
(1996) 08 DEL CK 0060

In the Delhi High Court

Case No : Civil Writ Appeal No. 2480 of 1993

Prem Prakash

APPELLANT

Vs

Air. India Corporation

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

Air India Employees Service Regulations, 2000 — Regulation 48

Citation : (1996) 64 DLT 77 : (1996) 38 DRJ 532

Hon'ble Judges : M.S.A. Siddiqui, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Sohail Dutt and K.C. Kalra, for the Appellant;

Judgement

Devinder Gupta, J.

(1) Petitioner has in this writ petition filed under Article 226 of the Constitution prayed for quashing of communications annexure F dated 10.2.1993 and subsequent communications dated 26.2.1993 and 26.3.1993 (Annexure K). In nutshell the petitioner's grievance is against the action of the respondent in declining to act on the withdrawal of petitioner's resignation which according to the petitioner had been conveyed to the respondent before acceptance of the resignation. Petitioner's case is that resignation was tendered to an incompetent authority and it was not a valid resignation and in any case its acceptance, irrespective of its withdrawal on 10.2.1993, was by an incompetent authority and as such the same is non-est.

(2) Facts in brief are that the petitioner, a permanent and confirmed employee of Air India and posted as Traffic Assistant at Delhi, on 3.2.1993 submitted his resignation with immediate effect by sending a telegram annexure B addressed to the Manager- Northern India, Air India, Himalaya House, New Delhi. It was followed by a letter dated 8.2.1993 (annexure C), which affirmed the tendering of resignation from the service of the Corporation effective from the date of telegram. It was stated that the resignation was being tendered due to personal

reasons with a request to accept the same. It is the petitioner's case that the telegram was sent by him in a state of panic when he was in grave mental tension and it was under the same tense condition that letter of 8.2.1993 was sent by him. On the very next day, namely, 9.2.1993 the petitioner withdrew his resignation by sending telegram annexure D, which was followed by letter annexure E dated 11.2.1993. There has been no acceptance of the resignation tendered by the petitioner till the telegram annexure D and letter annexure E were sent and duly communicated to the respondents. As such the resignation stood withdrawn before it could be accepted. It is also stated that the resignation was not addressed to the competent authority. The Customer Relations Manager (Smt. Gian Claire) respondent No.2 had compelled the petitioner to tender resignation under threat of being transferred outside Delhi. Petitioner had tendered his resignation to the Manager - Northern India. He was not the competent authority under the Rules. Competent Authority, according to the statutory rules, is the Commercial Director stationed at Bombay. As such the resignation letter itself was a nullity. It is alleged that letters, annexure F, purporting to be dated 10.2.1993 and 12.2.1993 respectively were dispatched by the respondent to the petitioners only on 26.2.1993, signed by the second respondent and thus by pre-dating letters annexure F as 10.2.1992 and 12.2.1993 by respondent No.2 that the petitioner's resignation had been accepted before receipt of the withdrawal thereof is a malafide act on the part of the respondents. This purported acceptance of the resignation which was withdrawn by the petitioner through telegram on 9.2.1993 which was received by the respondents on 10.2.1993 is a nullity and bad in law. It is also stated that after the resignation was withdrawn by the petitioner by sending telegram annexure D on 9.2.1993 the petitioner had also personally delivered in the respondents' Delhi office letter annexure E on 11.2.1993. Thereafter on 12.2.1993 and 15.2.1993 the petitioner reported for duty but was advised to wait for formal orders. Finding no response the petitioner faxed copy of the letter annexure E dated 11.2.1993 to Bombay office on 15.2.1993 and also gave a representation annexure G dated 15.2.1993 and submitted further representations annexure H dated 18.2.1993, Annexure I dated 23.2.1993 and annexure J, dated 2.3.1993. In response to which through letter dated 25.3.1993 (annexure K), the petitioner was informed that his resignation had been accepted on 10.2.1993 before the receipt of the letter of withdrawal dated 11.2.1993.

