



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 852/2018

This the 02ndday of December, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

Pramod Kumar Gaur,
Ex-SDE (Civil),
S/o Shri Hari Shanker Gaur,
R/o Block – C-12, H. No. 319,
Yamuna Vihar, Delhi – 110092.

...Applicant

(By Advocate:Ms. Shikha Yarlagadda)

VERSUS

1. Union of India through,
Ministry of Telecommunications,
20, Sanchar Bhawan,
Ashoka Road, New Delhi – 110001.
2. Mahanagar Telephone Nigam Limited,
Registered Office: 5th Floor, Mahanagar,
Door Sanchar Sadan, 9, CGO Complex,
Lodhi Road, New Delhi – 110003.

...Respondents

(By Advocates: Mr. Subhash Gosain and Mr. A. C. Mishra)

ORDER (Oral)

Mr. Justice L. Narasimha Reddy:-

The applicant joined the service of the Department of Telecommunications (DoT) in March, 1991 as Junior Engineer (Civil). Thereafter, he was promoted to the post of Assistant Engineer (Civil) in March, 1996. Mahanagar Telephone Nigam



Limited (MTNL) was formed in the year 2000. The applicant was permanently absorbed in that organization, in October, 2000. The MTNL framed the Sabbatical Scheme in the year 2009 for the benefit of its employees. The Scheme provided for the sanction of leave up to five years, to the permanent employees without pay. The employees are given an option to join the service on expiry of leave, or to seek voluntary retirement, in case he is covered by the CCS (Pension) Rules, 1972.

2. The applicant availed this sabbatical leave for the full length of five years, and it expired on 15.01.2016. He issued a notice on 15.01.2016 seeking voluntary retirement, effective from 24.01.2011. The correspondence ensued, as regards the form of application or the contents thereof and ultimately, his request was accepted on 30.06.2016, w.e.f. 24.01.2016. The applicant went on making requests, after the expiry of the said period, stating that his voluntary retirement shall be effective from 24.01.2011 and instead, the respondents have accepted the same w.e.f. 24.01.2016. Through an order dated 04.07.2016, the respondents declined to modify the effective date of his voluntary retirement and it was reiterated through an office order dated 30.08.2016. This OA is filed challenging the two orders.

3. The applicant contends that the very purpose of claiming the Sabbatical Scheme was to encourage the employees of MTNL either to acquire additional qualifications or to seek employment elsewhere, so that the financial burden of the organization is lessened and it is clearly mentioned in clause 6 that whenever the



voluntary retirement is sought by an employee, who is covered by CCS (Pension) Rules, 1972, the retirement would be effective from the date on which the employee proceeds on sabbatical leave and such a benefit was not extended to him. It is also pleaded that the relevant rules were amended at a later point of time and the purport thereof cannot be applied to him.

4. The respondents filed detailed counter affidavit. They did not dispute the fact that the applicant was initially an employee of the DoT and became an employee of the MTNL and that he has availed the sabbatical leave w.e.f. 24.01.2011. It is stated that though the applicant sought voluntary retirement, effective from 24.01.2011, there cannot be any acceptance of voluntary retirement anterior to the date on which the request is made. They have referred to various clauses contained in the Scheme and stated that when there was scope for uncertainty as to the understanding clause 6, clarificatory steps were taken and that the claim of the applicant cannot be accepted at all.

5. Ms. Shikha Yarlagadda, learned counsel for the applicant submits that the very purpose of the applicant to avail the sabbatical leave was to seek voluntary retirement, effective from the date on which he proceeded on sabbatical leave and in fact, clause 6 provides for this. According to her, the respondents themselves were convinced that the clause 6, as it stood originally, permits an employee to seek voluntary retirement



from the date on which he went on sabbatical leave, and amended the clause in such a way that the voluntary retirement, if sought by an employee, would be effective prospectively. Learned counsel for the applicant submits that an amended provision cannot be operated retrospectively and the right vested with the applicant cannot be disturbed.

