

BEFORE THE APPELLATE AUTHORITY/SPECIAL COMMISSIONER (Admn)
DEPARTMENT OF FOOD SUPPLIES & CONSUMER AFFAIRS
GOVERNMENT OF NCT OF DELHI
K Block, Room No. 108, 1st Floor, Vikas Bhawan I.P. Estate New Delhi-11002.

Dated: 29/3/2023

No.SPL.COMM./AA/FPS Appeal/F&S/2023

Appeal No. 04/2021
Review Appeal No. 13/2021
Review Appeal No. 25/2021

In the matter of:
M/s. Sunny Store,
FPS No. 9004, Circle-35 (Najafgarh) Delhi.

Shri Sunny Kadian

.....Appellant

Versus

The Assistant Commissioner (South-West)
Deptt. Of Food Supplies & Consumer Affairs Delhi

.....Respondent

Date of Hearing:- 14.10.2022

ORDER

The Order shall dispose of the Review Appeal dated 14.09.2021 filed by Shri Sunny Kadian, Prop. M/s. Sunny Store, FPS No. 9004, Circle -35 (Najafgarh) under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against the Acceptance of Resignation Order dated 16.12.2014 passed by Assistant Commissioner (South-West) and Cancellation Order No. PS/COMM/AA/FPS Appeal/F&S/2021/129-132 dated 17.06.2021 and Review Appeal Cancellation Order No.PS/Comm/AAFPS Appeal/F&S/2021/244-247 dated 13.08.2021 passed by the Commissioner /Appellate Authority respectively.

Shri Sunny Kadian, appellant alongwith Counsel Shri Yogesh Kumar, Advocate were present.

Shri Sunil Gaur, FSO (C-35) (Najafgarh) on behalf of Assistant Commissioner (South -West), Respondent was present.

The Case was called and heard at length.

The Counsel of Appellant submitted that the present appeal has been filed to withdraw resignation tendered by the Appellant out of his own free will stating poor health and adverse familial circumstances. The resignation was accepted by Assistant Commissioner (South West) vide order dated 16.12.2014 and all the cards attached with the FPS were linked to other nearby FPSs. He pleaded that the FPS holder is now fit (medical certificate on record) and his condition is stable to run the FPS as per the norms of department and wants to withdraw resignation tendered by him. It has been informed that on 11.11.2014, the daughter of the appellant died at Race Course Metro Station and the Police

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193/SSA/IT
05/04/23

Registered death as case of suicide at PS Qutub Minar (Metro), New Delhi vide DD No. 19 dated 11.11.2014 U/s 174 Crpc.

The Counsel stated that after unfortunate demise of his daughter on 11.11.2014, the appellant isolated himself from the society for a long time as the appellant went into depression after losing his daughter who was college student of merely 20 years of age. His health condition deteriorated further. Appellant submitted that the FPS was the only source of income for him.

The Counsel added that two FIR cases registered against the appellant as mentioned in the impugned order dated 16.12.2014 have already been quashed by the Hon'ble High Court of Delhi vide order dated 13.07.2015 in CrI. M.C. 1248/2015 and CrI. M.C.1263/2015 (Copy of the order dated 13.07.2015 of Hon'ble High Court was on record).

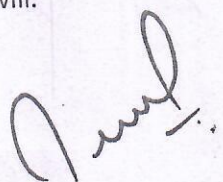
The Counsel contended that opportunity of being heard was not offered to Appellant before accepting the resignation. He quoted the 'Clause iv' of control order.

He stated that the petitioner has availed legal advice and has come to know that in case of adverse medical conditions, FPS holder can be granted medical leave by the Department but at the relevant time, no provision of medical leave was communicated to him by the Department and the petitioner was misguided by the concerned officials that there is no provision for medical leave for FPS holders, the petitioner would have applied for medical leave instead of tendering resignation. The fact about medical leave available to the FPS holder was not within the knowledge of FPS holder.

The Counsel quoted different orders passed by the Department for granting the relief on the same matter to bolster his claim. He further also requested for condonation of delay.

