

OFFICE OF THE COMMISSIONER/APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
GOVT.OF NCT OF DELHI,
ROOM No.101,1ST FLOOR,K-BLOCK,VIKAS BHAWAN,I.P.ESTATE,
NEW DELHI-110002.

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

Dated: 29/3/2023

Appeal No.18/2021
Review Appeal No. 34/2021

M/s. Rajinder Kumar & Vinod Kumar,
FPS No.3795,C-10 (Sultanpur Majra),
Delhi.

Shri Vinod Kumar, (Prop.).

Appellant

Versus

The Assistant Commissioner (North-West)
Deptt. of Food Supplies Consumer Affairs,
Delhi.

Respondent

Date of Hearing:- 20.10.2022

ORDER

The instant Appeal has been filed by Sh. Vinod Kumar, Prop. M/s. Rajinder Kumar & Vinod Kumar, FPS No. 3795, C-10 (Sultanpur Majra) under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against the Acceptance of Resignation Order No F.6/AC/NW/F&S/2015/464-467 dated 03.08.2015 passed by Assistant Commissioner (North-West) and to review the order No. PS/COMM./AA/FPS Appeal/F&S/2021/343-346 dt 22.09.2021 passed by the Commissioner/Appellate Authority respectively.

Shri Vinod Kumar, Appellant/Proprietor was present.

Smt Sushila, Assistant Commissioner (North-West)/Respondent was present.

The Case was called and both the parties were heard at length.

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Brief facts of the case are as under:-

The authorization of the FPS No.3795, M/s **Rajinder Kumar & Vinod Kumar** was valid upto 11.04.2015 and the Licensee did not submit the file for renewal of license. Accordingly, a show cause notice dated 24.07.2015 was issued by the licensing authority to the licensee to appear on 03.08.2015. Shri Vinod Kumar, Proprietor appeared on the day and filed a letter stating therein that he was not interested in running the FPS due to ill health and requested for acceptance of resignation and also surrendered original license. The licensing authority i.e. Assistant Commissioner (North-West) after taking all the facts into consideration accepted the resignation of FPS no 3795. The proprietor of FPS filed an appeal on 05.08.2021 against the acceptance to resignation order dt 03.08.2015. The appeal was considered and heard by the then appellate authority and after taking into consideration all the facts vide order dt 22.09.2021 dismissed the appeal and upheld the order of acceptance of resignation of FPS by licensing authority. The present review appeal has been filed to review the order dt 22.09.2021 passed by the then Commissioner/Appellate Authority.

The Appellant submitted that the present appeal has been filed to withdraw resignation tendered by him on 03.08.2015 out of his own free will stating poor health. The resignation was accepted by Assistant Commissioner (North-West) vide order dated 03.08.2015. He contended that opportunity of being heard was not offered to him before accepting the resignation. He further added that no provision of medical leave was communicated to him by the Department, if informed, he would have applied for medical leave instead of tendering resignation. He also stated that the mentioned FPS was the only source of income for him.

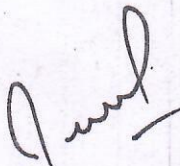
He further stated that no vacancy of FPS has been notified in the above area by the Department and the past of FPS holder is very clear and no case regarding discrepancies of any nature was pending against him and no consumer has filed any complaint against the FPS regarding any irregularity.

The appellant 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.

He pleaded that he is now fit (Medical Certificate was submitted to this cause) to run the FPS as per the norms of department and wants to withdraw resignation tendered by him.

The Assistant Commissioner (North-West), Respondent submitted that the authorization of the FPS No.3795 was valid upto 11.04.2015 and the Licensee failed to submit the file for renewal of license. A show cause notice dated 24.07.2015 was issued to the Licensee to appear on 03.08.2015 and to submit file for renewal of license. Shri Vinod Kumar, Prop. appeared on the day and filed a letter stating therein that he was not interested in running the FPS due to ill health and requested for acceptance of resignation and also surrendered original license. Therefore his resignation was accepted by the then licensing authority with immediate effect i.e. w.e.f. 03.08.2015.

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The Respondent contended that 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 self illness and requested for acceptance of resignation. After taking facts into consideration the then Assistant Commissioner (North-West)/licensing authority accepted resignation as per norms. He submitted that the cards attached to his shop were already linked to nearby shops. The card position is smooth and there is no requirement of any new FPS in the area.

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 on 03rd August, 2015 due to self illness which was accepted by the Assistant Commissioner (North-West)/licensing authority on 03.08.2015. He filed the Appeal on 05.08.2021 i.e. after a gap of five and half years approx., which was already time barred as per provisions contained in the Department's order dated 12.01.1981.


The 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.

The version of appellant regarding ignorance about medical leave is untenable as it is expected from the FPS holder that he would act as per terms and conditions laid down in the Act and various orders issued by the Department from time to time.

The cards attached to his shop were well adjusted in nearby shops. The cards attached with FPSs in the area are well within the limits and there is no requirement of any new FPS in the area. 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 seven 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 IT friendly.

The citation of orders in the similar matters would 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. 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.

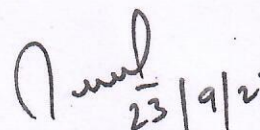
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Therefore, considering the above facts, I do not find any merit in the review appeal hence, the Order dated 03.08.2015 of Assistant Commissioner (North-West) and Order dated 22.09.2021 of the then Appellate Authority are upheld and the review appeal 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.


23/9/23
(SUSHIL SINGH)

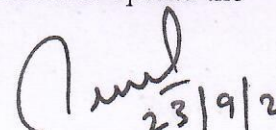
SPECIAL COMMISSIONER(F&S)/APPELLATE AUTHORITY

No.SPL.COMM./AA/FPS Appeal/F&S/2023 / 398-401

Dated: 05/04/2023

Copy to:-

1. The Assistant Commissioner (North-West), F&S Deptt. GNCT of Delhi
2. Sh. Vinod Kumar, Prop. M/s. Rajinder Kumar & Vinod Kumar (FPS No.-3795), C-10 through Assistant Commissioner (North-West).
3. Sh. Vinod Kumar, Prop. M/s. Rajinder Kumar & Vinod Kumar (FPS No. - 3795), C-10 R/o A-3/205, Sultan Puri, Delhi-110066:
- ✓ 4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.


23/9/23
(SUSHIL SINGH)

SPECIAL COMMISSIONER(F&S)/APPELLATE AUTHORITY