
(2013) 05 DEL CK 0154

In the Delhi High Court

Case No : Writ Petition (C) No. 464 of 1997

Shri N.C. Jain

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0154

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : G.D. Gupta, with Mr. Sarvesh Basaria, for the Appellant; Arun Birbal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner-Sh. N.C. Jain who was appointed by the respondent No. 2/Cement Corporation of India as a Director (Marketing) vide appointment letter dated 14.12.1994. Petitioner seeks the relief of quashing of the chargesheet dated 23.7.1996 on the ground that the chargesheet could not be issued in terms of Para xii(b) of the appointment letter dated 14.12.1994. It is argued that the petitioner submitted his resignation vide letter dated 27.10.1995 and therefore since on this date no disciplinary proceedings were pending nor was a decision taken to issue a chargesheet to him, the petitioner's jural relationship as an employee with the respondent No. 2-employer came to an end on 27.10.1995 inasmuch as the petitioner had prayed to be relieved immediately by adjusting the earned leave with three months notice pay. On behalf of respondent No. 2, it is contended that interpretation of para xii(b) as urged on behalf of the petitioner that the petitioner is deemed to have resigned from his services forthwith w.e.f. 27.10.1995 is quite clearly fallacious for the reason that if such an interpretation is permitted, every employee who knows that he is to be proceeded against for departmental action, will forthwith give his resignation and the employer will not be able to take action against him.

2. The relevant paras of appointment of the petitioner contained in the appointment letter dated 14.12.1994 are paras 1 and xii(b) and the same read as under:-

1) Period: The period of his appointment will be upto 31.7.1999 w.e.f. 1.11.1994 i.e. till the age of superannuation, and in accordance with the provisions of the Companies Act. The appointment may, however, be terminated even during this period by either side on 3 months notice or on payment of three months salary in lieu thereof.

Xii(b) The Government also reserves the right not to accept his resignation if the circumstances so warrant i.e. the disciplinary proceedings are pending or a decision has been taken by the competent authority to issue a charge sheet to him.

3. It is not disputed that the petitioner submitted his resignation letter dated 27.10.1995 and the same reads as under:-

October 27, 1995

The Secretary,
Department of Heavy Industry,
Ministry of Industry,
Government of India,
Udyog Bhavan,
New Delhi-110 011

Through: CMD, CCI Ltd.

Dear Sir,

I hereby tender my resignation from the post of Director(Marketing), Cement Corporation of India Ltd. It is requested that the Earned Leave due to me is adjusted against the notice period and I may kindly be relieved immediately.

Thanking you,

Yours faithfully,

(N.C. JAIN)

DIRECTOR (MARKETING)

CEMENT CORPORATION OF INDIA LTD. Core-V, SCOPE COMPLEX, Lodhi Road,
New Delhi

4. The respondent No. 1 in its additional-affidavit dated 11.4.1997 has stated that approval to initiate departmental proceedings for major penalty against the petitioner, subject to obtaining of Central Vigilance Commission's clearance, was

accorded by the competent authority in the case of the petitioner on 26.12.1995. This date being 26.12.1995 cannot and could not be controverted on behalf of the petitioner.

5. In the present case, there were grave charges against the petitioner. The main charge of major misconduct against the petitioner was of showing undue favours to one M/s. S. Sultan and Company. The charge against the petitioner is that repeated unauthorized and unsecured credit sales were made on behalf of respondent No. 2 to M/s. S. Sultan & Company which reached a level of Rs. 1,77,92,040.67/-. This was the first Article of Charge. The second Article of Charges pertains to failure of the petitioner to take effective steps to check the rising of the unsecured credit sales to M/s. S. Sultan & Co. There is also a charge of delivering damaged cement worth several lacs of rupees to M/s. S. Sultan & Co. in violation of the conditions of offer of the damaged cement sale policy of the respondent No. 2. Article III of Charges pertains to failure of the petitioner to deposit the cheques issued by M/s. S. Sultan & Co. in CCI's account, but instead returning the same to M/s. S. Sultan & Co. after adjusting credit notes submitted by the party which resulted in bouncing of cheques of Rs. 1,23,49,000/-. Article IV of the Charges pertains to petitioner not checking the stockists' rebate of more than Rs. 20 lacs allowed by M/s. S. Sultan & Co. to the sister concern M/s. S. Sultan. Article V of Charges pertains to giving of special cash discount of Rs. 54,720/- to M/s. S. Sultan & Co. The final Article of Charges i.e. Charge VI pertains to lack of performance of duties by the petitioner resulting in misappropriation of cement worth Rs. 73 lacs by M/s. S. Sultan & Co. Surely the aforesaid charges, details of which contained in the Article of Charges and the imputation of misconduct, are very grave charges resulting in loss of lacs and lacs of rupees to the respondent No. 2.

