
(2005) 01 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petition No. 8059 (W) of 2003 with C.A.N. No. 8948 of 2003

Santimay Chaudhuri

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Airlines Employees (Aircraft Engineering Department) Service Regulations, 1959 — Regulation 12

Citation : (2005) 3 ESC 1935 : (2005) 1 ILR (Cal) 47

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Ashish Sanyal and P.K. Chatterjee, for the Appellant; R.N. Majumder and Susanta Pal, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this writ petition has two fold grievances:--(1) the respondents wrongfully refused to accept his application for voluntary retirement; and (2) they initiated two disciplinary proceeding mala fide, and for frustrating his legal right to go on voluntary retirement.

2. In August 2002 he was working in Kolkata office of Indian Airlines Ltd. as senior manager. The company wanted to utilise his service in Chennai, and hence transferred him by order dated 26th August, 2002. Feeling aggrieved, he moved this Court by filing a Writ Petition [No. 12950 (W) of 2002]. By order dated 9th September, 2002 it was disposed off with the observations that he must join the Chennai office though he would be at liberty to make representation to his employer expressing his difficulties in complying with the transfer order. Consequently, he joined the Chennai office on 16th September, 2002 and discharge duties till 29th September, 2002.

3. He applied for leave stating illness of his wife. The competent authority sanctioned leave for the period from 30th September, 2002 to 30th November, 2002. While on leave he decided to apply for voluntary retirement in exercise of

his right available under Service Regulations for Employees (other than those in the Flying Crew and those in the Aircraft Engineering Department), Regulation 12, which is :

"Regulation 12.--An employee shall retire from the service of the company on attaining the age of 58 years provided that the competent authority may ask an employee to retire after he attains the age of 55 years on giving three months" notice without assigning any reason. An employee--

(a) on attaining the age of 55 years;

or

(b) on the completion of 20 years of continuous service may by giving three months" notice voluntarily retire from the service :

Provided that the voluntary retirement under Clause (b), shall be subject to approval of the competent authority :

Provided further that, notwithstanding anything contained in Regulation 12, the services of an employee may at the option of the Managing Director and the employee being found medically fit, be extended by one year at a time beyond the age of retirement of 58 years for an aggregate period not exceeding two years."

The application submitted by him on 1st October, 2002 reads as follows :

"This refers (sic) to the Est. Order No. 17 of 2002, issued vide No. H.P.D.O. 1/ C.E./1701 dated 26th August, 2002 by flouting all the guidelines of transfer.

In accordance to the above order and the dictum at the Hon"ble (sic) Justice of High Court of Calcutta I joined Southern region on 16th September, 2002.

During my stay at Chennai I failed to admit my son to any school as schools including "Central School" would not give fresh admission to Class-XI after 31st July of the academic session. Since studies of my son cannot be discontinued and my wife being sick and cannot be left alone I am now compelled due to the circumstances created at this age in the name of exigencies of work as was done again and again in the past to tender my option (sic) under "Service Regulation 12" and make it known to you that I have no other option but to retire from service with effect from 31st March, 2003 after close of office hour on that day, after availing my leave in credit.

I also request you to give effect to my promotion to the post of Dy. C.M. (C.E.) which was filled up without considering me again by flouting R & P rules of the organization (A representation given to you).

At last I request you to consider for passing appropriate orders for enabling me to draw my retirement from Kolkata office of Eastern Region as I will have to stay at Kolkata for the reason explained above.

Thanking you."

After he filed the application for voluntary retirement the company cancelled his sanctioned leave, and by order dated 8th November, 2002 directed him to report for duties Immediately. The order reads as under :

"This has reference to the privilege leave sanctioned to you w.e.f. 30th September, 2002.

The leave sanctioned to you is hereby cancelled and you are advised to report for duties immediately on receipt of this letter."

4. He, however, did not report for duty. The company first stopped his salary from November 2002, and then issued two charge-sheets dated 5th December, 2002 and 18th December, 2002.

