

(2019) 10 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8034 Of 2017

Md. Ashraf Khan

APPELLANT

Vs

Union Of India Through Secretary And Ors

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 11, 14
Constitution Of India, 1950 — Article 309

Citation : (2019) 4 PLJR 1018

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashutosh Kumar, J

Bench : Division Bench

Advocate : Rajendra Narayan, S.D Sanjay, Punam Kumari Singh

Final Decision : Dismissed

Judgement

Md. Ashraf Khan/the petitioner, who has since been dismissed from service by order dated 07.03.2013 passed by the Director (Vigilance) in the name of the President, had initially challenged before the Central Administrative Tribunal the ex parte enquiry proceeding against him and the report of the inquiry officer dated 14.01.2013 on the ground of same being bad in law as he had already filed an application for voluntary retirement, which with the efflux of time was to be deemed as accepted. It was also prayed by the writ petitioner before the Tribunal to direct the respondents to accept his request for voluntary retirement with effect from 22.08.2000 which is 90 days post his representation dated 23.05.2000 with all consequential benefits including pension, arrears and statutory interests thereupon or in the alternative, direct the respondents to allow him to resume his duty and then conduct fresh proceedings after making available to him the documents necessary for the purpose.

During the pendency of the aforesaid O. A. No. 156/2013, the petitioner was dismissed from service by order dated 07.03.2013 referred to above. An M. A. No. 189/2013 was filed by the petitioner for amending the prayer in the O. A., seeking quashing of the order of dismissal, which prayer was allowed but no

amendment was carried out by the petitioner. The Tribunal, on its own, included the prayer to quash the order of dismissal and deliberated upon the facts of the case.

The Tribunal, on going through the entire set of facts and circumstances, found that the writ petitioner had willfully absented himself from duty and had disobeyed the orders issued by the authorities. The Tribunal therefore did not interfere with the order of dismissal and rejected the O. A. of the petitioner as being devoid of merits, by the judgment dated 21.02.2017, which is under challenge in the present writ petition.

The facts of this case present a peculiar state of affairs in the functioning of the respondent National Informatics Centre, Patna District Centre as well as the conduct of the writ petitioner.

The petitioner was appointed on the post of Scientific Officer/Engineer-SB in the year 1988 and by around 1997, his service was confirmed. It appears from the records that an application was filed by the petitioner on 18.02.1997 seeking medical leave for surgery from 25.02.1997 to 21.03.1997. In the aforesaid application, he had shown his address at Gaya. On the last date of the leave i.e. on 21.03.1997, a further request was made by the petitioner for grant of earned leave from 22.03.1997 to 22.04.1997, which even though was not sanctioned by the controlling officer, the petitioner did not report to his office even after 22.04.1997.

According to the petitioner, he received a letter dated 13.01.1997 intimating him that 224 days were available in his earned leave account. Since the petitioner required further leave for surgery, he sought such leave by preferring a representation dated 18.02.1997. In the absence of any communication from the department, the petitioner understood such silence to be acceptance of his request for grant of earned leave. He finally sent an application for voluntary retirement on 23.05.2000 because of his ill health, which also remained unresponded. Thus, the stand of the petitioner is that he was never on any unauthorized leave but his absence was because of health reasons which were beyond his control. Thereafter, on being declared fit by the attending doctor, the petitioner claims to have sent a representation to the authorities on 27.08.2001 for allowing him to resume his duties. Later, another representation was filed on 17.12.2002 making a request for release of pension and other benefits. None of the aforesaid letters were responded to by the department/respondents and all of a sudden, the petitioner claims to have received a letter dated 09.01.2012 issued by the inquiry officer which apprised him that charges have been framed against him on 14.09.2011 for a departmental proceeding. The petitioner demanded the memo of charge. The petitioner has taken reference of further correspondence with the inquiry officer regarding furnishing proof of request for voluntary retirement but without perusing the documents furnished by the petitioner, the inquiry was concluded ex parte and a report was submitted on 19.12.2012. The petitioner also claims to have replied to the aforesaid report of

the inquiry officer on 21.01.2013, but no order was passed nor his request for voluntary retirement was acceded to. In the meantime, the petitioner was dismissed from service vide order dated 07.03.2013 issued under the signature of Director (Vigilance).

The contention of the petitioner before the Tribunal as also before this Court is that in the event of the notice of voluntary retirement not having been accepted or rejected, the same shall be deemed to have been accepted on the expiry of three months of the issuance of such notice; whereafter the relationship of master and servant ceased and therefore the order of dismissal was of no consequence and was bad in law.