(3) In the light of the above, the petitioner's contentions are that the entire action of the respondents is bad in law; the resignation was not tendered to the competent authority; it was not accepted by the competent authority; acceptance was pre-dated as 10.2.1993; it was not dispatched to the petitioner but only a copy thereof was dispatched to the petitioner along with covering letter dated 26.2.1993 (annexure F) before the resignation could be accepted by the Competent Authority or even before the alleged acceptance by the respondents, the petitioner had already withdrawn his resignation through

telegram dated 9.2.1993. Consequently the petitioner has prayed that on quashing of the letters the respondents be directed to allow the petitioner to resume his duty as Traffic Assistant.

(4) The respondents have filed their reply on the affidavit of Shri D.S. Kohli stating that the petitioner had submitted his resignation on 3.2.1993 through telegram, which was followed by letter dated 8.2.1993. Resignation was accepted on 10.2.1993, after the concerned authorities had approved the same. The concerned authorities had consequently confirmed the approval of acceptance of resignation vide telex dated 17.2.1993 and letter dated 18.2.1993, copies of which have been annexed with the reply as Annexure A. It is stated that the resignation was required to be submitted to the concerned authority to whom the petitioner would be answerable at his office of posting, which in the instant case is Manager, Northern India/Customer Relations Manager, Northern India. It is stated in the reply that the resignation was tendered, and the same was also accepted by the competent authority. When petitioner sent telegram on 3.2.1993 stating that he wished to resign for personal reasons and resignation be accepted with immediate effect. A copy was sent to Commercial Manager, Bombay on 4.2.1993. Subsequently the petitioner sent formal letter of resignation dated 8.2.1993. On receipt of confirmation from Commercial Manager (Admn.), subsequently confirmed through telex and letters dated 17.2.1993 and 18.2.1993 respectively.

(5) After this reply filed by the respondent respondent No.2 filed an additional affidavit sworn on 29.11.1995 stating that as Commercial Manager (Offg.) petitioner's resignation was accepted by her prior to its withdrawal. Telegram dated 9.2.1993 was received after letter of acceptance of resignation dated 10.2.1993 had been sent. Petitioner in rejoinder has controverted respondents' contention that resignation in fact was accepted on 10.2.1993. According to the petitioner it was pre-dated after the respondents received telegram dated 9.2.1993 and letter dated 11.2.1993.

(6) We have heard counsel for the parties and been taken through the record. During the course of hearing respondents had produced the office file containing the copies of letters. The relevant Service Regulations applicable in the instant case are known as Air India Employees Service Regulations. Regulation 49 deals with resignation and says that no employee shall resign from service except by giving such notice as he would have resigned under Regulation 48 if his services were to be terminated unless at the request of the employee the notice is waived or shorter notice is accepted in writing by the competent authority. Regulations 48 & 49 are quoted as under:

"48.Termination: The services of an employee may be terminated without assigning any reason, as under:- (a) of a permanent employee by giving him 30 days" notice in writing or pay in lieu of notice; (b) of an employee on probation by giving 7 days" notice in writing or pay in lieu of notice; (c) of a temporary employee by giving him 24 hours" notice in writing or pay in lieu of notice.

Explanation: For the purposes of this Regulation, the word "pay" shall include all emoluments which would be admissible if he were on privilege leave. 49. Resignation: (i) No employee shall resign from the service of the Corporation except by giving such notice as he would have received under Regulation 48 if his services were to be terminated, or compensation in lieu of such notice, unless, at the request of the employee, the notice is waived or shorter notice accepted in writing by the competent authority. Such compensation shall be equivalent to the amount of the pay as defined in the Explanation to Regulation 48, which the employee would have drawn during the period by which the notice falls short of the prescribed period, and shall be deemed to be a liability owed to the Corporation for the purpose of Regulation 22(2) of the Air-India Employee's Provident Fund Regulations, 1954. (ii) A resignation given under (i) above may be accepted with immediate effect or at any time before the expiry of the period of notice, in which case the employee shall be paid his salary in respect of the entire period of notice given by him. (iii) In case a shorter period of notice is accepted at the request of the employee, he shall be entitled to receive his pay and allowances only for the actual number of days worked. (iv) If an employee leaves the service of the Corporation without giving any notice or by giving inadequate notice, such resignation shall be liable to be construed as a misconduct and may entail any of the punishments prescribed under Regulation 43. (v) Not with standing anything contained in Clauses (i) to (iii) above, an employee shall not be entitled to tender his resignation and any resignation tendered by him shall not be effective or operative against the Corporation, if, at the time when such resignation is tendered disciplinary action is pending against him or is intended or proposed to be taken against him by the appropriate authority."

