(2006) 09 GAU CK 0069

In the Gauhati High Court

Case No : Writ Appeal No. 480 of 2002 (in CR No. 3276 of 1997)

Oil India Ltd. APPELLANT

Vs

Girindra Nath Gogoi RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Citation : (2008) 3 GLR 335

Hon'ble Judges : B.Sudershan Reddy, C.J. and Amitava Roy, J

Bench : Division Bench

Advocate : B.K.Bhattacharjee, S.N.Sarma, Y.S.Mannan, Advocates appearing for Parties

Judgement

Amitava Roy J.

1. In challenge is the judgment and order dated 05.08.2002, passed in C.R. No. 3276 of 1997, directing the appellant OIL India Ltd. (hereinafter referred to as the ''OIL''), to accept the respondent''s request for early retirement and release the consequential service benefits in terms of the rules applicable to him. Thereby, the disciplinary proceeding initiated against the respondent has also been quashed being unauthorized and impermissible. On appeal, by order dated 27.7.2004, the operation of the impugned judgment and order had been kept in abeyance. In the meantime, the respondent has attained his age of superannuation under the extant rules on 31.7.2002.

2. We have heard Mr. S.N. Sharma, senior advocate assisted by Mr. Y. S. Mannan, Advocate for the appellants and Mr. B.K. Bhattacharjee, Advocate for the respondents.

3. The admitted facts deserve a brief narration. The respondent, who was appointed as a Production Practice Trainee with the Assam OIL Company Ltd., was transferred to OIL in the same capacity on 1.1.1962. He was thereafter, promoted to the post of Assistant Executive Engineer in Executive GradeA. With time, he rose in the ranks and on 22.06.1996, was promoted as Superintending

Engineer (Production) under Executive Grade D of the appellant company. In July, 1996, he requested for privilege leave from 5.8.1996 to 3.10.1996, which was granted by the appellant authorities. Before the expiry of the leave period, he sought extension thereof by 30 days, which was also sanctioned. On 26.10.1996, the respondent submitted an application in writing to the Deputy General Manager, HR, OIL intimating his intention to voluntarily retire from service with immediate effect. This was followed up by a request by him on 10.11.1996 for privilege leave with or without pay till the decision was taken on his request for voluntary retirement.

4. Subsequent thereto, he was by letter dated 27.11.1996, issued by the Manager (Personal), required to state the reasons in details for seeking such retirement in order to process his request. The respondent by his reply dated 23.12.1996, provided the reasons. By a telegram dated 3.1,1997, issued by the Group General Manager, OIL, the respondent was however, asked to report for duty on or before 10.1.1997, conveying to him further that no decision had yet been taken on his request for early retirement. The respondent respond by his letter dated 11.1.1997, informing the Deputy General Manager (Production) OIL, that he would be resuming duties on 20.1.1997. He accordingly did so, but on the very same day applied for special leave without pay with effect from 20.1.1997 till his request for early settlement was acceded to. It was thereafter that on 14.2.1997, the respondent by his letter of that date addressed to the Deputy General Manager (HR) OIL, tendered his resignation with a request to release him from service with effect therefrom. By the memorandum dated 14.3.1997, issued by appellant No. 3, the respondent was informed that an enquiry was proposed to be held against him under rule 25 of the OIL Executives Conduct, Discipline & Appeal Rules, 1962 (hereinafter for short ''CDA Rules). The articles of charges, statement of imputations of misconduct and the list of documents and witnesses by which the accusations were proposed to be established, were also furnished therewith. It was alleged that the imputations constituted the respondent''s failure to maintain absolute integrity and devotion to duty, in contravention of clause 13.1 of rule 13 of the CDA Rules and thus amounted to a misconduct. The respondent was further informed by a communication dated 17.3.1997, that in view of the initiation of a disciplinary proceeding against him, his request for being released on resignation would not be processed pending finalization thereof.

4 A. The respondent by his reply dated 23.7.1997, denied the charges. Thereafter, he was asked to submit his written statement of defence in the inquiry. Following the appointment of an enquiry officer to probe into the charges, the respondent was noticed to appear in the proceeding. At that stage, he approached this court and invoked its jurisdiction under article 226 of the Constitution of India, praying for an appropriate writ inter alia, for quashing the disciplinary proceeding and directing the appellants to release him all consequential retiral benefits including gratuity, provident fund and pension as admissible under the rules by declaring that he stood voluntarily retired from

services of OIL either on 14.2.1997 or any date prior there to

5. In the writ petition, the respondent stated that he did not submit any explanation to the charges, as he was no longer in the service of OIL on and from 14.2.1997, but intimated his stand pertaining thereto, by his letter dated 27.3.1997. He maintained that as he ceased to be in the service of the appellant company, the initiation of the disciplinary a proceeding against him was wholly unauthorized. While contending that the appellant authorities had unjustifiably withheld their decision on his request for early retirement and resignation, he asserted that he should be deemed to have retired from service on and from 14.2.1997 and that the commencement of the disciplinary proceeding against him , was a punitive measure on considerations irrelevant, extraneous and collateral.