6. Sh. A.C. Mishra, learned counsel for the respondents – MTNL, on the other hand, submits that it was never the intention of the Scheme to permit an employee to retire much before his application for VRS is accepted. It is stated that when there existed some scope for improper understanding of the rule, clarification was sought, and a clarificatory amendment in that behalf was carried out.

7. It is a matter of record that the applicant was initially an employee of DoT and became an employee of MTNL. The Sabbatical Scheme was introduced in the MTNL in the year 2009. It is relevant to extract the Clause 6 of the Scheme. It reads as under:

“6.0 Notice

An employee will be required to give one month's notice in writing prior to joining after Sabbatical leave. The employee will have the option to rejoin during the course of 1 is Sabbatical Leave after fulfilling the stipulated one month's notice but not during the first six months. In case an employee does not wish to rejoin, he/she will have to submit his/her resignation and no notice period will be insisted upon.

In the case of those employees covered under CCS (Pension) Rules 1972 and are provided with voluntary retirement provision therein,



stipulated notice shall be served to the parent company. In such cases, terminal benefits will be settled as if the employee resigned/retired the company on the date of leaving on Sabbatical.”

8. The sabbatical scheme is not something which was introduced in the MTNL alone. This facility is created in various other government organizations also, to enable the employee to improve their qualifications. In addition to their improving the qualifications or expertise, the Scheme framed by the MTNL gave an opportunity to the employees to migrate to another organization also. In a way, it was one of the economy measure to improve the establishment.

9. A perusal of clause 5 discloses that the employees, who have availed the sabbatical leave, are not eligible for regular salary and other benefits, though continuity of service is provided. This includes the periodical increments or other benefits. Under clause 6, an employee is given option to join the organization on expiry of sabbatical or halfway through. Another option is to seek voluntary retirement if the employee is covered by the CCS (Pension) Rules, 1972. The applicant belongs to second category.

10. The applicant availed the sabbatical leave from 24.01.2011 initially for a period of one year and got extended till 24.01.2016. Before expiry of the period of five



years, he submitted an application seeking voluntary retirement and he mentioned it "as on 24.01.2016". Initially the respondents took objection for the notice period. After some correspondence ensued, they have ultimately accepted the request on 30.06.2016 w.e.f. 24.01.2016. The applicant is not satisfied with that and insists that the effective date must be 24.01.2011. Heavy reliance is placed upon the last sentence of the clause 6 of the Scheme, which is already extracted in paragraph 7 above.

11. If the sentence is read in isolation, one would get an impression that an employee, who avails sabbatical leave and seeks voluntary retirement, he would stand retired from the date on which he proceeded on leave. However, if one takes into account, the basic principles of service law, it becomes impermissible for an employee to seek voluntary retirement, covering a period during which he was very much in service. The very fact that the application for voluntary retirement was made on 15.01.2016 and it came to be accepted on 30.06.2016, discloses that till that date, the applicant was in service and he was entitled to join the duties as of right, on completion of leave.

12. It is not without any reason that the last sentence in clause 6 is incorporated. The objective was to ensure that



the service conditions of the employee, including that of the pay structure, would stand frozen, from the date on which he applied sabbatical, and the same is evident from clause 5. Obviously, keeping this in view, the respondents have mentioned in clause 6 that it is with reference to the date on which the employee went on sabbatical, that benefit shall be reckoned. This aspect was clarified on 24.02.2017 and 02.11.2017. The letter reads as under:

"Please refer to DO letter No. DPG/T/2016/00209, dated 17th October, 2017 addressed to Secretary (T). Secretary (T) has instructed me to look into the matter and address the issues. I have accordingly, obtained the details of the case which are summarized below:

MTNL introduces a sabbatical scheme in the year 2009. The scheme provides 5 years' sabbatical leave to all employees wherein their lien is protected. During sabbatical leave, the employee is not provided any salary or allowances i.e. there will no cash flow from the company. The period of sabbatical leave is also not reckoned for pension. (It is submitted that pension of MTNL employees under the CCS (Pension) rules, 1972 are paid by the Government. During the period of service in the company, the pension contribution at the maximum scale is paid by the company to the government. However, during the period of sabbatical leave, no such pension contribution is paid by the company to the Government, since no salary has been paid to the employee on sabbatical leave.)