5. Allegations made in the charge-sheet, dated 5th December, 2002 were as follows :

"You are hereby charged as under :

That you were sanctioned privilege leave for 62 days from 30.9.2002 to 30.11.2002. However, vide letter No. SR/RD/480223 dated 8.11.2002, you are informed that the leave sanctioned to you has been cancelled and you were advised to report for duties immediately. Even though you received the said letter on 11.11.2002, you had wilfully, in utter disregard to the instructions, failed and neglected to report for duties and remained absent unauthorisedly. While you have sought extension of leave till 31.3.2003 vide your letter dated 8.11.2002, you had vide letter dated 12.11.2002 initiated that you shall definitely resume duties if it is demanded for the interest of the organisation. As you had failed and neglected to report for duties despite advice, you were once again advised vide letter No. SR/RD/480223 dated 18.11.2002 to report for duty immediately. Even though you had received the said letter on 20.11.2002, you had wilfully in utter disregard to the instructions, failed and neglected to report for duties and continued to remain absent unauthorisedly.

Your above act, if proved, would constitute breach of Standing Order 1 and misconduct within the meaning of Standing Order 16 Clauses (1), (6), (8) and (13) of the Standing Orders (Regulations) concerning Discipline and Appeals, applicable to you which read as under.

Allegations made in charge-sheet, dated 18th December, 2002 were as follows :

"You are hereby charged as under :

That you were heading the Civil Engineering Department in Eastern Region at Kolkata during 1st January, 1997 to 14th September, 2002 and you were responsible for maintenance and up-keep of all structures including Indian airlines owned and hired buildings occupied by Indian Airlines.

That during your tenure of service at Kolkata, you had failed and neglected to

provide Civil Engineering support for maintaining the Catering premises at Kolkata in a hygienic condition. While the work carried out pursuant to the note sheet dated 15.7.1997 initiated by Sr. Manager (Catering) did not even last for two years, the Senior Manager (Catering) subsequently vide his letter dated 20/21.5.2002 brought to your attention the need for many repairs/renovation/painting works in the Catering Section and requested you to visit the premises. Even though Senior Manager (Catering) followed up with reminders dated 1.8.2002 and 12.8.2002, you failed and neglected in your duties and responsibilities by not providing timely estimates and support for maintaining hygienic condition of the Catering premises.

Your above act, if proved, would constitute breach of Standing Order 1 and misconduct within the meaning of Standing Order 16 Clauses (8), (12), (32), (33) and (38) of the Standing Orders (Regulations) concerning Discipline and Appeals, applicable to you which read as under."

Facing with the situation he took out this writ petition dated 19th May, 2003. During its pendency the company proceeded with the enquiry in connection with one of the charge-sheets, but final order is yet to be passed. He, however, did not participate in the enquiry that was held in Chennai. Although counsel for the parties wanted to make submissions regarding the enquiry held, I told them that, in my view, questions connected with the enquiry would not be relevant in this case. Both of them agreed with me.

6. As to the grievance of the petitioner his counsel submits that the right available to the petitioner was duly exercised by him, and that for exercising such right his client was not supposed to give any valid reason. He comments that under Regulation 12 there was no scope for the company to refuse to accept the offer made by the petitioner to go on voluntary retirement. He points out that the offer made did not require any approval of any authority. He concludes by saying that the disciplinary proceedings were initiated mala fide.

7. Counsel for the respondents argues that till the offer was accepted by the company, there was no concluded contract, and hence the company was entitled to initiate the disciplinary proceedings. He justifies actions of his clients by saying that the petitioner by his own conduct made his integrity doubtful. He clarifies that when nothing prevented the petitioner from exercising his right to go on voluntary retirement, he first applied for leave, and after obtaining leave, he came out with his real intention that he had actually contemplated to go on voluntary retirement. His argument is that once the company duly exercised its right to cancel the sanctioned leave, the petitioner's absence from duty constituted misconduct, and hence the disciplinary proceedings were properly initiated. Regarding acceptance of offer for voluntary retirement, he cites to me the decision in Bank of India and Others Vs. O.P. Swarnakar etc., .

