

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th April, 2011

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W.P.(C) 17284/2006

% **MAJOR (RETD.) RAJ MOHAN** **Petitioner**

Through: Mr. Manjit Singh Ahluwalia, Adv.

Versus

**OIL & NATURAL GAS CORPORATION
LTD. & ANR.**

..... **Respondents**

Through: Mr. R.K. Sawhney & Mr. S. Sirish
Kumar, Advocate for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns the order dated 20th July, 2006 of the respondent No.1 ONGC and seeks a direction for reinstatement of the petitioner to the post of General Manager (Security) in the respondent No.1 ONGC with all consequential reliefs and benefits. Relief of restraining the

respondents from dispossessing the petitioner from official accommodation and to pay all medical expenses of the petitioner is also claimed.

2. Notice of the petition was issued and the respondent No.1 ONGC restrained from evicting the petitioner from the official accommodation allotted to him. Pleadings were completed. Vide order dated 1st August, 2008, the petitioner was permitted to urge certain other grounds as sought. On the same day, it was also informed that the petitioner had since vacated his official accommodation. Rule was issued on 19th August, 2009. On the same day, it was also recorded that the petitioner had superannuated during the pendency of this writ petition. The counsels have been heard.

4. The petitioner was a Commissioned Officer of the Indian Army and sought premature release in the year 1979 and joined, earlier the M/s Cement Corporation of India as Deputy Manager and in the year 1982 was selected to the post of Joint Director in the respondent No.1 ONGC; he was thereafter promoted as Additional Director, Deputy General Manager and finally as General Manager (Security).

5. The decision for initiating departmental action against the petitioner was taken on 26th November, 2002. The petitioner on 4th August, 2003 applied under the Voluntary Retirement Scheme (VRS) of the respondent No.1 ONGC. However, the said request of the petitioner was turned down on 5th January, 2004. The petitioner on 16th January, 2004 applied for reconsideration of his request for voluntary retirement. On 4th February, 2004, the CBI registered a case against the petitioner and the same was under investigation. The petitioner on 7th February, 2004 submitted an application for resignation from the respondent No.1 ONGC. The petitioner was informed on 25th March, 2004 that his request for reconsideration of his voluntary retirement had not been acceded to. The petitioner on 29th March, 2004 yet again applied for voluntary retirement. The petitioner on 26th May, 2004 was placed under suspension pending disciplinary proceedings against him. The request dated 29th March, 2004 of the petitioner for voluntary retirement was declined on 28th June, 2004. The petitioner on 16th August, 2004 applied for retirement from the service of the respondent No.1 ONGC and on 2nd November, 2004 was served with the Memorandum of Charges against him and asked to furnish his

reply. The petitioner on 10th November, 2004 yet again reiterated his request for retirement and which was declined. Another Memorandum of Charges was served on the petitioner on 27th January, 2005.

6. On 1st September, 2005, the petitioner wrote to the respondent No.1 ONGC as under:

“TO
CHAIRMAN & MANAGING DIRECTOR
OIL AND NATURAL GAS CORPORATION LTD.
OFFICE OF CHAIRMAN & MANAGING DIRECTOR
6TH FLOOR, JEEVAN BHARTI TOWER-II
124 INDIRA CHOWK, NEW DELHI -110001

BY HAND / RECORDED
DELIVERY

No.RM/ONG/REG/05 DT.01.09.05

RESIGNATION

DEAR SIR,

IN TERMS OF MY LETTER OF APPOINTMENT & RULE 24 OF ONGC SERVICE RULES, I HEREBY RESIGN FROM THE SERVICE OF THE COMPANY, WITH IMMEDIATE EFFECT (01/09/05) & GIVE NOTICE OF THE SAME IT IS REQUESTED THAT THE NOTICE PERIOD, KINDLY BE WAIVED AND BE RELIEVED WITH IMMEDIATE EFFECT.

THANKING
Sd/-
(R. MOHAN)
GEN. MANAGER (HR-S)
ID NO.51084”

7. On 23rd September, 2005, the competent authority of the respondent No.1 ONGC imposed the penalty of withholding of promotion for a period of two years on the petitioner with reference to the Memorandum of Charges dated 27th January, 2005.

