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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 699/2017

ASHOK KUMAR DIXIT

..... Appellant

Through: Mr. Arvind Nayar, Senior Advocate with
Ms. Upasana Chandra Shekaran, Mr. Anuj Tiwari,
Mr. Ritwik Sahay, Mr. Shikhar Srivastav and Ms.
Mallika Kamal, Advocates.

versus

THE ORIENTAL INSURANCE CO LTD.

..... Respondent

Through: Mr. K.K. Rai, Senior Advocate with
Mr. Rahul Ranjan Verma and Mr. Anshul Rai,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

07.02.2019

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Dr. S. Muralidhar, J.:

1. This appeal is directed against an order dated 28th April, 2017 passed by the learned Single Judge dismissing W.P.(C) No. 3547 of 2017 filed by the Appellant.

2. In effect, by the impugned order the learned Single Judge rejected the challenge by the Appellant to the orders passed by the Respondent Oriental Insurance Company Limited ('OICL') rejecting his plea for voluntary retirement.

3. The background facts are that on 1st May, 1995, the Appellant was posted as Senior Divisional Manager of the Division Office-5 of the Respondent in Delhi. On 5th January 1996, the Central Bureau of Investigation ('CBI') received a private complaint concerning a claim pertaining to the year 1995 when the Appellant was posted as Senior Divisional Manager in Mumbai. At the same time, one Mr. N.K. Sinha was posted as Senior Divisional Manager in the Division Office at Dadar in Mumbai. Mr. Sinha is stated to have tendered his resignation on 30th May, 1996. Although the said resignation was not immediately accepted by the Respondent, Mr. Sinha stopped coming to office and joined some other insurance broking company.

4. On 14th July 1998, the CBI registered RC No. 20A/1998 under Sections 120-B, 420, 467 and 511 of IPC read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act'). Both the Appellant and Mr. Sinha were named in the case. On 25th May, 1999 the Appellant was promoted and posted as Manager at New Delhi. On 14th September, 1999 the Respondent accepted Mr. Sinha's resignation with retrospective effect from 30th May, 1996. The Respondent reserved its right to take action against Mr. Sinha on the basis of the outcome of the CBI case.

5. On the basis of the preliminary enquiry, CBI filed a charge sheet on 9th January, 2001 in the court of the Sessions Judge at Mumbai. Both Mr. Sinha and the Appellant were arraigned as accused. The consequent trial arising from said Special Case No. 13 of 2001 continued till 2011 when both Appellant and Mr. Sinha were acquitted.

6. On 23rd January, 2003, the Appellant submitted an application seeking voluntary retirement under the Voluntary Retirement Scheme ('VRS') which formed part of the General Insurance (Employees') Pension Scheme, 1995 ('GIEPS'). The Appellant requested that the notice period of three months be waived and that he should be relieved after two weeks. Without awaiting outcome of his application, the Appellant applied for permission for commercial employment on 27th January, 2003 and on 6th February, 2003, the Appellant surrendered the flat allotted to him by the Respondent.

7. On 6th February, 2003 itself the Respondent informed the Appellant that his request for curtailing the notice period was not acceded to. On 17th March, 2003, the Assistant General Manager of the Personnel Department of the Respondent wrote to the Appellant informing him "your application for voluntary retirement from the service of the company has not been accepted because of the CBI case going on against you, your request for permission to take up commercial employment has not been entertained at this stage and hence the same has been declined by the competent authority." This was followed by another letter dated 10th April, 2003 informing the Appellant that his VRS application could not be processed "for want of vigilance clearance and further as the criminal prosecution filed by CBI against the Appellant was pending, in lieu of the same, the competent authority has not accepted the request for voluntary retirement under pension General Insurance Scheme."

8. On 16th April 2003, the Appellant filed an appeal before the Chairman-cum-Managing Director ('CMD') requesting that his VRS application

should be accepted and he should be relieved conditionally as had been done in the case of Mr. Sinha. On 6th October, 2003, the Appellant sent a reminder. Throughout this period, after submitting his application for voluntary retirement, the Appellant admittedly stayed away from work without actually applying for leave.

9. On 12th January, 2004, the Appellant was issued a charge sheet by the Respondent for major penalty proceedings on account of unauthorised absence from office. The charge sheet inter alia noted “A.K. Dixit has resigned from the services of the company; his resignation was not accepted pending CBI case; he has stopped coming to office; has committed the gross misconduct.”

10. On 6th February, 2004, the Appellant replied to the charge sheet stating “I have not resigned; I have applied for VRS, have represented my case to CMD; final decision on VRS/relieving is pending; in the past officers pending final decision on their resignation/VRS had stopped coming to office and they were not charge sheeted against unauthorized leave, in fact some have been relieved after a gap of 2 or 3 years; different yardstick should not be adopted in my case.”

11. On 6th April, 2005, the Inquiry Officer (‘IO’) submitted his inquiry report to the General Manager concluding that the charges against the Appellant stood proved. On 10th May, 2005, the Appellant replied to the General Manager on the aforementioned report of the IO. By an order dated 13th July, 2005, the General Manager i.e. the Disciplinary Authority (‘DA’)

passed an order removing the Appellant from service. The relevant portions of the said order read as under:

“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 Chargesheet 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.”

12. The appeal filed by the Appellant against the aforementioned removal order was rejected on 30th January, 2012 and 11th May, 2016. Thereafter the Appellant filed Writ Petition (C) No. 3547 of 2017 in this Court.

13. In the impugned order dated 28th April, 2017 the learned Single Judge held that there was no reason for the Appellant to stay away from duty. The plea that the Appellant was under bona fide belief that his case for VRS shall be favourably considered was held to be a figment of imagination of the Appellant and ‘without basis’. The fact that he had made no attempt to join duty even after the charge sheet was issued to him suggested that the Appellant was not interested in his employment with the Respondent.

14. During the pendency of the present appeal, the Respondent was asked to consider whether the Appellant could be granted any compassionate allowance. At the hearing on 17th August, 2018, the Appellant was informed that the Respondent was unable to accede to that request. On 26th October, 2018 both parties stated that they are willing to explore the possibility of settlement through mediation. However, at the hearing on 10th January, 2019 the Court was informed that mediation had failed.

15. Mr. Arvind Nayar, learned Senior counsel appearing for the Appellant submitted that it was unfair on the part of the Respondent to treat the period during which the Appellant remained absent from duty after submitting his application for voluntary retirement as 'unauthorised' and the punishment of removal from service was disproportionate. Reliance was placed on the decision dated 25th September, 2012 of this Court in Writ Petition (C) No.1728 of 1999 (*Anil Kumar v. CRPF 2012 SCC OnLine Del 5021*). Reliance is also placed in the decision in *Chairman-cum-Managing Director, Coal India Limited v. Mukul Kumar AIR 2010 SC 75* where it was held that the punishment for removal was disproportionate to prove charge of unauthorised absence for more than six months. Reliance was also placed on the decision in *Rajendra Yadav v. State of MP (2013) 3 SCC 73* where it was held that there has to be parity among co-delinquents on the issue of penalty.

16. Mr. Nayar also urged that once an application for voluntary retirement is submitted then under Rule 30 (2) of the GIEPS, it was mandatory for the Respondent to accept the application.

17. Mr. K. K. Rai, learned Senior counsel for the Respondent, on the other hand supported the judgment of learned Single Judge by pointing out that in the present case there was no justification for the Respondent to have stayed away from the work. Mr. Rai pointed out that even after the charge sheet was served on him, the Appellant did not choose to report for duty. The absence from duty was for more than two years and could not be justified on

any ground whatsoever. Mr. Rai pointed out that the Appellant having been gainfully employed elsewhere even while on leave from Respondent was obviously not interested in joining back and, therefore, the decision of the Respondent removing him from service did not call for any interference.

