

(2012) 03 DEL CK 0180
In the Delhi High Court
Case No : LPA 1063 of 2011

R.K. Tandon

APPELLANT

Vs

Secy. Deptt. of Power and Another

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

National Hydro Electric Power Corporation Leave Rules — Rule 3.2.17

Citation : (2012) 03 DEL CK 0180

Hon'ble Judges : Pratibha Rani, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Vikas Mahajan, for the Appellant; Ravi Sikri, Advocate and Mr. Vaibhav Kalra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 22825/2011

Allowed subject to just exceptions.

CM No. 22826/2011

For the reason stated in the application, 56 days delay in filing the appeal is condoned.

LPA No. 1063/2011

1. Challenge is to the order dated September 06, 2011 passed by a learned Single Judge of this Court dismissing WP(C) No. 4560/1995.

2. Appellant was appointed as an Engineer in NHPC Ltd. and earned promotions. At the relevant time i.e. in March 1990 he was holding the post of Manager (Electrical), to which post he was promoted on June 22, 1988.

3. On June 12, 1989, appellant was transferred to the "Uri Hydro-electric Project" at Baramullah, Kashmir where he served till March 01, 1990 and claims that due to the deteriorating law and order situation, on account of terrorist activities, in Kashmir valley he had to leave the place of posting in panic. On March 08, 1990 he wrote a letter seeking absorption either at the Corporate office or any other project under NHPC, to which, on March 09, 1990 the Manager (Personnel) of NHPC responded informing the appellant that the request could not be acceded to. Appellant was advised to proceed on leave.

4. Appellant never sought leave. Along with a few other officers deployed at Uri and Kishanganga Projects, petitioner wrote a letter to NHPC on March 28, 1990 stating that in view of the extremely deteriorated law and order situation in Kashmir valley, concessions by way of changing headquarters, house-rent allowance at a place of choice of the employees be granted.

5. Treating, as if he had been sanctioned leave, for which the appellant was required to make a formal application and which application was not submitted, availing self leave, appellant joined Uri (date not known) and remained there till April 04, 1990, and abandoned the place, claiming that militants had set on fire the Circle office of the Uri Hydro-electric Project and he had received threatening calls.

6. That the situation in the valley was extremely hostile qua employees of NHPC is a matter of fact which is not in dispute and evidence thereof are letters exchanged between the Cabinet Secretary and the Secretary, Department of Power, which show that the matter was discussed of accommodating employees who could not work in the valley due to the prevailing disturbed conditions but no solution could be found.

7. Appellant claims that whereas Kashmiri pundits, a religious minority community, in the State of Jammu & Kashmir were allowed to mark attendance at Jammu, appellant was not permitted to do so. On August 14, 1991 the appellant wrote a letter and in the caption titled the subject of the letter:

Resignation of R.K.Tandon, Manager (Electrical)". The appellant wrote as under:

Sir,

The undersigned after having served the Loktak, Baira Suil and Uri SE Projects of NHPC, since 1977, requested the JNPC management number of times for transfer to Delhi Headquarters or to NHPC management number of times for transfer to Delhi Headquarters or to NHPC's other projects outside the Kashmir Valley. Such transfer was requested on health grounds, especially considering the turmoil prevailing in the valley and the heart problem, I have.

I am pained to point out that all my written requests and personal meetings with various officers of NHPC at different levels have fallen into deaf ears.

Under these circumstances, I am forced to resign from the NHPC's services. I,

therefore, request your goodself to accept my resignation with immediate effect as per rules in vogue.

All my pending dues arising out of EPF, gratuity, earned leave, pay revisions and other applicable benefits may please be finalized immediately and sent to me at the following residential address.

Thanking you,

Yours faithfully

Sd/

(R.K.Tandon)

8. Receiving no response, appellant wrote another letter dated December 23, 1991 on the subject of his resignation to which he received a response on January 03, 1992 informing him that NHPC had not received the letter dated August 14, 1991, and additionally informed that appellant's resignation was under active consideration. The letter dated January 03, 1992 reads as under:

Shri R.K. Tandon

C-3, Pocket-B,

Mayur Vihar-II,

Delhi-110091

Subject: Resignation from the post of Manager (Elect.)

