

(2013) 03 DEL CK 0017

In the Delhi High Court

Case No : Writ Petition (C) No. 7159 of 2001

Bharat Bhushan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0017

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sanjay Ghose, Mohd. Farruqh and Mr. Nitin Bhardwaj, for the Appellant; Rajiv Kapur and Ms. Vatsala Rai, for the Respondent

Judgement

Valmiki J Mehta, J.—The present writ petition is filed by Sh. Bharat Bhushan, an ex-employee of the respondent no. 2-State Bank of India, who took voluntary retirement under a circular dated 29.07.1999. The claim of the petitioner is that the petitioner has got lesser VRS benefits inasmuch as the petitioner has been given VRS benefits taking him on a lower post than the actual post, which he was working in the grade being Officer Middle Management Grade Scale II w.e.f. 1.01.1991. The basis dispute in the present case centers around the aspect of entitlement to further promotion of an employee of the respondent no. 2-bank, petitioner being one such employee, being dependant upon completion of an assignment in a rural or a semi urban area. In terms of the policy of the respondent no. 2-bank since certain circumstances existed, adhoc promotions were granted without employees" completing the period of posting of 2 years in the rural or semi urban area, subject however to the employee given an undertaking that he will complete the posting in the rural or semi urban area. The petitioner did take the promotion, and which was admittedly an adhoc promotion, by giving the following undertaking:-

The Chief General Manager,

State Bank of India,

New Delhi

Dear Sir

STAFF: SUPERVISING

PROMOTION TO MMG SCALE II

RURAL/SEMI-URBAN SERVICE: SEPARATE DESPENSATION

I hereby undertake to complete the required period of service as per the norms laid down by the Bank in a rural and/or semi-urban branch immediately after my posting.

2. I also undertake to forgo the promotion in the event of my failing to complete the required period of service at a rural/semi-urban branch for reasons attributable to me.

Yours faithfully,

(Signature)

Name of Officer: Bharat Bhushan

Grade: MM II

Place of Posting: Service Branch

2. Though this undertaking is undated obviously it must have been given prior to the petitioner taking the adhoc promotion to Officer Middle Management Grade Scale II.

3. Petitioner, pursuant to the VRS scheme dated 29.7.1999 applied for VRS, however, admittedly, till that date, he had not completed the period of two years posting in rural/semi urban area, and six months were still remaining. Petitioner was given voluntary retirement and the petitioner was paid his terminal dues, however, he was paid the terminal dues not as the petitioner being an Officer Middle Management Grade Scale II, but one scale lower being Officer Junior Management Grade Scale-I, and from which post, the petitioner had taken adhoc promotion subject to giving of an undertaking to complete the rural/semi urban assignment of two years.

4. It is undisputed before me that the amount which was received by the petitioner towards the terminal benefits on account of his VRS application being accepted, was not taken by the petitioner by disputing the quantum of payment and by reserving his rights that the amount received by the petitioner was not as per his legal entitlement requiring the monetary benefits to be as per the petitioner being an Officer of Middle Management Grade Scale-II.

5. On behalf of the petitioner, two principal points have been argued. The first one is that VRS scheme is a contract between an employee and the employer organization, and since the petitioner applied for VRS on the basis of his being an

Officer Middle Management Grade Scale II, the contract of VRS had necessarily to be accepted by the respondent no. 2-bank on this basis and not on taking the petitioner on the lower grade i.e. the respondent-bank could not have given VRS benefits by taking the petitioner in a lower scale of Junior Management Grade Scale-I. The second argument is based upon para 3(vii) of the circular dated 29.7.1999 of the respondent no. 2-bank, and this para as per the petitioner means that the respondent-bank should not have permitted resignation unless the employee mandatorily completes the rural/semi urban assignment, and if, in spite of the same VRS is given, it will have to be in terms of the grade scale pay of the higher grade where adhoc promotion is given.

