

(2009) 05 DEL CK 0220

In the Delhi High Court

Case No : Writ Petition (C) No. 1167 of 2000

G.K. Murthy

APPELLANT

Vs

The Chairman and Managing Director, IRCC Ltd.

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 05 DEL CK 0220

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Harvinder Singh Bhawna Chopra and K. Venkataraman, for the Appellant; D.N. Vohra, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By way of this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of his dismissal order dated 13/14.1.2000 . The petitioner also seeks declaration for treating him to be in continuous service with the respondent corporation. The petitioner also seeks grant of consequential benefits as due to him from 1.3.1997 as if he had continued to be in service of the respondent corporation. In the alternative the petitioner also seeks directions for treating him as voluntarily retired from 28.2.1997 in terms of the retirement notice given by him and to grant him all retirement benefits as due to him on the last pay drawn in the revised pay scale of Rs.12,000-16,500/- as claimed by him in his application dated 3.3.1997 with interest @ 24% per annum from 1.3.1997 in addition to the interest earned on his provident fund accumulation till the date of realization. The petitioner also seeks direction for the release of arrears of pay and allowance which the petitioner is entitled to as per the Fifth Pay Commission Report implemented by the respondent-corporation w.e.f. 1.1.1996 with interest @ 24% per annum from 1.1.1995 till the final payment. The petitioner has also claimed damages to the extent of Rs.5,00,000/- for the trauma and mental agony suffered by him

because of the totally indefensible, unfair and illegal conduct of the respondent.

2. Brief facts of the case are as under: The petitioner was appointed as P.S. to the CMD in June, 1977 in the scale of Rs.800-1200 against an advertisement issued by the respondent-Corporation. The minimum qualification prescribed in the advertisement was B.A. (Second Division). In the application dated 7.2.1977 submitted by the petitioner he had categorically stated that he was a Matriculate having passed the Matriculation examination from MEA Higher Secondary School, New Delhi in the year 1961. The petitioner also categorically stated in his bio-data dated 7.2.1977 that he could not complete his graduation on account of his transfer to the Bangalore regional office of Indian Drugs and Pharmaceuticals Ltd. which is a Government of India enterprise. On the basis of the this application and with the full knowledge that the petitioner was only a matriculate the petitioner was appointed in the service. During the 20 years of service the petitioner was promoted to various posts. An anonymous complaint was received by the respondent Corporation (Vigilance Cell) in August, 1996. The anonymous complainant had sent a fake B.A. Certificate in his name purported to have been issued by the Aligarh Muslim University showing that the petitioner had passed B.A. from that University in the year 1968. The respondent corporation invited applications for voluntary retirement from its staff vide Circular dated 22.11.1996. The petitioner fulfilled the eligibility conditions and submitted an application for voluntary retirement in the prescribed form. The petitioner's voluntary retirement application dated 2.12.1996 was returned on 4.2.1997 by the respondent on the ground that his application dated 2.12.1996 did not contain the recommendation of the Head of the Department. The petitioner again submitted his voluntary retirement application dated 2.12.1996 along with a forwarding letter dated 10.2.1997. The said application was acknowledged and kept on record in the Personnel Department. The petitioner was not asked to submit a fresh voluntary retirement application. The petitioner submitted a letter on 19.2.1997 wherein he had stated that the three months notice commencing from 2.12.1996 was coming to an end on 28.2.1997 and that he would not be available for the service of the respondent beyond 28.2.1997. Thus the petitioner had every reason to believe that the voluntary retirement took place w.e.f. 28.2.1997. The petitioner then submitted an application on 3.3.1997 claiming his dues on the basis of his voluntary retirement. On 5.3.1997 the petitioner received a letter dated 28.2.1997 from the respondent stating therein, that his application for voluntary retirement cannot be considered as vigilance cases were pending against him. On 6.3.1997 the petitioner submitted a representation to the respondent stating that his voluntary retirement became effective from 28.2.1997 after expiry of three months. notice period commencing from 2.12.1996. By office memorandum dated 13.3.1997 the respondent took a position that the petitioners stand that he stood relieved on the afternoon of 28.2.1997 was untenable and that he was absenting himself unauthorisedly from office and that he was liable to action under the rules. By another memo dated 15.7.1997 the petitioner was again informed that his application for voluntary

