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**(2001) 05 DEL CK 0163**

**In the Delhi High Court**

**Case No : C.W. No"s. 5359 and 8237 of 2000**

Shri V.K. Sayal

APPELLANT

Vs

Bharat Heavy Electricals Limited and others

RESPONDENT

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**Date of Decision : 04-05-2001**

**Acts Referred:**

**Citation : (2001) 05 DEL CK 0163**

**Hon'ble Judges : Dr. M.K. Sharma, J**

**Bench : Single Bench**

**Advocate : Mr. S.K. Kaul and Mr. Kamal Mehta, for the Appellant; Mr. J.C. Seth and Mr. Anil Seth, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Dr. Mukundakam Sharma, J.—This writ petition is preferred by the petitioner praying for quashing of the letter dated 28th August, 2000 whereby the respondent No.1 rejected the request of the petitioner to go on voluntary retirement under the BHEL Voluntary Retirement Scheme, 2000. The petitioner in this writ petition has also prayed for quashing and/or setting aside the letters dated 12th May, 2000, 17th June, 2000 and 8th August, 2000 issued by the respondents declaring that the petitioner is in unauthorised absence with effect from 1st April, 2000 and also for a further relief for a direction to the respondents to pay monthly salary and allowances to the petitioner with effect from 1st April, 2000 onwards.

2. The petitioner joined the respondent No. 1 on 8th July, 1975. On 25th June, 1991, the petitioner was promoted from the post of Senior Manager to Deputy General Manager (Administration). A memorandum/articles of charges dated 25th October, 1994 was issued to the petitioner by the respondent No.2 along with the list of documents and list of witnesses attached therewith. An enquiry was conducted by the respondent No.1 in respect of the charges drawn up in the aforesaid memorandum of charges and on conclusion of the inquiry, an order was passed by the respondent No.2 on 3rd March, 1997 imposing major penalty of

reduction in rank. Being aggrieved by the said order imposing major penalty of reduction in rank, the petitioner preferred a writ petition in this Court which was registered as C.W.P. No. 1116/1997. An interim order was passed in the aforesaid writ petition restraining the respondents from giving effect to the order dated 3rd March, 1997. However, after hearing the parties, the learned Single Judge dismissed the writ petition filed by the petitioner. A letters Patent Appeal was also filed by the petitioner as against the aforesaid order passed by the learned Single Judge dismissing the writ petition being C.W.P.No. 1116/1997. In the said appeal, the interim order earlier passed was vacated but, the appeal was admitted by this Court which is pending disposal. As against the order passed by the Division Bench vacating the interim order, the petitioner preferred a SLP which was also dismissed.

3. It also transpires from the records that the petitioner was also earlier absent from duty for about 10 months in the year 1995 which, however, was regularised subsequently by the respondents No.1 and 2. The petitioner also remained absent from duty between the period from 21st January, 2000 to 31st March, 2000 which was regularised by sanctioning Half Pay Leave. However, with effect from 1st April, 2000, the petitioner again remained absent from duty and he applied for grant of leave on 2nd April, 2000. In the said application he stated that his leave might be extended up to 30th April, 2000. The said respondents by the aforesaid letter further informed the petitioner that failing to report for duty even in spite of the same would render him for necessary action as deemed fit under leave Rules and CDA Rules of the Company which would be initiated against him.

4. In the meantime, the respondents announced a Scheme called the BHEL Voluntary Retirement Scheme, 2000, which was issued on 11th July, 2000 effective from 15th July, 2000. The petitioner made an application seeking to go on voluntary retirement under the aforesaid Scheme. The said application was filed by the petitioner in the prescribed proforma on 19th July, 2000 and requested that he may be relieved from duty with effect from 31st August, 2000. The aforesaid request of the petitioner was rejected on the ground that a disciplinary action against the petitioner for his unauthorised absence from duties since 1st April, 2000 was contemplated. The said application of the petitioner was rejected on 28th August, 2000.

5. Counsel appearing for the parties during the course of their arguments drew my attention to the various Clauses of the BHEL Voluntary Retirement Scheme, 2000 and also to the provisions of the BHEL Leave Rules. Some of the relevant provisions are enumerated hereinafter:-

The eligibility criteria under the BHEL Voluntarily Retirement Scheme, 2000 is given under clause 4 which provides that the Scheme would apply to an employee who has either crossed the age of 45 years OR has served the Company continuously as a regular employee for a minimum period of 15 years. Clause 5 thereof lays down the General Conditions. One of such conditions

provides that the discretion of accept or to reject the request for voluntary retirement would rest entirely with the Management. Clause 6 there of lays down the procedure which states that a minimum of one month's notice is necessary in case of such requests. Clause 9 provides that the Scheme would be effective from 15th July, 2000 and could be withdrawn at the discretion of the Company at any time without assigning any reason. There is a proforma which is to be filed in by the Unit Personnel Department wherein it is to be indicated as to whether disciplinary proceedings are pending or contemplated against the employee. As per the aforesaid Scheme, no employee against whom disciplinary action for major penalty is contemplated/pending would be granted benefit of the VRS Scheme.

