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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 3154/2001

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May 09, 2013

SHRI ARJUN CHAWLA

.....Petitioner

Through: Mr. K. Venkatraman, Advocate.

VERSUS

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. Yashraj Singh Deora, Advocate with
Ms. Anupama, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner-Sh. Arjun Chawla praying for quashing of the orders passed by the Disciplinary Authority dated 18.8.2000 whereby the petitioner was inflicted the punishment of removal from service.

2. On behalf of petitioner, neither Enquiry Report nor the order of the Disciplinary Authority is challenged but what is argued is that since departmental proceedings cannot be initiated after deemed voluntary retirement of the petitioner, hence entire departmental proceedings have to be quashed for this sole reason. Reliance is placed upon the Regulation 20(3)(i) and 20(3)(ii) of the Punjab

National Bank (Officers') Service Regulations, 1979 to argue that disciplinary proceedings can be said to be pending only if notice has been issued to the employee for showing cause why disciplinary proceedings shall not be instituted against him. Alongwith Regulations 20(3)(i) and (ii) reliance is also placed upon Pension Regulations 29(2) of the respondent which provides for deemed retirement if the application made for voluntary retirement is not refused before expiry of three months period specified in the notice.

3. On behalf of the respondent, it is argued that the present case would not be covered under Regulation 20(3) of the service regulations inasmuch as on joint reading of Regulation 20(3)(i) with Regulation 29(2) it is found that there is required a specific prior approval in writing of the competent authority in cases which are covered under the Pension Regulation 29(2), and in terms of which regulation it is required that the notice of voluntary retirement requires acceptance, and a mere silence will not do. It is further argued that the expression 'refuse' used in proviso to Regulation 29(2) only means that in a particular language the employer has informed the employee that the voluntary retirement is not accepted, and, it is not the requirement that the communication to an employee must specifically use the expression 'acceptance' in case of acceptance and 'refuse' in case of refusal.

4. In order to appreciate the respective arguments, it is necessary to reproduce the relevant regulations and which read as under:-

“20(3)(i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of Competent Authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

20(3)(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority.

29(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

5. Before interpretation of aforesaid regulations, certain admitted facts have to be referred to. Petitioner’s application for voluntary retirement is dated 15.4.1998. Respondent gave its response vide communication dated 4.5.1998 before the three months period that the application for voluntary retirement is kept pending by referring to the requirement of specific acceptance for effecting voluntary retirement. Petitioner after his inter departmental transfer did not join the services of the bank from 3.1.1998 except joining for one day on 11.4.1998,

and on which date he is said to have told the bank that he will be submitting his application for sick leave and thereafter instead submitted his application for voluntary retirement on 15.4.1998. Petitioner thus effectively from 3.1.1998 did not join the services of the respondent including after receipt of the communication dated 4.5.1998 or the show cause notice issued by the bank dated 18.9.1998 for initiation of the departmental enquiry on account of petitioner having not joined the services of the bank in spite of repeated notices.

6. Since the language of the letter dated 4.5.1998 of the respondent to the petitioner would be important to decide the matter in issue in the present case, I reproduce the said letter in its entirety as under:-

“ PERSONNEL DIVISION

H.O.: NEW DELHI

PL: D.A.C

Date: 4.5.98

/REGD/

Shri Arjun Chawla
Concurrent Auditor (Chief Inspectgor)
C/o Insp.& Control Division,
Rajendra Place, New Delhi.

Res. Address
U-22 Green Park,
New Delhi.

Your request for voluntary retirement

Please refer to your letter dated 15.4.1998 seeking voluntary retirement from the bank service with effect from 15.7.1998.

We have to advise that a case has been registered by the CBI against you vide RC No.2(E) BS & FC, Mumbai. The case is still under investigation and the Bank is pursuing the matter with CBI for expediting their investigation in the case. Your request for voluntary retirement will be considered after hearing from the CBI or after the finalization of the said case.

