

(2014) 01 AHC CK 0251

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 66527 of 2010

Ajay Kumar Verma

APPELLANT

Vs

Central Administrative Tribunal Additional Bench

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 UPLBEC 1021

Hon'ble Judges : Rajesh Kumar Agrawal, J; Mahesh Chandra Tripathi, J

Bench : Division Bench

Advocate : P.N. Saxena, Sri H.M. Srivastava and Sri Seema Agarwal, Advocate for the Appellant; Ajay Bhanot, C.S.C., Sri Kaushlesh Pratap Singh, Sri P.K. Sinha and S.C, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar and Mahesh Chandra Tripathi, JJ.—Heard Sri P.N. Saxena, learned Senior Advocate alongwith Sri H.M. Srivastava, learned Counsels for the petitioner, Sri Ajay Bhanot, learned Counsel for respondent Nos. 2 and 4, Sri Kaushlesh Pratap Singh, learned Counsel for respondent No. 4 and Sri P.K. Sinha, learned Counsel for respondent No. 5. Parties have exchanged their affidavits. With the consent of the learned Counsel for the parties, the writ petition is being finally disposed of at the admission stage itself.

2. Briefly stated facts giving rise to the present petition are that the petitioner has filed the instant writ petition with the following prayer:-

i. Issue a writ, order or direction in the nature of certiorari quashing letter dated 26.10.2010 issued by respondent No. 3 accompanying with letter dated 27.10.2010 issued by respondent No. 4 filed as Annexure No. 3 and order dated 4.11.2010 passed by respondent No. 1 filed as Annexure No. 7, so far it is against the petitioner.

ii. Issue a writ, order or direction in the nature of mandamus commanding the

respondent No. 3 to honour the letter dated 22.7.2010 issued by respondent No. 3 (filed as Annexure No. 2 to this writ petition).

iii. Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv. Award the cost of the petition to the petitioner.

3. The petitioner who was an employee of Bharat Pump and Compressors Ltd. Naini Allahabad (hereinafter referred as "BPCL") from 1984. In the month of March, 1989, he had been sent to Bharat Yantra Nigam Ltd., Allahabad (hereinafter referred as "BYNL") on deputation. On 16.8.1991, the petitioner was absorbed in BYNL, Allahabad. BYNL, Allahabad is an under taking of Government of India and the same was holding company with 6 subsidiary companies. Finally the BYNL, Allahabad had undergone for winding up, then question arose regarding the absorption of the employees of said company. It is apparent from the record that two writ petitions, namely, Writ Petition No. 53024 of 2007 (Raj Bali and others v. Union of India and others) and Civil Misc. Writ Petition No. 41655 of 2009 (Swadesh Kumar Kesarwani v. Union of India and others) had been filed by the employees of BYNL, Allahabad and both the writ petitions were decided by one common judgment dated 26.8.2009 with direction to appropriate authorities i.e. Government of India to consider the case of the employees giving fullest opportunities. In response to the direction issued by this Court, the Government of India in most sympathetic manner had taken a decision vide order dated 22.7.2010 for absorption of employees in order of preference. It is also relevant to mention here that only four companies, namely, BPCL Allahabad, B & R Kolkata, R & C Mumbai and TSL Naini, Allahabad amongst whom the option were to be given in order of preferences. As per record, 19 employees had given their option to be absorbed in the aforementioned subsidiary companies and as per claim of the petitioner he had given first option for absorption on the BPCL, Naini, Allahabad and B & R, Kolkata as second preference and R & C, Mumbai as third preference. The respondent No. 2 had served a letter dated 27.10.2010 accompanying with another letter dated 26.10.2010 had given option to the petitioner beyond the above mentioned four subsidiary companies to another subsidiary company know as TSPL Hospet, Karnataka and immediate response has been asked in this regard. It transpires that in response to the letter dated 27.10.2010, petitioner had submitted representation on 28.10.2010 before respondent No. 4 i.e. Managing Director, BYNL apprising him regarding his family problems with the request for absorption and requested that he may be given absorption only in BPCL. It has also been alleged by the petitioner that in response to the representation, the respondent No. 4 immediately exercised option as provided in Para-2 of the letter dated 26.10.2010, which provided voluntary retirement scheme to the petitioner. On account of decision of giving voluntary retirement, the petitioner being aggrieved had filed Original Application No. 1659 of 2010 before the Central Administrative Tribunal at Allahabad with following prayer:-

i. to issue a suitable order or direction by way of quashing the letter dated 26.10.2010 written by respondent No. 2 and covering letter dated 27.10.2010 filed as Annexure No. A-3 to the Compilation No. II of Original Application.

ii. to issue a suitable order or direction in the nature of mandamus commanding the respondents to honour the letter dated 22.7.2010 issued by respondent No. 2 filed as Annexure No. A-2.

iii. to issue a suitable order of direction in the nature of mandamus commanding the respondents to consider, decide and dispose of the representation dated 28.10.2010 submitted by the petitioner filed as Annexure No. A-4.