8. It seems to me that there was absolutely no just and proper reason for the company to initiate the disciplinary proceedings. On the admitted facts, I have no

hesitation in holding that in initiating the proceedings the respondents were actuated by malice.

9. I just not see how the conduct of the petitioner made his integrity doubtful. No provision of law prohibited him from exercising his right available under Regulation 12 to go on voluntary retirement. It is not the case of the company that the application was not entertainable for any reason. Its case rather is that the petitioner misused the compassion shown by the respondents in the matter of grant of leave. The company says that leave was granted to the petitioner on humanitarian ground. According to it while enjoying such leave the petitioner should not have exercised his right to apply for voluntary retirement. It left me wondering how these facts could be linked with the petitioner's integrity, as repeatedly argued and pointed out by counsel for the respondents.

10. It seems to me that the respondents were determined to see that the petitioner was in the thick of troubles by some means or other. Counsel for the respondents pointedly mentioned the fact of the petitioner's moving this Court previously for challenging the transfer order. I am sorry to say that I could not persuade myself into linking the petitioner's previous steps with his subsequent decision to apply for voluntary retirement.

11. I do not say that counsel for the respondents is not correct when he says that there was no unqualified right of the petitioner regarding acceptance of his offer to go on voluntary retirement. There is also no dispute regarding the proposition that till the offer was accepted no concluded contract was to come into existence, and that, as a result, even after the offer was made, the company was entitled to initiate disciplinary proceeding.

12. The question is whether the proceedings initiated in the present case were because of bona fide steps taken by the respondents. At the cost of repetition I would say, and I unhesitatingly say so, that the respondents did not take the steps bona fide. When the petitioner expressed his insurmountable difficulties, which might not be any difficulty worth saying to the respondents, the exercise of his legal right by the petitioner could not have been translated by the respondents for describing his integrity doubtful. The stand taken by the respondents does not, in my view, stand to any reason. The object and purpose of Regulation 12 cannot be defeated by them by their fanciful decisions,

13. The only ground for withholding the petitioner's release on voluntary retirement being the initiation of the two proceedings subsequent to his making the application, in my considered view, once I hold that the proceedings were initiated mala fide, the petitioner is entitled to get the benefits of voluntary retirement.

14. For these reasons, to my mind, the petitioner must get reliefs in this matter. Hence, I allow the writ petition. The two impugned charge-sheets are hereby quashed. The respondents are directed to grant all the benefits to the petitioner on the basis of his application for voluntary retirement, treating him as

voluntarily retired from service in terms of Regulation 12 with effect from 31st March, 2003. The benefits shall be released within three weeks from the date of receipt of a copy of this judgment and order by the respondents.

15. At this stage counsel for the respondents points out that the period during which the petitioner did not join needs to be regularised according to rules. Counsel for the petitioner responds by saying that his client was entitled to get leave. I am of the view that since leave was sanctioned upto 30th, 2002, the question of granting leave to the petitioner beyond that date, as a matter of course, cannot arise. Hence I order that for the period from 1st December, 2002 till 31st March, 2003 his case shall be dealt with by the respondents strictly according to the leave rules, and if leave is available to him, then they shall grant him such leave, otherwise the period will be treated as on duty without pay.

16. In the facts and circumstances of the case, I am not inclined to make any order for costs in the writ petition. Hence there will be no order for costs in it.

17. Since the writ petition itself has been disposed off, there is no need to pass any separate order in C.A.N. No. 8948 of 2003 that was taken out by the respondents for leave to pass final order in the pending disciplinary proceedings. Hence this application will be treated as disposed off without any order for costs.

18. Xerox copy of this judgment and order duly countersigned by the Assistant Registrar (Court) shall be supplied to the advocates, on usual undertakings.

19. Urgent certified xerox copy of this judgment and order shall be supplied to the parties, if applied for.