



2024:DHC:1949



\$~61

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

% Judgment delivered on: 07.03.2024

+ **W.P.(C) 1962/2024****PRADEEP KUMAR SHARMA**

..... Petitioner

versus

UNION OF INDIA & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Chauhan, Advocate.

For the Respondents : Mr. Krishna Kumar Sharma, Senior Panel Counsel with Mr. Anil Devlal, Govt. Pleader for R-1/ UOI.
Mr. Nitin Dahiya and Mr. Hunny Parashar, Advocates for R-2 with Mr. Saransh Bajaj, Legal Officer and Mr. Amitabha Khare, Advisor/HR.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CM APPL. 8233/2024 (for exemption)**

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 1962/2024

3. This is a writ petition under Article 226 of the Constitution of



India, 1950, seeking *inter alia* the following reliefs:-

“(a) issue a writ of certiorari setting aside the office order bearing number RCIL-CO0HR (RESG)/13/2022(CN-27663) dated 27.12.2022 issued by the Respondent No.2 and subsequent order bearing number RCIL/2023/P&A/44/7 dated 19.05.2023 whereby and whereunder the aforesaid have rejected the request of the Petitioner seeking withdrawal of his resignation; and

(b) issue a writ of mandamus, thereby directing and commanding the Respondents concern to reconsider the case of Petitioner and reinstate him with all the consequential benefits of having continued in service;and/or such other appropriate writ, order and/ or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case; and/or”

4. It is the case of the petitioner that the petitioner was earlier working as Personal Assistant in Ministry of Railways and joined the RailTel Corporation of India Limited/ Respondent No.2 on 02.06.2003 on deputation basis. Subsequently, after submitting the technical resignation from the Ministry of Railways, the petitioner was absorbed on 18.01.2008 at the corporate office of the Respondent No.2 as Principal Private Secretary at Grade E-2 level.

5. The petitioner had submitted his resignation on 23.11.2022 owing to personal reasons and was undergoing treatment for depression. The petitioner had requested for the resignation becoming effective from 31.12.2022.

6. It is the case of the petitioner that *vide* the order dated 27.12.2022, the respondent had accepted the application seeking voluntary resignation dated 23.11.2022.

7. The petitioner had thereafter sent a letter dated 13.03.2023 requesting for withdrawal of the said resignation letter sent to the respondent No.2. On receiving no response, another letter was sent on



27.03.2023 as also 13.04.2023. Thereafter, certain correspondences were exchanged between the petitioner and the respondent no.2.

8. It is the case of the petitioner that since there was no proper response from the respondent No.2 and whatever response was received were ambiguous, vague and contradictory, the petitioner was constrained to file the present petition.

9. Learned counsel appearing for the petitioner submits that though the application for resignation was submitted on 23.11.2022, however, the same was to come into effect only on 31.12.2022. He submits that the petitioner had withdrawn the said resignation on 28.12.2022 before it became effective, and as such, would be entitled to continuation of services.

10. Learned counsel also submits that as a consequence, all the arrears of pay, increments etc., also should follow such setting aside of the acceptance of resignation *vide* the letter dated 27.12.2022.

11. Learned counsel draws attention of this Court to various letters placed on record including letters dated 13.03.2023 and 13.04.2023. By referring to letter dated 13.04.2023, learned counsel directs attention of this Court to the reference mentioned particularly, reference (ii), which refers to a purported email dated 28.12.2022.

12. According to learned counsel, the email dated 28.12.2022 was the one, whereby the petitioner had withdrawn his resignation. He submits that thereafter, despite the respondents getting these correspondences of the like nature, did not address the issue raised in the letter dated 13.04.2023, particularly, in respect of the email dated 28.12.2022, requesting for withdrawal of his resignation.



13. He submits that it is trite that if a resignation tendered, is withdrawn before its acceptance or even if accepted, but gets withdrawn before the date when it becomes effective, such resignation has to be necessarily considered as withdrawn and the employee be put back in services.

14. It is on that basis, learned counsel submits that the impugned order of 27.12.2022 be quashed and set aside and the petitioner be re-instated in services with all consequential benefits.

15. *Per contra*, learned counsel appearing for the respondent no.2 submits that the petitioner has now put up a new version before this Court, which is not in the pleadings on record.

16. He submits that the petitioner had never sent any email dated 28.12.2022 to the respondent no.2. Moreover, the petitioner had applied for the gratuity amount on 16.01.2023, which was remitted to him on 29.03.2023.