4. Bare perusal of the decision taken by the Central Administrative Tribunal, Allahabad, it is apparent that the letter dated 22.7.2010 which was sent by the Ministry of Heavy Industries & Public Enterprises to the Chairman & Managing Director of BYNL afforded alternative employment to 19 individuals with option for voluntary retirement scheme, in case the individuals were reluctant to join the subsidiary companies as indicated in the said letter and the said letter further modified vide order dated 26.10.2010 though not giving any reference to the earlier order so far whereby the applicant/petitioner was asked to join TSPL, Hospet Karnataka and in response to the letter dated 26.10.2010, the BYNL had advised the applicant/petitioner vide order dated 27.10.2010 to communicate on very same day his willingness to join TSPL. It is also apparent that by the same letter it had also been cautioned to the petitioner that in case he does not exercise the option to join in TSPL, he would be provided voluntary retirement scheme as other option. The learned Tribunal had also taken into consideration that the applicant/petitioner who submitted his representation dated 28.10.2010 for reconsideration of the decision of the Ministry and post him to TSL/BPCL Naini Allahabad so as to enable him to look after his ailing parents but subsequently, when he had not received any communication he has requested for ten days" time to join TSPL vide his application dated 2.11.2010. In Paragraph No. 3 of the order dated 4.11.2010 passed by the Central Administrative Tribunal, Allahabad has categorically mentioned as below:-

3. Counsel for the applicant has brought to our knowledge an endorsement beneath the aforesaid representation dated 2.11.2010 signed by the Chairman of the Managing Director of Bharat Yantra Nigam Limited which reads as under:-

In view of Government directive for compliance by today (one week time) the request made is not agreed.

Para (ii) of said order shall be implemented.

Enclose VRS form.

5. For proper adjudication of the matter, it is relevant to quote the relevant clause which would eventually prove that at the time of hearing of the matter before the Tribunal, the applicant finally agreed and requested that ten days" time may be allowed to join TSPL and on the basis of prima facie case in his

favour and balance of convenience and in the interest of justice, the Original Application was disposed of with direction to the respondent No. 3 to entertain the applicant and retain him till 19.11.2010 and relieve on the said date i.e. 19.11.2010, the applicant may join TSPL thereafter-availing minimum joining time. Relevant Paragraph Nos. 4, 5, 6 and 7 of the Central Administrative Tribunal is reproduced below:-

4. Counsel for the applicant submits that there is no justification for the respondents to seek the option within a few hours as some time is required to take a decision in regard to exercise of option. We fully agree with the contention of the Counsel for the applicant as some time is certainly required to take a decision of this nature, as the same cannot be a short term decision and the request for ten days time also is not that unreasonable so as to negative the same. Again, the Chairman Managing Director of Bharat Yantra Nigam Limited could have referred the matter to the Ministry for communicating their decision in this regard. Instead, the hasty action taken by the Chairman and Managing Director on the very same day (2.11.2010) rejecting the request of the applicant is not appropriate.

5. While we are convinced that the applicant has made out a prima facie case in his favour and balance of convenience and interest of justice are in favour of the applicant being granted an interim order to the extent that the respondents Bharat Yantra Nigam Limited, respondent No. 3 shall retain the applicant till 19.11.2010 and thereafter only shall relieve him and that meanwhile respondent No. 3 Ministry may correspond with the respondent No. 2 for ex-post facto sanction, if necessary, to relieve the applicant at a future date, it was felt that the very O.A. could well be disposed of with such a direction after hearing the Counsel for the respondents.

6. The Counsel for the respondents has no objection to the above order being passed as no further grievance of the applicant would survive in this case, once the above order is complied with.

7. In view of the above, this OA is disposed of with a direction to the respondent No. 3 to entertain the applicant and retain him till 19.11.2010 and relieve him on the said date (19-11-2010 pm). The applicant may join the TSPL thereafter, availing of minimum joining time.

Under the circumstances, there shall be no orders as to costs.

