

10

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.3006/2003**

New Delhi, this the 14<sup>th</sup> day of October, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman**  
**Hon'ble Mr. S.K.Naik, Member (A)**

Shri Balbir Singh Chauhan  
R/o 16/343-E, Tank Road  
Karol Bagh  
New Delhi – 110 005.

... Applicant

**(By Advocate: Sh. K.K.Patel)**

Versus

Govt. of NCT of Delhi through

1. Principal Secretary (Home)  
5<sup>th</sup> Level, "A" Wing, Delhi Secretariat  
I.P.Estate, New Delhi.

2. The Director General (Prisoner)  
Central Jail, Tihar  
New Delhi.

... Respondents

**(By Advocate: Sh. Vijay Pandita)**

**ORDER**

**By Mr. Justice V.S.Aggarwal:**

Applicant (Balbir Singh Chauhan) was working in the National Capital Territory of Delhi. He contends that on 24.3.1986 he submitted his resignation with request to relieve him from 31.5.1986 on compelling family circumstances. He had prayed that any amount due from him may be deducted. On 14.5.1986, the respondents had directed the applicant to deposit Rs.4776/- in lump sum for the payment of articles. On 9.7.1986, the applicant had submitted his letter for withdrawal of resignation on the ground that he is not in a position to deposit the amount. On 21.10.1986, the Superintendent, Central Jail, directed him to join the duties. The resignation was accepted thereafter with effect from 30.10.1986.

2. The applicant thereafter had filed OA 641/2003. It was disposed of on 3.4.2003 with the following directions:

*CS Aggarwal*

(11)

-2-

“(1) Respondent No.2, i.e., Secretary, (Home-G), Govt. of NCT of Delhi shall consider the aforesaid representation of the applicant requesting for withdrawal of his resignation as expeditiously as possible and in any case within two months from the date of receipt of a copy of this order.

(2) Respondent No.2 shall do so by passing a reasoned and speaking order in accordance with law and shall also take into consideration the judgements of the Hon'ble Supreme Court relied upon by the applicant in the OA.

(3) The applicant shall also duly be intimated within the period of two months about the decision.

(4) Let a copy of the OA be annexed to this order to enable Respondent No.2 to take decision as above.”

3. Thereafter vide the impugned order of 8.8.2003, the representation of the applicant has been rejected. By virtue of the present application, he seeks setting aside of the order of 8.8.2003 and to direct the respondents to allow him to resume his duties and to pay him all consequential benefits, i.e., salary, allowances, etc. from the date he was not paid.

4. The application has been contested. It is not disputed that resignation of the applicant was accepted with effect from 30.10.1986. Respondents plead that an undated application for joining duty was the only communication which was available on the file. There was no application received from the applicant requesting for reconsideration of the decision. To accept the resignation after 15 years, the applicant again addressed an undated letter to the Chief Secretary, which was forwarded to the Chief Secretary on 12.6.2001. No representation in the intervening period was made by the applicant, which gives a distinct impression that he had accepted the position of the Jail authorities communicated vide order dated 24.10.1986. Respondents plead that the applicant cannot take advantage of the letter of



12

- 3 -

25.10.2002 which was an internal correspondence of the departments. It is denied that the applicant has any claim.

5. We have heard the parties' counsel and have seen the relevant record.

6. The legal position is not in dispute that before the resignation is accepted, it can be withdrawn by the concerned person. In the present case before us, the order was passed on 24.10.1986, accepting the resignation of the applicant from 30.10.1986. It reads:

ORDER

Shri B.S.Chauhan, UDC, who had worked in this Central Jail, New Delhi is hereby granted leave as under:-

In July:- 10 <sup>th</sup> , 15 <sup>th</sup> , 18 <sup>th</sup> , 19 <sup>th</sup> , 22 <sup>nd</sup> & 23 <sup>rd</sup> .	6 days EL
In August:- 16 <sup>th</sup> , 19 <sup>th</sup> , 20, 21 <sup>st</sup> , 23 <sup>rd</sup> , 25 <sup>th</sup> , 26 <sup>th</sup> & 30	8 days HPL
In Sept:- 1 <sup>st</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> , 10 <sup>th</sup> & 20 <sup>th</sup>	5 days HPL
In Oct.:- 1 <sup>st</sup> , 9 <sup>th</sup> , 10 <sup>th</sup> , 16 <sup>th</sup> , 17 <sup>th</sup> , 21 <sup>st</sup> & 22 <sup>nd</sup>	7 days HPL

His resignation was accepted on 30-10-86.

Sd/-

(S.P.Singh)

Dy. Inspector General(Prisons)

Central Jail, New Delhi

No.CJ.1(871)/85/10541 dated 24.10.86."