8. The petitioner claims to have received a letter dated 2nd January, 2006 from the respondent No.1 ONGC and which is reproduced herein below :

“Oil and Natural Gas Corporation Ltd.

Office of Chairman & Managing Director
6th Floor, Jeevan Bharti Tower II
124 Indira Chowk, New Delhi -110001

No. DELH/ESTT/61064/2005

Dated: 02.01.2006

To
Maj. R. Moan,
49, Asiad Games Village
New Delhi -110049

Subject: Your resignation of ONGC

This has reference to letter No.RM/ONG/REG/05 dated 22.09.05 and subsequent communication No.RM/REG/03-12 dated 02.12.05 on the above mentioned subject.

As per information available with this office you are involved in two disciplinary cases and have also been charged sheeted for major penalty in a vigilance case.

In accordance with ONGC Service Rules 1995-Rules 24(4) in the case of an employee, whose conduct is under inquiry or against whom disciplinary case is pending or a decision has been taken by the competent authority to issue a charge sheet etc. or who is under suspension, the resignation shall not ordinarily be accepted unless the appointing authority considers that having regard to the merits of disciplinary case pending or contemplated against him, it would be in the interest of the company to accept his resignation.

Accordingly, the case file is under submission to competent authority for consideration.

The decision, as and when taken, will be communicated to you in due course of time.

(Vijay Prakash)
CM (P&A)-1/c HR-ER”

9. The respondent No.1 ONGC in the counter affidavit, with respect to the aforesaid letter has stated that the copy of the same is not available on its records and has thus questioned its authenticity and called upon the petitioner to produce the original thereof.

10. The petitioner on 30th May, 2006 wrote to the respondent No.1 ONGC as under:

“TO
CHAIRMAN & MANAGING DIRECTOR
OIL AND NATURAL GAS CORPORATION LTD.
OFFICE OF CHAIRMAN & MANAGING DIRECTOR
6TH FLOOR, JEEVAN BHARTI TOWER-II
124 INDIRA CHOWK, NEW DELHI -110001

BY HAND

No.RM/ONG/REG/06 DT.30 MAY 06

SIR,

MAY I SUBMIT THE FOLLOWING FOR YOUR KIND CONSIDERATION.

(A) WAS PLACED UNDER SUSPENSION ON 26TH MAY, 04 & DISCIPLINARY PROCEEDINGS ORDERED, A CBI ENQUIRY WAS ALSO INSTITUTED.

(B) THE DISCIPLINARY PROCEEDINGS WERE COMPLETED IN THE YEAR 05 AND PUNISHMENT AWARDED.

(C) THE CBI ALSO ENQUIRED AND FILED CLOSURE REPORT WITH THE APPROPRIATE JUDICIAL AUTHORITY IN SEPT. 05 AND INFORMED THE ONGC ACCORDINGLY.

(D) A SECOND CHARGE SHEET WAS ISSUED AND REPLIED BY ME ON 01 SEPT 05 NO FURTHER ACTION / INTIMATION FROM ONGC TO ME HAS BEEN RECEIVED BY ME EVER SINCE (NINE MONTHS) INSPITE OF MY NUMEROUS REMINDERS.

IT IS A MATTER OF REGRET THAT INSPITE OF ABOVE I HAVE NOT BEEN REINSTATED & HARASSMENT IS CONTINUING.

I, THEREFORE REQUEST THAT I BE REINSTATED FORTHWITH & ALLOWED TO JOIN DUTIES.

Sd/-

30.5.06

(R.MOHAN)

GEN. MANAGER ID NO.51084"

11. The aforesaid letter was followed by a legal notice dated 13th June, 2006 of the advocate for the petitioner to the respondent No.1 ONGC also demanding revocation of the suspension order. The Disciplinary Authority of the respondent No.1 ONGC after considering the findings of the Inquiry Officer on the Memorandum of Charges dated 2nd November, 2004 (supra) came to the conclusion that the petitioner had failed to comply with the laid down instructions of the respondent No.1 ONGC but taking a lenient view imposed upon the petitioner only the penalty of censure and withdrew the order of suspension with immediate effect and directed the period of suspension to be treated as on duty for all intents and purposes. The Disciplinary Authority also considered the petitioner's application dated 1st September, 2005 (supra) for resignation and decided to accept the same with immediate effect and communicated the same to the petitioner vide letter dated 20th July, 2006 impugned in this petition.

