
(2011) 08 DEL CK 0023
In the Delhi High Court
Case No : W. P. (C) 8795-98 of 2004

A.K. Tandon and Others

APPELLANT

Vs

Liquidator and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0023

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : K. Venkataraman, for the Appellant; P.R. Agrawal and Anju Bhushan for R 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Petitioners 1 and 2, who were working as Deputy Managers (Finance & Accounts), Petitioner No. 3 as Personnel Assistant and Petitioner No. 4 as Senior Assistant (RB) with the Indian Road Construction Corporation Ltd. (‘IRCC’), Respondent No. 2, a Government of India enterprise, challenge the decision dated 31st January 2002 of the IRCC, rejecting their representation for release of the Voluntary Retirement Scheme (‘VRS’) compensation. The ground for rejection was that they had been relieved from the IRCC to join the National Highways Authority of India (‘NHAI’) even prior to their opting for the VRS.

2. By a circular dated 28th/31st March 2000, the IRCC conveyed to its employees a decision of the Government of India (‘GoI’) to wind up the IRCC. It was conveyed that the GoI had encouraged the employees to opt for the VRS failing which they would be entitled for compensation on closure in terms of the provisions of the Industrial Disputes Act, 1947 (‘ID Act’). This was followed by the circular dated 31st May 2000 in which it was end stated that Board of Directors of IRCC at a meeting held on 22May 2000 had directed that the all officers and staff should be advised to opt for VRS on or before 30June 2000. The salient features of the VRS Scheme were enclosed with this circular. The

Petitioners state that pursuant to the above rd circular they applied for VRS along with other employees. On 3July 2000, an Office Order was issued stating that all the applications for VRS which ad been received up to 30June 2000 "have been accepted". It is stated that the different dates on which the different officers and staff members are to be relieved would be "verified separately in due course".

3. By a circular dated 14September 2000 the IRCC intimated its officers and staff that since the mandatory notice period of three months for opting for VRS. will be completed on 30September 2000, they would be relieved on that date "except some officers and staff whose services may be continued beyond 30.9.2000 to attend to working relating to winding up, with their consent."

4. On 21st September 2000 the Petitioners 1 and 2 submitted their technical end resignations in order to join the NHAI on 22September 2000. Petitioner No. 3 joined the NHAI after submitting a technical resignation on 18 August 2000. Petitioner No. 4 also joined the NHAI on 9October 2000 after submitting technical resignation from the IRCC. It is stated by the four Petitioners that they had been selected and appointed in the NHAI on the basis of their educational qualifications, experience and their performance in the interview. They maintain that they were relieved from IRCC after acceptance of their VRS However, the IRCC rejected their representations for release of the VRS benefits by its letter dated 17August 2001 on the ground that they were not relieved on voluntary retirement "but on immediate absorption" with the NHAI.

5. On 6November 2001, an Office Memorandum (`OM") was issued by the Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises ( `DPE"), GoI modifying the revised VRS. for Central Public Sector Undertakings (`PS Us"), announced by the OM dated 5May 2000. Clause (d) of the said OM stated that "once an employee avails himself of voluntary retirement from a PSU, he shall not be allowed to take up employment in another PSU. If he desires to do so, he shall have to return the VRS compensation received by him to the PSU concerned." Para 4 stated that the employees, who had been relieved from the PS Us before the date of issue of the O.M., would not be covered by the modified scheme. The Petitioner contended that the OM dated 6November 2001 was obviously prospective and could not be invoked to deprive the Petitioners of their VRS compensation. After the further representation of the Petitioners th dated 15January 2002 was rejected by the Manager (Civil/Peers.) IRCC on 31st January 2002, the present writ petition was filed.

6. The Petitioners have relied upon the decision of the Supreme Court dated 8May 2001 in Civil Appeal No. 3740 of 2001 (Gaurishankar Ghosh Hazra v. Hindustan Copper Ltd.) in which it was held that the VRS of 1993 at the time of its announcement did not contain any embargo on an employee of a PSU, opting for the VRS, joining another PSU. It was held that in the circumstances, the benefits under the VRS 1993 could not be denied to the Appellant in that case.