6. In their affidavit, the appellants, while admitting the receipt of the application dated 26.10.1996, from the respondent, pleaded that not only a six months notice therefor, was required but under the Oil Indian c Pension Funds Rules, early retirement was admissible and pension benefits releasable thereupon only on any of the following grounds :

(i) Ill health,

(ii) Redundancy.

(iii) Unsuitability for his particular employment by reason of his age or near attainment of, pension age.

(iv) In special case on application by the concerned former employee with the recommendation of the company."

As the respondent did not come within any of the said clauses, he was requested to furnish the reasons in details for his decision, which however, were disclosed in his letter dated 23.12.1996. The appellant authorities, however, on a consideration thereof, did not find the same acceptable and accordingly, he was by the telegram dated 3.1.1997, asked to resume his duties. Thereafter, the Management received fetter from the respondent to the effect that he would be reporting for duties on 20.1.1997. Though, he was advised by the telegram dated 16.1.1997, to join forthwith, hedid not do so and remained absent without leave overstaying the period of sanctioned leave for more than four (4) consecutive days. It was at that stage, that the appellant company came to learn from the fetter dated 17.2.1997, of the Deputy Manger (Viz), OIL, ONGC, PNGC, CRBC, Nazira, that the respondent was already working "on hiring & M Services for WSS" on contract with it. The appellants pleaded that as the above conduct of the respondent was repugnant to clause 13.1 of the CDA Rules, a disciplinary action against him was contemplated for taking up employment with ONGC Ltd., while still in the rolls of the appellant company and therefore, his request to be released on resignation was not acted upon. It was categorically denied that the respondent had ceased to be in the service of the appellant company with effect from 14.2.1997 and that therefore, ho disciplinary proceeding against him a could be conducted. The allegation of withholding the decision on his request for early retirement or resignation on impertinent considerations was also denied. The appellants in categorical terms asserted that no unilateral determination of the contract of an employee as insisted upon by the respondent was permissible under the Company''s Rules and that the contentions raised in support of the reliefs claimed were untenable.

7. The learned Single Judge, while holding that the respondent was not covered by the voluntary retirement scheme of OIL meant for the Executives, took note of the provision for early retirement contained in the Executive Personnel Policy Manual and Clause 15 of the Service Agreement dated 12.3.1981, between the respondent and appellant company. Acting on the aforementioned Clause of the agreement, which was construed to have conferred on absolute right on the employee to determine the same at any time by giving three months notice in writing or relinquishing three months salary in lieu thereof, it was held that the reasons furnished by the petitioner in support of the request for early retirement were "plausible" and there was no valid ground for appellant authorities to refuse his prayer made therefore, in his letter dated 26.10.1996. Clause 30B(i) & (ii) of the CDA Rules, authorizing initiation of a disciplinary proceeding against an executive, while in service and continuance thereof, thereafter, relied upon by OIL, was discarded as inapplicable to the respondent, the above provisions having been incorporated in the CDA Rules, only with effect from 05.11.1999. The learned Single Judge concluded that the above provisions were no answer to save a disciplinary proceeding if initiated against a person, who in the meantime, by operation of law can be deemed to have retired from service of OIL. The reliefs as above, were thus extended to the respondent.

8. Mr. Sharma, has urged that the learned Single Judge had erred in determining that the respondent stood retired from the service of OIL on the date of initiation of the disciplinary proceeding by misconstruing the relevant provisions of the Company''s Policy and Rules bearing on the early retirement and resignation of its executives. Apart from the fact that in terms of the Executive Personnel Policy Manual (hereinafter referred to as the ''Policy Manual'', six months prior notice for early retirement is an essential prerequisite the respondent by his request to abandon the service on resignation having superseded his request for early retirement, reference to the letter dated 26.10.1996 to adjudge his claim was clearly unwarranted, he pleaded. According to the learned Senior counsel both in the matter of resignation and early retirement, the policy manual reserve a discretion in the management to accept or decline the request therefor and thus the respondent by no means could have been held to have ceased to be in the service of OIL automatically on the submission of his letter of resignation on 14.2.1997. The mandatory imperatives for determining the service of the respondent, either by resignation or by early retirement not having been fulfilled, he continued to be in service in absence of any express decision of the management accepting his request therefor, he urged. Mr. Sharma, dismissed the