6. Rule 9.1 of the Leaves Rules provides that no leave could be claimed by an employee as a matter of right and could only be granted at the convenience of the administration whereas, Rules 10.1 and 10.2 state as follows:-

"10.1 The Management shall at all times endeavor to grant all reasonable requests for leave, provided such requests are made in time as given hereunder. But no leave can be claimed as a matter of right and can only be granted at the convenience of the administration. The sanctioning authority has the discretion to refuse, revise, curtail or revoke leave at any time according to the exigencies of services.

10.2 An employee who desires to proceed on leave shall apply to the sanctioning authority giving reasons for leave and shall not avail of the same before it is actually sanctioned except in case of emergency or in case of illness supported by Medical certificate".

The aforesaid provisions make it crystal clear that an employee proceeding on leave has necessarily to apply for leave to the sanctioning authority by giving reasons and the sanctioning authority may sanction the leave subject to entitlement of leave to his credit and above all the exigencies of services. It is also provided for in the relevant Rules of the respondents that an employee who is unauthorisedly absent from duty for more than 15 days, he shall be liable for disciplinary action and his name may be struck off the rolls and thus the penalty contemplated for unauthorised absence is major penalty.

7. Counsel appearing for the petitioner in support of his contentions that the request of the petitioner to go on voluntary retirement in terms of the Scheme propounded by the respondent/BHEL should have been accepted by the respondents after regularising his absence relied upon the recent decision of the Supreme Court in *Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others*, .

8. I have carefully perused the said decision as the counsel appearing for the petitioner placed strong reliance on it in support of his aforesaid contention. In the said case, the employee made an application on 7th December, 1995 seeking voluntary retirement in the form prescribed, requesting to accept her option for

voluntary retirement with immediate effect. The recommending authority on the same day recommended for accepting her voluntary retirement and, Therefore, voluntary retirement in the said case ought to have come into effect with immediate effect. Since the employee was not allowed to hand over the charge and there was none to take over charge from her and certain other official formalities were also left to be carried out, she was compelled to continue to attend her duties and accordingly she wrote a letter on 23rd January, 1996, inter alia, contending that the Managing Director was the competent authority to accept her application for voluntary retirement in the said case ought to have come into effect with immediate effect. Since the employee was not allowed to hand over the charge and there was none to take over charge from her and certain other official formalities were also left to be carried out, she was compelled to continue to attend her duties and accordingly she wrote a letter on 23rd January, 1996, inter alia, contending that the Managing Director was the competent authority to accept her application for voluntary retirement. No reply was given to the said letter. The employee again addressed a letter on 14th February, 1996 to the Chairman of the respondent-Corporation stating that the failure of the respondent-Corporation to accept her voluntary retirement had caused great inconvenience and that she was entitled to get her voluntary retirement accepted forthwith. In the said letter also, she made it clear that, in the absence of any specific order, she would consider herself to be a free person without any obligation to the respondent-Corporation and her contract of service would stand terminated with effect from the date of submission of her application for voluntary retirement. Further in the said letter she stated that if there was any delay, she would presume that her voluntary retirement request had been accepted with effect from 15th February, 1996 and that she would not attend her duties any more. However, a letter was issued by the Managing Director of the Corporation in the nature of a show cause dated 15/16 February, 1996, wherein it was stated that the appellant had been participating in the political activities and that she intended to contest the election on a party ticket which amounted to misconduct.

In the background of the aforesaid facts and on considering the various Clauses of the voluntary retirement Scheme, it was held by the Supreme Court that there was no dispute that the employee was eligible to apply for voluntary retirement and that there was no impediment coming in the way of the said employee for seeking voluntary retirement as per Clause 5 of the Scheme and the application made in the prescribed form, as per the scheme, contemplates acceptance of option for voluntary retirement with immediate effect.

