Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4209/2012
M.A.No.3521/2012

Order Reserved on: 14.09.2016
Order pronounced on 04.10.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

N.K.Nagar
S/o J.R.Nagar
R/o IX/1046, New Post Office Street
Gandhi Nagar
Delhi – 110 031. …. Applicant

(By Advocate: Ms. Harvinder Oberoi)

Versus

Union of India through
Secretary
Ministry of Labour & Employment
Shram Shakti Bhawan
New Delhi. … Respondent

(By Advocate: Ms. Avinash Kaur)

O R D E R

By V. Ajay Kumar, Member (J):

Questioning the Annexure A1 Office Order No.16/2006 dated 25.01.2006 of the sole respondent – Union of India, whereunder the resignation of the applicant was accepted, w.e.f., 12.11.2005, the OA has been filed.

2. The brief facts of the case, as narrated in the OA, are that while the applicant was working as Section Officer on deputation in Ministry of Overseas Indian Affairs at Mumbai, on his repatriation, he joined with the respondent-Ministry of Labour Department vide his joining report, Annexure A6, dated 16.09.2005. On the same date, vide Annexure A7 also dated 16.09.2005, he submitted an application for two weeks Earned Leave w.e.f. 19.09.2005 citing non-shifting of household establishment from Mumbai to Delhi and also health problems. The respondent, vide Annexure A8 Office Order No.223/2005 dated 23.09.2005 while acknowledging the joining of the applicant, on 16.09.2005 posted the applicant in the office of the CLC (C), from the same date, i.e., with retrospective effect. Since on 16.09.2005, when the applicant submitted his joining report as the Under Secretary (Administration) was not available for long time in his cabin, he submitted his joining report and leave application to the PA of the Under Secretary, as he was also feeling giddiness due to hyper tension. Though the applicant vide his application dated 16.09.2005, sought leave only upto 02.10.2005, due to some unavoidable circumstances, finally could join duty only on 14.10.2005, and on the said date only he came to know about his posting at CLC(C) w.e.f. 16.09.2005 vide Annexure A8 dated 23.09.2005. Vide application Annexure A9 dated 14.09.2005, the applicant sought granting of extension of leave upto 13.10.2005. On 14.10.2005, when he came to know about his posting at CLC(C), w.e.f. 16.09.2005, he also came to

know that the respondent was treating the applicant as absent since 16.09.2005.

3. When the applicant approached the Under Secretary (US), and the Deputy Secretary (DS) in connection with his non-receipt of leave application dated 16.09.2005 and treating the relevant period as absence of the applicant, the DS simply grinned and reminded that the applicant had failed to attend him during his personal visit to Mumbai during that year and that he will take the applicant to task. Due to the altercation exchanged and the unkind words spoken by the DS towards the applicant's health and his wife's health, and due to the hypertension and psycho pathological state of mind, and sudden anger, the applicant prepared a resignation letter dated 20.10.2005 (Annexure A10), under Rule 5(1) of CCS (TS) Rules, signed and submitted the same for consideration.

4. The respondent-vide Annexure A11 Memorandum dated 21.10.2005, issued a Show Cause Notice to the applicant, calling upon him to show cause why the period from 16.09.2005 till 13.10.2005 shall not be treated as his willful absence in terms of Rule 7(1)(a) and 25 of CCS (Leave) Rules.

5. Further, vide Annexure A12 Memorandum dated 31.10.2005, informed the applicant that his resignation letter dated 20.10.2005 under Rule 5(1) of CCS (TS) Rules, is not maintainable since he is holding a substantive post and a permanent employee and the said resignation letter is *void ab initio* and accordingly advised the applicant

to consider tendering his resignation under the relevant rules commensurating with his status clearly specifying the date from which the same is required to be accepted so that the same could be processed for consideration of the competent authority.

6. The applicant vide Annexure A13, dated 12.11.2005, replied to both the aforesaid Memorandums dated 21.10.2005 and 31.10.2005. The applicant through the said reply while explaining the various difficulties, he is facing, due to the inconsiderate attitude of the administration with regard to his wife's ill health and also with regard to his ill health, clearly stated as under:

> "You have been aware that my resignation has been prompted by the administration by working on my herves, as I only intended to seek leave in order to attend to my wife who had been suffering from acute depression and had developed suicidal tendancy due to her health, and could not be left alone, as she has been feeling shattered from the trauma of not being able to conceive due to medical problems. Further regarding your Memo. No.A.39013/1/2005-Admn.I, dt. 31.10.05, it is submitted that, in case my resignation has not been maintainable under Rule 5(1) of CCS (TS) Rule and hence void ab initio, let it be so. I may kindly be granted leave on humanitarian grounds to enable me to tide over the grave crisis I have been going through, I have, otherwise, no option but to resign myself to the fait accompli under your tyrannical administration.
>
> Thanking you,"

7. It is submitted on behalf of the applicant that in his reply dated 12.11.2005 (Annexure A13), the applicant categorically stated that if his earlier resignation letter dated 20.10.2005, was void ab initio, leaving it aside leave may be granted to him, otherwise, no option to him but to resign, only. He has not sought for resignation in the said letter. He only stated that if leave is not granted to him, he will have no option to resign. But surprisingly and shockingly the respondent vide the impugned Annexure A1 Office Order dated 25.01.2006, by

treating the Annexure A13 letter dated 12.11.2005, as resignation of the applicant, illegally accepted the same w.e.f. 12.11.2005.