(7) Competent authority has also been defined under Regulation 3 (e) to mean in relation to exercise of any power, the Corporation, the Chairman, the Managing Director, the Head of Department or any other officer specified in that behalf In so far as the disciplinary and appellate authorities are concerned for the commercial departments, the Station Head is the authority empowered to impose any or all punishment under Regulation 43 with respect to any employee not above the grade of Traffic Assistant or its equivalent. There has been amendment in the Regulations published in Gazette of India on 25.7.1992 which is named Station Manager or its equivalent to be the authority in the Commercial Department empowered to impose any or all punishments on any officer in the grade of Assistant Station Supdt. or its equivalent. It is stated on behalf of the respondents that Customer Relations Manager, Northern India would be the competent authority for the purpose of acceptance of resignation as well.

(8) Proceeding on the assumption that Customer Relations Manager would be competent authority to accept resignation. The short question which would remain to be decided would be whether the petitioner's resignation was accepted by the respondents before the same was withdrawn by the petitioner. It is not disputed that petitioner's telegram dated 9.2.1993 withdrawing resignation

which he had tendered through telegram dated 3.2.1993 was received by the respondents on 10.2.1993. Respondents' version is that before telegram was received resignation was accepted on 10.2.1993. Petitioner's version is that neither the resignation was accepted on 10.2.1993 nor it was communicated to him. It was communicate only when letter dated 26.2.1993 annexure F was sent to him along with copies of two letters dated 10.2.1993 and 12.2.1993. In view of the specific stand which has been taken by the petitioner it was but necessary for the respondents to have produced on record some corroborative evidence of dispatch of letters dated 10.2.1993 and 12.2.1993 to the petitioner which the respondents have not done. Petitioner had specifically denied in the petition that letter dated 10.2.1993 and 12.2.1993 were ever dispatched to him. He has specifically alleged that the same were sent to him for the first time along with letter dated 26.2.1993 and on that basis it was stated that respondents had pre-dated these two letters, more especially after the receipt of the letter annexure E dated 11.2.1993. 9 Under Regulation 49 it would be necessary for an employee who intends to tender resignation to serve a notice, duration of which would be as per the provisions of Regulation 48. In the instant case the petitioner was a confirmed employee and in case his services were to be terminated it would be necessary to serve a 30 days' notice in writing. Consequently the petitioner could have tendered his resignation by giving one month's notice or paid compensation in lieu of such notice. This condition is subject to a proviso that at the request of the employee tendering resignation the notice could be waived or a shorter notice could be accepted in writing by the competent authority. Admittedly in the letter of 10.2.1993 there is no mention as regards the requirements of regulation 49 that whether there was a request by the petitioner for waiving of the notice or that whether the competent authority had accepted the shorter notice. Non-mentioning of these requirements of regulation 49 would be one of the circumstances leading to drawing of an inference that letter dated 10.2.1993 in fact had neither been dispatched to the petitioner till receipt of the telegram nor was any acceptance till 26.2.1993. This drawing of inference finds support from the two letters which have been appended by the respondents with their reply. First document is the telex message received from Bombay office, which reads:

"QUDELZRZAI Bomcdai EST/D-6/17 FEB. Claire, Re Resg Fvr Prem Prakash Ta St No 46791 Stp As Recommended We Cfm It Is In Order To Accept His Resg Eff 03 Feb One Month Pay In Lieu Of Notice May Be Deducted At The Time Of Final Settlement STP." The other document attached with the reply is also annexure A, namely, letter dated 18.2.1993 from the Commercial Department Bombay addressed to the Deputy Manager (Admn.) which reads: "From: Commercial Department Bombay. Date: Feb. 18, 1993 To: Dy. Manager-Admin., Ref.No.EST/D- New Delhi. Sub: Mr. Prem Prakash, Ta St. No.46791 - Resignation. Please refer to our telex No.EST/D-6 of February 17, 1993, confirming acceptance of Mr. P. Prakash's resignation effective February 3, 1993. 2. As recommended by you, we confirm that the resignation of Mr. Prem Prakash, St. No.46791 may be