After noticing the various Clauses and the undisputed facts, it was held by the Supreme Court that the employee submitted the application in the prescribed form to accept her voluntary retirement from service with immediate effect and then waited for sufficiently long time and wrote letters in January and February, 1996 pursuing the authority to accept the application seeking voluntary retirement and further after receiving show-cause notice on 17th February, 1996

from the Corporation, the employee had no good reason to wait any longer.

It was also held that non-response of the Corporation to the letters of the employee dated 23rd January, 1996, 14 February, 1996 and 15th February, 1996 and issuance of show-cause notice by the Corporation subsequently clearly indicate that all was not well with the Corporation in dealing with her application seeking voluntary retirement and a subsequent complaint alleging indulgence of the employee in political activities was not germane to consideration of the application of the employee having regard to the relevant factors mentioned in Clause 8.1 of the Scheme, particularly when there was no infirmity or impediment in terms of the Scheme in considering and accepting the application of the employee for voluntary retirement, having regard to the fact that the employee on her part did what all was required to be done.

The Supreme Court also noticed that under Clause 8.1 of the Scheme, discretion was available to the Corporation but it was held that said discretion was not absolute and it was circumscribed by the terms mentioned in the said Clause and it was to be exercised judiciously. In the facts, it was held that the Managing Director of the Corporation had failed to act reasonably and fairly and that he abdicated his duty by not exercising discretion at all in the light of the facts and circumstances of the case.

9. The question, Therefore, that arises for my consideration is whether the ratio of the aforesaid decision is applicable to the facts and circumstances of this case as sought to be submitted by the counsel appearing for the petitioner that the present case is fully covered by the aforesaid decision. The brief facts of the present case which are already mentioned indicate that the Scheme of BHEL, Voluntary Retirement Scheme was announced on 11th July, 2000 pursuant to which, the petitioner submitted his application in the prescribed proforma on 19th July, 2000 contending, inter alia, that he be relieved from his duties with effect from 31st August, 2000. A copy of the application was also placed before me. In the said application, the petitioner has stated in strong words about the functioning of the respondents No.1 and 2. His application was processed by the respondents and during the aforesaid course, it was recorded that the petitioner was unauthorisedly absent from duty for more than for months which is required to be dealt with as per existing Rules on the subject including disciplinary action. The aforesaid note came to be recorded on 14th August, 2000 and somewhere on 16th August, 2000, a decision was taken to draw a disciplinary proceeding against the petitioner. Therefore, the application of the petitioner for voluntary retirement was not considered and instead the letter dated 28th August, 2000, was issued. A charge-sheet has since been issued to the petitioner on 28th September, 2000, on account of his unauthorised absence. The petitioner has been absent from duty for a very long period of time and a part of the said period that is, from 22nd January, 2000 to 31st March, 2000 was regularised by giving sanction of Half Pay Leave. The application of the petitioner was rejected on 28th August, 2000 as before that date he had been absent from duty since

1st April, 2000 and did not attend office despite three letters written to him. The aforesaid facts when considered in the light of the relevant Rules and the provisions of the Scheme would make it apparent that the said facts cannot be equated with the facts of the case decided by the Supreme Court in Manjushree Pathak (supra). In the said case, the request of the employee for grant of voluntary retirement was to take effect immediately whereas, in the present case, it was to be effective from 31st August, 2000 before which dated disciplinary proceeding was initiated against the petitioner.

10. The petitioner has been absent from duty from 1st April, 2000 much prior to the announcement of the Voluntary Retirement Scheme. Even the petitioner was informed that his leave has not been sanctioned by the competent authority and, Therefore, he is required to join his duties immediately which communications were ignored by the petitioner. Two of the said communications were sent prior to the application of the petitioner seeking to go on voluntary retirement. The petitioner did not care to join his duties like a sincere and devoted servant of the Company. He continued to be absent which was treated by the Company as unauthorised absence for which action could be initiated under the relevant Leave Rules and the Conduct Rules. The said power was exercised by the respondents No.1 and 2 and, Therefore, the facts of the present case are distinguishable with the facts decided by the Supreme Court in the case of Manjushree Pathak (supra).

11. A discretion is vested on the respondent-Company to refuse the benefit of the Scheme to an employee. In the present case it cannot be said that the said discretion has been exercised by the competent authority arbitrarily. It also cannot be said that the respondent No.2 failed to act reasonably and fairly in the present case. The case of the petitioner was considered in the light of the facts and his conduct and on such consideration his request to go on voluntary retirement was rejected. I find no infirmity in the action of the respondent in rejecting the application of the petitioner to go on voluntary retirement.

12. In the facts and circumstances referred to above, I find no merit in this writ petition and the same is dismissed. Pending application stands disposed of accordingly.