The FSO (C-35) appeared on behalf of Assistant Commissioner (South- West) stated that the resignation was tendered by the FPS holder on his own will and was duly accepted with the free consent of FPS holder as such he was not interested to run the FPS due to self illness (Dust Allergy). After taking facts into consideration the then Assistant Commissioner (SW)/licensing authority accepted resignation and all the cards attached with the said FPS were linked to other nearby FPSs. He stated that no complaint whatsoever from any beneficiary received against the FPSs. After hearing contentions of both the parties, examining their written submissions and perusing other relevant records placed before me, it is noted that the FPS holder, on his own free will filled an application for acceptance of resignation in the month of November, 2014 which was accepted by the Assistant Commissioner (South-West/Licensing Authority) and all the cards attached with the said FPS were linked to other nearby FPSs vide order dated 24.11.2014. He filed the instant Appeal on 10.11.2020 almost a gap of six years which is already time barred as per provisions contained in the Department's order dated 12.01.1981.

The main contention of Counsel is not at all acceptable that the opportunity of being heard was not offered to petitioner before accepting the resignation by the Assistant Commissioner as the resignation was tendered by the FPS holder on his own will and was accepted with the free consent of FPS holder as such he was not interested to run the FPS due to adverse health. The Department had not forced him in anyway to resign and moreover, as per control order 1981, three months notice in writing is required which was also relaxed by accepting resignation without giving notice by him due to illness and his will.



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The version of Counsel regarding ignorance about medical leave is untenable as it is expected from the FPS holder that he will act as per terms and conditions laid down in the Act and various orders issued by the Department from time to time. In this regard, the matter was already governed by guidelines issued by the Department vide Order No. 1105 dated 15.07.1999 and amended Order No. 932-944 dated 23.09.2019 on the matter.

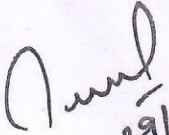
The citation of orders in the similar matters will not be appropriate at this juncture to question the wisdom and decision of the then Appellate Authority for awarding relief. It is always circumstantial and depends upon the merits and reasons of different cases. All cases cannot be viewed at same glance. Moreover, in this case the FPS holder on his own will tendered the resignation and the same was accepted with free consent of FPS holder.

Further, as stated by the FSO (C-35) all the cards attached with the said FPS were already linked to other nearby FPSs and no complaint from any beneficiary received about getting their entitled SFAs from linked FPSs. Moreover, with e-Pos and One Nation One Card implementation in Delhi, the beneficiaries can get the entitled ration from any FPS.

During the gap of six years the PDS system has undergone numerous changes including the introduction of technology in the form of e-Pos based transactions requiring the FPS holder to be I.T. friendly. In his application, he referred the reason of resignation self illness and as such is not in a condition to run the Fair Price Shop. There is therefore no certainty that such a situation will not arise again at a later date. Since no complaint from any beneficiary received about getting their entitled SFAs from linked FPSs therefore, considering the above facts, I do not find any merit in the review appeal hence, the Order dated 16.12.2014 of Assistant Commissioner (South-West) and Order dated 17.06.2021 are upheld and the review appeal is accordingly dismissed. Further, the Appellant is at liberty to file appeal to the next higher authority i.e. Financial Commissioner, Govt. of NCT of Delhi against the above mentioned orders if he desires so.

The appeal is disposed of in the aforesaid terms.

Parties be informed accordingly.


29/3/2023
(SUSHIL SINGH)

SPECIAL COMMISSIONER(F&S)/APPELLATE AUTHORITY

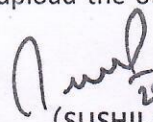
No.SPL.COMM./AA/FPS Appeal/F&S/2023

1402-405

Dated: 05/04/2023

Copy to :

1. The Assistant Commissioner (South - West), F&S Dept. GNCT of Delhi.
2. Shri Sunny Kadian, Prop. M/s. Sunny Store (FPS No. - 9004), C-35 through Assistant Commissioner (South -West).
3. Shri Sunny Kadian, Prop. M/s. Sunny Store (FPS No. - 9004), R/o House No. 104 A, B- Block, Prem Nagar, Najafgarh, New Delhi - 110043.
- ✓ 4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.


29/3/2023
(SUSHIL SINGH)

SPECIAL COMMISSIONER(F&S)/APPELLATE AUTHORITY

Pl. upload.

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