
(2010) 05 DEL CK 0315
In the Delhi High Court
Case No : Writ Petition (C) 1067 of 1996

Ashok Sarin

APPELLANT

Vs

Oil India Ltd. and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0315

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Vishal Singh, for the Appellant; Virender Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, working at the time of filing of the writ petition as a Deputy Chief Geophysicist at Duliajan, Assam with the respondent No. 1 Oil India Limited (hereinafter referred to as OIL), filed this petition claiming the following reliefs:

- i. To quash the decision of the respondent OIL refusing voluntary retirement to the petitioner.
- ii. For declaration that the petitioner has voluntarily retired from the service of the respondent OIL w.e.f. 15th September, 1994.
- iii. To quash the domestic inquiry proceedings initiated by the respondent OIL against him with the charge of misconduct of having abandoned his work.
- iv. For declaration that the domestic inquiry proceedings initiated against him after he had sought voluntary retirement were illegal and void.
- v. For direction for payment of his terminal benefits on voluntary retirement.

2. Notice of the writ petition as well as application for stay of domestic inquiry was issued. On 21st August, 1997 the counsel for the petitioner informed this Court that the petitioner was not interested in continuing with his service with

the respondent OIL and interested only in acceptance of his application for voluntary retirement. In the circumstances the counsel for the respondent OIL stated that they would fill up the post on which the petitioner was working. On 29th October, 2002 the counsel for the respondent OIL informed this Court that the disciplinary proceedings against the petitioner has been concluded and the matter was required to be considered by the disciplinary authority. Thereafter, on 21st November, 2002 the counsel for the respondent OIL informed that the disciplinary authority has tentatively decided to dismiss the petitioner from the service and sought directions for payment of provident fund and gratuity dues of the petitioner. This Court clarified that the pendency of the writ petition would not stand in the way of the respondent OIL paying provident fund and gratuity to the petitioner and payment was directed to be made within ten days. Thereafter the writ petition was dismissed for non prosecution on 5th December, 2008 and was restored on 2nd February, 2009. The writ petition was again dismissed for non prosecution on 8th July, 2009 and the petitioner again applied for restoration vide CM. No. 8589/2009 of which notice was ordered to be issued. The counsel for the respondent OIL has appeared. For the reasons stated in the application, the same is allowed. The writ petition is restored to its original position.

3. The fate of the disciplinary proceedings was inquired from the counsels. It is informed that the penalty of dismissal from service has been imposed on the petitioner. It was further inquired from the counsel for the petitioner whether the petitioner has challenged the said order. The answer is in the negative. The counsel for the petitioner contends that it is the case of the petitioner that his application for voluntary retirement was wrongly rejected by the respondent OIL and in which regard relief is also claimed in this petition and if the petitioner succeeds in the same, the disciplinary proceedings initiated thereafter would be of no avail. The only question for consideration thus in the present petition is as to the validity of the order of the respondent OIL refusing to accept the application of the petitioner for voluntary retirement. The counsels have been heard.

4. The counsel for the petitioner admits that as per the rule/scheme for Voluntary Retirement, the petitioner could not retire by his unilateral act and his application for voluntary retirement was required to be accepted by the respondent OIL. Attention is invited to the letter dated 11th October, 1994 of the respondent OIL intimating to the petitioner that his request for voluntary retirement has not been agreed to. The counsel for the petitioner contends that no reasons whatsoever have been given for refusing voluntary retirement. It is also contended that the respondent OIL being a "State" ought to have acted fairly in the matter of accepting or refusing Voluntary Retirement to the petitioner and cannot act whimsically, particularly when the petitioner was eligible for the same. It is further contended that the petitioner at the contemporaneous time was posted at Assam and was urgently required to be in Delhi with his family and had requested the respondent OIL to either transfer him to Delhi or to grant him leave or to give him voluntary retirement. Reliance

in this regard is placed on Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others,

5. The respondent OIL has in its counter affidavit pleaded that the Management had reserved to itself the right not to grant voluntary retirement. It is further pleaded that the said Scheme is intended only to do away with the surplus manpower; that the petitioner was holding the position of Deputy Chief Geophysicist and there was no possibility of reduction of manpower in the Geophysical Data Acquisition and Processing Department of the Company; it was for this reason that the application of the petitioner was not accepted.