application of clause 15 of the Agreement to supersede the provisions in the policy manual pertaining to resignation and early retirement. Relying on rule 30 B(i) and (ii) of the CDA Rules, the learned Senior counsel maintained that the initiation and continuance of the disciplinary proceeding against the respondent, was valid and that no interference therewith was called for. The charges brought against the respondent and proved in the inquiry being grave in nature, necessary action in terms of the CDA Rules, is warranted to sustain the discipline in and probity of the organization, he asserted.

9. Mr. Bhattacharjee, in reply, has submitted that the respondent having made a request for an early retirement from service on 26.10.1996, followed by an offer of resignation, he ceased to be in the service of appellant company with effect from 14.2.1997 and, therefore, the disciplinary proceeding initiated thereafter, was per se illegal, incompetent and without jurisdiction. According to him, the charges levelled against the respondent were out and out false. He maintained that no charge for joining the services of the ONGC, had been levelled in the disciplinary proceeding, which had been launched only to harass and intimidate the respondent. As he stood relieved from the service of OIL before the commencement of the disciplinary proceeding, the learned Single Judge rightly interfered therewith and granted the consequential service benefits. Mr. Bhattacharjee, admitted that in between by the communication dated 9.4.2002, the respondent has been retired from the service of the Company with effect from 31.07.2002 and asked to collect his dues, as referred to therein. The learned counsel on instructions, further submitted that as a consequence thereof, almost all the retirement benefits due to the respondent have, in the meantime, been released to him.

10. We have extended our anxious consideration to the competing arguments. As the assertions have their roots in the respondent''s application dated 26.10.1996, for early retirement, we consider it apt to start therewith. It is apparent therefrom that thereby, the respondent, wished to take early retirement from the service of Company due to his personal problems. Being asked, he on 23.12.1996, elaborated the reasons supporting his said decision. He was at the relevant time on privilege leave and the telegram dated 3.1.1997, issued by the Group General Manager, OIL, demonstrates that his request for early retirement had not been acceded to and that he was required to report for duty on or before 10.1.1997. That in response thereto, the respondent eventually joined on 20.01.1997, is an admitted fact. He thereafter on 14.2.1997, tendered his resignation from the Company''s service complaining that he was compelled to do so as there was no response to his request for early retirement. He thereby, requested that his resignation be accepted with effect from that date. He offered one month''s salary from his retirement benefits in lieu of a notice for that period. While, the said request was pending, the records disclose, that by a communication dated 17.2.1997, the Deputy Manager (Viz) ONGC, CRBC, Nazira, informed the Chief Manager (Vigilance) OIL in reference to the latter''s communication dated 20.1.1997, that in the meantime, the respondent had

taken up employment with the OIL and Natural Gas Corporation Ltd. Nazira. By the memorandum dated 14.3.1997, the respondent was thereafter, informed of the decision of OIL to initiate an enquiry against him under rule 25 of the CDA Rules on two heads of charges referred to therein. It was alleged that the respondent by his activities detailed in the accompanying statement of articles of charges that he had failed to maintain absolute integrity and devotion to duty in contravention of clause 13.1 of the CDA Rules. Article II of the charges appertained to the imputation of his engagement with the ONGC. The respondent was accordingly, by communication dated 17.3.1997 of Deputy General Manager (HR), OIL intimated that his request for being relieved on resignation would not be processed pending finalization of the disciplinary proceeding.

11. It would be expedient at the stage to notice the provisions for resignation and early retirement in the policy manual of the appellant''s company. Under clause 6.1.2 of the Policy Manual, an Executive can resign serving due notice to the company, the authorities to accept the request therefor, being specified therein. In terms of clause 6.1.3.1, the request for resignation ought to be submitted to the authority competent to accept it and should be clear and unconditional. Clause 6.1.3.2, prescribes that resignation from service would generally be accepted except when the Executive concerned is engaged on work of importance and alternative arrangements for filling up the post may take time, or when he is winder suspension or his conduct is under investigation or against whom there are departmental claims. Clause 6.1.3.5 vests the accepting authority with thepower to decide the date from which the resignation should become effective. The right of not accepting resignation, if circumstances so warrant, due to pending disciplinary/ vigilance cases etc. has been expressly reserved to the management in clause 6.1.11.