Your attention is specifically drawn to Regulation 29(2) of Punjab National Bank (Employees') Pension Regulations, 1995 in terms of which notice for voluntary retirement requires acceptance by the competent authority.

Sd/-
AGM-Personnel

Copy to:- The Dy. General Manager, Insp. & Contro. Division Head Office, New Delhi for information. A copy of the letter dated 15.4.1998 received from Shri Chawla is enclosed for information.

AGM-Personnel”

7(i) Let us now examine the issue in the present case as to whether petitioner is deemed to have retired three months after 15.4.1998 and thereby the disciplinary proceedings could not have been initiated thereafter vide show cause notice dated 18.9.1998. A reading of the Pension Regulation 29(2) shows that it is in two parts. The first part states that notice of voluntary retirement requires acceptance. The second part provides that there will be deemed voluntary retirement where refusal is not informed to the employee before expiry of the notice period of three months. Petitioner argues that there is required specific language of refusal in a communication of the respondent failing which there is

deemed retirement after the notice period. It is also argued that requiring of acceptance in terms of first part of Regulation 29(2) merges into the automatic voluntary retirement on the expiry of three months notice period because the requisite acceptance is deemed to be given when there is no refusal within the three months notice period.

(ii) In my opinion, interpretation of Regulation 29(2) has to be by a harmonious reading of both the parts of the regulation. No doubt the second part does provide deemed retirement when there is no refusal of the application made for voluntary retirement, however, the first part specifically requires that there has to be acceptance of the application for voluntary retirement by the appointing authority. That there is required an approval or acceptance is also clear from Regulation 20(3)(i) of the 1979 Regulations which *stricto sensu* does not apply because the said regulation pertains to requirement of approval in writing where disciplinary proceedings are pending. However, some colour of prior approval existing in Regulation 20(3)(i) will fall upon Regulation 29(2). Since in the first part of Regulation 29(2) there is positive language of requiring acceptance, the expression 'refuse' used in the second part has to be read so that it is sufficient if the (communication within the three months notice period) to the employee seeking voluntary retirement should communicate a non-acceptance of the application for voluntary retirement. Therefore, in my opinion, the word 'refuse'

means non-acceptance in view of the language in question of Regulation 29(2) and not that the communication must use the expression refused/refusal.

(iii) When we read the communication of the respondent dated 4.5.1998 and which is reproduced above, it is shown that there is nothing in the said letter that the request for voluntary retirement has been accepted. No doubt, it is not written that the request for voluntary retirement is refused, however, what is legally required is that the letter must give an indication of non-acceptance of the request of voluntary retirement in view of the aforesaid interpretation given by me to the Regulation 29(2). The communication dated 4.5.1998 specifically mentions not only the fact that request for voluntary retirement is still pending for consideration ie there is non-acceptance, reference is also specifically invited to Regulation 29(2) requiring an acceptance of the competent authority. Stating the application for voluntary retirement is kept pending is stating non-acceptance. Therefore, the language of the communication dated 4.5.1998 in effect shows that there is non-acceptance of the application for voluntary retirement and which is kept pending for being considered after hearing from CBI or finalization of the CBI case which was pending against the petitioner. Once the communication dated 4.5.1998 can be read as a non-acceptance to the request/application for voluntary retirement this conclusion suffices to take the case of the petitioner out of deemed retirement in the second part of Regulation 29(2). What is quite clear is

that language of the communication dated 4.5.1998 in so many words states that acceptance has not been given as regards the request/application for voluntary retirement made by the petitioner. Thus I hold that there was no deemed retirement of the petitioner after notice period of three months w.e.f 15.4.1998. Since there is no deemed retirement, Regulation 20(3) comes into play because departmental proceedings were commenced by means of the notice of the respondent dated 18.9.1998. Thereafter by virtue of first para of Regulation 20(3) there cannot be resignation from services of the bank without a specific approval in writing of the competent authority and which admittedly is not there.

(iv) The argument on behalf of the petitioner is accordingly rejected that petitioner is deemed to have retired on expiry of three months notice period from 15.4.1998 allegedly because there is no specific refusal of the respondent to the application for voluntary retirement dated 15.4.1998.