6. The issue is that how should para xii(b) of the appointment letter be interpreted. Can it be interpreted in such a manner that without the resignation being accepted there is an automatic resignation in terms of para (1) of the appointment letter simply by giving three months salary in lieu of three months notice.

7. In my opinion, the convenient interpretation sought to be given by the petitioner cannot be accepted because there has to be harmonious construction of all the clauses/terms of the appointment letter dated 14.12.1994.

No doubt para (1) states that the services may be terminated by either side on giving three months notice, however, para xii(b) makes it clear that the resignation is not automatic and government/respondent No. 2 has a right to reject the resignation if the circumstances so warrant including of a decision having been taken to issue the chargesheet against the petitioner. Counsel for the respondent No. 2 is justified in arguing that if an employee is allowed to bring his employment to an end immediately on giving of the notice of resignation with three months' pay, the employer will however be able to proceed against most of the employees because every employee on coming to

know that the departmental proceedings are sought to be initiated or a chargesheet is to be issued or a decision is to be taken to proceed against him for major or minor penalty proceedings, would simply give a letter of resignation/voluntary retirement/termination of services by giving three months notice pay. Counsel for the respondent No. 2 is justified in arguing that such a convenient interpretation sought to be urged on behalf of the petitioner will lead to grave frauds being perpetuated against the employer/respondent No. 2. In my opinion, counsel for the respondent No. 2 is justified and I accept the argument that it is within a period of three months that an employer/respondent No. 2 has to decide as to whether or not to initiate the disciplinary proceedings against an employee such as the petitioner and during which period there is no automatic resignation/retirement. Of course, after the period of three months if a decision is taken to initiate departmental proceedings, then, it would not be valid because it is issued after three months notice period, however, it is rightly contended on behalf of the respondent No. 2 that since in this case decision was taken by the competent authority to initiate major penalty proceedings against the petitioner on 26.12.1995, being within a three month period from 27.10.1995 (the date of resignation letter of the petitioner), there is no illegality in issuing of the chargesheet dated 23.7.1996 against the petitioner. For the sake of completion of narration, I must state that there is also a second chargesheet against the petitioner of failing to attend his duties and which is in addition to the chargesheet in which six charges have been leveled against the petitioner qua M/s. S. Sultan & Co. as stated above. Once a decision is taken by the competent authority to initiate major penalty proceedings against the petitioner on 26.12.1995 surely thereafter whatever are the administrative steps which are required to be taken whether of CVC clearance or drawing up the formal Article of Charges or doing of any other acts, such steps can definitely be beyond the period of three months.

8. On behalf of the petitioner, it was also sought to be contended by referring to the letter of the respondent No. 1 issued to the petitioner dated 14.9.2000 during the pendency of this petition that petitioner now has been relieved from services w.e.f. 31.7.1999 and thus departmental action cannot continue. I cannot agree with this interpretation urged on behalf of the petitioner to the letter dated 14.9.2000 because the ordinary term of appointment of the petitioner had come to an end on 31.7.1999 and which came into effect by virtue of letter dated 14.9.2000, but since the disciplinary proceedings against the petitioner were stayed by an interim order of this Court, no further action could be taken by the respondent No. 2 against the petitioner except giving into effect the ordinary date of superannuation of the petitioner as 31.7.1999 because surely the petitioner even otherwise cannot continue beyond that date. That however does not mean that respondent No. 2 is deemed to have withdrawn the chargesheet against the petitioner. The chargesheet could not be proceeded with only on account of interim order of this Court and petitioner therefore cannot urge simply because he has an interim order, that the letter of the respondent No. 1 dated

14.9.2000 amounted to withdrawing of the chargesheet and terminating the jural relationship of employer and employee. This letter of the respondent No. 1 dated 14.9.2000 pertains only to ordinary date of superannuation and this aspect of the disciplinary proceedings continuing against the petitioner is specifically referred to in this letter by stating that the disciplinary proceedings were contemplated against the petitioner and that is why petitioner's resignation was not accepted.

9. In view of the above, I find that the petitioner cannot be said to have automatically resigned from services of the respondent No. 2 simply on account of having submitted the resignation letter dated 27.10.1995. Within a period of three months from 27.10.1995, the respondent No. 2 was entitled to take a decision for initiating departmental proceedings against the petitioner, and which the respondent No. 2 did so in terms of the decision dated 26.12.1995 within three months. Since resignation given by the petitioner/employee is not automatic thus within a period of three months respondent No. 2 was justified in taking decision to initiate departmental proceedings. Once decision is taken to initiate departmental proceedings, by the language of para xii(b) of the appointment letter dated 14.12.1994, the resignation is treated not to have been accepted. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.