7. The applicant has already withdrawn his resignation on 9.7.1986 and the said letter reads:

"To

The Superintendent  
Central Jail, Tihar  
New Delhi.

Sir,

With due respect, I beg to say that I have tendered my resignation from service w.e.f. 30.5.86 due



(13)

-u-

to domestic circumstances. But no reply has been received so far. I have to deposit Rs.4776/- from Jail Factory and I have received a letter No.CJ-1(871)/85/1960 dated 14.5.86 from your office in which you have stated that the outstanding amount may be deposited in lump-sum and I am not in the position to do so, it is therefore, requested that the resignation tendered by me may kindly be withdrawn and I may be allowed to join my duty and absence period may kindly be regularized by granting leave. EOL. Outstanding payment of Jail Factory may kindly be recovered from my salary @ Rs.100/- P.M.

Thanking you,

Yours faithfully,

Dated 9.7.1986.

Sd/-

(B.S.Chauhan)

U.D.C.

Central Jail, New Delhi"

8. Thus, it is obvious that the applicant had withdrawn his resignation before it was accepted.

9. The learned counsel relied upon the decision of the Supreme Court in the case of RAJ KUMAR v. UNION OF INDIA, AIR 1969 SC 180 and the decision rendered in the case of POWER FINANCE CORPORATION LTD. v. PRAMOD KUMAR BHATIA, (1997) 4 SC 280. In both the decisions, the ratio deci dendi drawn was that the resignation or retirement becomes effective when the person is relieved from his duty after acceptance of the offer of resignation but it can be withdrawn before the date of acceptance. In fact, in the case of *Power Finance Corporation Ltd. (supra)* the Supreme Court held:

"6. Having regard to the respective contentions, the question that arises for consideration is whether the respondent acquired a vested right after acceptance of the voluntary retirement by proceedings dated 20-12-1994. It is seen that the order is a conditional order in that until the dues are paid, the order does not become effective. The respondent himself admitted that the outstanding dues could be adjusted from the amount payable to him. Admittedly, no such adjustment has been made. He, therefore, rightly understood that unless

ls Ag

he is relieved of the duties of the post, after the payment of the outstanding dues, the order accepting his voluntary retirement does not become effective.

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..."

10. In the present case before us, it is obvious that the applicant had withdrawn his resignation before it was formally accepted with effect from 30.10.1986. Consequently, to that extent, the applicant has a just claim.

11. But that is not the end of the matter. Learned counsel for the respondents pointed that the application has been filed after 17 years of the said letter and this clearly shows that the applicant had accepted the position.

12. To keep the record straight, we deem it necessary to mention that applicant had filed OA 641/2003. On 3.4.2003, the resultant directions given by this Tribunal have already been reproduced above. Perusal of the same clearly shows that this Tribunal had directed the respondents for reconsideration of the matter and there was no specific finding that there is any waiver right or estoppel against the applicant.

13. Reverting back to the facts of the present case, it is clear that the applicant has not been attending office since October, 1986. He contends that he has been making repeated representations but copy of any such representation has not been produced. Reliance on behalf of the internal correspondence of October, 2002 which is from Superintendent, Central Jail to Deputy Secretary, Home is of a little consequence. By virtue of the same, the representation has been forwarded to accept the decision on the matter



pertaining to the resignation of the applicant. It is obvious that the applicant has represented sometime in the year 2001 and, therefore, the matter was being considered. But even that letter is after 15 years of the resignation. This clearly shows that for the intervening period, there was no representation that had ever been made and when a person does not claim a right for nearly 15 years and has accepted the position, it is too late for him now to say that his representation was still pending, particularly when from 1986 to 2001, it is not shown that any representation had been filed.

14. There is another way of looking at the same matter. Section 21(1) of the Administrative Tribunals Act, 1985 reads:

**"21. Limitation.-** (1) A Tribunal shall not admit an application,-

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section(2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

Perusal of the same clearly shows that if after six months of the representation, no decision is taken, the period of limitation of one year starts running. Even if for the sake of the arguments (though it is not shown), we take that any representation has been made, still the period of limitation started running and now to contend after 16 years that his resignation had been withdrawn, indeed cannot be taken to confer any right. Not only the application is barred by time

*CS Ag*

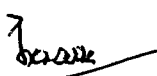
16

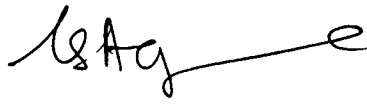
7-

but also it is highly belated and neither there is any equity nor law in favour of the applicant.

15. No other argument was raised.

16. For these reasons, the application being without merit fails and is accordingly dismissed.

  
(S.K. Naik)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSN/