

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 31st October, 2011
Judgment Delivered On: 8th November, 2011

+ LPA 618/2011

MAJOR (RETD.) RAJINDER MOHAN Appellant
Through: Mr.M.S.Ahluwalia, Advocate

versus

OIL & NATURAL GAS CORPORATION LTD. & ANR. Respondents

Through: Mr.V.N.Koura, Advocate with
Ms.Paramjeet Benipal, Advocate for R-1
Mr.Neeraj Chaudhari, Advocate and
Mr.Akshay Chandra, Advocate for UOI/R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P. GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The appellant filed a writ petition seeking reinstatement under ONGC alleging that after seeking premature release from the Army the appellant sought and was granted employment with respondent No.1 ONGC in the year 1982 and when he was working as the General Manager (Security) he was targeted by the Chairman ONGC who was biased towards him and to get rid of his miseries

he sought voluntary retirement which was refused without a cause and ultimately on a frivolous charge he was suspended on 26.5.2004 and on 2.11.2004 and 27.1.2005 two charge sheets were served upon him.

2. When both inquiries pertaining to the charge sheet dated 2.1.2004 and 27.1.2005 were pending, on 1.9.2005 the appellant submitted a letter of resignation 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”

3. The disciplinary proceedings pertaining to the charge sheet dated 27.1.2005 culminated in the disciplinary

authority levying a penalty of withholding promotion for 2 years vide order dated 23.9.2005. The disciplinary proceedings pertaining to the charge sheet dated 2.11.2004 continued.

4. The appellant claims that in response to his letter of resignation dated 1.9.2005 he received a letter dated 2.1.2006 written by ONGC as under:-

“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 charge 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"

5. The said letter claimed to be written by ONGC has been denied. However, in the alternative ONGC claims that even if the letter was written, a perusal thereof would reveal that it has been expressly intimated to the appellant that as per ONGC service rules a resignation submitted by a person facing disciplinary inquiry is not ordinarily accepted unless the appointing authority, in the interest of the organization accepts the resignation. It was intimated that the matter would be considered by the competent authority and decision as and when taken would be communicated to the appellant in due course i.e. the resignation submitted by the appellant was not accepted.

6. Appellant wrote a letter dated 30.5.2006 to ONGC praying that his suspension had continued for too long and hence he be permitted to serve. Since this letter is the fulcrum on which the appellant seeks to give weight to his claim, we note the contents thereof. It reads 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 WER
COMPLETED IN YEAR 05 AND PUNISHMENT
AWARDED.

(C) THE CBI ALSO ENQUIRED & FILED
CLOSURE REPORT WITH THE APPROPRIATE
JUDICIAL AUTHORITY IN SEPT 05 & 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 MUMEROUS
REMINDERS.

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

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

Sd/-
30.5.06

(R.MOHAN)
GEN.MANAGER ID NO. 51084"

7. It needs to be highlighted that when letter dated 30.5.2006 was written by the appellant the penalty of withholding promotion for 2 years pertaining to the charge sheet dated 27.1.2005 had already been inflicted and qua the charge sheet dated 2.11.2004 the disciplinary proceedings were pending.

8. The disciplinary proceedings pertaining to the charge sheet dated 2.11.2004 concluded with a verdict of guilt and at that stage, a composite order was passed by the disciplinary authority with respect to the penalty levied as also ONGC's response to appellant's letter dated 1.9.2005 under which he sought permission to resign. The composite order dated 20.7.2006 reads as under:-

"ORDER

Whereas Major R.Mohan, General Manager (Security) was charge sheeted under Rule 36 of ONGC Conduct Discipline & Appeal Rules, 194 vide Memorandum No.44/3/MRM/2004-D&A dated 2.11.2004 & Memorandum No.5/3/2004-Vig dated 28.8.2005.

Whereas enquiry was held against the charges levelled vide Memorandum dated 02.11.2004 and the findings of the Inquiry Officer were forwarded to Major R.Mohan vide Memorandum No.44/31/MRM/2004-D & A dated 17.06.2005.

Whereas Major R.Mohan submitted his representation dated 11.07.2005 against the findings of the Inquiry Officer.

And, whereas after going through the inquiry report dated 10.06.2005 submitting by the

Inquiry Officer, representation dated 11.07.2005 of Major R.Mohan and keeping in view the facts and circumstances of the case, I have come to the conclusion that Major R.Mohan has failed to comply with laid down instruction of the Corporation, however, considering the case in totality, taking a lenient view the undersigned considers imposition of '**Censure**' shall meet the ends of justice.