6. So far as the first aspect is concerned, I cannot agree with the contention raised on behalf of the petitioner that the application given by an employee such as the petitioner can only form the basis of the contract of VRS and not the response thereto given by the respondent no. 2/employer. This is for the reason that no doubt the application for VRS is an offer under the Contract Act, 1872 which has to be accepted by the respondent no. 2-bank/employer, however, the respondent no. 2-bank/employer can always give a counter offer by paying a different amount instead of the amount as is claimed by an employee in his VRS application. This counter offer would be different from the terms of the VRS application and it would be perfectly open for an employee not to accept this counter offer and refuse the lesser payment, and in which circumstances, there would be no conclusion of the contract of VRS. However, if an employee, and which the petitioner has done in the present case, accepts lesser VRS benefits/ amounts being credited to his account, especially without raising any objection in the acceptance of VRS benefits, the contract is completed at this stage of receiving the VRS benefits and the contract is not as per the application made for voluntary retirement.

In fact, the principle of estoppel will also apply against the petitioner and the petitioner is estopped from claiming any higher amounts inasmuch as he accepted the VRS amounts given by the respondent no. 2/employer without any protest and without reserving any legal rights to claim a higher amount. I may note that in this regard, the respondent No. 2-bank in its counter-affidavit has specifically stated that the petitioner having withdrawn the VRS benefits settled in his favour from his account shows his consent and completion the contract by accepting of the counter offer of the bank of a lesser amount instead of the amount as claimed by the petitioner/employee. This aspect of contract being completed on the petitioner receiving a lesser VRS amount, as also the issue of estoppel becomes more than clear when we read para 8(iii) of the VRS Scheme, which reads as under:-

iii) The employees seeking retirement under VRS will not be entitled to dispute the payments received under the Scheme on any ground whatsoever. The retiring staff members and/or their nominee or legal heirs shall have no right/claim/demands against the Bank on any matter relating to the Scheme.

7. A reference to the aforesaid para 8(iii) makes it abundantly clear that an employee who retires under a Voluntary Retirement Scheme will not be entitled to dispute the payment received under the scheme on any ground whatsoever. This scheme which contained this specific para is the scheme under which the petitioner had applied and taken VRS, and therefore, the petitioner is clearly barred from claiming any entitlement to dispute the payment received under the VRS.

8. In para 34 of A.K. Bindal and Another Vs. Union of India (UOI) and Others, , it is held that on accepting voluntary retirement, an employee cannot turn back thereafter to claim other amounts except VRS benefits received. This para 34 reads as under:-

34. This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

Thus the first argument raised on behalf of the petitioner is accordingly rejected.

9. The second argument raised by the petitioner on the basis of para 3(vii) of the Circular dated 29.7.1999 can be understood if we refer not only to such para but also the other related paras of this circular dated 29.7.1999. The relevant portions of this circular read as under:-

CIRCULAR MEMO NO. CDO: PER: 56 OF 1999-2000 C.O. LETTER NO. CDO/PMCIR/25 DATED 11TH JUNE 1999

To:

ALL BRANCHES &

OFFICES IN DELHI

CIRCLE

FROM:-

PERSONNEL & HRD DEPTT.

STATE BANK OF INDIA.

LHO.NEW DELHI.

DATED: 29 JUL 1999

STAFF: SUPERVISING

NON-COMPLETION OF RURAL/SEMI URBAN ASSIGNMENTS WITHDRAWAL OF PROMOTION

In terms of the Government of India guidelines, the officers promoted to MMGS II/III which effect from the 1st August, 1988 had to complete 2/3 years Rural/ Semi-Urban (R/SU) assignments as a necessary condition for promotion. Some of the officers could not be posted for completion of the same due to various factors and were promoted to higher grades, based on the undertakings given by them that they would complete the R/SU assignment immediately after their posting or forego the promotion in the event of their failing to complete the required period of service at rural/semi-urban branch for reasons attributable to them.

2. Due to the change in circumstances over a period of time, some of these officers are not willing to go in for completion of these assignments now, some have even given in writing that their promotion may be withdrawn, some have submitted papers for voluntary retirement and some others have stated that they are not in a position to go for R/SU posting immediately.