As opposed to the aforesaid contentions of the petitioner, the respondents state that when the petitioner did not report for duty even after 22.04.1997, an Office Memorandum No. 808 dated 29.01.1999 was issued to the petitioner on his available address on record by registered post intimating him that his request for earned leave vide his application dated 21.03.1997 was not sanctioned by the controlling officer and that the petitioner was required to report for duty and also explain in writing as to why disciplinary proceedings be not initiated against him for his willful absence from duty without permission. The aforesaid communication could not, admittedly, be delivered to the petitioner. The petitioner but never reported back and the other communication to him on 24.02.1999 also returned unserved. After a long lapse of time, which fact appears to be quite bizarre, the department realized the necessity of initiating departmental proceedings against the petitioner under Rule 14 of CCS (CCA) Rules, 1965 on grounds of his unauthorized absence since 22.03.1997 and his lapse in not informing the office regarding his present/changed address.

Charges were framed on 14.09.2011 which was delivered to the petitioner, copy of which was also received by the petitioner. Despite this, the petitioner did not participate in the disciplinary proceedings, leaving no option for the inquiry officer but to conduct the proceedings ex parte and submit a report on 19.12.2012 to the disciplinary authority, holding all the charges framed against the petitioner to have been proved. The inquiry report was also sent to the petitioner and a second show cause notice was served upon him. This notice was addressed to the petitioner on his Pune address, which was communicated to the department by the petitioner for the first time in his application dated 07.02.2012.

The disciplinary authority perused the entire materials and was satisfied that the petitioner willfully absented himself from duty and that he was given reasonable opportunity to defend his case in the departmental proceedings but only because of his non-cooperation, the proceedings had to be concluded ex parte. Under the satisfaction and pleasure of the President, the petitioner was served with the penalty of dismissal from service which shall ordinarily be a disqualification for future employment under the Government as envisaged in Rule 11 of CCS (CCA) Rules, 1965. The aforesaid order was issued in the name of the President by the Director (Vigilance).

It is the further case of the respondents that as per Gazette Notification dated 16.02.2002, the Director, Joint Director and the Deputy Director have been designated as competent officers to authenticate the orders of the President on behalf of the National Informatics Centre and thus no further consultation with UPSC is required.

After having heard the parties and from the perusal of the records, it appears to us that the letter dated 23.05.2000 in which a request had been made by the petitioner for a golden hand shake for pre-mature superannuation and payment of pension, was received on the same date i.e. 23.05.2000. The address of the petitioner in the aforesaid representation has been shown to be of Rajapur Pul, Patna. This very fact makes such letter, which has been annexed with the writ petition as Annexure-5, suspect for two reasons. All through, the petitioner had shown his address at Gaya and later, he intimated about the changed address at Pune. The second reason is that if the petitioner was at Patna in the year 2000, there was no reason for him not to meet the concerned authority in the respondents' office personally. In this view of the matter, the contention of the respondents that the application of the petitioner dated 23.05.2000 for voluntary retirement was never received in the office of the respondents and that the document is forged and fabricated with a forged stamp of National Informatics Centre, Patna, appears to be correct. The stand of the respondent is that assuming but not admitting that the aforesaid application was received in the National Informatics Centre, Patna, the same was for pre-mature retirement and not for voluntary retirement under the rules.

With respect to the aforesaid letter dated 23.05.2000, the stand of the respondent in its counter affidavit is as follows:

"That it is specifically asserted that the petitioner's so called application dated 23.05.200 for VRS or Voluntary Retirement Scheme (Annexure-4 to writ petition) was never received in the office of the respondents and it is prima facie a Forged Document with Forged Signature and Forged Stamp of NIC Patna. The petitioner's aforesaid application was an application for pre mature retirement and it was not an application for Voluntary Retirement under the rules. What is more, the Stamp of Receiving Authority dated 23.05.2000 is virtually not of NIC Bihar State Unit, as bears writing "Government of India, Planning Commission, National Informatics Center, Bihar State Unit, 3rd Floor, Technology Bhawan, Bailey Road, Patna-800015." But it is stated and submitted that at the time of creation of Ministry of Information Technology in October 1999, NIC was moved to Ministry of Information Technology. Hence at the relevant time on 23.05.2000 NIC was not under the Planning Commission of Government of India. Hence it is well established and fully proved that the alleged stamp of receiving authority on petitioner's application dated 23.05.2000 is a Forged Stamp, and this letter was never received in the NIC Bihar Unit. What is more, for voluntary retirement minimum of 20 years regular service is required, whereas the petitioner has been unauthorisedly absent from duty ever since 22.03.1997 and never joined duty

thereafter. The petitioner has rendered only 8 years regular service from the date of his joining in NIC on 12.04.1988. Further the petitioner's application dated 27.08.2001 (Annexure- 5 to writ petition) for joining duty sent by post from Patna "Flat No. 4E-2, Eagle Apartment, Mainpura, Rajkapur Pul, Patna, Bihar, India, Pin Code: 800001" is not tenable or reliable, as it was not received in the office of NIC, Bihar, Patna. What is more, if the petitioner had to join the duty, then he would have submitted his joining in person rather than submitting letter of joining from somewhere else. Same aspect is relevant with regard to petitioner's application dated 17.12.2002 (Annexure- 6 to writ application). Hence, petitioner's contentions are not tenable and are not true, and as such denied in toto. As already explained herein above, the charge memo dated 14.09.2011 was duly served and delivered to the petitioner and thereafter the charge memo was also sent to petitioner by the Inquiry Officer. Hence the contentions made in by the petitioner in the writ petition and supplementary affidavit are not correct and as such they are denied."

