

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.361/09

Friday this the 19th day of March 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Induchoodan C.G.,
S/o.V.K.Gopalakrishna Kurup,
Therathenai House, South Eroor, Thripunithura.Applicant

(By Advocate Mr.A.T.Anil Kumar)

V e r s u s

1. The Chairman & Managing Director,
Hindustan Organic Chemicals Ltd.,
Harchandri House, 81, Maharshi Karve Road,
Mumbai – 400 002.
2. General Manager,
Hindustan Organic Chemicals Ltd.
Ambalamughal, Kochi – 682 302.Respondents

(By Advocate M/s.Menon & Menon)

This application having been heard on 19th March 2010 the Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

This is the second round of litigation by the applicant.

2. Facts in brief : The applicant, while working as Chief Manager (Production) applied for two months Half Pay Leave with effect from 17.6.2008 to visit his brother residing in Saudi Arabia, vide Annexure A-2 application dated 9.6.2008. According to him, even though in the said

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application he requested for two months' leave, at the instance of the Head of the Department the word "two" was deleted and thus reduced the period of leave to "one" month. Thereafter, he made another application to grant him one year's leave for foreign employment. Since the respondents did not reply to both his said applications, he made the Annexure A-3 representation dated 8.7.2008 seeking reply to his earlier requests. Since, there was again no response, he made yet another representation dated 14.7.2008 (Annexure A-4) to the respondents to sanction him one year special leave for taking up outside assignment from 17.7.2008 as purportedly given to two other employees in the respondents company, namely, Mr.P.Shibukumar and Mr.K.S.Murali or to sanction him 252 HPL and balance earned leave for a period of one year from 17.7.2008 or to accept his resignation from the present position with effect from 18.7.2008. He has also send a cheque of Rs.2 lakhs along with the said letter towards the outstanding amount on account of House Building Advance taken by him. In reply to the said letter, the respondents issued the Annexure A-5 letter dated 23.7.2008 stating that he has not been attending duty from 17.6.2008 and he has not reported for duty in spite the telegram dated 23.6.2008 sent to him to do so. The respondents have also noted that he has proceeded on foreign travel without getting prior permission from the authority concerned and informed him that the disciplinary authority has decided to initiate disciplinary action against him. However, the applicant once again wrote to the respondents, vide Annexure A-6 letter dated 8.8.2008, repeating his earlier requests for leave from 17.6.2008 to 17.7.2008 and special leave for one year for foreign assignment or to



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accept his resignation. Thereafter, the respondents issued the show cause notice dated 14.8.2008 to explain as to why disciplinary action should not be taken against him for the following charges :-

1. Absence without prior permission or leave from 17.7.2008 onwards.

2. Violation of clause 14 (1) of CDA Rules, which read as under :-

"No employee of the company shall, except with the previous sanction of the competent authority, be engaged directly or indirectly in any trade or business or undertake any other employment whether for remuneration or not."

3. Willful insubordination and disobedience.

4. Overstaying the sanctioned leave for more than 4 consecutive days without sufficient grounds.

5. Furnishing false information during the course of employment.

6. Acting in a manner prejudicial to the interest of the company.

7. Pursuance of conduct unbecoming of an employee of your status.

8. Dishonesty in connection with the business of the company.

9. Commission of act subversive of discipline or good behaviour.

3. The applicant, vide his letter dated 20.8.2008, explained the circumstances under which he had proceeded on leave from 17.6.2008 to 16.8.2008. According to him, his application for leave as well as for permission to go abroad was handed over to Shri.M.Radhakrishnan, Head of the Production Department but at his instance he struck off the word "two" and substituted with the word "one" and went abroad for a period of



one month anticipating sanction as per the usual procedure. He further submitted that Shri.K.K.Vijayakumar, Chief Personal and Administration Manager called his wife over telephone on 29.6.2008 and coerced and compelled her to submit his resignation letter or else to face the disciplinary proceedings. He has also stated that since his application for one year's leave for taking up employment abroad was not considered by the respondents, he submitted his resignation, vide letter dated 14.7.2008, along with his ID Card surrendering the same and a cheque for Rs.2 lakhs towards the liability outstanding against him on account of the Housing Loan. He has, therefore, submitted that since he has already sent in his resignation, it was only just and fair to permit him to resign after giving him the admissible terminal benefits and the promotion to the next higher post which was due to him from January 2008. However, the respondents rejected his above explanations and decided to go ahead with the disciplinary proceedings against him. Since the applicant was abroad, his wife Girija Shankar.T vide her letter dated 18.12.2008 to the Enquiry Officer informed that she was appearing on behalf of her husband in the enquiry as his Power of Attorney holder and sought various documents for defence purpose and participated in the proceedings held on that date. Shri.U.K.Devidas, Advocate represented the respondents. In the proceedings held on 7.1.2009 also Mrs.Girija Shankar participated but the Presenting Officer made objection stating that the power of attorney holder cannot be allowed to participate in the enquiry and the employee himself has to appear personally. The hearing was, therefore, adjourned to 14.1.2009 and again to 21.1.2009. On 21.1.2009, the Enquiry Officer