3. In view of the foregoing and the affidavit filed in the Supreme Court by the Bank that the concerned officers (promoted to MMGS-III) shall be sent for R/SU assignments and till such officers complete the said R/SU assignments their promotion is to be treated as adhoc, it has been decided by the Executive Committee of the Central Board at its meeting held on the 3rd June 1999, to proceed in the matter as under:-

i) If an officer is unable to complete the mandatory/R/SU assignment for any reason attributable to him/her, his/her promotion will have to be withdrawn and he/she will not be permitted to officiate in higher grade(s). This withdrawal can go back to two/three grades also i.e. to the grade in which the officer was when he/she gave the undertaking for completing the amount by assignment.

ii) An officer, not willing to go for R/SU assignment due to changed circumstances, will make a request in writing giving the reasons for withdrawal of promotion. In case no request is made in writing by the officer and he/she doesn't go for R/SU assignment, his/her promotion will be withdrawn as it was subject to the completion of the R/SU assignment, in terms of his/her undertaking.

iii) The officer can be considered for promotion subsequently with effect from a

prospective date, if otherwise eligible, as per the promotion policy/placement norms in vogue at the material time, if he/she completes all the mandatory assignments beforehand. Minimum period for eligibility for considering him/her for next promotion will be two years as has been laid down in the debarment policy.

iv) Although the Bank has not a right to do so, as a special case, incremental salary, allowance and perquisites may not be recovered from the officers whose promotions have been withdrawn.....

vi) Deferment in position at R/SU centre without withdrawal of promotion can be granted only on medical grounds pertaining to self, subject to examination by a competent medical board constituted by the Bank. This deferment would be for a period not exceeding 6 months. However, in such a case, if the transfer order was issued earlier and the officer had refused to complete the assignment at that particular point of time, his/her case would be treated just like other cases.

vii) If an officer opts for voluntary retirement/resignation, the Bank would not permit such retirement/resignation unless he/she either completes the mandatory R/SU assignment or makes a request in writing to withdraw his/her promotion(s) as he/she cannot complete R/SU assignment and be retired. In case the officer applies for retirement/resigns, without making a request in writing for withdrawal of promotion(s), the Bank may withdraw his/her promotion(s) based on the undertaking already given and thereafter permit the officer to retire/resign.

(underlining added).

10. In my opinion para 3(vii) has to be read with the earlier paras of the circular and not independently as if an employee gets the higher emoluments of a higher grade unless there is a specific order/action of the bank of withdrawing of the promotion. Even if para 3(vii) is read independently as urged on behalf of the petitioner, yet this paragraph does not state that it is mandatory for the respondent no. 2/employer to seek a request in writing for withdrawal of the promotion by a person and only thereafter VRS benefit for a lower post can be given failing which automatically VRS benefits of a higher post has to be given. When we read the first line of this para-3(vii), this line shows that a person will not be entitled to VRS unless he completes the mandatory rural/semi urban assignment or makes a request in writing to withdraw his promotion because he cannot complete the rural/semi urban assignment. The later part of this first line cannot be read in isolation to argue that if there is no request for withdrawal or promotion, VRS benefits will automatically be given as if the employee has been confirmed as promoted. To read so, would be to not only do violence to the language, but take away the intention of this line and the earlier paras of the circular, which is basically to ensure that VRS benefits cannot be given unless the mandatory rural/semi urban assignment is complete failing which the benefit of the higher promotion is withdrawn, and it cannot be that if the request for a

higher promotion is not withdrawn, merely on that basis automatically there will be a confirmed higher promotion at the scale of pay of which post the employee will be granted VRS benefits.

In fact, whatever doubt which exists is removed from the second line of para 3(vii) which specifically provides that in case the officer applies for retirement without making a request in writing for withdrawal of a promotion, bank may withdraw the promotion of an employee based on the undertaking already given and thereafter permit the officer to retire/resign. The word "retirement" is more than comprehensive to include a voluntary retirement and it is not possible to confine the expression "retirement" as is urged on behalf of the petitioner only to a normal retirement and not voluntary retirement. In fact the interpretation sought to be given on behalf of the petitioner to the word "retirement" is without any basis because the issue is if retirement includes retirement in the normal course or by seeking voluntary retirement, and therefore, I refuse to give restricted interpretation to the expression "retirement" as is urged on behalf of the petitioner that it should be taken as normal retirement only and not a retirement under the VRS.

In view of the above, I do not find any merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.