8. On behalf of the petitioner, reliance is placed upon:-

(i) ***J.P. Sharma Vs. Director General Border Roads & Ors. 47 (1992) DLT 575.***

(ii) ***State of Haryana and Ors. Vs. S.K. Singhal (1999) 4 SCC 293.***

(iii) ***B.J. Shelat Vs. State of Gujarat and Ors. (1978) 2 SCC 202.***

(iv) *Ashoke Dasgupta Vs. United Bank of India & Ors. 1999 (8) Services Law Reporter 742.*

9. The judgment in the case of *J.P. Sharma (supra)* is relied upon in support of the proposition that there had to be a specific refusal and if the expression 'refusal' is not used by the respondent/employer before the three months notice period petitioner should be taken to have deemed to be retired at the end of three months notice period. Para 12 of the said judgment is relied upon and which reads as under:-

“12. The second communication, which was addressed to the petitioner on 31/05/1988, only stated that the notice of voluntary retirement can be accepted, if required, by curtailing three months period, but the case of the petitioner will be processed only after the evidence of the Supervisor, in the Court of Inquiry ordered on 1/01/1988. The petitioner was requested to give evidence and obtain clearance from the Presiding Officer without further delay so that the case can be processed further. This communication also cannot be termed as refusal of acceptance of notice of voluntary retirement, as the same clearly indicated that the matter was under consideration and the case will be processed after the evidence was recorded. The petitioner was only warned that as his leave had not been granted, he must report for duty forthwith. There is no, communication of refusal to the petitioner for permission for voluntary retirement within the time specified in the notice by the Appointing Authority. The provisions of Sub-rule 2 of Rule 48-A of the Central Civil Services (Pension) Rules, 1972, will come into operation and the retirement shall become effective from the date of expiry of the notice period by operation of law. In this context, reference may be made to the judgment in *Shri Jivan Krishna v Union of India and Another A.T.R. 1989 C.A.T. 118*”

10. The judgment in the case of ***J.P. Sharma (supra)*** would have definitely helped the petitioner but in my opinion the judgment does not help the petitioner because the Single Judge of this Court in that case was concerned with the typical language of Rule 48A of the Central Civil Services (Pension) Rules, 1972 and in the first para of which there is no requirement of a specific acceptance to an application for voluntary retirement as is found in the subject Regulation 29(2). That relevant regulation which was in issue in the case of ***J.P. Sharma (supra)*** reads as under:-

“Rule 48-A-Retirement on completion of 20 years qualifying service-

(1) at any time, after a Government servant has completed twenty years qualifying service, he may, be giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) Proviso-

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

11. The aforesaid Rule 48-A in its first part does not use the expression of prior acceptance required qua the application for voluntary retirement and which is so specifically required in terms of Regulation 29(2) which is found in the present case. Learned Single Judge in the case of ***J.P. Sharma (supra)*** interpreted the Rule 48-A in terms of the proviso requiring the specific expression of ‘refusal’

because the first sub Rule of Rule 48-A did not require specific acceptance and there was a deemed retirement on completion of three months notice period. Therefore, in my opinion, the petitioner cannot get any benefit of the judgment in the case of *J.P. Sharma (supra)*.

12. So far as the judgment in the case of *S.K. Singhal (supra)* is concerned, reliance is placed upon para 20 and which reads as under:-

“20. So far as the plea of the State in regard to absence from duty during the notice period is concerned, the High Court has shown that it is unsupportable on facts. In any event, in view of the express provision in the proviso to sub-rule (2) of Rule 5.32(B) referred to above requiring communication of rejection within the notice period, the said allegations of absence even if true, cannot help the State.”

I do not understand how the para relied upon helps the petitioner because as per the relevant rule in that case there was required a specific communication of rejection. I have already held that so far as Regulation 29(2) which is in issue in the present case the communication to the petitioner need not contain the specific word of rejection or refusal of the application of voluntary retirement. I may finally note that in the facts in the case of *S.K. Singhal (supra)* within the notice period there was in fact no communication by the employer to the employee either of non-acceptance or a specific refusal.

