

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 599 of 2011

Tuesday, this the 5th day of July, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

Induchoodan C.G., S/o. V.K. Gopalakrishna Kurup,
 Aged 47 years, Therathenal House, South Eroor,
 Thripunithura.

Applicant

(By Advocate – Mr. A.T. Anil Kumar)

V e r s u s

The Chairman & Managing Director,
 Hindustan Organic Chemicals Ltd.,
 Harchndani House, 81 Marshall Karve Road,
 Mumbai-400002.

Respondent

(By Advocate – Mr. V. Krishna Menon)

This application having been heard on 5.7.2011, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant was working in the Production Department of the Hindustan Organic Chemicals Limited (in short HOCL), Kochi since 1988. He applied for leave with effect from 17.6.2008 for the purpose of a foreign visit which was not acted upon. A representation was made by him seeking a reply to his earlier request. Still there was no response. However, his absence was treated as unauthorized and disciplinary action was taken against him and an inquiry officer was appointed. As against some

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proceedings in the inquiry and questioning the role of the inquiry officer the applicant has filed OA No. 205 of 2009 and by Annexure A-9 order dated 1st April, 2009 this Tribunal observed that the Company may not be interested to keep an unwilling worker with them. As a matter of fact this observation happened to be made based on an oral submission made by the applicant that he may be allowed to take voluntary retirement from service and the respondent may be directed to accept the same. The Tribunal accordingly, observed that if the applicant is permitted to take voluntary retirement the matter stands closed once and for all and gave the liberty to the applicant to make an unequivocal representation to the respondents within one month to permit him to be admitted to voluntary retire from service with effect from the date he has been absent from duty and if such an application is received the respondents were also directed to consider the same within two months and communicate their decision. Till such time the disciplinary action initiated stood stayed. OA was disposed of accordingly. The applicant accordingly submitted his representation for voluntary retirement. However, the respondent rejected the same mainly on two grounds firstly that there was no scheme for voluntary retirement and secondly because a disciplinary action was pending against the officer. The rejection of the representation for voluntary retirement was again the subject matter of challenge in OA No. 361 of 2009. By Annexure A-10 order dated 19.3.2010 this Tribunal held as follows:-

“14. In the above conspectus of facts and circumstances, as discussed above, we reiterate our view as held in OA 205/09 (supra), when an employee is not willing to serve the respondents any more and willing to resign, it is only a futile exercise to force him to continue in service or to make him face the disciplinary proceedings for the simple reason

that the charge against him is only unauthorised absence. From the records it is clear that he expressed his willingness to resign from service well before the disciplinary proceedings were initiated against him. We, therefore, in the interest of justice, permit the applicant to submit his unconditional resignation from service with effect from 17.6.2008 within a period of three weeks and on receipt of the same, the respondents shall consider it and take a suitable decision within a period of two months time untrammelled by the Disciplinary Authority's earlier decision to take disciplinary action against him and the proceedings held so far. With the aforesaid directions this OA is disposed of. There shall be no order as to costs."

2. The respondent however, challenged the order before the Hon'ble High Court in Writ Petition No. 16894 of 2010 which was disposed of by Annexure A-12 judgement dated 18.1.2011. The Tribunal's decision was confirmed. However, there was an observation that it is up to the Management to keep in mind the interest of the Company and decide whether an experienced person should be restored to the Office for the benefit of the Company itself. The operative portion of the judgement of the Hon'ble High Court is also extracted hereinunder:-

"Learned counsel for the respondent submitted that inspite of the elapse of two years, the post remains vacant and the respondent is willing to rejoin and work with the Company. It is worthwhile for the Management to consider whether the respondent could be inducted back and allowed to serve the Company because he has served the Company over two decades to the satisfaction of the Management. However, we do not want to issue any direction to the Company in this regard because the same does not arise from the order of the CAT. It is up to the Management to keep in mind the interest of the Company and decide whether an experienced person should be restored to the Office for the benefit of the Company itself. Leaving this option to the Company, we direct the Company, in the alternate, to implement the Tribunal's order without any delay if the respondent cannot be absorbed in service again."

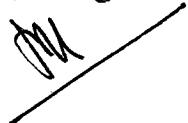
3. Subsequent to the decision of the Hon'ble High Court the applicant submitted Annexure A-13 letter dated 19.1.2011 expressing his readiness to

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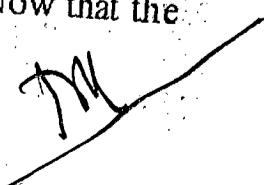
report for duty. However, the respondent instead of permitting him to report for duty accepted the resignation tendered by him furnishing the settlement of account and requested the applicant to settle the dues expeditiously, vide Annexure A-14 dated 10.5.2011. The applicant has filed the present OA seeking a direction to the respondent to reinstate him in service with all benefits from 17.6.2008 including his promotion to the post of Chief Manager from 1.1.2008 and all other benefits after the promotion.

4. We have heard the learned counsel for the applicant and also the learned counsel appearing for the respondent.

5. Admittedly the applicant proceeded after applying for leave which was not specifically sanctioned nor rejected. Subsequently, proceedings were initiated against him as though he is unauthorisedly absenting himself from duty. The charge sheet was issued and an inquiry officer was appointed. An order passed by the inquiry officer during the course of the proceedings was subject matter of challenge in OA No. 205 of 2009. It was in the final order passed by this Tribunal in the said OA made an observation regarding the request made by the applicant for voluntary retirement to be considered by the respondent and with a view to enable the respondent to consider such request disciplinary proceedings were ordered to be kept in abeyance. Subsequently, the respondent did not favourably consider the request for voluntary retirement on grounds stated and proceeded with the disciplinary action. Challenging the rejection of the request of voluntary retirement, the applicant had approached this Tribunal. Respondent's counsel specifically points out that even in that proceeding



there was no challenge as such against the disciplinary action. In the final order passed in the subsequent OA No. 361 of 2009 this Tribunal permitted the applicant to apply for resignation and in case such resignation is submitted the respondents were directed to consider the same. It must be remembered that earlier what was directed to be considered was the voluntary retirement of the applicant from service which for reasons mentioned could not be considered by the respondent and therefore that was substituted by a right to resign from the post which was availed of by the applicant by submitting an application for resignation. The Hon'ble High Court has confirmed the said order but made an observation that it is up to the Management to keep in mind the interest of the Company and decide whether an experienced person should be restored to the office for the benefit of the Company itself. However, the respondent did not permit him to rejoin duty and accepted his resignation. In such circumstances the question of reinstating the applicant into service is a foregone story and the applicant has no right to contend nor seek for any relief of the nature as prayed for. As a matter of fact both in the first order passed by this Tribunal and also in the second order, the applicant was given opportunity to apply for voluntary retirement and in the second to resign from the Company and at no point of time he had contended that he is entitled to continue in service rather when his request for voluntary retirement was not accepted and also when his request for resignation from service of the Company was accepted and he is estopped by conduct to contend that he is entitled to continue in service. He made the Court to act on his request for voluntary retirement and later for resignation. He cannot approbate and reprobate. Now that the

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Company has accepted his request to resign from the service of the Company there is absolutely no merit in the contention now raised.

6. The Original Application is devoid of any merit and the same is liable to be dismissed. Accordingly, we do so. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

"SA"