Now, therefore, in exercise of the powers delegated under Rule 35 of ONGC Conducted Discipline & appeal Rules, 1994 the undersigned imposes the penalty of '**Censure**' on Major R.Mohan.

Further, the undersigned has taken into consideration the contributions of Major R.Mohan towards the services rendered for the cause of the Nation while working with defence forces and also keeping in view the report filed by CBI for closure of case against Major R.Mohan, it is felt appropriate that in the fitness of the case to withdraw the charges levelled against him vide Memorandum No.5/3/2004-Veg. Dated 28.08.2005.

It is further ordered that the suspension of Major R.Mohan, General Manager (Security) be revoked with immediate effect and the period of suspension be treated as "**On duty**" for all intent and purpose.

The undersigned has also considered the application dated 01.09.2005 submitted by Major R.Mohan for resignation from the services of ONGC and has decided to accept the same.

Accordingly, the resignation of Major R.Mohan, General Manager (Security) is hereby accepted with immediate effect."

9. A bare perusal of the order dated 20.7.2006 would reveal that simultaneously while imposing censure, but making it clear that it was as the result of a lenient view being taken, the disciplinary authority directed that the period during which appellant remained under suspension would be treated '*on duty*' for all purposes and as regards appellant's letter dated 1.9.2005 seeking permission to resign, the same stands accepted.

10. Appellant's appeal against the penalty inflicted vide order dated 20.7.2006 was rejected. In the appeal the appellant prayed that he be permitted to resume duties, a prayer which was rejected on account of the fact that appellant's request to be permitted to resign was accepted.

11. Appellant filed a writ petition taking a stand that vide letter dated 30.5.2006, under which he had requested to be reinstated and allowed to join duties amounted to his having withdrawn the letter dated 1.9.2005 under which he had sought permission to resign, and claiming that since he had withdrawn the request to be permitted to resign before his letter dated 1.9.2005 was accepted vide order dated 20.7.2006, the acceptance of his offer to resign was without any authority of law and thus claim was to direct ONGC to reinstate appellant in service with all consequential benefits. The appellant pleaded in the alternative that vide letter dated 2.1.2006 written by ONGC to him the letter of resignation submitted by him stood rejected and thus it was pleaded that having rejected the letter of resignation, the competent authority had become functus officio and hence could not subsequently accept the same.

12. Stand taken by ONGC was that vide letter dated 30.5.2006 the appellant never withdrew the letter of resignation dated 1.9.2005. His grievance was to his continued suspension and that the request to be reinstated took colour from the said grievance i.e. the request to be reinstated in service was a request that pending disciplinary proceedings he be permitted to work i.e. the suspension be revoked. Qua the second stand, as noted hereinabove the defence of ONGC was that firstly letter dated 2.1.2006 was not written at all and alternatively, if written, it was never communicated to the appellant that resignation submitted by him was rejected. On the contrary, it was expressly made known to the appellant that decision thereon would be taken later since ONGC rules did not ordinarily permit a charge sheeted employee to resign unless the interest of the organization justified acceptance of the offer of resignation.

13. It is apparent that three issues which arose for consideration before the learned Single Judge were (i) the interpretation of the letter dated 30.5.2006 i.e. whether, literally and/or meaningfully read, the appellant withdrew request made by him to be permitted to be resigned vide letter dated 1.9.2005 or the appellant requested for the suspension to be revoked and he be permitted to work, (ii) whether ONGC wrote the letter dated 2.1.2006, and (iii) if ONGC wrote the letter dated 2.1.2006, whether it contained a rejection of appellant's request to be permitted to resign.

14. The view taken by the learned Single Judge on the first issue is that vide letter dated 30.5.2006 the

appellant did not withdraw his letter dated 1.9.2005 and thus his request to be permitted to resign remained pending. On the second issue i.e. whether ONGC wrote the letter dated 2.1.2006 the learned Single Judge noted that its office copy was not in the record of ONGC but rendered no conclusive opinion whether or not the letter was written and thus the third question was gone into and on the assumption that the letter was written by ONGC, it has been held that literally and/or meaningfully read, the letter does not contain a rejection of appellant's request to resign as per his letter dated 1.9.2005.