6. Aggrieved with the order dated 4.11.2010 passed by the Central Administrative Tribunal, Allahabad, the petitioner has preferred the present writ petition and in response Sri Ajay Bhanot has drawn our attention as learned Counsel for the respondent No. 2 and 4 has vehemently argued and opposed the claim set out by the petitioner mainly on the ground that in compliance of the aforementioned writ petition, the representation had been decided by the Government of India to absorb the BYNL employees in the erstwhile subsidiary companies and for this very purpose efforts were made by the Central Cabinet

decision and its approval conveyed vide letter dated 23.10.2007, Ministry of Heavy Industries & Public Enterprises which clearly envisaged as under:-

Opening of a Voluntary Retirement Scheme (VRS) to enable the employee desirous of opting for an early separation before closure of the company. An option to be given simultaneously to the employees of the company to join any of the subsidiaries before closure of the company, if such subsidiary is willing to take them, or in the alternative be offered VRS. In case the employees refuse to opt for VRS then the company would terminate their services under ID act 1947.

7. It had also been contended by Sri Ajay Bhanot, learned Counsel for respondent Nos. 2 and 4 that the approval of Central Cabinet which makes clear that it was not obligatory for any of the subsidiary company to take the employees of BYNL on their roll particularly because they were independent business entities and responsible for their own operation and profitability. He had also contended that after absorption of the petitioner in BYNL. He had lost the lien in the BPCL and became full fledged employee of the company where he was absorbed. Therefore, at that stage, he had no right or liberty to agitate or to make reference to his parental organisation for his absorption.

8. Sri Ajay Bhanot also drawn our attention that the claim of the petitioner set out by the present writ petition is also barred by principles of estoppel specially on the ground that disposal order of the Central Administrative Tribunal in the Original Application No. 1659 of 2010 was consented order specially on the ground that the applicant/petitioner himself has stated that in his last representation that some reasonable time (ten days) may be provided to join the TSPL. Therefore, once consented order has been passed in the said Original Application, it is not open to the petitioner to re-agitate by means of the present writ petition. Thus only on account of principles of estoppel, the present writ petition is devoid of merit and is liable to be dismissed.

9. Learned Counsellor the petitioner has also argued that Sri Arun Kumar Verma was much senior to Sri A.K. Dwivedi, Accountant Assistant who had been absorbed in the HD Department in the BPCL and his claim had been ignored.

10. In the present matter, Sri P.K. Sinha who appeared on behalf of respondent No. 5 i.e. BPCL also brought on record through counter affidavit and submitted that BPCL had also gone under severe financial constraint in mid, 1990's and on account of heavy financial loss, the same was also referred to the Board for Industrial and Financial Reconstruction (BIFR) in the year, 1995. Subsequently, the Government of India created a Bureau for Revival of Public Sector Enterprises (BRPSE) which had mainly constituted by Government of India to study the cases of sick public sector enterprises and to give suggestions and recommendations so that the revival of public sector enterprises could be ensured. In this background, a report/recommendation was submitted in the year 2006 to the Government of India regarding the right off non plan loan of Rs. 102.75 crore and also to right off interest dues of Rs. 50.40 crore of the BPCL and also the BRPSE had also

recommended for budgetary support of Rs. 3.73 crore so that the BPCL stand on its own legs. It is also relevant to mention at this stage that the BRPSE had also recommended strength of employees may be reduced by at least 100 through voluntary retirement package and 42 employees had taken voluntary retirement under this scheme. It may also be pointed out that the BPCL is one of the subsidiary company of M/s. BYNL alongwith five other of the subsidiary companies and in the year 2009 the Government of India had taken a decision to wind up M/s. BYNL holding companies of six subsidiary companies including the BPCL in this regard voluntary retirement scheme had been introduced in the BYNL. In this background, the letter dated 23.10.2007 had been issued and the reference had already been given in the preceding paragraph whereas it was clearly provided that the employee may join any subsidiary company before the closure of the companies, if such, subsidiary is willing to take them or in the alternative given voluntary retirement. In this background, BPCL had absorbed two employees (drivers), namely, Sri Abhimanyu Prasad and Sri Uttam Singh as per the suitability in the BPCL and further also four other persons, namely, Sri A.K. Dwivedi, Executive Assistant, in the HD Department, Sri Ramesh Chandra, Senior Assistant Accounts, in the Finance Department, Sri J.K. Chitrakar, P.A. (BYNL) in Company's Secretariat and Sri D.S. Adhikari, Attendant in HD Department.

11. Sri P.K. Sinha, also brought into notice that BPCL while absorbing the aforementioned persons had constituted Committee and only on the suitability they were permitted to join in the BPCL. He had also drawn our attention that they had been adjusted in the different department as they were well acquainted with the job relating to formalities of winding up of M/s. BYNL. The four employees recommended by the Committee were also deputed to comply the formalities of winding up of M/s. BYNL. It has been contended on behalf of the BPCL through affidavit that High Committee has been constituted and only after assessing the suitability of a person for the organisation, the persons had been absorbed.

