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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3547/2017, CM No. 15463/2017
ASHOK KUMAR DIXIT Petitioner
Through: Mr. Praveen Kumar Jain, Adv.
versus
THE ORIENTAL INSURANCE CO. LTD. Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **28.04.2017**

CM No. 15463/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 3547/2017

1. This petition has been filed by the petitioner with the following prayers:-

“In the conspectus of circumstances delineated hereinabove, it is therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased:

a) to issue a writ of certiorari or any other appropriate writ/order/quashing/setting aside the impugned orders dt. 10-04-2003, 13-07-2005, 30-01-2012 and 11-05-2016 passed by the respondent for being in violation of the provisions of its own Rules, Constitution of India as well as of the principles of

natural justice; and

b) to direct the respondent to accept the application dated 23-01-2003 made by the petitioner for grant of VRS with effect from 06-02-2003 and to pay the pension and other retirement benefits as per his entitlement along with interest; and/or

c) to issue a writ of certiorari or any other appropriate writ/order directing the respondent to consider the case of the petitioner herein on compassionate ground as provided in paragraph No.32 of the General Insurance (Employees') Pension Scheme, 1995; and

d) to award the cost of the present writ petition; and/or

e) pass such other further order(s), as may be deemed fit, proper, just and expedient in the interest of justice."

2. It is averred in the writ petition and also contended by Mr. Praveen Kumar Jain that on May 01, 1995 the petitioner was posted as Senior Divisional Manager, Oriental, DO-5 in Delh and one of his colleague Mr. N.K. Sinha was posted as Manager in Oriental Regional Office-II in Mumbai. On January 5, 1996, CBI started preliminary investigation against the petitioner and others. On May 30, 1996 Mr. N.K. Sinha resigned as Manager from the service of the company. On July 14, 1998 CBI registered a regular case being RC No. 20A/1998.

3. It is contended by Mr. Jain that the respondent had accepted Mr. N.K. Sinha's resignation retrospectively and conditionally. On January 23, 2003

the petitioner applied for VRS under General Insurance (Employees') Pension Scheme, 1995. On April 10, 2003 the petitioner was informed that his VRS application has not been accepted. I may note here that on January 27, 2003, the petitioner had applied for Commercial Employment, which request was rejected by the respondent on March 17, 2003. Be that as it may, on April 16, 2003 the petitioner appealed to the CMD that his VRS application has not been accepted. It is submitted by Mr. Jain that on January 12, 2004 a charge sheet was issued to the petitioner for major penalty proceedings on account of unauthorized absence. The charge sheet was replied on February 06, 2004.

4. It is conceded by Mr. Jain that the petitioner had participated in the disciplinary proceedings. On the basis of the findings of the Enquiry Officer the General Manager, Disciplinary Authority vide order dated July 15, 2005, removed the petitioner from the service of the company. It appears that the petitioner submitted an appeal against the order of removal dated July 15, 2005. The said appeal was rejected by the Appellate Authority on January 30, 2012. It is noted that even the memorial submitted by the petitioner on May 17, 2012 has been rejected on May 11, 2016. It is the finding of the Disciplinary Authority in its order dated July 13, 2005 that the petitioner

was unauthorizedly absent from February 7, 2003 to January 12, 2004.

5. Mr. Praveen Kumar Jain also concedes to the fact that the petitioner did not join the duties till the penalty order dated July 13, 2005 was passed. In other words, the petitioner was not only unauthorizedly absent between the period February 7, 2003 to January 12, 2004 but even thereafter. It is the contention of Mr. Jain that the respondent could not have rejected the request of the petitioner for grant of VRS, inasmuch as the respondent had accepted the request of Mr. N.K. Sinha of resignation, that too from a retrospective effect. He states that the petitioner did not join his duties under a bona fide belief that the request of the petitioner of VRS shall be considered in his favour. He also refers to the fact that the petitioner was given promotion in the year 1999. I am not convinced with the submissions made by Mr. Jain for more than one reason. Firstly, the request of VRS of the petitioner was made on January 23, 2003. The said request was rejected on April 10, 2003. The plea of Mr. Jain that the petitioner submitted an appeal against the rejection of his request for VRS on April 10, 2003, which has not been decided till date, does not appeal to the Court, inasmuch as 14 years have elapsed thereafter. Secondly a charge sheet was issued to the petitioner on January 12, 2004, which culminated in an order of penalty of

removal from service on July 15, 2005, even the appeal and the memorial filed by the petitioner were rejected by the Authorities on January 30, 2012 and May 11, 2016 respectively. So, this plea of Mr. Jain that the appeal against the rejection of the application for VRS has not been considered, would be inconsequential.

6. Insofar as the order of “*removal*” of the Disciplinary Authority is concerned, the Disciplinary Authority has after considering the charge sheet, reply to the charge sheet, enquiry findings and the representation of the petitioner against the findings and other connected records was of the following view:-

“1. Shri A.K. Dixit was informed by the office vide letter dated 06.02.03 that the decision of the Competent Authority would be communicated to him within 90 days from the date of serving of VRS notice i.e 23.01.02.

2. Shri A.K. Dixit was informed by the office vide letter dated 10.04.03 that his notice of VRS was not accepted by the Competent Authority in view of the pending criminal case against him.

3. According to Central Bureau of Investigation letter dated 12.02.01 that a Chargesheet has been filed in the court of Special Judge, Mumbai on 05.02.01 vide Special Case No.13/2001 under Section 120-B, 420, 467 and 511 of IPC and

13(2) r/w 13(i) (d) and 15 of PC Act, 1988 against Shri Ashok Kumar Dixit and others and as such the criminal proceedings were pending as on 23.01.02 i.e the date on which he sent notice of VRS to the Company. In view of the pending criminal prosecution the Competent Authority has not accepted the VRS.

4. When the request of VRS (Voluntary Retirement Scheme) was not accepted and the same was conveyed to Shri A.K. Dixit, the employer-employee relationship is in existence and it is expected of him to attend the duties, whereas he stopped attending duties from 07.02.03 and he remained on unauthorised absence till the date of issuance of the Chargesheet i.e 12.01.04 and thereafter till date.

5. As far as the defence of Shri A.K. Dixit that his case as well as that of Shri N.K. Sinha's stands on the same footing and as such his notice under VRS should have been accepted by the Competent Authority is concerned, the same is not tenable because at the time when the resignation of Shri N.K. Sinha was considered by the Competent Authority the Central Bureau of Investigation case was under investigation and the Chargesheet has not been filed. As per the records Shri N.K. Sinha had submitted the resignation on 16.04.96 and whereas the Chargehsset in this case was filed on 12.02.01 and Shri Sinha was relieved from the services of the Company much before the date of filing of Chargesheet. As is obvious from the above the case of Shri Dixit stands on different footing than that of Shri N.K. Sinha. It is reiterated that the Chargesheet stood filed and

the trial was on when Shri A.K. Dixit put in his papers under VRS on 23.01.02.

6. As such it is evident from the records that Shri A.K. Dixit is on unauthorised absence from 07.02.03 to 12.01.2004.”

7. The aforesaid conclusively proves there is no reason for the petitioner to be away from his duties. The plea of Mr. Jain that he was under bona fide belief that his case for VRS shall be favourably considered was a fitment of imagination of the petitioner without basis. He made no attempt to join the duties even after the issuance of charge sheet, which suggest that the petitioner was not interested in his employment with the respondent.

8. Noting the aforesaid facts, this Court is of the view that the petitioner is not entitled to the reliefs as prayed for. The writ petition is dismissed.

V. KAMESWAR RAO, J

APRIL 28, 2017/ak