

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 19th January, 2011

+ W.P.(C) 55/2010

PRAVEEN KUMAR Petitioner
Through: Mr.Ashok Gurnani, Advocate

versus

THE DIRECTOR GENERAL OF
CISF & ORS. Respondents
Through: Mr.A.K.Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Leave sought by the petitioner being refused, petitioner submitted his resignation on 4.3.2009. The letter of resignation reads as under:-

"Due to some personal problem I want to resign from service and I request you to accept my resignation with immediate effect."

2. From the next day the petitioner stopped reporting for duty and since acceptance of resignation was not communicated to him caused a legal notice dated 25.3.2009 to be served upon the department demanding formal acceptance of his resignation to be intimated to him and terminal dues to be paid.

3. Claiming not to have received any acceptance of his
W.P. (C) No.55/2010

resignation, on 17.8.2009, the petitioner sent a communication stating that he may be permitted to withdraw his request for resignation and he be permitted to rejoin, with a prayer that the period of his absence may be regularized by granting him leave of any kind which is due to him. This was responded to by communication dated 29.9.2009 informing petitioner that his resignation had already been accepted w.e.f. 6.4.2009.

4. The instant petition had been filed stating that the resignation of the petitioner was never accepted, much less communicated to him on 6.4.2009.

5. Needless to state in the counter affidavit filed, the respondents have affirmed that on 6.4.2009 acceptance of petitioner's resignation was communicated to him. It is further pleaded that while accepting the resignation the petitioner was required to surrender his Identity card, clothing and equipment as also obtain necessary clearance certificates from the accounts department and since petitioner did not do the needful, on 4.8.2009 a reminder was sent in which, with reference to the letter dated 6.4.2009 the petitioner was called upon to do the needful. It is further pleaded that communications were addressed to the petitioner on the issue on 25.9.2009 and 18.11.2009.

6. It would be useful to note the averments of the respondents in para 18 of the counter affidavit, which read as under:-

"18. That in reply to para 18 of the petition, it is submitted that the contention of the petitioner stating that he was not communicated regarding acceptance of his resignation is not sustainable. In this regard, it is mentioned here that the acceptance of the resignation of the petitioner was communicated at his home address as furnished by him in his documents, vide official letters dated 6.4.2009, 4.8.2009, 25.9.2009 and dated

18.11.2009. Copy of letters dated 25.9.2009 and 18.11.2009 are annexed with the present writ petition by the petitioner as per Annexure P-4 and P-5 respectively. If the petitioner could receive the copies of letters dated 25.9.2009 & dated 18.11.2009, it seems inexplicable that the earlier communications could not reach his address. However, copy of official communications dated 6.4.2009 and 4.8.2009 are annexed herewith as **ANNEXURE-R-2 & 3** respectively.

7. In the rejoinder, responding to the averments made in para 18 of the counter affidavit, the petitioner has pleaded as under:-

“18. The acceptance of the resignation by the authorities was not communicated to the Petitioner and the petitioner was not received the letter dated 06.04.2009 though he has only received letter dated 29.09.2009 and 18.11.2009 addressed by the Office of the Deputy Inspector General, CISF to him.”

8. Relevant would it be to note that there is a problem with the communication dated 6.4.2009 sent to the petitioner. A lazy man in the dispatch branch of the respondent posted the postal envelop at a wrong address and this is the reason why the communication dated 6.4.2009 did not reach the petitioner.

9. However, as noted hereinabove in the reminder dated 4.8.2009, a reference has been made to the fact that vide communication dated 6.4.2009, resignation of the petitioner has been accepted.

10. Now, a perusal of para 18 of the rejoinder affidavit shows that the petitioner has not denied the categorical assertion in para 18 of the counter affidavit that a reminder was sent to the petitioner on 4.8.2009. The petitioner has denied receipt of letter dated 06.04.2009; has admitted having received

letters dated 29.09.2009 and 18.11.2009; has neither admitted nor denied receipt of letter dated 4.8.2009. Thus, the rule of interpreting pleadings requires this Court to treat it as an admission by the petitioner that communication dated 4.8.2009 was received by him.

11. Let us read the communication dated 4.8.2009. It reads as under:-

“Ref.: Your application No.1100 dated 4.3.2009.
Your resignation has been accepted by the competent authority vide letter No.E-28014/CISF/SSG/Adm-II/07-1791 dated 6.4.09.
Hence you are once again hereby directed to submit your clearance certificate and return your I-card to this office immediately.”

12. Now, the matter can be looked at from the point of view that communication dated 4.8.2009 informing petitioner of his resignation being accepted was sent to him prior to petitioner, vide his communication dated 17.8.2009, withdrawing the resignation.

13. Thus, on the settled law that once a resignation is accepted and the date from which resignation has to be effective is in the past, the resignation cannot be withdrawn.

14. From a perusal of the letter of resignation submitted by the petitioner it is clear that the petitioner made the resignation effective with immediate effect and stopped reporting for duty from the next day. Thus, even if we treat 4.8.2009 as the date of communication of the acceptance of petitioner's request for resigning, the question of the resignation being withdrawn on 17.8.2009 does not arise.

15. That apart, once the competent authority accepts the resignation and passes an order on the file, that date would be the date required to be treated as the date when resignation

was accepted. In this case we find that post order being passed on the file accepting petitioner's resignation, the same was formally communicated to the petitioner, but unfortunately, at a wrong address. The law on the subject is as held by the Supreme Court in the decision reported as 2003 (2) SC Service Law Judgments 40 North Zone Cultural Centre & Anr. Vs. Vedpathi Dinesh Kumar, where, in para 15 it was observed: *"Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before withdrawal."*

16. We find no merit in the writ petition and hence dismiss the same but noting that the petitioner has an issue on some unpaid dues and for which in the absence of any specific pleadings we cannot adjudicate the issue, we direct that upon petitioner returning the Identity Card; the dress issued to him by the department and obtains the necessary 'No Dues' certificate from the accounts branch and fills up the necessary documents required to be filled up, the dues, if any, would be released.

17. No costs.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

JANUARY 19, 2011

rk