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

+ LPA 731/2018

DR S K BANSAL

..... Appellant

Through: Mr. Rajshekhar Rao with Mr. Karan Lahiri, Ms. Gauri Puri, Ms. Vagavi Pandey, Advs.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. R.G. Srivastava, Adv. for R-2 and R-3.

Mr. Anil Soni, CGSC with Ms. Priyanka Singh, adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

08.01.2019

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C.M. No. 54236/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

LPA 731/2018 & C.M. No. 54233/2019 , C.M. Nos. 54235,54237/2019

1. The present Letters Patent Appeal is directed against the judgment dated 25.10.2018 rendered by the learned Single Judge in W.P. (C.) No. 248/2003. The learned Single Judge has dismissed the said writ petition wherein the petitioner/ appellant sought the quashing of the order dated 19.03.2002, by which it was declared – for the second time, that he was deemed to have resigned from service. He also sought the quashing of the inquiry proceedings and inquiry report dated 20.02.2002, stated to have been held against him. The appellant also sought a direction to the respondents to

pay consequential benefits.

2. The appellant was appointed as geophysicist with the respondent ONGC on 03.04.1984 and was posted at Dehradun. In the month of July, 1984, he was transferred to Delhi and he was re-transferred to Dehradun on 27.03.1987. He sought a transfer to Delhi on compassionate grounds on 22.04.1987. On 07.11.1987, he was transferred to Mumbai Regional Business Centre (MRBC), Mumbai. He sought cancellation of the said transfer. His order of transfer was, accordingly, kept in abeyance on 15.02.1988. He was transferred to Delhi on 31.03.1988, and rejoined his post in Delhi on 11.04.1988. He was again transferred to MRBC on 15.03.1990. He made a representation against his transfer, which was rejected on 27.03.1991. The appellant claimed that he was not in a position to proceed to Mumbai to join his post and he repeatedly applied for Extraordinary Leave. There was no response on his leave applications, meaning thereby, that his leave was not sanctioned. The petitioner failed to join at MRBC, Mumbai and remained absent from duty without sanction of leave. Consequently on 21.09.1992, the appellant was informed by the respondent that he is deemed to have resigned from his post under Regulation 14(5) of the ONGC Leave Regulations, 1968, in view of his long absence from duty with effect from 21.04.1991 and, on account of his not having reported to duty in spite of telegrams dated 28.04.1992 and 16.07.1992. The appellant states that the date from which he was deemed to have resigned was subsequently altered to 31.08.1991. The deemed resignation was confirmed on 26.02.1993.

3. The appellant assailed the said order in W.P. (C.) No. 1887/1994. The learned Single Judge set aside the order and directed that the appellant

should be issued a show cause notice, so as to enable him to explain his circumstances and consider his explanation/ justification for continued unauthorised leave. Direction was also issued that he be paid subsistence allowance. The respondent preferred a Letters Patent Appeal i.e. L.P.A No. 59/1999. This appeal was partially allowed by the Division Bench in as much, as, the direction to pay subsistence allowance to the appellant herein was recalled. However, the direction requiring the issuance of a show cause notice to the appellant was sustained.

4. Consequently, the appellant was show caused on 29.05.2001. The appellant sent his reply on 16.08.2001. The Designated Inquiry Officer made his report which was against the appellant. He represented against it on 26.02.2002. On 19.03.2002, the deemed resignation of the appellant was upheld. Consequently, the appellant again approached this Court by preferring W.P. (C.) No. 248/2003, which has been dismissed by the impugned judgment.

5. The relevant Leave Regulation i.e. Regulation 14 (5) of the ONGC Rule Regulations, 1968 reads as follows:

“ Where an employee fails to resume duty on the expiry of the period of extra-ordinary leave if the leave granted to him is the maximum that can be granted under this regulation or where an employee who is granted a lesser amount of extraordinary leave than the maximum admissible under this regulation, remains absent from the duty for any period which, together with extraordinary leave so granted exceeds the limit upto which he could have been granted leave under this regulation, he shall be deemed to have resigned his appointment and shall accordingly cease to be in the employment of the Commission, unless the Commission may determine otherwise, in view of the exceptional circumstances of the case.”

6. The learned Single Judge has held that the necessary ingredients for invocation of the said Regulation existed in the present case. He has further held that the respondents, after considering the response given by the appellant to the show cause notice, had arrived at the decision to reject the explanation furnished by the appellant, and that the same did not call for interference.

7. The submission of learned counsel for the appellant, firstly, is that the direction issued by the Division Bench in L.P.A No. 59/1999, recalling the direction issued by the learned Single Judge for grant of subsistence allowance, was not in accordance with the Rules. The submission is that since the order of deemed suspension dated 26.02.1993 had been set aside, the status of the appellant was that he continued to remain in service with the respondent.

8. He submits that Regulation 33 – which deals with suspension, provides in sub Clause(4) that where the penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of, or by a decision of a Court of law, and the Disciplinary Authority, on a consideration of the circumstances of the case decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Employee shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

9. The submission is that the aforesaid being the position, the appellant was entitled to suspension/ subsistence allowance. The further submission is

that the appellant had preferred a Review Petition before the Division Bench in L.P.A No. 59/1999, and on 12.04.2002, the Review Petition was dismissed as withdrawn with liberty to the appellant to take all pleas available, including invoking Regulation 33(4) of the relevant Regulations.

10. Mr. Rao submits that even though this aspect was raised in the writ petition and noticed by the Learned Single Judge, while passing the impugned order, the same has not been considered by him.

11. Having considered the impugned judgment and the submission of Mr. Rao, we are of the view that there is absolutely no merit in the present petition. The Rule of deemed resignation extracted hereinabove, is a Rule which codifies the rule of voluntary and wilful abandonment of his service by an employee. The deemed resignation by an employee does not tantamount to either removal, dismissal or compulsory retirement. It is not a punishment imposed by the employer. It results from the voluntary and wilful conduct of the employee in not reporting for duty and remaining absent from duty for a considerable length of time. In the present case, the appellant remained on leave without sanction from 21.04.1991. Thus, as a consequence of the appellants conduct, the deemed resignation was triggered under Regulation 14(5) aforesaid.

12. The first order of deemed resignation was passed on 21.09.1992 and the same was confirmed on 26.02.1993. The setting aside of these orders did not change the status of the appellant. If he was deemed to have resigned, his status remained the same. Only the declaration/ recognition of that status by the said two orders dated 21.09.1992 and 26.02.1993 was set aside, so as to grant the appellant an opportunity to explain the circumstances and his justification for his absence. If his justification were

to be found acceptable, the competent authority could take a view not to treat the appellant as deemed to have resigned or abandoned his service, inter alia, by regularising the period of his unauthorised leave. The opportunity granted to the appellant by the learned Single Judge in the first round, and upheld by the Division Bench, was limited in its scope and did not tantamount to an obligation on the part of the respondent to hold an elaborate inquiry against the appellant, since no misconduct was alleged against him. That process has been undertaken and, in our view, the learned Single Judge has rightly not considered it necessary to interfere with the decision arrived at by the competent authority.

13. Reliance placed by the appellant on Regulation 33(4), in our view, is misplaced for the reason that the said regulation would come into play only if the employee were to be proceeded against in disciplinary proceedings, and only he were to be penalised by dismissal, removal or compulsory retirement from service, which is set aside or declared and rendered void in consequence of a decision of a Court of law. That is not the case in hand.

14. The submission that the subsistence allowance of the appellant could not have been withdrawn by the Division Bench while passing the order in LPA No. 59/1999 is a submission which is neither legally tenable, nor can be raised before us. Since the setting aside of the orders dated 21.09.1992 and 26.02.1993 did not change the status of the appellant as “deemed to have resigned”, he was not entitled any subsistence allowance. Moreover, if the appellant was aggrieved by the said order, it was for him to assail the same before the Supreme Court contemporaneously. Merely because he was granted leave by the Division Bench in his Review Application to seek subsistence allowance by placing reliance on Regulation 33(4), it did not

tantamount to the Division Bench pronouncing on the applicability of the said regulation to the appellant's case.

15. We find no merit in the present appeal.

16. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 08, 2019

N.Khanna