12. Though the original of letter dated 2nd January, 2006 (supra) has not been produced by the petitioner but the counsels have made submissions without raising any controversy as to the authenticity thereof.

13. The counsel for the petitioner has argued that the letter dated 1st September, 2005 of the petitioner of resignation stood rejected vide letter dated 2nd January, 2006 of the respondent No.1 ONGC and alternatively that the same stood withdrawn vide letter dated 30th May, 2006 (supra) of the petitioner and thus the question of the respondent No.1 ONGC, on 20th July, 2006 accepting the resignation of the petitioner did not arise. Per contra, the counsel for the respondent No.1 ONGC has urged that neither was the request for resignation rejected in the letter dated 2nd January, 2006 nor was the letter of resignation withdrawn on 30th May, 2006 and thus no error can be found in the letter / order dated 20th July, 2006 accepting the resignation.

14. It was put to the counsel for the petitioner during the hearing on 27th April, 2011 as to how the letter dated 2nd January, 2006 in the face of its language could be treated as of rejection of the request for resignation and without any whisper in the letter dated 30th May, 2006 qua resignation, how could the same be treated as withdrawal of the resignation. The

counsel for the petitioner had then sought time to cite judgments and the matter was posted for today.

15. The counsel for the petitioner has today referred to the following judgments and the discussion with respect to which is recorded herein below:

(i) ***Dr. Prabha Atri Vs. State of U.P.*** (2003) 1 SCC 701.

The employee in this case being a Doctor, on being served with a charge sheet, while replying thereto and submitting his explanation, had tendered the resignation with immediate effect. The only question for consideration was whether the same amounted to a letter of resignation or expression of intent to resign. The Supreme Court held that since the Service Rules provided for three months notice of resignation, the letter of resignation with immediate effect issued in exasperation in the facts of that case could not be used by the employer Hospital to get rid of the employee.

I am unable to find application of the law laid down in the said case to the facts of the present case. It has not even been argued by the counsel for the petitioner that the letter of resignation was in exasperation. The sole case urged as aforesaid was of the resignation having been rejected on 2nd January, 2006 and / or of having been withdrawn on 30th May, 2006. Moreover, when the respondent No.1 ONGC in its counter affidavit stated that the petitioner had applied for voluntary retirement when faced with proceedings against him, the petitioner in rejoinder denied that he had knowledge of the disciplinary action proposed against him when he applied for voluntary retirement. The petitioner in the present case, for two years prior to the letter dated 1st September, 2005 had been applying for severing his employment with the respondent No.1 ONGC and it thus cannot be said that the letter of resignation was in a huff or an act of exasperation.

(ii) ***Anu Saxena Vs. Jesus and Mary College*** 2006 (92) DRJ 331.

In this case though the letter of resignation was accepted prior to the withdrawal thereof but the acceptance was not found to be by the appropriate authority empowered to accept the resignation and

hence deemed to be inoperative. Accordingly, it was held that the resignation having been withdrawn prior to acceptance, the employee (in that case, a Lecturer) continued in service. There was no dispute as to withdrawal.

However, the present case is concerned with the interpretation of the letters dated 2nd January, 2006 and 30th May, 2006 (supra) i.e. whether they constitute rejection of the letter of resignation and withdrawal of the letter of resignation respectively. This judgment is also thus not found applicable to the facts of the present case.

(iii) *Secretary, Home Department, Govt. of Maharashtra Mantralaya, Mumbai Vs. Sanjay Pandey, Ex-IPS* 131 (2006) DLT 202 (DB).

This judgment is also on the proposition that when a future date is specified in a resignation letter, such resignation could be withdrawn by the concerned employee at any time before the same was accepted and even if such resignation letter is accepted and effective date of resignation is subsequent thereto, the

employee is entitled to withdraw the resignation even after acceptance but before the effective date.

The said proposition does not arise in the facts of the present case.

(iv) ***A.K. Arora Vs. National Building Constructions Corporation Ltd.*** 2009 (109) DRJ 129.

All that this judgment lays down is that it is within the scope of sound administrative decision making, to prevent a delinquent employee from conveniently stymieing the process and avoiding punishment by using the device of resignation.

