

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

% *Judgment Reserved on : March 05, 2013*
Judgment Pronounced on : April 01, 2013

+ **WP(C) 6811/2011**

BHARAT SANCHAR NIGAM LTD. Petitioner
Represented by: Mr.Jagdish Kumar, Advocate.

versus

SURJEET SINGH CHAWLA Respondent
Represented by: Mr.M.K.Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The respondent was appointed to the post of Junior Accounts Officer in Bharat Sanchar Nigam Limited (hereinafter referred to as the 'BSNL') on May 26, 2004 and was posted at Ferozpur in Punjab Telecom circle. The letter offering appointment, made it clear, as under:-

“5. The appointment carries with it the liability to serve in part of Punjab Telecom Circle, and also be liable for field service in any part of India in times of War/National Emergencies. The appointees who have not completed the age of 40 years if so required will be liable to serve in the Territorial Army subject to the provisions of Section 6-A of the Territorial Army Act, 1948 (58 of 1948) and the rules made there under.”

2. Immediately upon joining service respondent's father and wife started writing letters to the department that respondent be posted at Delhi

stating the reason that his aged mother was suffering from schizophrenia and needed constant care. Letters continued to pour in making said request till December 2007.

3. On June 02, 2008, the Divisional Engineer (Admn.), BSNL issued an order transferring the respondent from Ferozpur to the Data Centre at Chandigarh. But before the aforesaid posting order could be communicated to him, the respondent submitted a resignation on June 05, 2008 from BSNL with immediate effect, citing unavoidable family circumstances.

4. On July 03, 2008, the Divisional Engineer (Admn.), Telecom Circle, Ferozpur, BSNL accepted the resignation of the respondent. On the same date i.e. July 03, 2008 the petitioner was relieved from his duties. It may be noted here that till said date BSNL had not informed the respondent regarding the posting order dated June 05, 2008.

5. After he was relieved when his resignation was accepted, upon learning about the transfer/posting order dated June 05, 2008, the respondent submitted an application on July 29, 2008 praying that he be permitted to withdraw his resignation, in which he highlighted that had he known of he being transferred to Chandigarh, a place where he could bring his mother for medical treatment, he would not have resigned from service.

7. Receiving no response to his application dated July 29, 2008 the respondent sent reminders. It was only on October 18, 2008 that the Competent Authority of BSNL issued an office order rejecting the request to withdraw the resignation.

8. Aggrieved by the order dated October 18, 2008, the respondent filed an application under Section 19 of the Central Administrative Tribunals

Act, 1985 being OA No.1471/2009 before the Central Administrative Tribunal, Principal Bench, New Delhi; primarily contending therein that in view of the provisions of Rule 26(4) of the CCS (Pension) Rules, 1972 and the fact that the issuance of the order dated June 2, 2008 posting him to Chandigarh was not informed to him before he submitted his resignation, he had a right to withdraw the same and BSNL was obliged to accord permission in '*public interest*'.

9. In its reply filed, BSNL contended that the provisions of Rule 26(4) of the CCS (Pension) Rules, 1972 have no application in the present case since the respondent was not on a pensionable service and was not governed by the CCS (Pension) Rules 1972.

10. While the aforesaid application was pending adjudication before the Tribunal, the respondent submitted an application dated August 28, 2009 under Right to Information Act, 2005 with the Public Information Officer, BSNL seeking certain information relating to his resignation. One of the queries raised by the respondent was as follows:-

“2. Copy of the relevant ruling under which my case for withdrawal of resignation has been rejected.”

11. In response to the aforesaid application dated August 28, 2009, the Public Information Officer, replied on September 08, 2009, answering the afore-noted query raised by the respondent in the following terms:-

“Point 2 Copy of relevant rules, Rule 26 of CCS (Pension) Rule dealing with withdrawal of resignation is attached as per Annexure-“A”.”

12. Making a reference to the afore-note query and the answer, before the Tribunal the respondent tried to bring home the point that Rule 26 of the

CCS (Pension) Rules 1972 were applicable and the stand taken by BSNL was incorrect.

13. After noting the rival contentions of the parties, following 2 questions were formulated by the Tribunal for decision:-

“(a) Whether the BSNL had any rules/instructions of its own on the subject of resignation, its withdrawal and acceptance?”

“(b) Whether the provisions of the CCS (Pension) Rule 26, sub-rule (4) can be deemed to be attracted in this case?”

14. With respect to question (a), it has been held by the Tribunal that the BSNL had not shown any rules/instructions of its own dealing with the aspect of resignation of its employees. With respect to question (b), it has been held that the record of the present case shows that the competent authority has not examined the aspect of applicability of the provisions of Rule 26(4) of the CCS (Pension) Rules, 1972.