8. The respondents vide their counter reply submitted that on repatriation from Protector of Emigrants, Mumbai, the applicant had joined Ministry of Labour and Employment, and was taken on strength on 16.09.2005 and was posted to Office of CLC(C) from the same date, vide Annexure R1 Office Order No.223/2005 dated 23.09.2005. He had submitted an application for Earned Leave w.e.f. 19.09.2005 but left the same with PA to Under Secretary without giving his joining in the Office of CLC(C) and proceeded on leave without caring to check whether the same was sanctioned or not. Finally, he reported on 14.10.2005 and submitted his joining report to CLC(C) and sought for extension of his leave upto 13.10.2005. Accordingly, an explanation for his wilful absence was called for vide Memorandum dated 21.10.2005. Since the resignation dated 20.10.2005 was not in accordance with rules, the same was rejected vide Memorandum dated 31.10.2005. Finally, the resignation of the applicant was accepted by the competent authority w.e.f. 12.11.2005 vide the impugned order dated 25.01.2006, however, his resignation letter and approval of the competent authority are not traceable in the relevant file.

9. The respondents further submitted that without raising any objection about acceptance of his resignation the applicant had applied for payment of his GPF amount and leave salary vide Annexure R9,

and accordingly all the dues were released to him vide Annexure R10 dated 10.07.2006.

10. The respondents further submit that after lapse of more than five years from the date of acceptance of resignation of the applicant, for the first time, the applicant represented, vide his application dated 03.02.2011 (Annexure R11), seeking rescindment of the impugned order. The same was followed by reminder dated 29.06.2011 (Annexure R12). The same were rejected by the respondents by stating that the applicant had not represented for withdrawal of resignation from Government service within the stipulated 90 days from the date of acceptance of resignation.

11. Heard Ms. Harvinder Oberoi, the learned counsel for the applicant and Ms. Avinash Kaur, the learned counsel for the respondents, and perused the pleadings on record.

12. Mrs. Harvinder Oberoi, appearing for the applicant, would mainly contend that admittedly and as per the respondents Memorandum dated 31.10.2005 (Annexure A12) itself the resignation letter dated 20.10.2005 (Annexure A10) was not valid as per rules, and that the applicant was advised to submit a fresh resignation commensurating his status and by clearly specifying the date from which the same is required to be accepted so that the same would be processed for consideration of the competent authority. Thereafter, the applicant, at no point of time, submitted any fresh resignation. In the letter dated 12.11.2005 (Annexure A13), the applicant nowhere tendered his

resignation. While requesting to grant leave on humanitarian grounds, he only submitted that if the leave is not granted, he would be left with no other option but to resign. By no stretch of imagination the said letter dated 12.11.2005 can be treated as a letter of resignation. Hence, the impugned order accepting resignation of the applicant, without there being any separate written resignation, is illegal, arbitrary and liable to be set aside.

13. The learned counsel placed reliance on **Angad Das** v. **Union of India & Others,** (2010) 3 SCC 463 and on **Suresh Kumar** v. **Union of India & Others** – WP(C) No.2150/2014 dated 17.10.2014 of the Hon'ble High Court of Delhi.

14. Ms. Avinash Kaur, the learned counsel appearing for the respondents, failed to state whether there is any other letter or application of the applicant seeking resignation from the Government service other than Annexure A10 letter dated 20.10.2005 which was rejected by them, vide Annexure A12 Memorandum dated 31.10.2005 or letter dated 12.11.2005 (Annexure A13) whereunder nowhere the applicant tendered his resignation. While reiterating the statement made in the counter affidavit that the resignation letter and approval of the competent authority are not traceable in the relevant file, which was also confirmed vide the Annexure A16, copy of the extract of the relevant file obtained by the applicant under RTI Act, submits that the OA is liable to be dismissed on the ground of limitation as the applicant questioned the impugned order dated 25.01.2006 by filing the OA on

22.08.2012. The learned counsel further submits that the OA is liable to be dismissed as the applicant represented for rescindment of acceptance of his resignation for the first time after lapse of more than 6 years, and that the applicant without any protest or objection to the Annexure A1, has applied for the consequential benefits and accordingly received the same, also way back in the year 2006 itself. Hence, the OA is liable to be dismissed on the ground of estoppel and waiver of his rights, if any.