17. He submits that even otherwise, the email dated 28.12.2022 has not been placed on record by the petitioner.

18. That apart, he submits that once the respondent no.2 had accepted his resignation on 27.12.2022 being effective from 31.12.2022, there is no question of withdrawal of resignation post acceptance and post the said resignation becoming effective.

19. He submits that the present petition be dismissed with exemplary costs.

20. This Court has considered the arguments of learned counsel for the parties as also perused the entire record.

21. The law regarding as to how and when and in what



circumstances, the resignation tendered by an employee would become effective is no more *res integra* in view of the catena of judgments, which are as under:-

- (1) *M/s New Victoria Mills and Others vs. Shrikant Arya*, reported as (2021) 13 SCC 771.
- (2) *Air India Express Ltd. vs. Gurdarshan Kaur Sandhu*, reported as (2019) 17 SCC 129.
- (3) *Director General of Police & Anr. vs. M.Jeyanthi*, reported as (2021) 14 SCC 677.

22. While considering the aforesaid judgments, it is clear that the petitioner in the present case had to necessarily establish the fact that before the application for resignation dated 23.11.2022 had become effective on 31.12.2022, the petitioner had withdrawn the same.

23. It is apparent that the petitioner has not be placed on record the letter/ the purported email dated 28.12.2022, which the petitioner has tried to introduce in the letter dated 13.04.2023.

24. The explanation tendered by learned counsel for the petitioner in respect of non-filing of the said email dated 28.12.2022 was, that the moment the said email was sent by the petitioner, the respondent had severed the access of the official email of the petitioner. Due to inaccessibility, the petitioner could not take a printout of the email dated 28.12.2022. The said submission is rejected for the reason that the first letter, which emanates from the petitioner to the respondent No.2 post 31.12.2022 is a letter dated 13.03.2023, which is bereft of any reference to such email dated 28.12.2022. For the purpose of understanding the submission and the observations to be made by this Court, the letter



2024:DHC:1949



dated 13.03.2023 is extracted hereunder :-

"Dated: 13th March 2023,

*The Chairman & Managing Director,
RCIL/CO,
New Delhi- 110023.*

Sub: Withdrawal of resignation letter dated 23.11.2022

Ref: (i) RCIL's Order dated 27.12.2022.

(ii) Statutory Provision in Sub Rules (4) to (6) of Rule 26 of CCS(Pension) Rules, 1972 corresponding to Article 418(b) of the Civil Service Regulations as per OM No. 28034/25/87-Estt(A) dated 11.02.1988.

Respected Sir,

With due respect, this is to inform to your good offices that I had tendered my resignation from RCIL vide my request dated 23.11.2022 and the same got approved/effective from 31.12.2022 (AN).

With due regards, I have to submit that at the time of tendering my resignation, I was suffering from "depression" since mid October,22 and I was not in proper condition of mind to take decisions properly. As such, I had no other option but to resign from service.

In view of the deteriorating condition, I started getting treatment of -"depression" from the Psychiatry Department, VMC & Safdarjung Hospital, New Delhi as per the enclosed prescription slip dated 03.12.2022.

Sir, having gone through the treatment for more than last 03 months, my mental/physical condition has substantially improved and as result of which I am in a position to perform duties assigned efficiently and in a proper manner.

In view of the situation brought out above, it is requested to consider withdrawal of my resignation dated 23.11.2022 along with condonation of the interruption of service under Statutory Provisions in the Sub Rules, 1972 corresponding to Article 418(b) of Civil Service Regulations issued vide OM No.28034/25/87-Estt(A) dated 11.02.1988. I do hereby undertake that I do abide by all the Statutory Provisions of the above mentioned Sub Rules.

Thanking You Sir,

Yours faithfully,

(Pradeep Kumar Sharma)



2024:DHC:1949

*Ex DGM/HR/CO**Mob: 8383900440**Email : psrcl@gmail.com"*

25. It is crystal clear from the reading of the aforesaid letter and its contents that despite being the first letter sent to the respondent No.2 after a passage of almost three months, the said contents are conspicuous by the absence of any reference to the purported email dated 28.12.2022. All that can be gathered from the reading of the said letter is, that the petitioner was blaming his condition on depression and submitted that since he has become better, he was entitled or rather he was medically fit to resume duties, and as such, the resignation tendered be reconsidered and he be put back in services.