15. Vide order dated August 16, 2010, the Tribunal disposed of the application filed by the respondent in the following terms:-

“7. In view of the foregoing, in the interest of equity, this OA is disposed of by remitting the matter to respondent No.2 for a fresh consideration particularly taking into account the relevant rules/executive instructions being adopted by the BSNL on the subject and dispose it by a speaking and reasoned order. This is to be done within a period of three months from the date of passing of this order. No order as to costs.”

16. On December 01, 2010 the General Manager (Finance), BSNL passed an order in compliance with the directions contained in the order

dated August 16, 2010 passed by the Tribunal in OA No.1471/2009, the relevant portion whereof reads as under:-

“6. Now, therefore in compliance with the directions of the Hon’ble Central Administrative Tribunal, New Delhi contained in the order dated 16.08.2010 in the O.A. No.1471/2009, Shri Surjeet Singh Chawla, ex-Junior Accounts Officer, BSNL is hereby informed that as per the Law declared by the Hon’ble Supreme Court of India, he has had no legally enforceable right to withdraw his resignation on 29.07.2008 after it had already become effective on 03.07.2008. His request dated 29.07.2008 for withdraw of his resignation does not merit acceptance and his hereby rejected for the following reasons:-

A. Surjeet Singh Chawla, was appointed as Junior Accounts Officer, BSNL through a direct recruitment w.e.f. 26.5.2004. He executed a Bond of service whereby he inter alia agreed to serve BSNL for at least five years or else pay to BSNL amounts specified in the Bond. Before expiry of five years, he submitted an unconditional resignation dated 05-06-2008 with the request for its immediate acceptance. To cause acceptance of his resignation, he also deposited the amounts lawfully due from him on account of breach of terms of the Bond and thus nullified the Bond of service.

B. BSNL does not have its own rules/regulations/executive instructions concerning acceptance and withdrawal of resignation of its directly recruited employees. Whenever such employees offer to resign, the resignation is accepted keeping in view the exigencies of service subject to the terms of appointment, the terms of bond of service, whenever executed by the concerned employee and vigilance clearance.

C. The unconditional resignation dated 05-06-2008 of Shri Surjeet Singh Chawla was accordingly accepted by the competent authority and he was relieved from BSNL w.e.f. 03.07.2008. Consequently his services stood terminated and his resignation became effective on 03.07.2008.

D. *Shri Surjeet Singh Chawla requested for withdrawal of his resignation on 29.07.2008 i.e. after his resignation had already become effective on 03.07.2008.*

E. *Since BSNL does not have its own rules/regulations/executive instructions concerning acceptance/rejection of the request for withdrawal of a resignation by directly recruited employees of BSNL, the Law declared by the Hon'ble Supreme Court of India holds the field.*

F. *The Hon'ble Supreme Court of India in several cases including Balram Gupta Vs Union of India & Anr 1987 AIR 2354, 1987 SCC Suppl. 228, Union of India Vs Shri Gopal Chandra Misra and Others [1978] 3 S.C.R. 12, and Raj Kumar Vs Union of India 1969 AIR 180, 1968 (3) SCR 875 has held that, a resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resigner. And that in the absence of any law or rule governing the condition of the 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.*

In the light of the afore said Law declared by the Hon'ble Supreme Court of India Shri Surjeet Singh Chawla has had no legally enforceable right to withdraw his resignation on 29.07.2008 after his resignation had already become effective on 03.07.2008.

H. *No rule governing the conditions of service provided anything contrary to the aforesaid law. The provisions of the CCS (Pension) Rule 26, sub-rule (4) cannot be deemed to be attracted in the case of Shri Surjeet Singh Chawla ex-Junior Accounts Officer, BSNL for the following reasons:-*

(i) *Rule 2 concerning applicability of the CCS (Pension) Rules, 1972, provide that these rules shall apply to the Government servants appointed on or before 31st day of December, 2003 but shall not apply to persons entitled to the benefit of a Contributory Provident Fund.*

(ii) Shri Surjeet Singh Chawla, was not a Government Servant because he was appointed as Junior Accounts Officer, BSNL through direct recruitment and was thus, an employee of BSNL appointed w.e.f. 26.05.2004.

(iii) Shri Surjeet Singh Chawla was entitled to and had actually availed of the benefit of EPF.

*This issues with the approval of worthy CMD, BSNL
i.e. Respondent No.2” (Emphasis Supplied)*

17. Aggrieved by the order dated December 01, 2010, passed by the General Manager (Finance), BSNL, the respondent filed another application being OA No.67/2011 before the Tribunal essentially raising the same contentions as were raised by him in the earlier OA No.1471/2009 filed by him. In addition thereto, it was highlighted by the respondent that the General Manager (Finance) who has passed the order dated December 1, 2010 was prejudiced against him, which is evident from the fact that the said General Manager had on several occasions in the past recommended that the request for transfer made by the respondent should not be treated favourably.