12. Clause 6.5.2 of the Policy Manual, which deals with early retirement is extracted hereinbelow for ready reference;

Early Retirement

"Executive, who is covered under the OIL India Pension Scheme will be entitled to retire with proportionate pension with the concurrence of the Company before reaching the age of 60 years provided he/she has completed 20 years of service and is not below the age of 45 years. Such an executive will write to RCE through proper channel, at least 6 months prior to the proposed date of early Retirement."

Clause 15 of the Agreement dated 12.03.1981, between the respondent and the OIL containing service covenants and referred to in the impugned judgment also deserve to be set out as hereinunder:

"Fifteen

The Employee shall have the right to determine this Agreement at any time upon giving previous notice of three months in writing to the Company or on paying to the company three months salary in lieu of notice."

13. A plain reading of the letter dated 14.2.1997, leaves no manner of doubt that the respondent thereby had forgone his request for early retirement made by the letter dated 26.10.1996 and had substituted the same by one for resignation. The contents of the said letter are explicit and unambiguous in this regard. The said letter clearly proclaims that the respondent had switched over to the request for resignation as the appellant authorities had failed to respond to his appeal for early retirement. Further, though in terms of clauses 6.5.2, of the Policy Manual, six months notice prior to the proposed date of early retirement is a prescribed condition, the offer for resignation was made before the expiry of the said period. The factum of his reporting for duty on 20.1.1997, in compliance of the telegram dated 3.1.1997, disclosing that his request for early retirement had not been accepted is also of decisive relevance. In other words, on the submission of the letter dated 14.2.1997, his request for early retirement, by the letter dated 26.10.1996, did not survive for further consideration of the appellants. The provisions of the policy manual pertaining to resignation do not recognize any absolute right of an Executive to renounce the service of OIL unilaterally, nonacceptance of his request therefor notwithstanding. To the contrary, the clauses referred to hereinabove, recognize a discretion in the management not to accept such a request in appropriate circumstances including one of pendency of a disciplinary proceeding against the executive concerned. This indeed has been the consistent stand of the appellants.

14. Admittedly, no request had been made by the respondent to terminate the service agreement by invoking clause 15 thereof. The request made for early retirement and thereafter, the offer of resignation cannot by any means tantamount to a notice contemplated in the said clause of the agreement. The modes of determination of the service of an executive under OIL, by early retirement, resignation and termination of the agreement are conceptually distinctive and comprehend vividly different preconditions and eventual consequences. Not only the prerequisites therefor, are dissimilar the outcome visavis, the service benefits extendable to the executive concerned following the cessation of service would vary. The procedures thus cannot be permissibly interchanged at ones convenience.

In the case in hand, the appellant authorities on the ground of pendency of the disciplinary proceeding, have not acted upon the respondents'' application for resignation. This decision in terms of the relevant provision of the policy manual cannot be denounced as illegal, arbitrary or whimsical. The exercise of the discretion has been within the prescribed parameters governing the process. In the above premise, we do not feel persuaded to uphold the conclusion of the learned Single Judge that on the date of initiation of the disciplinary proceeding against the respondent, he had ceased to be in the service of the appellant company. We are of the view that the respondent was in the service of the appellant company on the date of commencement of the disciplinary proceeding and continued to be so till 31.7.2002, whereafter, he retired on acquiring the age of superannuation of 60 years.

15. Though, Rule 30B(i) of CDA Rules, which permits initiation of a disciplinary proceeding against an Executive, while in service or during employment to be continued and concluded even after his retirement and rule 30B(ii) sanctioning institution of such a proceeding even after his/her retirement in respect of grave misconduct with reference to an event or cause of action, which had taken place not more than four (4) years before the commencement thereof, were incorporated in the said rules on 05.11.1999, in view of our decision that the respondent on the date of initiation of the impugned proceeding had been in the service of the appellant company, the applicability of the above provisions thereto, cannot be excluded. Admittedly, the disciplinary proceeding was pending from 14.03.1997 on the date of the insertion of the above provisions in the CDA Rules, and therefore, were invocable thereto. On that count as well, the impugned disciplinary proceeding cannot be dismissed as invalid. Noticeably, the proceeding had remained pending till the disposal of the writ petition in view of the order dated 27.7.2004 of the learned Single Judge, restraining the appellant authorities from taking a final decision in connection therewith.

16. In view of the conclusions recorded hereinabove, we are constrained to hold that the impugned judgment and order warrants interference in appeal. It is therefore, set aside. The appellant authorities, in view of the respondent''s retirement from service in due course would complete the disciplinary proceeding (if not so done meanwhile), if so advised b and release his service entitlements by finalizing and computing the same at the earliest. The appeal stands allowed. No costs.