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observed that the main allegations against the employee being remaining on unauthorised absence from duty and taking up another employment without sanction of the competent authority, he has to appear before the Enquiry Officer and the proceedings to 4.2.2009. The applicant challenged the aforesaid ruling of the Enquiry Officer before this Tribunal vide his OA 205/2009 seeking the following reliefs :-

1. To call for the records leading to Annexure A-11 and set aside the same.
2. To declare that the entire disciplinary proceedings initiated against the applicant in pursuance of Annexure A-6 is vitiated.
3. To declare that the applicant can be represented in the disciplinary proceedings in pursuance of Annexure A-6 through the Power of Attorney Holder in the enquiry proceedings.
4. To grant such other reliefs, which this Tribunal may deems fit and proper in the circumstances of the case.
5. To award cost to the applicant.

4. During the course of the hearing in the aforesaid OA, the learned counsel of the applicant has made an oral request to allow the applicant to take voluntary retirement from service. Noting that the respondents may not be interested to keep an unwilling worker with them, this Tribunal, vide Annexure A-14 order dated 1.4.2009, permitted the applicant to make an unequivocal representation to the respondents to admit him to voluntary retirement and the respondents to consider the same and communicate the decision to him. The relevant part of the said order was as under :-



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"6. We have heard learned counsel Shri Mr. S. Sreekumar for the applicant and learned counsel Mr. Shaiju for M/s. Menon & Menon for respondents. The respondents may not be interested to keep an unwilling worker with them. If the applicant is permitted to take voluntary retirement from service, the matter will also be closed once and for all. The charge leveled against him is also, unauthorised absence from duty. We, therefore, allow the applicant to make an unequivocal representation to the respondents within one month from today to permit him to be admitted to voluntary retire from service with effect from the date he has been absent from duty. If such an application is received from the applicant himself, the respondents shall consider the same within a period of two months thereafter and communicate the decision to him. Till such time, the enquiry proceedings initiated against the applicant shall remain be stayed. With the aforesaid direction, this OA is disposed of. There shall be no orders as to costs."

5. Accordingly, the applicant has submitted the Annexure A-15 letter dated 24.4.2009 to permit him to retire under the Voluntary Retirement Scheme. However, the Chairman & Managing Director of the respondents company has rejected his request vide impugned Annexure A-1 letter dated 26.5.2009 and its relevant part is extracted below :-

" At present there is no scheme for voluntary retirement in force. It may be pointed that in the earlier schemes it was specifically provided that the scheme is not applicable to employees against whom disciplinary proceedings are pending. Admittedly disciplinary proceedings has been initiated against you. In view of the above, your request for voluntary retirement cannot be granted. For all these reasons your representation for voluntary retirement is rejected."

6. The applicant challenged the aforesaid Annexure A-1 letter in this Original Application seeking the following reliefs :-

1. To call for the records leading to Annexure A-1 and set aside the same.



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2. Direct the 1st respondent to give the benefit of Voluntary Retirement Scheme to the applicant and relieve him from service with all benefits thereunder.
3. To grant such other reliefs which this Tribunal may deems fit and proper in the circumstances of the case.
7. According to the applicant, he has not committed any misconduct as alleged in the show cause notice and despite his Annexure A-8 explanation, the 1st respondent has initiated disciplinary proceedings against him with the malafide and ill motive to wreck vengeance on him as he declined to sign the contract for the maintenance of compressions which was not in the interest of the company. He has also submitted that he was discriminated in the matter of sanctioning the leave to go abroad unlike others like Mr.P.Ravikumar, Manager (Production), Smt.Sindhu, Mr.Shibukumar etc. were granted leave. He further denied the submission of the respondents that there is no scheme for voluntary retirement in force. He cited the case of one Shri.N.G.Antony in the Electrical Engineering Department who was given the benefit of voluntary retirement scheme.
8. Today also during the course of the hearing, counsel for the applicant has submitted that he has specific instructions from the applicant to say that he is prepared to submit an unconditional resignation from service to the respondents with effect from 18.7.2008, if necessary.
9. The respondents in their reply has denied the submission made by the applicant. They submitted that the applicant's application for leave and permission to go abroad was not accepted by the Head of the Department.



They denied the allegation about granting voluntary retirement to Shri.N.G.Antony. According to them, he was granted VRS while he was in the rolls of the Rayalseema Unit of the Company as per VR Scheme 2007 which was in operation from 28.12.2007 to 31.3.2008.