18. On the other hand, BSNL justified its action of not granting permission to the respondent to withdraw his resignation on the grounds contained in the order dated December 01, 2010.

19. Vide judgment and order dated July 04, 2011 the Tribunal allowed the application filed by the respondent, quashed the orders dated October 18, 2008 and December 1, 2010 issued by BSNL and directed BSNL to reinstate the respondent.

20. In so concluding, it has been held by the Tribunal that:-

(i) the order dated December 01, 2010 was passed by the General Manager (Finance), BSNL whereas the same was required to be passed by the Chief Managing Director, BSNL in terms of the directions contained in the order dated August 16, 2010 passed by the Tribunal in OA No.1471/2009;

(ii) the General Manager (Finance), BSNL did not apply its mind while passing the order dated December 01, 2010 which is evident from the fact that the judgments referred in the said order have no application in the present case;

(iii) the General Manager (Finance), BSNL who had passed the order dated December 01, 2010 had already closed mind in the matter which is apparent from the fact that the said General Manager had on several occasions in the past recommended that the request for transfer made by the respondent should not be treated favorably;

(iv) the respondent was forced to resign from the service due to the action of BSNL of not taking humane and compassionate approach in the matter and transferring the respondent to Delhi or any other nearby place to enable him to tend to his sick mother and not disclosing the factum of his transfer to Chandigarh to the respondent; and

(v) BSNL ought to have permitted the respondent to withdraw his resignation in view of the fact that the respondent had resigned from service due to compelling domestic circumstances.

21. Before proceeding further, it would be relevant to note following portion of the order dated July 04, 2011 passed by the Tribunal:-

“12. Rule 26 of the CCS (Pension) Rules, 1972 may not be applicable in the case of the applicant for the technical

reason that he was appointed after 31.12.2003. However, the said Rule lays down the general principle to be followed in cases of withdrawal of resignation by a Government servant. Just because the said rule is not applicable to some employees, the principle behind it cannot be ignored. Sub-rule (4) of the said Rule states that the appointing authority may permit a person to withdraw his resignation in the public interest if the resignation was tendered for some compelling reasons and it reads as under:-

....

13. Thus the background of the applicant and the compelling circumstances under which he was forced to submit his letter of resignation dated 05.06.2008 on “unavoidable family circumstances” is quite evident from the aforesaid undisputed facts of this case. We are, therefore, of the considered view that the applicant has not submitted his resignation for his better prospects or for his own advantages. On the other hand, it was under pressure and for the reasons beyond his control. No responsible son can ignore his aged mother who is suffering from the acute mental order of Schizophrenia.”

22. Aggrieved by the judgment and order dated July 04, 2011 passed by the Tribunal, BSNL has filed the present petition under Article 226 of the Constitution of India.

23. It is evident from the above conspectus of facts that the controversy involved in the present case centers around Rule 26 of the CCS (Pension) Rules, 1972. Whereas the respondent contends that the provisions of Rule 26 of the CCS (Pension) Rules, 1972 apply in the present case, BSNL contends to the contrary.

24. In order to resolve the said controversy, it would be most apposite to note following provisions of the CCS (Pension) Rules, 1972:-

“2. Application:- *Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before 31st day of December, 2003 including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to –*

- (a) railway servants;*
- (b) persons in casual and daily rated employment;*
- (c) persons paid from contingencies;*
- (d) persons entitled to the benefit of a Contributory Provident Fund;*
- (e) members of the All India Services;*
- (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;*
- (g) persons employed on contract except when the contract provides otherwise; and*
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.*

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26. Forfeiture of service on resignation:-

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

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(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.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.”

25. Regarding the applicability of CCS (Pension) Rules, 1972 it was contended by BSNL that CCS (Pension) Rules, 1972 do not apply to the BSNL for the reason:-

(i) CCS (Pension) Rules, 1972 apply only to the government servants and the employees of the BSNL are not ‘government servants’; and

(ii) being an autonomous body BSNL is not bound by the Rules and Regulations framed by the government.

26. Rule 2 of CCS (Pension) Rules, 1972 records that CCS (Pension) Rules shall apply to only those government servants who are appointed on or before December 31, 2003. The respondent was appointed in BSNL on May 26, 2004. Thus, in view of Rule 2 of CCS (Pension) Rules, 1972 and the fact that the respondent was appointed in BSNL after December 31, 2003 it has to be held that CCS (Pension) Rules, 1972 including Rule 26 thereof have no application in the case of the respondent. Even assuming that the CCS (Pension) Rules, 1972 apply to BSNL the fact of the matter is that said Rules would have no application in the case of the respondent.