retirement (Golden Handshake) had not been accepted by the competent authority because of pending vigilance case. The respondent issued a memorandum No. 701040/Disc./1/PC dated 15.5.1998 along with which a charge sheet was issued to the petitioner. In reply the petitioner vide his representation dated 16.6.1998 refuted the allegations made in the charge sheet. An enquiry was conducted by Shri A.K. Garde from the office of CVC into the charges. The Enquiry Officer held that charges 1 and 3 attributing that the petitioner gave a forged certificate was not proved. By an office order dated 13/14/1/2000 the petitioner was dismissed from service. The petitioner made several representations dated 19.2.1997, 3.3.1997, 6.3.1997, 10.3.1997, 18.3.1997, 3.3.1998, 6.6.1998, 15.2.1999, 4.3.1999, 6.5.1999, 6.10.99 and lastly on 20.1.2000 to settle his dues on voluntary retirement.

3. Mr. K. Venkataraman counsel for the petitioner submitted that the petitioner was appointed on the post of P.S. to CMD on 2.6.1977. Counsel for the petitioner further submitted that without their being any complaint of any nature whatsoever against the petitioner and despite the fact that he was working honestly and diligently and rendered his conscientious services with the Indian Road Construction Corporation Limited the respondent had been harassing him for no rhyme or reason. Counsel also submitted that the Indian Road Construction Corporation Limited/respondent announced a scheme for voluntary retirement and in response thereto the petitioner had moved an application dated 2.12.1996 to seek voluntary retirement. Counsel for the petitioner also submitted that respondent corporation was required to take a decision within three months period which came to expire on 28.2.1997. Counsel for the petitioner submitted that no decision was taken by the respondent on the said application of the petitioner but just on the expiry of the said stipulated period, the respondent corporation vide letter dated 28.2.1997 along with a memo dated 6.3.1997 both appended to a forwarding letter dated 4.3.1997 communicated to the petitioner that his application for voluntary retirement could not be considered as vigilance cases were pending against him. Counsel for the petitioner submitted that with a view to curtail the right of the petitioner, apparently a false stand was taken by the respondent corporation and without there being any basis an enquiry was directed against the petitioner inter alia for the alleged forged BA degree/graduation certificate; for the alleged qualification of BA Second division in the year 1968; non disclosure of the name of the said university; for the usage of BA degree for obtaining initial appointment as Private Secretary in June, 1977; for non-disclosure of the name of the University from which he had passed his Graduation. While working in the Personnel Department of the IRCC Ltd. the personal file of the petitioner was paginated more than once but some important pages were found missing but still an illegal decision of not considering his voluntary retirement was taken. Inviting attention of this Court to the application dated 7.2.1977 counsel for the petitioner submitted that in column No. 3 "b" the petitioner clearly stated that he appeared as a private candidate in the year 1968 and he could not complete his graduation as he was

transferred to Bangalore in the year 1968. Counsel further submitted that he had stated that he had passed BA in Second Division in the Preliminary Examination conducted by Jay shree College Jangpura, New Delhi but nowhere he had mentioned that he had completed his graduation. Counsel further submitted that the said application was duly received by Lt. Gen. B.N. Das, C.M.D. as would be borne out from his signatures appearing on the photocopy of the same placed on record by the petitioner. Counsel further submitted that even in the question are the petitioner had clearly stated that he had appeared as a private candidate in BA examination in the year 1968. Counsel thus contended that the petitioner had never submitted the aforesaid certificate nor had suppressed any information or misrepresented the fact of his being a graduate. Inviting attention of this Court to the report of the Enquiry Officer counsel for the petitioner submitted that the enquiry officer clearly observed that the petitioner had never submitted the aforesaid certificate as the same was received by the department from some anonymous source. In the said enquiry report the officer also stated that no evidence was produced to prove that the petitioner had forged the certificate and submitted the same with the corporation. He also clearly stated that all such certificates have been produced by somebody unknown. The act of forgery attributed to the petitioner was required to be established by the respondent through evidence. The contention of the counsel for the petitioner was that the findings given by the enquiry officer clearly proved that the aforesaid certificates were not submitted by the petitioner. Counsel for the petitioner also invited the attention of this Court towards the documents filed by the respondent wherein they had taken a stand that the said application of the petitioner was not available in the records of the respondent and was missing from the records. Counsel for the petitioner in support of his arguments invited attention of this Court to the documents placed on record by the petitioner whereby the petitioner sought his candidature to be sponsored by the Bhartiya Vidya Bhawan, for undertaking Post Graduate Diploma Course in Business Management in the year 1972-73 in which he clearly stated that he was an undergraduate and therefore without his being sponsored by the employer he would not be entitled for admission in the said degree course with the Bhartiya Vidya Bhawan. Counsel for the petitioner further submitted that many other officers were given the employment by the respondent corporation who did not fulfill the laid down qualification. In this regard attention has been invited by the petitioner to Annexure-P-23 placed on record on page 114 giving details of nine such officers who were given such appointment. Counsel for the petitioner further submitted that even the petitioner was relieved from his duties and handed over the charge to another officer on 28.2.1997. Counsel for the petitioner also submitted that in circular it was clearly submitted that the application had to be submitted within 30 days but as per the case of the respondent the same was returned to the petitioner after a lapse of two months period. In support of his contentions counsel for the petitioner placed reliance on the following judgments:

1. J.P. Sharma Vs. Director General Border Roads and Others,

2. Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others,
3. Tek Chand Vs. Dile Ram,
4. Dinesh Chandra Sangma Vs. State of Assam and Others,
5. Than Singh Vs. Municipal Corporation of Delhi,
6. State of Haryana and Ors. v. S.K. Singhal (1994) 4 SCC 293
7. Anand Sarup Guar v. Chief Secy., Govt. of NCT of Delhi and Ors. (2002) VI AD (Delhi) 487 (DB)
8. Union of India and others Vs. Sayed Muzaffar Mir,
9. Ashoke Dasgupta v. United Bank of India and Ors. 1999 (8) SLR 742 (Cal.)
- 10 B.J. Shelat Vs. State of Gujarat and Others,

4. Refuting the contentions of the counsel for the petitioner, Ms. Anju Bhushan counsel for the respondent submitted that earlier the petitioner sought voluntary retirement vide his application dated 2.12.1996 but since the same was not applied through proper channel, the petitioner was required to move a fresh application which was moved by the petitioner on 13.2.1997 and the same was rejected. The contention of the counsel for the Respondent was that three months notice period would be counted from 14.2.1997 which would expire on 13.5.1997 and not on 28.2.1997 as alleged by the petitioner. Counsel for the respondent thus stated that out of the said period of three months in terms of the policy of the respondent, decision was taken by the respondent corporation rejecting the application of the petitioner. The contention of the counsel for the respondent is that clearly the petitioner had stated in the question air in column No.3 that he was a graduate and under the column examination passed the petitioner clearly disclosed his qualification as BA. Counsel thus contended that in the said column the petitioner should have stated that he was under graduate or had just appeared in the BA examination. Counsel submitted that disciplinary authority has taken a correct decision to award penalty of dismissal against the petitioner. Respondent also placed reliance on the CCS Rules to contend that the respondent was well within its rights to initiate proceedings against the petitioner. Respondent thus submitted that the application of the petitioner was rightly rejected on account of the pendency of the disciplinary proceedings against him. In support of her contentions the counsel relied upon the following judgments:

1. District Collector, Viziangram v. M. Tripura Sundari Devi 1990 (4) SLR 237 (SC)
2. S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,

5. I have heard learned Counsel for the parties and perused the record.

6. Before delving on the issues raised herein, it would be relevant to reproduce the relevant portions of the Voluntary Retirement Scheme, which is as under:

(a) Eligibility/procedure

(i) An employee

(ii) An employee who satisfies the eligibility criteria shall apply to CMD for voluntary retirement in the form prescribed at Appendix ?A? through proper channel, 3 months before the date on which the retirement is sought.

(iii) The application will be processed by the Personnel Deptt. If found in order. They will obtain the approval of CMD and communicate the same to the concerned employee.

(iv) The management of the enterprise will have the right not to grant voluntary retirement for reasons to be recorded in writing.

7. The said voluntary retirement scheme was floated vide circular No. 701072 dated 2.11.1992 and the said Scheme came into effect from the date of the said circular on 2/11/1992 and the petitioner applied under the said scheme on 2/12/1996. It is the case of the petitioner that vide minutes of the meeting held on 10.10.1996 CMD-IRCC conveyed the orders of the Secretary regarding the proposed closure of IRCC and pursuant to it, vide circular No. 701072 dated 22.11.1996, R & S Cell of the respondent invited applications for the voluntary retirement and advised that the maximum number of employees should opt for the Voluntary Retirement Scheme. The petitioner according to the Scheme submitted the application for voluntary retirement on 2.12.1996 in the prescribed form addressed to the CMD of IRCC giving the required service particulars and the same was received by the R & S Cell on 2.12.1996 itself. The petitioner pursuant to the aforesaid sub-clauses (ii) & (iii) of Clause (a) to the said Scheme made the application seeking voluntary retirement to SM (P). R & S Cell of Personnel Department for processing it before the orders of CMD are obtained. But vide letter dated 4.2.1997 the Senior Manager (Pers) intimated to the petitioner that since the application of the petitioner did not have the recommendation of the HOD, therefore, the same was returned for completing the said formalities. After replying to the said letter, the petitioner again submitted the said application on 10.02.1997. The said application was rejected by the Corporation vide letter dated 28.02.1997 on the ground that certain vigilance cases were pending/contemplated against him. The respondent corporation issued charge sheet on the basis of a complaint of an anonymous complainant.