Mr. P. K. Gaur, the petitioner, served as Sub-Divisional Engineer (Civil) in MTNL. He applied under the sabbatical scheme and went on leave from 2/1/2011. The sabbatical period duration extended upto 24.1.2016. However, on 15/1/2016, he has applied for voluntary retirement with effect from 25.1.2011, the date of commencement of his sabbatical. The process of voluntary retirement under the rules requires three months' notice. M/s MTNL approved the prospective retirement with effect from 24.1.2016 rejecting his claim for acceptance of his



voluntary retirement with effect from 25.1.2011 but accepting substantially his request for waiver of notice period and waiving the remaining balance notice period, strictly in accordance with the rules governing voluntary retirement.

It is very clear from the above that the retirement of the petitioner was accepted strictly according to the rules. Mr. Gaur is not entitled for pension for the sabbatical period since no pensionable service has been rendered by him during the sabbatical leave period and no pension contribution has also been made by the company to the government for this period for the same reason that there has been no service rendered by him in the company during this period.

The Board of MTNL considered application of Mr. Gaur and certain 'amendments' made to the scheme. It is not necessary to dwell on the 'amendments' as they will have prospective effect and shall not apply to the case of the petitioner. The scheme as it stood before the 'amendments' will have effect in the case of the petitioner. However, a plain reading of the proposal on the file of MTNL Agenda notes and the Decision of the Board lend credence to the understanding that the 'amendments' are more clarificatory in nature and do not vary the scheme in any manner. But since the term 'amendment' have legal implication, we may even ignore them for the purpose of appreciating the petitioner's case.

An employee retiring/resigning under CCS pension Rules, 1972 has to provide notice for his voluntary retirement. In the Instant case, the officer served notice on 15/1/2016 with a request for waiver of notice period and acceptance from the date he proceeded on sabbatical leave. MTNL substantially accepted his request for waiver of notice period making the retirement effective from 24.01.2016 coinciding with the ending of his sabbatical leave period but rejected his request for acceptance of voluntary retirement with effect from 25.01.2011, the date of commencement of his sabbatical and made his retirement effective from 24.01.2016, i.e. date of ending of his sabbatical, waiving of the balance notice period. In the circumstances, the office is entitled to pension with effect from 24/1/2016, the date of acceptance of his retirement application.

It appears that the petitioner is under the impression that acceptance of his retirement



retrospectively with effect from 25.01.2011 will enable him to get pension for the sabbatical period as well. He cannot be drawing pension for the period when he had a lien to a post in the company. The pension is payable only on the acceptance of his retirement from the services of the company that also extinguishes his lien to a post held by him substantively in the company. Hence, the grant of his pension with effect from 25/1/2011 is untenable and not maintainable. He is eligible for pension only from 24.01.2016 on acceptance of his voluntary retirement. I am informed by MTNL officers present at the meeting that the officer has been repeatedly advised to file pension papers but the officer has refused to do so. This is for your information.”

13. Though clause 6 was amended at a later stage, it was clarificatory in nature and it was not an effort to modify the purport thereof. A clarification, as and when issued, would operate from the date on which the rule/provision was framed.

14. A serious inconsistency would arise in case the plea of the applicant is accepted. Take the case of an employee who avails the sabbatical leave for five years and joins thereafter. On joining, he would not be entitled for any benefit for the period of five years and he would not draw the salary for that period. In contrast, an employee who avails the sabbatical leave for five years, as did the applicant, and seeks voluntary retirement at the end of that period, he would be entitled for pension during that period. That can never be the contemplation



of any rule making authority, nor is such course permissible in service law.

15. We do not find any merit in the OA. It is accordingly dismissed.

16. Pending MAs, if any, shall stand disposed of.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

December 2, 2020
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