resignation is a non-issue inasmuch as : Whether a probationer submits a resignation or a confirmed employee submit resignation makes no difference to the question of the employee exercising the right to withdraw the resignation.

7. Thus, this aspect of the matter which has been extensively dealt with by the Tribunal is ignored by us. We treat that the petitioner stood confirmed.

8. Rule 26 of the CCS (Pension) Rules, 1972 requires a resignation to be accepted by the competent authority and upon acceptance entails forfeiture of past service. Sub-Rule 4 of Rule 26 of the CCS (Pension) Rules, 1972 empowers the appointing authority to permit a person to

withdraw the resignation in public interest provided not more than 90 days have lapsed between the date when the resignation became effective and the date on which a person is allowed to resume duty. Rule 88 of the CCS (Pension) Rules, 1972 empowers the Ministry of Department of the Government concerned to dispense with or relax the requirement of the Pension Rules if operation of the Rules causes undue hardship or justice and equity so demands.

9. Thus, the question to be considered by us is : Whether the action of the department in not permitting petitioner to withdraw the resignation after 1 year and 3 months of the same having been accepted is legal or valid?

10. Now, with respect to matters of discretion, the jurisdiction of the Court is limited. It is the decision making process which has to be scrutinised by the Court and not the decision. An inquiry into the decision making process would include an inquiry whether the authority has properly drawn its attention to all relevant facts and has ignored the irrelevant facts.

11. From the order passed by the competent authority we find that the competent authority has taken note of the fact that the petitioner had rendered actual service of less than 5 years when she had submitted the letter to resign from service. The authority has taken note of the fact that the petitioner had been unauthorisedly absent for 1 year and 10 months. The authority has taken note of the fact that the petitioner was facing the charge-sheet. As regards Dr.V.K.Dogra, the authority concerned has taken note of the fact that Dr.V.K.Dogra had a long past service rendered when he submitted a resignation and that the reason why he had resigned was to be that his community was in the troubled State of Jammu & Kashmir where militancy was at its peak."

15. It is also useful to refer the decision of the Hon'ble Apex Court in

Hitender Kumar Soni (supra), which is as under:

"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."

16. A perusal of the Office Memorandum No.39/6/57-Estt.(A), dated 06.05.1958, issued by the Ministry of Home Affairs, on which the applicant placed reliance, indicates that nothing therein supports the case of the applicant.

17. The DoPT's Office Memorandum No.F.No.28035/2/2007-Estt.(A) dated 04.12.2007 which was issued in terms of Rule 26 of the CCS (Pension) Rules, 1972, provides for relaxation of the time limit of 90 days between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw resignation, only in exceptional cases which are fully justified, from the point of public interest. Since the applicant, admittedly, applied for withdrawal of her resignation beyond the said permissible period of 90 days, she cannot seek any relaxation of Rules.

18. In the circumstances and in view of the aforesaid legal position, the issue is answered in the negative, and accordingly the OA is dismissed, being devoid of any merit. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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