27. As early as in the year 1954, in the decision reported as AIR 1954 SC 584 Jai Ram v Union of India the Supreme Court made following observations on the issue of withdrawal of resignation by an employee:-

“It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but, he can be allowed to do so as long as he continues in service and not after it has terminated.” (Emphasis Supplied)

28. In the decision reported as AIR 1969 SC 180 Raj Kumar v Union of India the Supreme Court observed as under:-

“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.” (Emphasis Supplied)

29. While approving the dictum of law laid down in Jai Ram and Raj Kumar’s cases (supra), in the decision reported as AIR 1978 SC 694 Union of India v Gopal Chandra Misra, a Constitution Bench of the Supreme Court observed as under:-

“It will bear repetition that the general principle is that in the absence of legal, contractual or constitutional bar, a ‘prospective’ resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority.” (Emphasis Supplied)

30. From the above decisions, the law relating to withdrawal of resignation by an employee can be summarized thus : *In the absence of any law or rule governing the conditions of his service to the contrary, it is not open to an employee to withdraw his resignation after it has been accepted by the appropriate authority.*

31. In the instant case, it is not in dispute that the respondent resigned from service on June 5, 2008. It is further not in dispute that the resignation of the respondent was accepted on July 3, 2008 and the respondent sought to withdraw the resignation only on July 29, 2008 i.e. after 26 days of his request for resignation being accepted and he being relieved from service.

32. BSNL has no Rule/Regulation/Instruction relating to withdrawal of resignation by its employee. (It has already been held by us in the foregoing paras that the CCS (Pension) Rules, 1972 including Rule 26 thereof have no application in the present case). Such being the factual matrix, it has to be held that it was not open for the respondent to withdraw his resignation once it was accepted by the Competent Authority.

33. The Tribunal lost sight of the above legal position while passing the impugned judgment dated July 4, 2011.

34. A reading of the impugned order would bring out that the Tribunal was moved by compassion while passing the said judgment.

35. But, it is settled law that where law occupies the field, equity and compassion have no place. The Tribunal has been influenced by the fact that when he submitted his resignation the respondent was not aware of he being transferred to Chandigarh as per order dated June 05, 2008. The Tribunal has observed that BSNL should have taken a humane approach by transferring respondent to Delhi or a nearby place so that he could serve his sick mother.

36. The Tribunal overlooked the fact that the respondent knew about his compelling domestic circumstances when he accepted appointment in Firozpur circle. Immediately after joining he started sending letters through his wife and father praying for compassion in the matter of posting. In public service, and especially when a person joins duty in a known circle, it would play havoc if Courts start taking the view that notwithstanding the employee knowing his circumstance and yet seeking appointment in a

particular place has a right, based on compassion, to be posted in a place of his choice.

37. We remind ourselves and the Tribunal that we exercise jurisdiction under the shadow of '*Satyamev Jayate*' i.e. '*Truth shall prevail*'. It is only the Supreme Court which exercises jurisdiction under the shadow of '*Yato Dharmastato Jayah*' i.e. '*Truth alone I uphold*'. In other words, our jurisdiction as also that of the Tribunal relates to '*Niti*' and not '*Nyaya*'. We and the Tribunal are bound by the law. The Supreme Court alone is vested with the power to do complete justice between the parties by virtue of Article 142 of the Constitution of India.

38. The view taken by the Tribunal that in the absence of any Rules pertaining to withdrawal of resignation after it was accepted, recourse could be had to the principle embodied in Rule 26 of the CCS (Pension) Rules 1972 is patently erroneous. Further, the view taken by the Tribunal that the General Manager (Finance) could not have passed the order under challenge and that only the Chief Managing Director (BSNL) was competent to do so is contrary to law for the reason no Rule was cited before the Tribunal that said power was with the Chief Managing Director (BSNL) and none else. Similarly, the view taken by the Tribunal that the General Manager (Finance) had a closed mind on account of the fact that in the past he had been rejecting the requests made by the respondent for being transferred, and thus the order passed by him had to be quashed, is erroneous for the reason firstly the General Manager (Finance) was fully justified in not recommending respondent to be transferred, for the reason, as noted by us herein above, the respondent joined Firozpur Circle with open eyes and having got a job in hand, started requesting that due to his

mother being unwell he be posted at Delhi; and secondly for the reason the issue to be decided was not a fact based issue : the issue was purely legal, in that, did respondent have a right to withdraw the resignation submitted by him after it was accepted and he was relieved from service.

39. In view of above discussion we have no option but to allow the present petition and set aside the impugned judgment and order dated July 04, 2011 passed by the Tribunal and consequently dismiss OA No.1471/2009.

40. It is ordered accordingly.

41. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 01, 2013
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