However, a reading of the letter dated 2nd January, 2006 in the present case does not show that the respondent No.1 rejected the resignation of the petitioner for the reason of the disciplinary proceedings pending against him. On the contrary, the resignation letter was expressly kept pending.

(v) ***Mahesh Chander Tyagi Vs. Director of Education*** 1996 (I) AD (Delhi) 65 laying down that resignation with a rider will

come into force only when the conditions stipulated therein are complied.

The resignation in the present case is unconditional and thus the said judgment is not attracted.

(vi) ***Mala Tandon Thukral Vs. Director of Education*** 167 (2010) DLT 46.

In this case also the letter of resignation was unequivocally withdrawn on the very next day and before approval therefor in accordance with law had been obtained.

Again the same is not found applicable in this case.

(vii) ***Delhi Police Public School Vs. Director of Education*** 129 (2006) DLT 272 (DB).

This was a case where the letter was held to be not a letter of resignation but intent to resign in future.

Neither any such case has been made out in the present case nor does the language of the letter dated 1st September, 2005 permit the same to be treated as an intent to resign in future.

(viii) *Anil Chuttani Vs. Oil & Natural Gas Corporation* 2010
(117) DRJ 433.

This was a case of deemed resignation, having no relevance to the present controversy.

16. Though the counsels have argued on the premise that the letter dated 2nd January, 2006 (supra) of the respondent No.1 ONGC is in response to the resignation letter dated 1st September, 2005 but the same has been issued in reference to the communications dated 22nd September, 2005 and 2nd December, 2005 of the petitioner to the respondent No.1 ONGC. The petitioner has chosen not to file the copies of the letters dated 22nd September, 2005 and 2nd December, 2005; however, from a reading of the letter dated 2nd January, 2006, the said two letters appear to be also concerning resignation.

17. In my opinion the language of the letter dated 2nd January, 2006 admits no two opinions. It cannot be read as a letter of rejection of the resignation sought by the petitioner. Rather the decision on the resignation was kept expressly open.

18. As far as the letter dated 30th May, 2006 is concerned, the same admittedly neither refers to the letters of resignation nor to resignation. The argument urged on behalf of the petitioner is that once the petitioner had sought revocation of the suspension and reinstatement, it should be deemed to be withdrawal of the resignation also.

19. I am unable to agree; resignation and suspension are two different matters. The petitioner till his letter of resignation was accepted, continued to be an employee of the respondent No.1 ONGC and merely because he sought revocation of suspension, it cannot be deemed to be a withdrawal of resignation as well. Significantly, the petitioner in the letter dated 1st September, 2005 of resignation, though even then under suspension, did not refer thereto at all and was independently exercising the right of resignation under the Service Rules of ONGC. Not only so, the legal

notice dated 13th June, 2006 following the letter dated 30th May, 2006 also did not state that even the resignation earlier submitted and pending consideration was being withdrawn.

20. There is another aspect of the matter. The order dated 20th July, 2006 is a composite order not only of acceptance of resignation but also of inspite of holding the petitioner guilty of failure to comply with the laid down instructions of the respondent No.1 ONGC, taking a lenient view of the matter and imposing the punishment only of censure on the petitioner. The Disciplinary Authority of the respondent No.1 ONGC is found to have taken a holistic view of the matter and when such holistic view is taken, one part thereof cannot be interfered with in as much as the same is likely to have bearing on the other part also. It is well nigh possible that the Chairman-cum-Managing Director of the respondent No.1 ONGC being the Disciplinary Authority, inspite of finding the petitioner guilty of the charges, took a lenient view for the reason of the petitioner having submitted his resignation and while accepting the same. Had the resignation of the petitioner been not pending at that time, the possibility

cannot be ruled out of the Chairman-cum-Managing Director of the respondent No.1 ONGC not taking a lenient view and / or of imposing a more severe punishment on the petitioner.

21. There is nothing at all to show that the Chairman-cum-Managing Director of the respondent No.1 ONGC erred in presuming the letter of resignation to be still pending for consideration. The petitioner has been unable to place any material before this Court to show that he had intimated to the respondent No.1 ONGC that he had withdrawn his resignation.

I, therefore, do not find any merit in the petition; the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

APRIL 29, 2011

‘gsr’

(corrected & released on 12th May, 2011)