6. The Voluntary Retirement Scheme of the respondent OIL requires reasons to be recorded in writing for refusing voluntary retirement. The letter dated 11th October, 1994 (*supra*) does not contain any reasons. However the respondent OIL along with its counter affidavit has filed a copy of the subsequent letter dated 2nd May, 1996 sent to the petitioner wherein the reasons as stated in the counter affidavit for refusing voluntary retirement to the petitioner were communicated to the petitioner. The requirement under the scheme is for "recording" the reasons and not for "communicating" the reasons. No time is prescribed in the scheme for communicating refusal or acceptance of the application for voluntary retirement. Moreover, this part is covered by the order dated 19th June, 1995 of Division Bench of this Court in earlier WP(C) 2275/1995 preferred by the petitioner.

7. As far as the judgment in Manjushree Pathak (*supra*) is concerned, in that case a vigilance inquiry and disciplinary proceedings were initiated on the basis of a complaint after the submission of the application for voluntary retirement. The employer in that case was also found to have not responded to the application for voluntary retirement even though the concerned authority had recommended acceptance of the application for Voluntary Retirement. It was in that context that the vigilance inquiry and the disciplinary proceedings in pursuance to a complaint subsequent to application for voluntary retirement were set aside and the employee granted voluntary retirement. However, in the present case the petitioner submitted the application for voluntary retirement on 1st September, 1994 and was orally informed that his application would not be accepted (as admitted by him in his letter dated 19th September, 1994) and his application for voluntary retirement was rejected on 11th October, 1994. No vigilance inquiry has been commenced against the petitioner. As far as the disciplinary proceedings are concerned, they are for misconduct of absenteeism inspite of rejection of the application for voluntary retirement. The facts of the present case are thus materially different from that in Manjushree Pathak.

8. Faced with the aforesaid, the counsel for the petitioner contends that there were only two posts of Deputy Chief Geophysicist and both the posts were occupied and as such the reasons given for not accepting the proposal of the petitioner for Voluntary Retirement are not correct. This Court however is not to go into the correctness or otherwise of the reasons for which an organization as

the respondent OIL decides to accept or reject the proposal of its officials for Voluntary Retirement. I have repeatedly inquired from the counsel for the petitioner whether any mala fides or motives have been attributed for refusing the petitioner's application. The counsel is unable to show any. In the circumstances, the power of this Court of judicial review cannot extend to the executive decision of the respondent OIL not to retire an official before the prescribed age of superannuation. An organization invests in its employees. The petitioner has admittedly been working with the respondent OIL for long and by his sheer association with the respondent OIL for such a long span of time is presumed to be of immense utility to the respondent OIL. Moreover the petitioner is a technical person and is in the field of Geophysics where experience is of immense value. In the circumstances, nothing wrong or arbitrary can be found with the decision of the respondent OIL of refusing to allow the petitioner to retire before attaining the age of superannuation. The Supreme Court in Board of Trustees, Visakhapatnam Port Trust and Others Vs. T.S.N. Raju and Another, has held that no one can claim voluntary retirement as a matter of right. The petitioner, therefore, insofar as impugns the order of refusal of voluntary retirement, does not make out any case for interference. As far as the other reliefs claimed are concerned, this Court had not stayed the domestic inquiry proceedings initiated against the petitioner and which as aforesaid have culminated in an order of dismissal of the petitioner from service. The said order is not subject matter of this petition. Moreover, the commencement of disciplinary proceedings was challenged only on the ground of the petitioner being entitled to voluntary retirement. Once that part is not found in favour of the petitioner, the petitioner is not entitled to any other relief. The writ petition is therefore dismissed. No order as to costs.