8. As regards the question whether the application of the petitioner dated 2/12/1996 was sent to the respondent through proper channel and whether the retirement of the petitioner became effective from 28/2/1997, I feel that the respondent sent the said application through proper channel and therefore, the retirement of the petitioner became effective from 28/2/1997. Upon perusal of

the aforesaid scheme it is manifest that all that was required for submitting the application for seeking voluntary retirement was that the petitioner was to apply to CMD for the said purpose in the prescribed form through proper channel, three months before the date on which the retirement was sought. The petitioner applied for the same on 2.12.1996, complying with all the requisite conditions and submitted the application to the SM (P) R & S Cell of the Personnel Department for processing it. The application so submitted also contained the official noting of the said department. Clearly, the requirement of sending the said application through proper channel was fulfilled. But the respondent vide letter dated 4/2/1997 returned the said application on the flimsy ground that the same was not recommended by the HOD and therefore, should be sent again through the proper channel. The expression "through proper channel" does not mean that the recommendation of the HOD was essential. Be that as it may, the respondent took more than 2 months to raise such an objection, knowing fairly well that the petitioner was due to retire in the next 24 days. I feel that the petitioner complied with all the formalities but still the respondent unnecessarily created ruckus and made an objection returning the application of the petitioner for sending it again. The respondent ought to have accepted the application of the petitioner dated 2.12.1996 at the first instance itself within the three months period.

9. Furthermore, the rejection letter dated 28.2.1997, was sent on 3.3.1997 but reached the petitioner only on 6/3/1997 i.e. much after the three months period. The reason for rejection of his application for voluntary retirement due to pendency of vigilance enquiry also appears to be another device used by the respondent corporation to harass the petitioner. Any action of Commission having a vigilance angle is a subject matter of vigilance enquiry. Vigilance angle has been defined by the Central Vigilance Commission vide Office Order No. 23/04/04 as under: "Vigilance angle is obvious in the following acts:

- (i) Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.
- (ii) Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he has or likely to have official dealings or his subordinates have official dealings or where he can exert influence.
- (iii) Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.
- (iv) Possession of assets disproportionate to his known sources of income.
- (v) Cases of misappropriation, forgery or cheating or other similar criminal offences.

10.2(a)** There are, however, other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt.

Gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible/public interest is evident; failure to keep the controlling authority/superiors informed in time ? these are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

2(b) Any undue/unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case. ** as modified vide Officer Order No. 74/12/05 dated 21/12/05.

11. Clearly, the act of concealment of the fact that the petitioner was an undergraduate was not a subject matter of vigilance enquiry as per the aforesaid definition of vigilance angle, which is a subject matter of vigilance enquiry. From the above discussion, it is manifest that the voluntary retirement of the petitioner became effective from the forenoon of 28.2.1997.

12. As regards the issue of fraud committed by the petitioner and the contention of the counsel for the respondent that he concealed the fact of his being undergraduate, I feel that the same is also devoid of any merit. The petitioner had time and again been disclosing the fact that he was an undergraduate. From day one, in his application dated 7/2/1977, seeking job on the post of PS to CMD, under the heading "educational qualification" he had clearly disclosed that he appeared in BA as a private candidate in the year 1968 and on account of his transfer to Bangalore, while working with his earlier employer he could not complete his graduation. The same is reproduced as under:

3. Educational:

(a) Passed Matriculation Exam from Qualifications MBA Higher Secondary School in the year 1961.

(b) BA (appeared) as a private candidate in the year 1968.

(c) Attended one year Post-Graduate Diploma Course in Business Management in the year 1972-73 from Bhartiya Vidya Bhawan, New Delhi. On account of my transfer to Bangalore in the year 1968, I could not complete my graduation. However, I have passed BA in Second Division in the Preliminary Examination conducted by Jay shree College Jangpura, New Delhi where I was a student during the year 1967-68. A copy of the certificate to this effect issued by the above College is enclosed.

