

(2017) 11 DEL CK 0137

In the Delhi High Court

Case No : Civil Writ Petition No. 3647 Of 2017

Bhavya Kiran Arya

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 28-11-2017

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)

Citation : (2017) 11 DEL CK 0137

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : Kiran Babu, Jitesh Vikram Srivastava, Manish Goyal

Final Decision : Dismissed

Judgement

1. The present petition assails the order dated 09.05.2016 passed by the Central Administrative Tribunal, Principal Bench, Delhi, dismissing the

Original Application filed by the petitioner, seeking directions to the respondents/ Department of Posts to refund a sum of Rs.25,993/- towards one

month's salary recovered from her at the time of tendering her resignation from the post of temporary Postal Assistant.

2. The relevant admitted facts of the case are that on 12.02.2014, the petitioner was selected to the post of temporary Postal Assistant as an outsider

candidate under the quota reserved for the physically handicapped/scheduled caste candidate at GPO, New Delhi. The petitioner was called for a pre-

induction in-house training from 14.02.2014 to 01.03.2014. After completion of the training, vide memo dated 01.03.2014, the petitioner was appointed

as a temporary Postal Assistant w.e.f. 03.03.2014. The letter of her appointment issued by the respondents stipulated several conditions, one of them

being that the petitioner's appointment was temporary in nature and could be

terminated at any time without assigning any reason therefor and

that she would be governed by the Central Government Service (Conduct) Rule, 1964, as amended from time to time. The petitioner was further

required to complete the probation period of two years successfully as per the departmental rules.

3. On 03.03.2014, the petitioner submitted a declaration to the respondents, which is reproduced hereinbelow:-

“I understand that the employment under Govt. is temporary and that my services may be terminated by one month’s notice either by

me to Govt. or by Govt. to me. I agree however that I shall not resign or quit my employment except with the previous consent in writing of

the Head of the Department or office in which I am at the time employed, and that in default without prejudice or any action that a Govt.

may choose to take against me, I shall forfeit to the Govt. such sum act exceeding my pay for one month as the Head of the Deptt. or Office

may fix.

I undertaken that for the minimum period of five years from the date of my appointment in the grade of sorter RMS/Postal Clerk and during

that period I shall not sever my connection with the Department unless I first obtain the consent of the competent authority in writing and if I

commit a breach of this condition I shall be liable to forfeit or refund all the stipend or pay drawn by me during the training to the Govt.”

4. In less two months from the date of her appointment, the petitioner submitted an application on 28.04.2014 tendering her resignation. At the time of

submitting her resignation letter, the petitioner also deposited a sum of Rs.25,993/- with the respondent No.2 towards one month’s notice pay. On

completion of all the requisite departmental formalities, the respondent No.2 accepted the petitioner’s resignation letter vide its memo dated

12.05.2014.

5. After the petitioner was relieved from service, she preferred an Original Application before the Tribunal, claiming three

days’ salary for the period between 14.02.2014 to 16.02.2014 and refund of Rs.25,993/- that had been deposited by her at the time of tendering

resignation as one month’s salary.

6. During the pendency of the aforesaid proceedings before the Tribunal, the

respondents paid a sum of Rs.2,557/- to the petitioner on 05.11.2014 towards her pay and allowances for the period of three days but opposed the remaining prayer of the petitioner seeking refund of one month's salary. By the impugned judgment, the learned Tribunal rejected the Original Application filed by the petitioner on the ground that at the time of her appointment, she had accepted the offer as contained in the appointment letter dated 01.03.2014, which required her to sign a declaration form and the said declaration clearly provided that in the event, the petitioner quits before the tenure of her appointment, her one month's salary was liable to be forfeited by the respondents. Therefore, the petitioner was held to be bound by the said declaration, having accepted the same at the time of her appointment. Aggrieved by the said judgment, the petitioner has filed the present petition.

7. Mr. Kiran Babu, learned counsel for the petitioner submits that the petitioner was forced to deposit one month's salary in lieu of one month's notice and the undertaking furnished by her for serving for a minimum period of five years, is applicable only to the trainee employees for the post of â??Sorter RMS/Postal Clerkâ? but not to a temporary Postal Assistant, on which post, the petitioner was appointed. He urges that the unconditional resignation of the petitioner was accepted by the Department under Rule 5 of the CCS (Temporary Service) Rules, 1965, but she had not submitted her resignation under the said Rule and therefore the said provision had been wrongly invoked in her case. To substantiate the said submission, learned counsel relies on O.M. No.4/1/65-Estt.(C) dated 25.05.1966, issued by the Ministry of Home Affairs, Govt. of India, which draws a distinction between a simple letter of resignation and a notice issued under Rule 5 of the CCS (Temporary Service) Rules, 1965. He states that in the present case, the petitioner had not submitted her resignation under Rule 5 and therefore, there was no requirement for her to give one month's notice and in lieu thereof, deposit one month's notice pay, as the said provision was not attracted in the present case.

8. Having heard learned counsel for the petitioner, we are not persuaded by his argument to the effect that the petitioner had tendered a simple letter of resignation without referring to Rule 5(1) of the CCS(Temporary Services) Rules, 1965 and therefore, the respondents could not have called upon

her to deposit one month's salary alongwith her letter of resignation. The terms and conditions of the declaration submitted by the petitioner at the time of her appointment, leave no manner of doubt that at that point in time, she had accepted that she will not resign or quit her employment except with the prior written consent of the Head of the Department and in the event of any default, she will forfeit one month's pay.

9. The facts as noticed above, reveal that the petitioner was appointed on 01.03.2014 and in less than two months reckoned therefrom, she had tendered her letter of resignation. On the date on which she tendered her resignation, being conscious of the stipulations contained in the declaration, the petitioner had on her own deposited one month's notice pay with the respondent No.2, without raising any objection at that point in time. It was only after the Department completed all the requisite formalities and accepted her resignation that the petitioner first served a legal notice dated 23.05.2014 on the respondents, demanding refund of one month's salary deposited by her and then approached the Tribunal, by filing the Original Application in the month of July, 2014.

10. We are of the opinion that the Tribunal was justified in rejecting the case of the petitioner by relying on the declaration submitted by her at the time of her appointment. The petitioner cannot be permitted to wriggle out of the said declaration/undertaking after her resignation was accepted by the respondents on a specious plea that such a declaration was not required to be submitted by a Postal Assistant. If that was the case, then the petitioner should have protested at the time of her appointment and refused to furnish the declaration. Having waived any such objection at the relevant time, the petitioner cannot be permitted to take such a plea after her resignation letter was accepted by the competent authority, in accordance with the conditions stipulated in the undertaking given by her, as referred to above.

11. In the aforesaid facts and circumstances, the present petition is found to be meritless and accordingly dismissed. However, there shall be no orders as to costs.