Kindly refer to your letter dated 23.12.1991 on the above subject.

In this connection it is stated that we did not receive your letter dated 14.8.1991. However, your resignation case is under process. Meanwhile, you are requested to clear all the dues of the Corporation including HRA, Scooter Advance etc. Moreover, your contention of taking employment anywhere after submitting your resignation is not valid until and unless your resignation is not accepted, by NHPC Ltd.

Yours faithfully,

Sd/-

(SUBHAS C.GUPTA) 3.1.92

Asstt.Manager (P) EE

9. On May 11, 1992, the order impugned in the writ petition was issued, informing appellant that being absent from duty with effect from March 02, 1990 without leave being sanctioned and not having resumed duty till date, appellant was deemed to have left the service and name was struck off the rolls of NHPC with effect from March 02, 1990 under Rule 3.2.17 of NHPC Leave Rules which

we note are non-statutory rules and are akin to office instructions.

10. On August 23, 1993 appellant withdrew his resignation and filed WP(C) No. 4235/1993 praying that the order dated May 11, 1992 be quashed.

11. NHPC disputed the claim of the appellant that the situation in the valley was of such extreme volatility that it was impossible for the appellant to work therein. Pleading that the appellant abandoned his duties and started supervising a project work of NHPC awarded to Hythro Power Corporation, it was stated that this evidences that the appellant could work in the valley. It was pointed out that the work in question was being executed at Dulhasti in the State of Jammu & Kashmir. The contracted work had been awarded to a French Consortium which had sub-contracted a part work to Hythro Power Corporation. It was pointed out that Hythro Power Corporation was a partnership firm of which the wife of the appellant and the wife of another employee of NHPC, namely, Mr.G.S.Rawat were partners. It was pleaded that appellant's presence in the valley to supervise the sub-contracted work awarded to Hythro Power Corporation by the French Consortium was proof that the appellant was playing tricks. NHPC pleaded that when it learnt as aforesaid, confirmation was sought from the French Consortium, which confirmed as per a letter dated July 26, 1991 that the appellant was physically present to supervise the sub-contracted work at Dulhasti. Additional proof pleaded, of appellant being in the valley, was a summon received from the Court of the Chief Judicial Magistrate at Chamba (HP) requiring appellant to appear as an official witness on September 20, 1990 and a telegram being sent to the appellant at his residential permanent address at Delhi available with the department requiring him to comply with the summon received and additionally an employee of NHPC being sent, with the summons, to the house of the appellant for delivery thereof, on which appellant's wife wrote that her husband was either at Jammu or at Uri. It was pleaded that wife of Mr.G.S.Rawat and appellant were housewives and had no technical qualifications to either execute or supervise the execution of the sub-contracted job at Dulhasti to the partnership firm Hythro Power Corporation. It was highlighted that Mr.G.S.Rawat was a Civil Engineer and the appellant was an Electrical Engineer. It was highlighted that Hythro Power Corporation had been awarded the work of erection, testing and commissioning of generating plant equipment and accessories, as sub-contractor by the French Consortium. The specialized nature of work to be executed was highlighted to bring home the point that housewives could not have executed the same and that persons with technical knowledge and experience, like the appellant and G.S.Rawat could only have executed the works. It was pointed out that attempt by the appellant to withdraw the resignation letter submitted by him on August 23, 1993 was inconsequential since order dated May 11, 1992 had been issued. It was pleaded that on November 26, 1990 the appellant was issued a notice informing him of being unauthorizedly absent since March 02, 1990 and was notified that if he did not join within 8 days, it shall be presumed that he had left the service of the Corporation of his own accord.