13. Furthermore, in the same application, under the heading "General", while giving general information, he again mentioned that he was an undergraduate. The same is reproduced as under:

General: I am a South Indian residing in Delhi for more than 20 years. My father

is employed in the M/O Health and am residing with him in Government Quarters. I am a good sports man and have won several certificate with merit. Although I am Undergraduate, but I have worked with very senior officers including MD and CMDs and I am confident that I will be able to deliver the goods required by your esteemed organization.

14. Be that as it may, it was for the respondent to bring on record the said application dated 7/2/1977, which as per their version, they are unable to trace.

15. The petitioner in his letter dated 11/5/1980 to the CMD secretariat clearly mentioned that for pursuing a PG diploma course at Bhartiya Vidya Bhawan he needed sponsorship/recommendation of IRCC as he was an undergraduate, the said letter is reproduced as under:

Placed below is an advt. released by Bharatiya Vidya Bhawan for following PG Diploma Courses.

1) Indl. Relations & Personnel Mgt.

2) Marketing & Advtg.Mgt.

3) Publicity & Public Relations. The minimum qualification for admission to the above course is graduation in any discipline. However, relaxation can be made to serving Executives/Sponsored candidates. These courses are conducted in the Evening from 6.00 P.M. to 8.00 P.M. During the informal discussions, CMD advised me to do some professional course for my future prospects. I propose to do PG Diploma in Indl. Relations & Personnel Mgt. for the year 1980- 1981. Since I am an undergraduate I may not get admission to the above Diploma course. On the personal enquiry, Principal, Bhartiya Vidya Bhawan informed me that my case for admission could be considered, although I am an undergraduate, provided my case is recommended/sponsored by the Corporation since this is only a part time Diploma course basically meant for serving Executives/employees. I, therefore, request CMD to sponsor/recommend my case for admission to PG Diploma in Indl. Relations & Personnel Mgt. In the event of my selection I will bear all expenses for the above course.

16. In view of the above, it cannot be said that the petitioner misled the corporation or suppressed the information from the corporation. The material upon which petitioner has placed reliance was available with the respondent right from the day one.

17. Furthermore, in the questionnaire and the attestation form, which the petitioner filled before the interview, he wrote "appeared" in BA, he nowhere said that he completed his BA or passed BA.

18. Although, it is no ground to claim parity that earlier also other employees with lesser qualification as required for the relevant post on which they were employed were taken into service by the corporation, but in the circumstance that the petitioner never concealed the fact that he was an under- graduate and

rather the lapse on the part of the corporation respondent in not properly scrutinizing the documents submitted by the petitioner, wherein he has in unequivocal terms mentioned that he was an under-graduate, cannot become a reason for dismissal of the petitioner.

19. In view of the foregoing discussion, I do not feel that the petitioner ever concealed the fact of his being an under- graduate. Therefore, the enquiry officer reached to an incorrect finding in this regard and resultantly, the dismissal order dated 13/14.1.2000 deserves to be quashed.

20. In view of the foregoing discussion, the dismissal order dated 13/14.1.2000 is quashed. Consequently, the petitioner shall be treated to be in service of the corporation respondent from the date of his appointment till 28.2.1997, the effective date of his voluntary retirement and therefore, he is entitled to all the retirement benefits due to him as per the last pay drawn by him with interest @ 12% pa. The respondent corporation is also directed to release the arrears of pay and allowance to which the petitioner is entitled under the 5th pay commission as implemented by the respondent w.e.f. 1.1.1996 with interest @ 12% pa.

21. This is a classic case of high-handedness on the part of a government corporation. The petitioner herein applied for voluntary retirement on 2.12.1996 under the scheme floated by the Indian Road Construction Corporation, which was to come into effect from 28/2/1997. But IRCC instead of accepting the same rejected it on flimsy grounds and went to the extent of initiating disciplinary inquiry against the petitioner closing its eyes to its own fault and dismissing the petitioner for an alleged concealment and fraud which he never committed. The hapless petitioner has been facing hostility of unsympathetic and depraved employer for the past 12 years without any slip up by him. This is a fit case for awarding exemplary damages in condemnation of the abuse of power by a government corporation. The corporation is directed to pay Rs.50,000/- as damages for unnecessarily harassing the petitioner for 12 years.

22. In view of the above discussion, the petition is allowed in above terms.