18. In order to examine the above submissions, it is necessary to refer to sub- clauses (1) and (2) of Clause 30 of the General Insurance (Employees') Pension Scheme, 1995 (GIEPS), which read as under:

(30) Pension on voluntary retirement

(1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service:

Provided that this sub-paragraph shall not apply to an employee who is on deputation unless after having been transferred or having returned in India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(2) The notice of voluntary retirement given under sub-paragraph (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."

19. Contrary to what is contended by Mr. Nayar, the proviso to Rule 30(2)

of the GIEPS does envisage the appointing authority refusing to grant permission for retirement although it requires that such refusal be communicated before expiry of the period specified in the notice. In the present case, the Appellant was informed by a letter dated 6th February, 2003, in response to his notice dated 23rd January, 2003 that the decision of the competent authority would be communicated within 90 days. On 17th March, 2003, the Assistant General Manager of the Personnel Department of the Respondent informed the Appellant that his VRS application had not been accepted because of the pending CBI case against him. On 10th April, 2003 he was again informed that his VRS application was refused in view of the pending criminal case. Consequently, the Court rejects the plea that under Rule 30 (2) of the GIEPS it was mandatory for the Respondent to have accepted the VRS application of the Appellant.

20. Mr. Nayar repeatedly urged that since both the Appellant and Mr. Sinha were investigated and arraigned as accused by the CBI, the Appellant could not have been treated differently from Mr. Sinha as far as relieving him from the service of Respondent is concerned. He further submitted that if Mr. Sinha's resignation could have been accepted after three years by the Respondent with retrospective effect, there was no reason why the Appellant's VRS application could not have been accepted likewise from the date on which it was submitted even if the Appellant had remained absent.

21. The Court does not appreciate how the Appellant can seek to be treated at par with Mr. Sinha. While it is true that both Appellant and Mr. Sinha

were arraigned as accused by the CBI, the fact remains that Mr. Sinha tendered his resignation at a time when the charge sheet was not filed in the case. Further even before the charge sheet was filed, the Respondent took a decision to accept Mr. Sinha's resignation. Therefore, clearly the Appellant cannot seek parity with Mr. Sinha. The Appellant submitted VRS application after the CBI had filed the charge sheet and after trial had commenced. In the circumstances, the decision of the Respondent not to accept the Appellant's application under the VRS when the trial was still in progress against the Appellant, cannot be said to be unreasonable. Consequently, the Court finds no error in the decision of the Respondent in not accepting the VRS application of the Appellant.

22. The Appellant could not have presumed by merely submitting a VRS application that it was going to be accepted. Having put in so many years of service and having risen to senior managerial position, the Appellant ought to have been fully conscious of remaining unauthorisedly absent from work. It is entirely possible that with the Appellant having got gainful employment elsewhere, he decided to take a chance and stayed away from work with the Respondent knowing that his VRS application was in fact not accepted. The Appellant does not deny having received the communications dated 17th March 2003 and 10th April, 2003 rejecting his VRS application. Yet he did not report for duty soon thereafter. Even after the charge sheet in the disciplinary proceedings for unauthorised absence was served on him, the Appellant did not think it appropriate to report for duty. In the circumstances, the finding of guilt returned by the IO on the charge of unauthorised absence does not call for interference.

23. As regards proportionality of the punishment it is seen that the unauthorised absence continued from 23rd January, 2003 onwards till the report of the IO on 6th April, 2005 i.e. for more than two years. Therefore, this was not a case of innocent or bonafide absence from service by an employee. The facts of the present case speak for themselves. The decisions in *Anil Kumar v. CRPF, Chairman-cum-Managing Director, Coal India* (*supra*) and *Rajender Yadav v. State of MP* (*supra*) turned on their own facts and are of no assistance to the Appellant. In the circumstances, this Court is unable to be persuaded that the punishment of removal from service awarded to the Appellant is disproportionate.

24. No ground is made out for interference with the impugned judgment passed by learned Single Judge. The appeal is dismissed with no order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 07, 2019
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