10. As regards his promotion to the post of Chief Manager with effect from 1.1.2008 was concerned, they have submitted that though he was considered for promotion to the said post, no order of promotion could be issued by them as he remained on unauthorised absence and left the country.

11. We have heard counsel for the parties extensively in the matter. From the reply filed by the respondents it is clear that there is no voluntary retirement scheme in force and the applicant alone cannot be granted any such benefits. Now the question as to why the applicant's request for resignation from service has not been considered by the respondents. The main charges against the applicant are absence without prior permission or leave with effect from 17.7.2008 and undertaking other employment without previous sanction of competent authority. Before the disciplinary proceedings were initiated against him by issuing the charge sheet dated 14.8.2008, the applicant had made the following requests vide his Annexure A-4 letter dated 14.7.2008 :-

1. To sanction him one year special leave for outside assignment from 17.7.2008 which management used to extend to the company employees and extended to Mr.Shibukumar and Mr.K.S.Murali.

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2. If the above request is denied, to sanction him leave of 252 HPL and balance Earned Leave for a period of one year from 17.7.2008 from his credit leave of 523 days.
3. If the aforesaid 1st and 2nd requests are not allowed, he should be permitted to resign from service with effect from 18.7.2008 and to consider the said letter as a letter of resignation.

12. From the above letter it is seen that the applicant has opted for resignation with effect from 18.7.2008. In our view, the respondents have not given due consideration to his aforesaid requests. If his first and second requests regarding sanctioning of different types of leave to him were not acceptable to the respondents as they are not covered under the rules, they could have given serious consideration to his third request to permit him to resign from service. The reasons given by the respondents in rejecting his request is that the disciplinary authority has already taken a decision to initiate disciplinary action against him. We cannot appreciate this position of the respondents. It is an undisputed fact that from 9.6.2008 ie. the date of making the application for leave from 17.6.2008, the applicant has made the Annexure A-3 representation dated 8.7.2008 and Annexure A-4 representation dated 14.7.2008 repeating his requests for grant of leave and permission to go abroad and take up another employment or to accept his resignation. However, the respondents were keeping silence on all his three applications/representations. The only response from the respondents during this period was the telegram stated to have been issued on 23.6.2008 stating that he has not been attending office since 17.6.2008 and advising him to join duty. Later, it was vide their Annexure A-5 letter dated 23.7.2008, the respondents have informed the



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applicant that the competent authority has decided to initiate disciplinary proceedings against him. However, the applicant once again, vide his Annexure A-6 letter dated 8.8.2008 requested the respondents to accept his resignation from service. At least, at this stage, the respondents should have considered his request for resignation and communicate the decision to him. The learned counsel for the respondents submitted during the course of the arguments that the applicant's letter dated 14.7.2008 could not be treated as an application for resignation from service as the same was conditional. However, according to the learned counsel for the applicant the aforesaid letter of resignation could not have been described as a conditional one but it contains his alternative proposals which are final. In our view, even if the applicant's said letter was treated as a conditional one, he should have been informed about it and he should have been asked to submit an unequivocal application resigning from service. In any case, the intention of the applicant to resign was very clear as he already sent a cheque for Rs.2 lakhs to the respondents to settle his balance amount of House Building Loan and the Company's identity card. Instead, they have issued the Annexure A-7 charge sheet dated 14.8.2008. It only reflects the prejudiced mind of the Disciplinary Authority to punish the employee at any cost. It is well settled law that the disciplinary proceedings against an employee are said to be pending only from the date the show cause notice containing the charges is issued to him as held by the Apex Court in Union of India Vs. K.V.Jankiraman [(1991) 4 SCC 109] and reiterated in Coal India Ltd. Vs. Saroj Kumar Mishra [(2007) 9 SCC 625], Union of India Vs. Sangram Keshari Nayak [(2007) 6 SCC



704] and UCO Bank and another Vs. Rajinder Lal Kapoor [(2007) 6 SCC 694]. In the case of UCO Bank (supra), the Apex Court has held as under :-

"21.Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder i.e. continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a charge sheet is issued. This aspect of the matter has also been considered by this Court recently in Coal India Ltd. Vs. Saroj Kumar Mishra wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a charge sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in Coal India Ltd. this Court held :-

"13. It is not the case of the appellants that pursuant to or in furtherance of the compliant received by the Vigilance Department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a charge sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.

14. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."

It was furthermore observed that :

"20. A departmental proceeding is ordinarily said to be initiated only when a charge sheet is issued."



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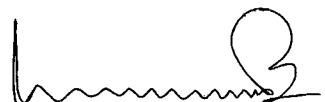
13. Admittedly, the charge sheet was issued to the applicant only on 14.8.2008. Therefore, there was no impediment for the respondents to consider his letter of resignation dated 14.7.2008 though resignation was only his 2nd option but an unequivocal one.

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.

(Dated this the 19th day of March 2010)


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER