

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CWP-13565-2016
Date of Decision: 01.04.2024

Rajiv Singh ...Petitioner

Versus

Oriental Insurance Company Ltd. and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. S.P. Laler, Advocate and
Mr. Shubham Saroha, Advocate for the petitioner
Mr. S.S. Sidhu, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 10.03.2016 (Annexure P-21) passed by the appellate authority and order dated 14.05.2015 (Annexure P-19) whereby he has been removed from service without disqualification from future employment.
2. The petitioner joined respondent-Oriental Fire & General Insurance Company on 21.06.1977. He was confirmed w.e.f. 01.07.1981 vide order dated 19.10.1981. After completing 31 years and 9 months of service, he decided to avail benefit of Voluntary Retirement Scheme. He filed an application dated 31.03.2009 seeking voluntary retirement. The said application was never rejected by competent authority, however, petitioner was asked to submit certain documents which he did not. On account of non-

submission of documents, the respondent made up its mind to treat him 'absent from duty' and initiate departmental proceedings. An Enquiry Officer was appointed by Regional Manager who claimed himself as disciplinary authority. The Enquiry Officer inquired into the matter and submitted his report dated 13.10.2011 (Annexure R-26). The Regional Manager accepted findings of the Enquiry Officer and called upon the petitioner to file his response. The said authority vide order dated 25.10.2013 (Annexure P-18) imposed penalty of removal from service without disqualification from future employment. The petitioner preferred an appeal before the appellate authority which came up for consideration before General Manager who vide order dated 27.02.2015 concluded that Regional Manager was not competent authority to pass order of removal from service. The said authority remanded the matter back for fresh order to be passed by competent authority. The matter came up for consideration before Deputy General Manager who vide order dated 14.05.2015 (Annexure P-19) ratified order passed by Regional Manager. The petitioner unsuccessfully preferred an appeal before appellate authority.

3. Learned counsel for the petitioner submits that appellate authority vide order dated 27.02.2015 remanded the matter back to the disciplinary authority, however, copy of said order was never communicated to the petitioner. The Deputy General Manager who was competent authority passed a fresh order, however, he simply ratified order passed by an incompetent officer. He did not even issue notice to the petitioner and invited his comments. From the perusal of subsequent order, it is evident that it is reiteration of previous order. The disciplinary authority was duty bound to

invite comments from the petitioner and pass a speaking & reasoned order instead of reiterating earlier findings.

4. The petitioner served respondent for almost 32 years and was eligible for voluntary retirement because minimum required service was 20 years. The respondent could reject application of the petitioner within 90 days, however, it asked him to submit documents relating to his property and application in the prescribed form. The respondent did not reject application of the petitioner and issued charge sheet alleging 'absence from duty'.

5. *Per contra*, learned counsel for the respondents submits that the petitioner concededly submitted application seeking voluntary retirement on 31.03.2009, however, he neither submitted property details nor filed application in the prescribed pro forma, thus, he was treated as 'absent from duty' and impugned orders came to be passed. He conceded that disciplinary authority i.e. Deputy General Manager while passing impugned order did not invite comments from the petitioner and the order was passed in his absence.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. The conceded position emerging from the record is that the petitioner joined service on 21.06.1977 and he submitted his application seeking voluntary retirement on 31.03.2009. Meaning thereby, he served respondent for almost 32 years. As per Rule 30 of General Insurance (Employees) Pension Scheme, 1995 (for short '**1995 Scheme**'), an employee after completing 20 years of service may apply for voluntary retirement. The appointing authority may reject application within 90 days from the date of

receipt of application. The petitioner did not work after 31.03.2009. No dues were outstanding against him. He was not involved in any case. Neither departmental nor criminal proceeding was pending against him.

8. Rule 30 of 1995 Scheme permits voluntary retirement which is reproduced 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 to 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.”

[Emphasis Supplied]

From the perusal of aforesaid Rule, it comes out that an employee, at any time after completing 20 years of service, may apply for voluntary retirement. At that point of time, he should not be on deputation or absorbed permanently in autonomous body or a public sector undertaking. The appointing authority may reject application seeking voluntary retirement within 90 days and if it does not refuse to grant permission, the retirement shall become effective from the date of expiry of 90 days.

9. In the case in hand, the petitioner filed application seeking voluntary retirement on 31.03.2009. The said application was never rejected leaving aside within 90 days. The respondent asked the petitioner to supply certain information which he did not. The appointing authority on the ground of non-submission of documents could reject his application but this course was not adopted. Proviso to Sub-Rule (2) of Rule 30 of the 1995 Scheme clearly provides that if application is not rejected within 90 days, it shall be deemed to be accepted. The respondent within 90 days did not reject application of the petitioner seeking voluntary retirement. A fortiori he retired on the expiry of 90 days from 31.03.2009.

10. It is settled proposition of law that a substantial benefit cannot be denied on technical or procedural grounds. The rules create substantial right to seek voluntary retirement on completion of 20 years service. Learned counsel for the respondent vehemently pleaded that the petitioner did not submit his property details so authorities could not decide application of the petitioner. Neither any criminal or civil proceeding was pending against him nor was any amount outstanding against him. The respondent could deny claim of the petitioner had some proceeding been pending against him. In the absence of

any pending proceeding, his claim could not be rejected on technical or procedural grounds. It is not case of the respondents that petitioner was involved in misappropriation of funds or he had made property out of illegal means. In the absence of any such allegation, the substantial benefit could not be denied on procedural or technical grounds.

11. The respondent, at the most, on account of non-submission of documents could impose some minor penalty whereas it initiated proceedings for major penalty which culminated in removal from service. The petitioner was admittedly eligible for voluntary retirement and he did not work after 31.03.2009 because he had already filed application seeking voluntary retirement. His status after 30.06.2009 was of a retiree and respondent initiated proceedings for major penalty on 06.10.2010. The respondent has treated a retired employee absent from duty. An employee who stands retired cannot be treated as absent from duty. The respondent's action of imposing penalty of removal from service cannot be justified in the eye of law and equity.

12. The respondent issued charge sheet which was followed by departmental inquiry. The petitioner concededly did not work after 31.03.2009 i.e. date of his application seeking voluntary retirement. As he had already applied for voluntary retirement, there was no question to work, nevertheless, respondent treated him 'absent from duty' and by way of charge sheet and inquiry report concluded that he was 'absent from duty'. The Enquiry Officer was appointed by Regional Manager who claimed himself disciplinary authority. The appellate authority set aside order of disciplinary authority on the ground that he was not competent/appointing authority. The

Enquiry Officer was appointed by Regional Manager, thus, the appointment of Enquiry Officer itself was bad in the eye of law because an incompetent authority cannot make further appointment(s).

13. The matter does not rest here. The appellate authority remanded the matter with an observation that fresh order be passed by competent authority. The relevant extracts of order dated 27.02.2015 passed by appellate authority read as under:-

“AND WHEREAS the undersigned being the Appellate Authority after having gone through the Charge sheet, written statement of defence submitted by Charged Officer, Enquiry Report, Penalty Order, Appeal Representation and all connected records of the case observes that there is no infirmity in the enquiry proceedings and findings of the Enquiry Officer. However, it is observed that the Penalty order dated 25.10.2013 was signed by the Regional Manager being Disciplinary Authority, that the appointment letter dated 11.07.1977 of the appellant was signed by the then AGM (Northern Regional). Although, the Disciplinary Authority for the cadre of Development Officer is Manager (Scale IV), the order of "Removal from Services" can not be issued by an authority lower than the appointing authority. Accordingly, the order of "Removal..." should have been issued by an officer in the cadre of DGM (Scale VI) or above. THEREFORE in view of the above facts, the undersigned remit the case with the directions to place the matter before the appropriate disciplinary authority for passing the appropriate orders. The appropriate Disciplinary Authority must go by evidence on record and reach objective conclusion. Thus, irrespective of findings of Enquiry Officer, the appropriate Disciplinary Authority who is now responsible for finalizing this case must find out for itself that there exists sufficient evidence linking the charged officer with the alleged misconduct.”

From the perusal of aforesaid, it is evident that appellate authority directed the disciplinary authority to go into the evidence on record and reach objective conclusion. It was further directed that irrespective of findings of Enquiry Officer, the competent authority would find out whether there exists sufficient evidence linking the charged officer with the alleged misconduct. The fresh order came to be passed by Deputy General Manager who did not think it appropriate to invite comments of the petitioner. He thought it appropriate to pass a fresh order just by reiterating findings of earlier authority. He did not grant opportunity of hearing to the petitioner. The relevant extracts of order dated 14.05.2015 passed by Deputy General Manager read as:-

“AND WHEREAS the undersigned being the Competent Authority after having gone through the Charge sheet, written statement of defence submitted by Charged Officer, Enquiry Report and all connected records of the case observes that Sh. Mehta abandoned duty from 01.04.2009 after visiting office on that date. All formalities for applying for VRS were not fulfilled by him despite repeated reminders and attempts made by the Branch Office. Sh. Mehta did not even bothered to attend the enquiry. The cover note books were called back from him only after he stopped attending office. He never represented to the higher authorities that he was not being allowed to attend office. The justification given by Sh. Mehta for not attending office is an after thought and not acceptable.

Therefore keeping in view the facts stated above the undersigned find the penalty imposed on Sh. Rajiv Mehta vide order dated 25.10.2013 is in order and hence, the undersigned ratify the order dated 25.10.2013 imposing the penalty of "Removal from Services which shall not be a disqualification for future employment.”

From the perusal of above order, it comes out that Deputy General Manager has opted to ratify order passed by an incompetent authority. He did not think it appropriate to independently examine evidence on record and pass a fresh order whereas he has opted to ratify earlier order. He did not even find it appropriate to invite comments of petitioner and grant him opportunity of hearing. The endeavour of Deputy General Manager was to substitute signature of Regional Manager. It amounts to gross violation of principles of natural justice. The approach of disciplinary authority cannot be approved by any standard or yardstick of legal principles. The order is patently bad in the eye of law.

14. In the wake of above facts and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The respondents are directed to release retiral benefits of the petitioner within three months from today.

15. It is made clear that petitioner as conceded shall not be entitled to interest on arrears.

(JAGMOHAN BANSAL)
JUDGE

01.04.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No