7. On behalf of Respondent Nos. 1 and 2, it is contended that prior to the formal acceptance of the Petitioners' application under the VRS, each of them had been relieved pursuant to a resignation letter so that they could join the NHAI on immediate absorption basis. While submitting the VRS application each of the Petitioners had given an undertaking to the effect that "in case of my getting appointed in any other organization in response to my application forwarded through proper channel, my application for VRS may be treated as withdrawn for all purposes." It was on this basis that the Petitioners were absorbed by the NHAI. It is also stated that the IRCC paid each of the Petitioners their entire terminal benefits including gratuity, leave encashment and also transferred the PF accumulation to the NHAI. The Petitioners accepted the above amount without any objection.

8. In the rejoinder, it is not denied by the Petitioners that they had given the above undertaking. It is however contended that the Petitioners' appointment in the NHAI were fresh appointments after a regular process of selection and, therefore, it was not merely an absorption as contended by the Respondents. Further, it is submitted that the circular dated 31st January 1996 is applicable only where the employee is absorbed in another PSU and not when the employee joins an autonomous body like the NHAI.

9. The above submissions have been considered by this Court. The sequence of events shows that each of the Petitioners did submit technical resignations from the IRCC before joining the NHAI. The documents annexed with the counter affidavit shows that it was the IRCC that took up with the Ministry of Shipping, Road Transport and Highways ('MoST'), the issue of absorption of its employees in the NHAI which was carrying out the work of similar nature like construction and maintenance of highways. By a letter dated 11 January 2000 the IRCC again requested the MoST for a sympathetic consideration of the demand of its employees, which included the Petitioners herein, for their absorption in the PSUs functioning under the administrative control of the MoST. It was on this basis that the MoST instructed NHAI to consider employment of the IRCC employees. An offer was then made by the NHAI to some of the employees of the IRCC which included the Petitioners herein. One of the sample letters of the NHAI dated 14 September 2000 addressed to the IRCC states that "it has been decided to appoint Shri Ashok Kumar Tandon and Satish Kumar Dureja as Accounts Officer on immediate absorption basis." It is the consequence of this that the Petitioners 1 and 2 have submitted their resignations on 21st September 2000 and joined the NHAI on 22 September 2000. Consequently, the case of the Petitioners that they did not join NHAI on absorption basis is not borne out by the record.

10. As regards Petitioner No. 3, the letter dated 2 August 2000 of the NHAI addressed to the IRCC states that he had been taken in the NHAI on transfer basis.

11. Each of the Petitioners gave an undertaking categorically stating that in the

event of their getting appointment with another organization, the application for VRS may be treated as withdrawn "for all practical purposes". Consequently, after the above undertaking, it is obvious that the Petitioners' application for VRS could not be treated as being alive. The documents enclosed with the counter affidavit also show that each of the Petitioners have been paid their respective retiral benefits which was accepted by each of them without demur.

12. The circular dated 14 September 2000 of the IRCC only states that the officers would be relieved from 30 September 2000. Till then, therefore, the Petitioners' applications under the VRS would be treated as pending. Moreover, the letter dated 3 July 2000 states that the dates from which different categories of officers and staff were to be relieved would be "verified separately in due course".

13. The reliance placed on the decision of the Supreme Court in *Gaurishankar Ghosh Hazra v. Hindustan Copper Ltd.*, is misplaced. On the facts of the present case, it is plain that even before a final decision was taken on the applications made by the Petitioners seeking VRS and prior to the date from which the VRS was to become effective, i.e., 30 September 2000, they were relieved by the IRCC to join the NHAI pursuant to their resignations from the IRCC.

14. Consequently, there is no merit in this writ petition, and it is dismissed as such with no order as to costs.