
(2002) 03 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. 7703 of 1997

Eqbal Rajak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48A(3)A

Citation : (2002) 2 PLJR 635

Hon'ble Judges : Ravi S. Dhavan, C.J.;D.P.S. Choudhary, J

Bench : Division Bench

Advocate : Kishore Kumar Sinha, for the Appellant; P.K. Shahi, for Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J. and D.P.S. Choudhary, J.—The Petitioner Eqbal Rajak has filed the present petition challenging the order of the Central Administrative Tribunal dated 29 November 1996 on registration of case No. O.A. 153 of 1995: Eqbal Rajak v. Union of India and Ors.

2. The Petitioner was appointed as a washerman on 25 September 1971 at the Bihar Regimental Centre, Danapur. Subsequently, he was declared surplus as a washerman but the military was kind to him and retained his services by posting him to the Military Dental Hospital, Namkum, Ranchi w.e.f. 1 June 1972 on the post of messenger. Thereafter, he was brought back on transfer to Station Headquarters, Danapur w.e.f. 12 May 1978. The facts are best re-produced in the counter affidavit of the Union of India to which the Petitioner has not had the courage to reply by a rejoinder affidavit. In paragraph-4 of the petition the Petitioner has taken legal grounds that the Respondents have taken illegal action in accepting his request for voluntary retirement and subsequently not acceding to his request to the withdrawal of the application which sought the voluntary retirement.

3. The contention of the Petitioner is that his application for voluntary retirement should be deemed to have been recalled when he sent a subsequent request that his earlier request for voluntary retirement be not acted upon. This was the case which the Petitioner took to the Central Administrative Tribunal also. The attempt clearly was to fault the Union of India on legal grounds. If the matter is to be seen in isolation, then, what are the real facts. These facts come in the counter affidavit in paragraph 11. It is re-produced instead of the Court narrating the facts:

That with regard to the statements made in paragraph 4, it is stated that:

(a) The statement made by individual is palpably false. He never reported in the Office of Station Headquarters, Danapur Cantt since 04 February 94 to to-date. He always used to send his wife with his applications to office. He voluntarily submitted his premature retirement and office ever forced him to submit an application for premature retirement. He did not mention his intended date of retirement giving gap of three month notice period in his application. He has also mentioned in his application that he was unable to work due to his sickness. He had no leave in credit and was availing "leave not due". A true typed/photo copy of the application dated 9.3.94 is attached as Annexure "C" to this counter affidavit.

(b) The Respondent did not have any mala fide intention towards the Petitioner. The individual had asked for voluntarily retirement and his retirement has been sanctioned under Rule 48A Sub-rule (3)A(b) of CCA (Pension) Rules, 1972 by relaxing 3 months period as stated earlier. He expressed his inability to report for duty vide his application dated 9th March 94 (Annexure-C). The Respondent also studied the case in details and decided to send him on premature retirement keeping in view his grievance, health problems, prolong absence from duty (leave not due), inability to work and also all past records of his service.

(c) The statement made, is totally false and not maintainable. The Respondent did not act in any hurry, while sanctioning his premature retirement.

(d) The Petitioner shown inability to perform his duty and was on "leave not due". The 3 months period has been relaxed automatically vide Government of India decisions (1)(i) (Retirement without returning to duty while on Leave not Due) of Rule 48A of CCA (Pension) 1972. Now demand of the applicant is not legally valid and reasonably stands good.

(e) The Petitioner never forwarded a withdrawal letter of his application dated 09 March 94. The Respondent in their letter dated 4th April 94 (Annexure-3), themselves called upon the applicant to report in office if he has any problems but he never acted upon and failed to report in office. He has also refused to receive the letter forwarded under registered post and returned back giving remarks "refused to take". The notice dated 9 May 94 was also not effective as he was on "leave not due" and did not return to duty. In this connection Government of India Decisions Para (1)(i) as annexed by the applicant as

Annexure "6", is very clear on the subject.

(f) The decision of Hon"ble CAT Patna is prestigious decision and to safeguard the Indian Constitution and there is no scope to give shelter to an employee who never pay regards to Rules of law as well as tries to forge the Rules.

(g) The decision of Hon"ble CAT Patna is in accordance with law and Petitioner is not entitled for reliefs sought for. The application of the individual is not maintainable.

