

Raj Kumar

Vs

Union of India

Civil Appeal No. 2429 of 1966

(J. C. Shah, V. Ramaswami – I, G. K. Mitter JJ)

18.04.1968

JUDGMENT

SHAH, J. -

The appellant belonged to the Indian Administrative Service and was in August 1964 posted as Collector & District Magistrate, Kota. On August 21, 1964, he addressed a letter to the Chief Minister, Rajasthan, setting out several grievances and finally stated - "In conclusion I would only request that the Government may do me the kindness of accepting my resignation from the service which I am submitting separately as I am convinced that it would be impossible to continue in such an atmosphere without being humiliated from time to time". He also addressed a letter dated August 30, 1964, to the Chief Secretary to the Government of Rajasthan submitting his resignation "from the Indian Administrative Service for early acceptance", and requested that it may be forwarded to the Government of India with the remarks of the State Government. The State Government recommended that the resignation be accepted. On October 31, 1964, the Government of India accepted the resignation of the appellant and requested the Chief Secretary to the Government of Rajasthan "to intimate the date on which the appellant was relieved of his duties so that a formal notification could be issued in that behalf."

After some time the appellant changed his mind and by letter dated November 27, 1964, the appellant requested the Chief Secretary to the Government of Rajasthan to recommend "acceptance of the withdrawal" of his resignation from the Indian Administrative Service. He also addressed a separate letter to the Secretary to the Government of India, Ministry of Home Affairs, intimating that he was withdrawing his resignation from the Indian Administrative Service. On March 29, 1965, an order accepting the resignation of the appellant from the Indian Administrative Service was issued and the appellant was directed to hand over charge to the Additional Collector, Kota. The appellant then moved a petition in the High Court of Punjab at Delhi for the issue of a writ of certiorari calling for the record of the case and quashing the order passed by the Government of India accepting the resignation of the appellant, and also quashing the order dated March 29, 1965 issued by the State of Rajasthan. The High Court rejected the petition holding that the resignation became effective on the date on which it was accepted by the Government of India, and a subsequent withdrawal of the resignation was ineffective, even if acceptance of the resignation was not intimated to the appellant.

In this appeal, with certificate granted by the High Court, counsel for the appellant contends that the appellant could, so long as acceptance of the resignation was not communicated to him, withdraw the resignation submitted by him. Counsel invited our attention to a circular memorandum issued on May 6, 1958, under the signature of the Deputy Secretary to the Government of India, Ministry of

Home Affairs, setting out the procedure to be followed in dealing with resignation from service. Clauses (c) & (d) of the circular stated :

(c) "The competent authority should decide the date with effect from which the resignation should become effective. In cases covered by (b)(i) above, the date would be that with effect from which alternative arrangements can be made for filling the post. Where an office is on leave, the competent authority should decide whether he will accept the resignation with immediate effect or with effect from the date following the termination of the leave. Where a period of notice is prescribed which a Government servant should give when he wishes to resign from service, the competent authority may decide to count the period of leave towards the notice period. In other cases also, it is open to the competent authority to decide whether the resignation should become effective immediately or with effect from some prospective date....."

(d) "A resignation becomes effective when it is accepted and the officer is relieved of his duties. Where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation either to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation has become effective, the officer is no longer in Government service and acceptance of the request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break."

Counsel says that under the instructions issued by the Government of India resignation of an officer from service becomes effective after it is accepted and the officer is relieved of his duties and not till then. But the circular letter has no statutory force. It is not a rule made under Art. 309 of the Constitution. It contains merely instructions set out by the Ministry of Home Affairs about the procedure to be followed in respect of resignation from service. Our attention has not been invited to any statutory rule or regulation relating to resignation by members of the Indian Administrative Service, especially as to the date on which the resignation becomes effective.

The letters written by the appellant on August 21, 1964, and August 30, 1964, did not indicate that the resignation was not to become effective until acceptance thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Art. 309 of the Constitution which enacts that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation.

Our attention was invited to a judgment of this Court in *State of Punjab v. Amar Singh Harika* [A.I.R. 1966 S.C.R. 1313] in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the Officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But when 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 poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the State of Rajasthan did not immediately implement the order and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance of in relieving him of his duties.

The alternative ground raised by counsel that acceptance of the resignation amounts to dismissal from employment and failure to comply with the requirement of Art. 311 of the Constitution vitiates the order accepting the resignation has no force. The order complained of did not purport to be one of dismissal : the Government of India accepted the resignation submitted by the appellant, they did not purport to terminate the appointment for any misconduct on the part of the appellant, or as a measure of penalty.

The appeal fails and is dismissed. There will be no order as to costs.

Appeal dismissed.##

</html