12. We have heard rival submissions of learned Counsel for the parties and perused the record. The Government of India, Ministry of Heavy Industries and Public Enterprises had issued a letter of winding up on 23.10.2007 upon putting a clause which as follows:-

Opening of a Voluntary Retirement Scheme (VRS) to enable the employee desirous of opting for an early separation before closure of the company. An option to be given simultaneously to the employees of the company to join any of the subsidiaries before closure of the company, if such subsidiary is willing to take them, or in the alternative be offered VRS. In case the employees refuse to opt for VRS then the company would terminate their services under ID act 1947.

13. Bare perusal of the winding up of letter dated 23.10.2007, it is apparent before opening of voluntary retirement scheme if employee desirous of opting for a early separation before, the closure of company. An option was also called for

to join any of the subsidiaries before the closure of the companies but at the same time it further provided that "if such subsidiary is willing to take them, or in the alternative be offered VRS". Therefore, in these circumstances, the whole scheme was sympathetic in nature at the time of winding up of a company. The Government of India had taken a noble cause that even though VRS scheme was there in favour of the employees but at the same time an offer was also given to the employees to exercise their option for absorption in any of the subsidiary but at the same time it was also provided that merely option for absorption in subsidiary would not be just sufficient but in fact such subsidiary company also must willing to take them.

14. In the present matter, no doubt, the petitioner had opted as first option for BPCL for absorption but the High Power Committee of the BPCL had not found him suitable for absorption in the BPCL. Therefore, as contended by the Counsel for the petitioner that Sri Arun Kumar Verma was senior to Sri A.K. Dwivedi, Executive Assistant has no force. The BPCL had already brought on record that the suitability was thoroughly assessed and only thereafter the absorption had taken place. It is also necessary at this stage, to discuss the true and correct status of the BPCL as mentioned above that BPCL had also gone under tremendous financial implications. Whereas, at one point of time, it was pruning the said strength of its workers, trying all means to put up the company as financial vibrant company then at that point of time it had every right to justify specially the condition of suitability of a person who is going to be absorbed in the company. Therefore, the allegations of pick and chose is totally devoid of merit and liable to be rejected. It is further relevant to discuss at this stage, that the arguments advanced by Sri Ajay Bhanot regarding the principle of estoppel is also correct under the present set of circumstances where the applicant himself submitted representation dated 28.10.2010 for reconsideration of the decision of the Ministry and post him to TSPL/BPCL so as to enable him to look after his ailing parents. Later on, as he had not received any communication, he himself has requested for ten days" time to join TSPL vide his application dated 2.11.2010. Only, thereafter, the petitioner had filed the Original Application No. 1659 of 2010. Taking into consideration of the said representation, the endorsement was made by the Chairman and Managing Director of BYNL, it reads as under:-

In view of Government directive for compliance by today (one week time) the request made is not agreed.

Para (ii) of said order shall be implemented.

Enclose VRS form.

15. Learned Tribunal had also considered the prima facie claim of the applicant/petitioner that some reasonable time was definitely required to the applicant to take a decision as the same cannot be a short term decision and in this background had sought some reasonable time. Only in this background, learned

Tribunal has categorically made an averment which has already been quoted above that the prima facie case and balance of convenience and interest of justice were all in favour of the applicant and finally Original Application was disposed of with direction to the respondent No. 3 to entertain the applicant and retain him till 19.11.2010 and relieve him on the said date, the applicant may join the TSPL thereafter availing the minimum time of joining. Therefore, the aforementioned facts as narrated in the order of the learned Tribunal in the Original Application would clearly demonstrate that the said order was consented in nature and petitioner had no right to agitate the said consented order any further by means of the present writ petition. Therefore, the present writ petition is liable to be dismissed.

16. The aforementioned facts and circumstances would also clearly demonstrate that there is no violation of legal right of the petitioner. The erstwhile company is no more in existence and only on the humanitarian ground in consultation with the subsidiary companies, an option was given to the employees for absorption. In the present matter, the petitioner had also been given an option to join Thungabhadra Steel Products Limited which was also admittedly subsidiary companies of BYNL and there was no pick and chose method adopted in the aforementioned companies. In the present matter, while disposing of the Original Application by the Tribunal breathing time was given to the applicant/petitioner to join TSPL and in utter disregard to the direction issued in the Original Application, the applicant/petitioner has filed the present writ petition.

17. On the facts and circumstances as referred hereinabove, we do not find any reason to interfere in the matter. Accordingly, we decline to exercise extraordinary discretion under Article 226 of the Constitution of India. The writ petition fails and is accordingly, dismissed.