15. A careful examination of the pleadings on record and of the rival contentions, it is clear that other than Annexure A10 letter dated 20.10.2005, which was rejected by the respondents as void abinitio, there is no other resignation letter submitted by the applicant. Further, the Annexure A13 letter dated 12.11.2005 of the applicant cannot be said to be a letter of resignation as no such request was made in the said letter. Hence, whether the action of the respondents in reconsidering the Annexure A10, resignation letter dated 20.10.2005, which was rejected by themselves as void abinitio, or in considering the Annexure A13 letter dated 12.11.2005 seeking granting of leave as letters of resignation from service made by the applicant, *suo moto* and unilaterally, is legal, valid and in accordance with law, is the question fell for our consideration.

16. In **Angad Das** (supra), the applicant a Constable in the CRPF was compulsorily retired from service by way of punishment, after following due procedure. His letter requesting for reemployment was

treated as an appeal by the DIG and the punishment of compulsory retirement imposed upon him was enhanced to that of removal from service. The Hon'ble Apex Court, while allowing the appeal, held as under:

> ñ1. People in power and authority should not easily lose equanimity, composure and appreciation for the problems of the lesser mortals. They are always expected to remember that power and authority must be judiciously exercised according to the laws and human compassion. Arrogance and vanity have no place in discharge of their official functions and duties.
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> 8. We are astonished as to how a simple letter of request for re-employment has been treated as an appeal by the D.I.G. Police, CRPF, and in exercise of his power under Rule 28 of the CRPF Rules, 1955, the punishment of "compulsory retirement" from service has been enhanced to "removal from service" w.e.f. 31.5.1996. The mere letter for re-employment could not have been treated as an appeal under Rule 28 of the CRPF Rules, 1955. The D.I.G. Police, CRPF, was totally unjustified in enhancing the punishment from "compulsory retirement" to "removal from service". The order was legally untenable. The Special Director General has also seriously erred in upholding the order dated 8th October, 1996 passed by the D.I.G. Police, CRPF. ñ

17. In the present case also the respondents, illegally and without authority of law, have accepted the resignation of the applicant from service without there being any resignation letter from the applicant. The respondents not stated that there is any other resignation letter other than the Annexure A10 dated 20.10.2005. The averment regarding non-traceability of the resignation letter and also the approval of the competent authority, is also, admittedly, pertaining to the letter dated 20.10.2005 only.

18. As rightly contended by the respondents' counsel that the applicant made the representation seeking recindment of the impugned order, for the first time, vide Annexure R11 dated 03.02.2011, i.e., after a lapse of 5 years, and alleging inaction thereto,

filed the OA on 22.08.2012. However, the learned counsel for the applicant explained the delay occurred in making the first representation by submitting that the applicant and his wife were not keeping well at the time of passing of the impugned orders and in fact the same was the reason for his mental disturbance and for submitting the Annexure A10 letter dated 20.10.2005, which was rejected by the respondents, and when the applicant came to know about the illegality, in the action of the respondents, and after obtaining the information under RTI Act, vide Annexure A16 that even there was no valid approval from the competent authority for issuing the impugned order, he filed the OA. The learned counsel further submits that the applicant lost the livelihood, i.e., payment of salary month after month in view of the illegal impugned order and hence, the same is a continuous cause of action and accordingly the OA is maintainable. The learned counsel further prayed that in view of the blatant illegality in issuing the impugned order, the Tribunal may advance justice to the applicant, by condoning the delay, if any.

19. In **N. Balakrishnan** v. **M. Krishnamurthy,** (1998) 7 SCC 123, the Hon'ble Apex Court, held as under:

> ñ9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior court would be

> free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammeled by the conclusion of the lower Court.ò

20. In **Oriental Aroma Chemical Industries Ltd.** v. **Gujrat Industrial Development Corporation**, (2010) 5 SCC 459 held as under:

> ñ8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinateé ..ò

21. In view of the clear illegality in passing the impugned order by the respondents, as held by the Hon'ble Apex Court in **Angad Das** (supra) and in view of the admitted fact situation and the decisions of the Hon'ble Apex Court, referred to hereinbefore, to the effect that the rules of limitation are not meant to destroy the right of the party and that a liberal construction is to be taken so as to advance the justice, the delay is condoned, and accordingly, the MA No.3521/2012 is allowed.

22. In the circumstances and for the aforesaid reasons the impugned Annexure A1 - Office Order No.16/2006 - dated 25.01.2006, is quashed and set aside, and the respondents shall reinstate the applicant into service within 30 days. However, in the peculiar facts of

the case, the applicant is not entitled for counting of the service for the break period and for any back-wages. Further, the amounts, if any, received by the applicant from the respondents consequent to the impugned order, shall be recovered from his monthly salary in equal instalments within a reasonable time after the applicant is reinstated into service. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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