What is rather surprising is that if the petitioner was at Patna even for a brief period, there was no reason why he did not appear/show-up before the authorities. Where was the occasion for the petitioner to have gone to Gaya for a minor surgery of hydrocele. What could possibly be the reason for approaching the Central Administrative Tribunal in the year 2013 i.e. after about 15 years of his having requested for medical leave. Was it not sufficient for the Tribunal to discard the contention of the petitioner that he had requested for voluntary retirement and such request, if not acceded to within 90 days, would be deemed to have been accepted thereby precluding any such departmental proceeding resulting in dismissal of the petitioner. We have already noted the bizarre state of affairs in the office of the respondents in waking up from their slumber and having found that one of their employees has not reported on duty for more than a decade.

However, the laid back approach and inaction of the respondents cannot be permitted to be used by an employee to his advantage.

The delay in approaching the Tribunal only reflects that the petitioner had abandoned his job and was gainfully employed somewhere else.

The respondents, by way of supplementary counter affidavit, have brought to the notice of this Court that National Informatics Centre was set up under the then department of Information Technology for providing e-governance to the Government at all levels using computer communication network. Amongst the manpower, there were engineers and technocrats who had some specialization in the area of computer and communication. However, with the meteoric growth of information technology, the demand for qualified engineers and scientists swelled up and it became difficult for the department to retain its specialist manpower despite providing for a flexible complementing scheme for career growth and advancement. It had been the experience of the department in the past that many of its employees had proceeded on long leave followed by tendering their

resignations. In order to tackle this problem, a Committee was constituted with the approval of DG, National Informatics Centre to examine all cases of unauthorized absence of NIC officials and the report of the committee was accepted by the DG, NIC on 17.03.2007.

The fact that the petitioner never came back to his organization after having applied for leave in the year 1997 is an evidence sure enough for us to hold that all such correspondence about which reference has been made by the petitioner in the present writ petition are conjured up for the purposes of taking advantage for receiving pensionary benefits for the period that he has worked with the department.

The lurking suspicion in our mind made us ask for the passport of the petitioner to ascertain whether the petitioner had obtained any employment in a foreign country.

Learned advocate appearing for the petitioner has fairly conceded that for some time, the petitioner was on a contractual job in a foreign country.

In the case cited by the petitioner, viz. Dinesh Chandra Sangma vs. State of Assam and Others AIR 1978 Supreme Court 17, the appellant therein was a District and Sessions Judge at Dibrugarh, who, because of his domestic troubles had served a notice on the Government under Fundamental Rule 56 (C) as amended by the Governor of Assam under Article 309 of the Constitution by a notification dated 22.07.1975 for voluntarily retiring from service. The aforesaid request was allowed by the Governor of Assam and the appellant was allowed to go home on a one month's leave preparatory to the retirement.

Shortly thereafter, the earlier order of the Government was countermanded and the appellant was transferred by the High Court of Assam from Dibrugarh to Dhubri. The appellant did not join at the transferred place on the pretext of his having voluntarily retired from service prior to his transfer. The appellant had made several representations to the High Court as also to the Government for recall of the order which had countermanded the earlier order of voluntary retirement but when such request was not heeded to, the appellant filed a writ petition for quashing the Government order which had set aside the earlier order of granting voluntary retirement to the appellant. The writ petition was dismissed on the sole ground that such order was subject to compliance of the concerned rules.

The Supreme Court in the aforesaid case, after holding that relationship between the Government and servant is not like an ordinary contract of service between master and servant and the relationship assumes a status, found that the appellant had voluntarily retired by three months' notice not in accordance with an express or implied term of his contract of employment but in pursuance of a statutory rule which did not have any provision for taking the consent of the Government to give legal effect to the voluntary retirement under Fundamental Rule 56(C). The appellant therefore was allowed to retire voluntarily.

The facts of the case in Dinesh Chandra Sangma (supra) is absolutely different and has got no bearing with the facts of the present case. In the first instance, there is no definite proof of the letter seeking voluntary retirement having been served upon the respondent and secondly, approaching the Tribunal after 15 years squares up and strengthens the view that the petitioner has voluntarily abandoned the service.

We need not say any further.

There is no reason why the judgment of the Tribunal which has been impugned in the present writ petition be interfered with.

The writ petition is devoid of merits and is dismissed but without costs.