13. So far as the judgment in the case of ***B.J. Shelat (supra)*** is concerned, the said judgment also would not apply because the issue in the said case pertains to entitlement to withholding the permission to retirement and there is no specific para pointed out to me in the said judgment as to how the said judgment in any manner requires a specific 'refusal' of the application for voluntary retirement. Judgment in the case of ***B.J. Shelat (supra)*** was in fact more concerned on interpretation of the expression 'withhold' i.e withholding of grant of permission for voluntary retirement.

14. The judgment in the case of ***Ashoke Dasgupta(supra)*** is relied upon for its para 32 which reads as under:-

"32. As regards the sub-regulations 3(i) and 3(ii) of Regulation 20, in my opinion, those would not be applicable to the instant case because until the expiry of 12.8.96 there was neither a disciplinary proceeding commenced against the writ petitioner, nor a suspension of his, nor any show-cause made out as to why a disciplinary proceeding should not be started against him. In my opinion, the word "before" occurring in sub-regulation 3(i) is referable to the cases of deemed pendency of disciplinary proceeding mentioned in sub-regulation 3(ii). Since none of the contingencies happened in the instant case the notice given by the writ petition is not invalidated. The letter of 14.2.96 referred to by Mr. Bhattacharya is not a show-cause of any type; it called for an explanation from a subordinate with copy to the vigilance; the writ petitioner gave an explanation, although a little, in June' 96." This para 32 which is relied upon surely has no application to interpretation of Regulation 29(2) because the para relied upon really refers to equivalent Regulation 20 in the present case and which comes into play only with respect to seeking of voluntary retirement during the pendency of departmental proceedings.

This para 32 which is relied upon surely has no application to interpretation of Regulation 29(2) because the para relied upon really refers to equivalent Regulation 20 in the present case and which comes into play only with respect to seeking of voluntary retirement during the pendency of departmental proceedings.

15. On behalf of the petitioner, finally it was argued that the punishment of removal from service is harsh because the petitioner had put in 25 years of service with the bank. It is argued that even if the petitioner is found guilty the extreme punishment of removal from service should not have been inflicted upon the petitioner.

16. In my opinion, though now the doctrine of proportionality is well established in service jurisprudence in this country, however, I am not inclined to interfere on this ground because petitioner has effectively not joined the services of the respondent-bank way back from 3.1.1998. I would have been inclined to take a liberal view if the petitioner had joined his duties on receiving the communication dated 4.5.1998 or even when the show cause notice dated 18.9.1998 issued by the respondent-bank to the petitioner, however the petitioner steadfastly remained obdurate and did not join the services of the respondent-bank even during the enquiry proceedings. No employee can presume that automatic leave is sanctioned to him or he is deemed to have automatically taken voluntary retirement because

he feels so. If the petitioner was over confident that his application for voluntary retirement will be accepted he has to also take the adverse consequence if the interpretation of Regulation 29(2) would have not gone in his favour and which has so happened in the present case. Also the doctrine of proportionality will come into play if the punishment shocks the judicial conscience as per the facts of the present case. Considering that the petitioner abandoned his services on the basis of his own interpretation given to Regulation 29(2), I do not feel that the action against the petitioner and the punishment inflicted upon him can in any manner be said to shock the judicial conscience for this Court to interfere with the punishment by application of doctrine of proportionality.

17. Finally, I must state that at the fag end of arguments petitioner very desperately sought to challenge the communication dated 4.5.1998 on the ground that the same was not issued by the competent authority viz the appointing authority, however, I find that there is absolutely no cause of action or grounds pleaded for this factual argument, and since what would be the factual position is not known because respondent has had no opportunity on facts to rebut the contention now raised for the first time in final arguments, I disallow the petitioner to raise this ground.

18. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

MAY 09, 2013
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VALMIKI J. MEHTA, J.