accepted with immediate effect i.e. February 3,1993. 3, one month's salary in lieu of notice may be deducted at the time of final settlement. Sd-/ (Mrs. B. Rastogi) Asstt. Manager - Traffic Admin. cc : Personnel Manager (E), Santa Cruz. - Along with resignation letter dated Feb. 03, 1993 from Mr. Prem Prakash, Ta, St. No.46791 and a copy of vigilance clearance cc : Sr. Accounts Officer, Pay Accounts, Santa Cruz. cc: Sr. Medical Officer, Medical Clinic, New Delhi."

(10) From the original file which was produced for our persual we noticed that on 9.2.1993, on the strength of the petitioner's telegram dated 3.2.1993 recommendation was made to the Commercial Department, Bombay for accepting petitioner's resignation to be effective from 3.2.1993. In other words till 9.2.1993 there was nothing on the file to show that in the office of the Deputy Manager (Admn.), New Delhi or by the Customer Relations Manager resignation was accepted. They were awaiting the confirmation of acceptance of petitioner's resignation from Bombay. Telex message dated 17.2.1993 suggests that recommendation which was made by the Delhi office recommended acceptance of the resignation was confirmed and the same was stated to be in order and Delhi Office was asked to accept petitioner's resignation effective from 3.2.1993 further directing that one month's pay in lieu of notice may be deducted at the time of final settlement. This telex message was followed by letter dated 18.2.1983 clearly stating that petitioner's resignation may be accepted with immediate effect, i.e., 3.2.1993 and one month's salary in lieu of notice may be deducted at the time of final settlement. This acceptance would be in consonance with the provisions of Regulation 49 whereas dispatch letter dated 10.2.1993 states nothing about requirements of Regulation 49. The dispatch letter dated 10.2.1993 reads:

"WE refer to your telegram dated 3rd February, 1993 and letter dated 8th February, 1993 tendering your resignation from the services of the Corporation. 2. We wish to advise you that your resignation from the services of the Corporation has been accepted effective 3rd February, 1993 as indicated in your letter of resignation dated 8th February, 1993. 3. By means of a copy of this letter, we are advising our Personnel Manager-NI to initiate action regarding settlement of your dues."

(11) Even what is stated by respondent in the counter affidavit of D.S. Kohli would fortify the view which we have taken that there has been no acceptance of petitioner's resignation till 17/18.2.1993 when in para 5 it is stated:

"THE answering respondents accepted the resignation on 10th February, 1993 after the concerned authorities had approved the same and subsequently confirmed the approval vide telex dated 17.2.93 and letter dated 18.2.93 copies of which are annexed hereto as Annexure "A""

(12) What is stated in the counter affidavit is that petitioner's resignation was accepted after the concerned authorities approved the same. There was no approval received from the concerned authorities till 17/18.2.1993. No document

was available on file nor anything was shown to us that approval, if any, had been accorded for accepting petitioner's resignation prior to 17.2.1993. Had petitioner's resignation been accepted on 10.2.1993, in normal course, the same would have been dispatched to the petitioner the same day. Had this been the case nothing prevented the respondents from producing on record corroborative evidence about the dispatch of the letter dated 10.2.1993 in the absence of the same an adverse inference deserves to be drawn that had such record been produced the same would have shown that no such letter was ever dispatched on 10.2.1993.

(13) In view of the above, we have no hesitation in holding that there has been no acceptance of petitioner's resignation dated 3.2.1993 till the telegram dated 9.2.1993 was received by the respondents and acceptance of the resignation was subsequent to the receipt of the telegram. The resignation as such stood withdrawn validly by the petitioner. (otherwise also, assuming that acceptance was through letter dated 10.2.1993 the same was in consonance with Regulation 49 and the same will also make acceptance to be bad being violative of Regulation 49.

(14) Resultantly, petition deserves to be allowed by quashing the impugned order/communication. Ordered accordingly. It is held that the petitioner continues on the service of the respondents without any break in service and he will be duly assigned his job which he had been performing, namely, Traffic Assistant.