4. This is not all the cardiogram of the Petitioner while in service. If the content of his service is judged then paragraph 18 of the counter affidavit needs to be seen. At present, let these facts be reproduced as are contained in the counter affidavit without comment of the Court:

That from the facts and circumstances stated here in above, as well as from his previous service record, it would be manifest that the applicant throughout his service was absolutely little concerned for his duty and had been a habitual defaulter. In this connection, it would be worthwhile to state here that in the past also following "show cause notices" were also served on the applicant for his absence from duty or on some other disciplinary ground. In spite of such notices, the applicant did not show any marked improvement:

(a) 163506/1/EST dt-06 Aug 84 - Absent from office after making attendance.

(b) 163506/1/EST/dt 24 Aug 84 - Absent from office after making attendance.

(c) 163506/1/EST dt 26 Sep 84 - Absent without granting of leave.

(d) 163506/EST/1 dt 29 Nov 84 - Absent without granting of leave.

(e) 163506/1/EST dt 02 May 87 - Absent from duty from office after making attendance.

(f) 163507/16A/EST dt 20 Jul 87 - Absent without granting of leave.

(g) 163507/16A/EST dt 21 May 88 - Absent from duty after making attendance.

(h) 163507/16A/EST dt 23 May 88 - Absent from duty after making attendance.

(i) 163507/16A/EST dt 15 Jun 88 - Absent from duty after making attendance.

(j) 163507/16A/EST dt 04 Jul 88 - Absent without granting leave.

(k) 163507/16A (1)/EST dt 15 Nov 88 - Absent without granting of leave.

(l) 163507/6A/EST dt 19 Dec 88 - Individual has been found washing clothes in extreme cold water and taking leave on medical ground.

(m) 163507/6A/EST dt 31 Jul 89 - For not wearing proper dress in office which were provided by office.

(n) 163507/6A/EST dt 20 Oct 89 - Absent from office after making attendance.

- (o) 163507/6A/EST dt 24 Apr 90 - Absent without granting leave.
- (p) 163507/6A/EST dt 07 Jun 90 - Absent from office after making attendance.
- (q) 163507/6A/EST dt 13 Jun 90 - Absent from duty.
- (r) 163507/6A EST dt 14 Sep 90 - Absent without granting of leave.
- (s) 163507/6A/EST dt 14 Sep 91 - Absent without granting leave.
- (t) 163507/6A/EST dt 27 Sep 91 - For theft.
- (u) 163507/16/EST dt 09 Jan 93 - Absent without granting leave.
- (v) 163507/16/EST dt 30 Mar 93 - Absent without granting leave.
- (w) 163507/16/EST dt 31 Mar 93 - Absent from office after making attendance.
- (x) 163507/16 EST dt 12 May 93 - Absent without granting leave.
- (y) 163507/16/EST dt 22 May 93 - Absent without granting leave.
- (z) 163507/16 EST dt 26 Oct 93 - Absent without granting leave.

5. The Petitioner was suspended during the service twice. This aspect is mentioned in paragraph 17 which is re-produced:

That it would also be relevant to state that the Petitioner was under suspension for the following period for the reasons noted against each period:

- (a) 24 Nov 1988 to 20 June 1989, he was suspended because of some theft case.
- (b) 21 Sep 1991 to 20 Jul 92, he was suspended for the offence of taking bribe.

6. The sum total of what remains about the Petitioner is that he is a habitual absentee. Further, during the period of his service notwithstanding he may not have worked or had not shown any sense of duty, he was suspended once on an allegation of theft and then again on an allegation of accepting bribe.

7. After having put in his application seeking voluntary retirement the Petitioner repeatedly sent his wife to the office of the Station Commander by pleading that while the Petitioner's service may see retirement or voluntary retirement but in lieu of his service she should be taken into service. These aspects are mentioned in the order of the tribunal also.

8. The Petitioner did not have the courage to reply to the averments made in the counter affidavit of the Union of India.

9. The sense of duty of the Petitioner towards work is virtually nil. The Court views the Petitioner as a habitual absentee. Absenteeism is the negation of work. This leaves the Petitioner with hardly any position that his status as a person who may have voluntarily retired may be changed so that he may still continue to work with the Station Commander's establishment at the Bihar Regimental Centre and make a nuisance of himself on a second inning of absenteeism.

10. The Court is not going into some other aspects on record which the Petitioner has not denied that at one stage his wife brought a medical certificate of a doctor on 5 March 1994 and the doctor's certificate was dated 31 March 1994.

11. This is not a case which should be considered by the High Court. Justice at the High Court rests on equity and good conscience. The Petitioner's case does not meet the criteria. This is a frivolous case.

12. The Court would have imposed exemplary costs but regard being had to the circumstances that the Petitioner is retired and was a Class IV employee, the Court is passing no order on this aspect.

13. Dismissed.