26. There is no reference to any email dated 28.12.2022 or even a reference to the fact that the accessibility to the official email was closed or denied by respondent No.2 as on 28.12.2022. The next letter dated 13.04.2023 appears to be making reference to the email dated 28.12.2022 for the first time. The letter dated 13.04.2023 clearly appears to be an afterthought and a design introduced for the first time by the petitioner to mislead the respondent No.2. Moreover, by this date the petitioner had also received the gratuity without any demur or protest. Thus, this argument is rejected.

27. The petitioner had also referred to the OM dated 10.06.2019, to submit that the procedure of accepting the resignations of employees are governed under such OM, and as such, the petitioner would get ninety days from the date of furnishing the resignation letter and refers particularly to Clause (c) of para 2, which is extracted hereunder :-

"2. The appointing authority may permit a person to withdraw his resignation in the public interest on the



following conditions, namely:

(c) that the period of absence from duty 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.”

28. To the mind of this Court, the said argument is fallacious. Once the Competent Authority had accepted the resignation and the same came into effect on the expiry of the period as accepted, the jural relation of employer and employee comes to an end and as such after the severance, the petitioner cannot fall back on the Rules or OM etc. On the above basis, learned counsel submitted that the resignation did not become effective from the date of acceptance, which is 27.12.2022 till ninety days have passed thereon.

29. This issue is no more *res integra* and the same argument was repelled by the Supreme Court in the case of **Director General of Police & Anr. vs. M.Jeyanthi**, reported as (2021) 14 SCC 677. The operative portion of the said judgment is extracted hereunder :-

“8. Clause (a) of Rule 35-A requires that before resigning, a member of the service must furnish not less than three months' notice in writing to the appointing authority. Under clause (b), the notice may be withdrawn before its acceptance. Withdrawal of the resignation is not permitted after acceptance by the appointing authority. Under clause (c), the appointing authority is required to issue orders on the notice of resignation before the date of expiry of the notice. If the resignation is being accepted, the date of acceptance is not to be later than the date of the expiry of the notice. If no order has been passed, the resignation is deemed to have been accepted on the expiry of the period of notice. The provisions of clauses (b) and (c) of Rule 35-A make it abundantly clear that:



(i) *A resignation can be withdrawn before its acceptance; and*

(ii) *Upon acceptance, the employee loses the entitlement to withdraw the resignation.*

Moreover, it is evident from clause (c) of Rule 35-A that the appointing authority, while accepting the resignation, is empowered to indicate a date from which it will take effect which will not be later than the date of expiry of the notice. In other words, the authority can legitimately accept the resignation from a date anterior to the expiry of the notice. Upon the acceptance of the resignation, the cessation of service takes place and it is not open to the employee to withdraw the resignation.

9. In the present case, as the facts which have been narrated indicate, the resignation dated 1 June 2017 was accepted on 12 June 2017. It was only a month thereafter on 13 July 2017 that the respondent purported to withdraw the resignation. The resignation having taken effect upon its acceptance, the withdrawal was of no consequence. We do not find merit in the submission that the acceptance of the resignation was invalid. The order which was passed clearly indicates the acceptance of the resignation. The order, however, provides that if the Vigilance and Anti Corruption Department indicated that any adverse remarks or if any adverse noting was made by the Special Branch CID, the resignation would be cancelled. The fact of the matter, however, is that the acceptance of the resignation was complete on 12 June 2017. Once this was the position, the withdrawal was of no consequence in law.

10. The High Court was not justified in coming to the conclusion that within a period of ninety day which is the period of notice required under the Rules, it was open to the employee to withdraw the resignation even after acceptance. This construction is clearly contrary to the provisions of Rule 35A."

30. From the facts, it is crystal clear that the petitioner had not sent



2024:DHC:1949



any email on 28.12.2022. That coupled with the fact that the petitioner had also applied for release of the gratuity on 16.01.2023, which was released to him on 29.03.2023 also propels this Court to come to the conclusion that the present petition is nothing but an abuse of process of Court.

31. The petitioner knew fully well that the resignation was tendered voluntarily which was validly accepted and had become effective on 31.12.2022. Even the letter dated 13.03.2023 showed no reference to the purported email dated 28.12.2022. This Court is not able to agree with any of the contentions raised by the petitioner. Though this Court wanted to impose exemplary cost, however, in the circumstances is refraining from doing so.

32. In that view of the matter, the present petition along with pending application is dismissed.

TUSHAR RAO GEDELA, J.

MARCH 7, 2024/nd