12. In the rejoinder filed by appellant to the counter affidavit filed by NHPC he denied having received the letter dated November 26, 1990. He questioned the dispatch register of NHPC. He admitted that his wife was a partner of Hythro Power Corporation to which a work was sub-contracted by the French Consortium for the Dulhasti Project but claimed that the project was in Kishtwar District, unaffected by terrorists. He denied working for the said firm or at the site of the sub-contracted work and as regards the letter dated July 26, 1991 written by the French Consortium to NHPC, he denied authenticity thereof and alleged the document to be a forged document. He explained his being in the valley, as informed by his wife when the official of NHPC went to his house to hand over a copy of the summons issued by the Chief Judicial Magistrate, Chamba for appellant to appear as a witness on September 20, 1990, by stating that he had gone to the valley to obtain transfer certificates pertaining to his children studying at the Kendriya Vidyalaya at Jammu.

13. The learned Single Judge has not adjudicated on the vires of Rule 3.2.17 of the NHPC Leave Rules, and has held that the explanation of the appellant pertaining to his not being at Dulhasti was not convincing. The learned Single Judge has opined that admission by the appellant that his wife was a partner of the firm Hythro Power Corporation would lead to inferences as were inferred by NHPC in the counter-affidavit filed i.e. the technical nature of the sub-contracted work, wife of the appellant being a housewife and not qualified either technically or by experience and lastly the appellant being a technically qualified person; meaning thereby that the cumulative effect of aforesaid facts and circumstances would lead a reasonable person to draw a reasonable conclusion that it was the appellant who was supervising the sub-contracted work at Kishtwar. The learned Single Judge has found the explanation given by the appellant of being statedly at Uri to collect the transfer certificates of his children as not worthy of any credence and has linked appellant's presence in the valley to his supervising the work awarded to Hythro Power Corporation.

14. In a nutshell, the learned Single Judge has found that the appellant not only abandoned the work, but did so voluntarily and not out of any compulsion; using their wives as a cover, the appellant and a co-employee, had obtained a remunerative sub-contract at Kishtwar and were making good money from the said commercial venture.

15. We are not dealing with the submissions urged pertaining to the vires of rule 3.2.17 of NHPC Leave Rules for the reason the impugned judgment evidences that vires thereof was not argued before the learned Single Judge. The argument advanced was that no show-cause being issued preceding the impugned order being passed, rules of natural justice were violated, a plea negated by the learned Single Judge with reference to the notice dated November 26, 1990 sent to the appellant, receipt whereof was denied by him, calling upon the appellant to join duty within eight days under pains of a presumption being drawn against him of abandoning a job.

16. The learned Single Judge has relied upon the dispatch register and we highlight that the same is a matter of fact.

17. The appellant has not denied that his wife and the wife of his colleague Sh. G.S. Rawat are housewives and that initially the two were the partners of Hythro Power Corporation but claims that subsequently two more persons having technical qualifications were inducted as partners. In this manner, appellant seeks to explain the technical work awarded to the partnership firm being capable of execution without any knowledge of the work by his wife, a justification which is most illogical for the reason this would mean that the wife of the appellant was a sleeping partner and this normally happens when a person invests money in a project where somebody else works. It would then be a cooperative venture between capital and labour. But, we find that as per their constituted deed of partnership, each partner had to contribute equally to the capital of the firm. Further, appellant being away from his house and as stated by his wife being in Uri when in September 1990 an attempt was made to hand over Court summons to the appellant, is a pointer to the appellant working for gain at Uri and his explanation that he went to Uri to collect transfer certificates from the school where his children were studying does not inspire confidence. The appellant never produced any transfer certificates obtained by him in September 1990. Lastly, we see no reason why the French consortium would supply for false information as per its letter dated July 26, 1991 that appellant was working at the Dulhasti Project.

18. Appellant's conduct is highly suspicious and we are of the opinion that such persons are not entitled to any discretionary relief under Article 226 of the Constitution of India and concurring with the view taken by the learned Single Judge, dismiss the appeal in-limine.