15. On the first issue, pertaining to appellant's letter dated 30.5.2006, contents whereof have been noted by us in para 6 above, we need to highlight that there are no express words in the letter that the appellant withdraws his letter dated 1.9.2005. Thus, since the letter of the letter does not throw any light on the matter of fact on which parties are at variance, we need to read the contents of the letter to find out whether in spirit it amounts to or conveys to a person of ordinary prudence that the author of the letter intends or has withdrawn the letter dated 1.9.2005. Highlighting that there is just no reference to the letter dated 1.9.2005 in the letter dated 30.5.2006, a reading of the letter would show that in para A the appellant talks about his being suspended since 26th May 2004 consequent to disciplinary proceedings contemplated against him as also a CBI inquiry pending. In para B the appellant refers to disciplinary proceedings completed and punishment awarded, and obviously this assertion pertains only to the

inquiry pertaining to the charge sheet dated 27.1.2005 which had resulted in the penalty being imposed on 23.9.2005 and as regards charge sheet dated 2.11.2004, the disciplinary proceedings were pending. Para C of the letter pertains to a stated closure report filed by CBI and para D pertains to the other charge sheet to which we have made a reference hereinbefore which was pending consideration at the disciplinary inquiry. It is in the context of paras A to D that appellant's request to be reinstated needs to be considered in the context of the rival positions taken by the parties i.e. whether said request to be reinstated would encompass the withdrawal of the letter of resignation dated 1.9.2005 or would not so enwomb the same.

16. The test in law is the test of how a prudent person would read a communication sent to him and so applying the test of a prudent person, even with a strained logic and reasoning, we are unable to read in the letter dated 30.5.2006, it being conveyed, that the resignation submitted on 1.9.2005 was being withdrawn. The request for reinstatement is clearly in the context of appellant's continued suspension and not with reference to appellant withdrawing his letter dated 1.9.2005 and thus the request for reinstatement made is clearly a request to withdraw the order of suspension and not by way of an intimation that the resignation submitted on 1.9.2005 was withdrawn.

17. We concur with the view taken by the learned Single Judge.

18. The second question which pertained to whether ONGC wrote the letter dated 2.1.2006, contents whereof have been noted by us in para 4 above, is a highly disputed question of fact and has rightly been not gone into by the learned Single Judge, but immediately highlighting that no prejudice therefrom has been occasioned to the appellant inasmuch as the learned Single Judge has proceeded to decide the effect of the said letter, on the presumption and the supposition that ONGC wrote the letter.

19. As noted above, claim of the appellant was that vide said letter ONGC had implicitly rejected his letter of resignation dated 1.9.2005. Stand of ONGC was that assuming said letter was written by ONGC, far from conveying even implicitly that appellant's letter of resignation dated 1.9.2005 was rejected, it was expressly intimated that ONGC service rules ordinarily did not permit a charge sheeted employee to resign unless the same was in the interest of the organization and that the matter was under consideration and also that the decision as and when taken would be communicated in due course.

20. We see no scope to read in the said letter any implicit communication of the resignation letter dated 1.9.2005 being rejected. Thus, the learned Single Judge has correctly opined that assuming it to be written, vide letter dated 2.1.2006 ONGC never communicated rejection of appellant's letter dated 1.9.2005 and that the appellant's letter of resignation dated 1.9.2005, not being withdrawn by him, remained pending till its acceptance was communicated vide the composite order dated 20.7.2006

under which penalty of censure was inflicted upon the appellant pertaining to charge sheet dated 2.11.2004 and also that his resignation was accepted.

21. We have independently reflected on the issues raised and reach the same conclusions as have been reached by the learned Single Judge and would highlight that the weak penalty of censure levied upon the appellant pertaining to the charge sheet dated 2.11.2004 has been founded upon the concomitant decision to accept the resignation submitted by the appellant to bring a quietus to the sordid affair and the learned Single Judge has correctly opined that after taking the benefit of a decision making process resulting in a minor penalty of the weakest kind being inflicted upon him, the appellant is attempting to play it clever by taking a stand that his resignation letter dated 1.9.2005 could not be acted upon by the department.

22. The appeal is dismissed and with the same ethos i.e. that of the impugned decision, we refrain from imposing any cost.

(PRADEEP NANDRAJOG)
JUDGE

(S.P. GARG)
JUDGE

NOVEMBER 08, 2011
mm