

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3352/2014

This the 4th day of October, 2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. N. Gaur, Member (A)

Dr. Aditya Kumar Sharma S/o V. K. Sharma,
C/o O. P. Sharma, R/o Flat No.3,
Bhanuvilla Flats,
19 Sangam Park Society,
Ambabari, Ahmedabad-380015.

... Applicant

(In person)

Versus

1. Union of India through
Secretary, Ministry of Micro, Small and
Medium Enterprises, 7th Floor,
Nirman Bhawan, Maulana Azad Road,
New Delhi-110008.
2. Fragrance and Flavour Development Centre
through Additional Secretary & Development
Commissioner (MSME)-cum-Chairman,
FFDC, Kannauj, UP.

... Respondents

(By Advocates: Mr. R. K. Sharma)

O R D E R

Justice Permod Kohli, Chairman :

The applicant was offered appointment to the post of Deputy
Director (Agro Tech), Fragrance & Flavour Development Centre
(FFDC), Kannauj, on contract basis vide memorandum dated

31.10.2005 (Annexure A-1) issued by the respondent No.2. The applicant conveyed his acceptance and joined duties on 11.11.2005. A formal memorandum of agreement was also executed on 11.11.2005. His pay was fixed at Rs.10,000/- in the scale of pay of Rs.10,000-325-15,200 and allowances as admissible under rules with effect from 12.11.2005, as is evident from the office order dated 14.11.2005 (Annexure A-3). Services of the applicant were extended from 11.05.2006 for a total period of five years from the date of his joining, i.e., 11.11.2005, up to 10.11.2010, vide letter dated 03.06.2006 (Annexure A-4), with the approval of the Chairman, FFDC.

2. The Ministry of Micro, Small and Medium Enterprises (MSME), Government of India vide its letter dated 05.09.2008 conveyed the approval of the AS&DC (MSME/Chairman for recruitment of officers/staff (other than CEO) on regular basis initially on probation for a period of one year or two years, and the concerned officials - General Manager/Principal Director/Director, MSME autonomous bodies were requested to make suitable modifications in the recruitment rules. It was also stated that appointments already made in the institute on contract basis may be considered for regularization in consultation with the Chairman's office, after following the DPC procedure, and the decision may be placed before the Governing Council in its next meeting for

ratification. The applicant claims to have been recommended for regularization of his services having been approved and ratified by the 32nd Governing Council meeting of FFDC.

3. It is stated that the applicant suffered serious illness and on 17.05.2012 he was diagnosed with invasive carcinoma (cancer) and also suffered severe UTI, stone in kidney, infection in prostate and other complications. He requested for joining his duties vide letter dated 05.11.2012. He was allowed to join duties and the period from 10.09.2012 to 09.10.2012 was treated as extraordinary leave subject to production of medical certificate. However, the period from 08.09.2012 to 09.09.2012 was treated as break in service for want of medical certificate. The applicant has given further details of his illness and remaining on leave as also rejection of his request for extraordinary leave of one year for treatment of cancer etc. However, the details are not relevant for purposes of adjudication of the present Application. The applicant sent a mail on 21.04.2013 to the Chairman, FFDC and AS&DC (MSME), Office of Development Commissioner (MSME), New Delhi whereby he submitted his pre-resignation notice for resignation from the post of Deputy Director (Agro Tech), FFDC, Kannauj (UP) w.e.f. 31.12.2013. The Office of Development Commissioner (MSME), Ministry of MSME, vide letter dated 25.04.2013 asked the applicant to submit duly signed

resignation to the Chairman, FFDC, Kannauj by speed post for further necessary action. The applicant accordingly sent a signed copy of the aforesaid mail, i.e., the pre-resignation notice, on 14.06.2013.

4. It is stated that the applicant was away to Nagaland and joined duties on 09.09.2013 after availing leave. On 12.09.2013, the applicant was served with a letter dated 25.07.2013 issued from the Office of Development Commissioner (MSME), Ministry of MSME, Government of India, communicating him that the AS&DC-cum-Chairman, FFDC was pleased to accept his resignation dated 14.06.2013, and that he would stand relieved from the post of Deputy Director (Agro Tech), FFDC, Kannauj on 13.09.2013. The applicant was informed by FFDC, Kannauj vide letter dated 02/07.08.2013 that his pre-resignation notice dated 14.06.2013 had been accepted by the competent authority.

5. The applicant vide his mail dated 12.09.2013 (Annexure A-14) addressed to the Chairman, FFDC and AS&DC (MSME) withdrew his pre-resignation notice which gave effect to his resignation only w.e.f. 31.12.2013. The applicant thereafter made representations also, and then filed the present Application seeking the following reliefs:

- “(i) To direct the respondent to set aside the office order no.30(7)/Service Matter/FFDC/2012/ABC/542 dated 25.07.2013 issued from the O/o Development Commissioner, Micro, Small and Medium Enterprises, Ministry of Micro, Small and Medium Enterprises, Govt. of India.
- (ii) To direct the respondents to set aside the office order No.FFDC/KNJ/Admn./1/20/2013-14 dated 13.09.2013 relieving the applicant from his services.
- (iii) To direct the respondents to reinstate the services of the applicant with all consequential benefits w.e.f. his date of relieving i.e. 13.09.2013.
- (iv) Pass such other or further order as this Hon’ble Court may deem fit and proper in the facts and circumstances of this case.”

6. In the counter affidavit filed by the respondents the facts stated by the applicant and noticed hereinabove, have not been disputed. It is stated on behalf of the respondents that resignation notice dated 14.06.2013 submitted by the applicant was accepted by the Additional Secretary & Development Commissioner (MSME)-cum-Chairman, FFDC, New Delhi, and the applicant was relieved on 13.09.2013. It is further stated that the applicant’s services being temporary, same were dispensed with in terms of para 2 of the terms and conditions of the contract dated 11.11.2005.

7. The applicant has referred to the provisions of rule 26(4) of the CCS (Pension) Rules, 1972, which permits withdrawal of the resignation. The said sub-rule reads as under:

“(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

- (i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;
- (ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;
- (iii) that the period of absence from duty 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 the resignation is not more than ninety days ;
- (iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.”

8. It is stated that since there was no ground for refusal to withdraw the resignation, the acceptance of the resignation before the effective date is totally illegal and unwarranted in law. When the applicant submitted his resignation, he had mentioned his illness and thereafter in the withdrawal letter he mentioned that he had only issued a “pre-resignation” notice and never submitted the resignation.

9. It is admitted position that the applicant only served a pre-resignation notice and his resignation was supposed to take effect on 31.12.2013. His resignation was, however, accepted by the competent authority on 25.07.2013, much before the effective date of resignation and he was ordered to be relieved on 13.09.2013. In the acceptance order no reference is made to the contract of service dated 11.11.2005 whereunder services of contractual employee could be dispensed with. The impugned order dated 25.07.2013 simply deals with the acceptance of the resignation. The plea of the respondents in the counter affidavit and as argued during the course of hearing that the applicant being a contractual employee his services could be dispensed with under para 2 of the agreement dated 11.11.2005, is not acceptable. It is settled law that the respondents have to rely upon the grounds in the impugned order, and they cannot be permitted to supplement the grounds by the pleadings, as is the ratio of the Constitution Bench judgment of the Hon'ble Supreme Court in *Mohinder Singh Gill v Chief Election Commissioner* [(1978) 1 SCC 405], wherein the Apex Court held as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get

validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commr. of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC 16 :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

10. Once the applicant had given and notified the date of resignation, i.e., 31.12.2013, he had every right to withdraw the resignation notwithstanding the acceptance thereof on 25.07.2013. The order of acceptance of resignation is *per se* illegal and is not sustainable in law. The applicant could have withdrawn the resignation before the effective date. The respondents could only accept the resignation from the date indicated by the applicant in his pre-resignation notice and not from any earlier date. In terms of rule 26(4) of the CCS (Pension) Rules, 1972 also the competent authority could refuse the withdrawal of resignation only under the circumstances indicated therein. Admittedly, no such circumstance exists nor has been projected in the counter affidavit. The action of the respondents in accepting the resignation before the effective date

is thus liable to be set aside. Another Constitution Bench of the Apex Court in *Union of India & others v Gopal Chandra Misra & others* [(1978) 2 SCC 301] has categorically held that an intimation in writing to the competent authority by the incumbent of his intention to resign his office/post from a specified future date can be withdrawn by him at any time before it becomes effective. Relevant observations of the Hon'ble Supreme Court are extracted hereunder:

“41. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment.”

Similar view has been expressed by the Apex Court in later judgments in *Union of India & another v Wing Commander T. Parthasarathy* [(2001) 1 SCC 158], and *Srikantha S. M. v Bharath Earth Movers Ltd.* [(2005) 8 SCC 314].

11. In view of the dictum of the aforesaid judgments and the factual background mentioned hereinabove, this Application is allowed. Impugned orders dated 25.07.2013 and 13.09.2013 are hereby set aside. Consequently, the respondents are directed to take back the applicant into service forthwith. This order shall not

prevent the respondents from proceeding according to the terms of contract in accordance with law.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/as/