

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

O.A.No.736 of 1995.

Date of decision : 24 -APR-2001.

Ramakant Thakur, son of Late Ram Japan Thakur,
resident of Nand Vihar Colony, Dutta Saheb Lane,
P.S.: Mithanpura, District : Muzaffarpur.

....APPLICANT.

By Advocate :- Shri Sunil Kumar Singh.

Vs.

1. The Union of India through the Director General, Department of Telecom, Sanchar Bhavan, New Delhi-110 001.
2. Chief General Manager, Eastern Telecom Project, Calcutta.
3. General Manager, Telecom Project, Patna.
4. Divisional Engineer, Microwave Project, Patna.

....RESPONDENTS.

By Advocate :- Shri V.M.K.Sinha,
Sr. Standing Counsel.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.
HON'BLE MR. L.R.K.PRASAD, MEMBER (ADMINISTRATIVE)

O R D E R

JUSTICE S.NARAYAN, V.C.:- Applicant, Ramakant Thakur, Sr. Sub-Divisional Engineer, Microwave Project (Telecom Muzaffarpur, has raised three fold issues in the instant O.A. in regard to his suspension, payment of leave salary and voluntary retirement and has prayed for reliefs in the following terms :-

"(a) For quashing the order of the Chief General Manager, Eastern Telecom Project Zone, Calcutta contained in order No. CGM(P)/Vig./3-95, dated, 13th November, 1995, issued under the signature of the CGMT Project, Calcutta, forwarded to the applicant vide letter dated 14.11.1995 issued under the signature of Divisional Engineer, Microwave Project, Patna.

(b) For payment of applicant's salary for the period starting from 1.5.95 to

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30.09.95 excepting the salary for the period of October and November, 1994, and half salary paid to the applicant for the period of April, 1995.

(c) For declaration that the applicant shall be deemed to have been voluntarily retired from service with effect from 1st October, 1995."

2. Briefly stated, the applicant has contended that as per his notice given to the respondents for voluntary retirement, he would be deemed to have retired from service w.e.f. 1st October, 1995, and, accordingly, the suspension order issued by the respondents authority (respondent no.2) as per his letter dated, 13th November, 1995 (Annexure-A/15), and communicated to him by the respondent no.4 through his letter dated, 14th November, 1995 (Annexure-A/16), can not be given effect to and the same was, accordingly, liable to be quashed. He has also prayed for settling his leave account and to pay the salary for the period of his absence during the year 1994-95, just preceding his deemed voluntary retirement.

3. As against the above plea, the respondents pleaded, inter-alia, that the leave admissible to the applicant could not be settled for want of any action on the part of the applicant as also certain lapses on his part in not properly filing the application through proper channel and with required medical certificates. This being the position, the leave for the period of his absence has not yet been settled, nor payment could be made. In regard to the notice for voluntary retirement, it was urged that the notice suffered certain defects

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as already communicated to the applicant and, in any case, the notice could be effective only w.e.f. 17th August, 1995, awaiting the statutory period of three months and, during this period, his prayer for voluntary retirement was turned-down ~~on~~ on the ground that the notice as such, was not acceptable till the final decision of the disciplinary proceeding already initiated and pending against him in regard to certain mis-conduct on his part.

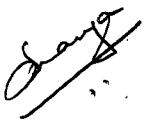
4. On the above pleadings of the parties, following issues arise for being answered in the instant case :-

(i) Whether the applicant would be deemed to have ~~voluntarily~~ retired from ~~the~~ service w.e.f. 1st October, 1995 ?

(ii) Whether the order dated, 13th November, 1995, placing the applicant on suspension, was bad in law ?

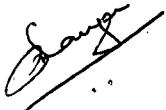
(iii) Whether the applicant was entitled to the leave salary as claimed ?

5. Before we enter into the merits of the issues, as noted above, it is worth pointing out to be borne in mind the background under which the issues have arisen. The background as such, was almost admitted truth on the record ~~and it can not, but be held that those facts~~ led to the controversy between the parties. Those facts are as follows. The Vigilance Section of the respondents department found certain irregularities committed by the applicant during the period of his service from October, 1991, to August, 1992, while he was Incharge of Telecom Project Division, Jaypur/Bahrampur (Orissa). The applicant was incidentally transferred and relieved from Bahrampur



to join as Sr.Assistant Engineer, OFC, Muzaffarpur, vide letter dated, 16th April, 1994. The applicant thereupon, submitted his joining report dated, 20th April, 1994, to the Director, Microwave Project, Patna. The applicant proceeded on leave for 40 days w.e.f. 21st April, 1994, on health ground. At this jucture, a dispute arose between the applicant and the respondents authorities in regard to the absence of the applicant from time to time for which he filed one or the other application for grant of leave either on medical ground or on the ground of domestic affairs. The leave was not sanctioned by the respondents authorities who, instead, asked for medical certificates and also raised objection to the joining report of the applicant from time to time on the ground of those having not been forwarded through proper channel. While this controversy in regard to absence/leave was going on, the applicant served a notice dated, 29th June, 1995 (Annexure-A/7) and again on 17th August, 1995 (Annexure-A/9), seeking his voluntary retirement w.e.f. 1st October, 1995. The notice for voluntary retirement was sent by the applicant while availing leave not duly sanctioned.

6. It was in context of the above hard facts on the record that the respondents authorities have not yet decided the applicant's period of absence from duty either by granting leave or otherwise and they took a decision in the month of October, 1995, as per Annexure-A/13 (dt. 10.10.1995), and Annexure-A/14 (dt. 13.10.1995), not to accept the



notice² of voluntary retirement and further, they also issued the impugned order dated, 13th November, 1995 (Annexure-A/15), putting the applicant under suspension.

7. At the very outset, one would get an impression that the applicant got annoyed with and sore upon the Vigilance department having unearthed certain irregularities said to have been committed by him (the applicant) during the period from October, 1991, to August, 1992, while he was Incharge of Telecom Project Division, Jaypur/Bahrampur(Orissa). Probably, he also felt aggrieved of the incidence of his³ transfer from Bahrampur to Muzaffarpur, inasmuch as, soon after submitting his joining report at Muzaffarpur, he proceeded⁴ on leave without prior sanction. The letter of his transfer was issued on 16th April, 1994, and thereupon, he submitted his joining report on 20th April, 1994, and filed application for leave w.e.f. 21st April, 1994. In this context, it was pointed-out that his joining report was not counter-signed by the respondent no.4 as required in due course and instead, it was sent directly to the Director, Microwave Project, Patna. From this point of time, the applicant filed leave applications from time to time and those applications, admittedly, have⁵ not yet been settled by one way or the other on certain pleas raised on behalf of the respondents.



8. In the facts and circumstances, as noticed in the preceding paragraph, we would observe that any law or rule prescribed to regulate the service conditions was meant to be given effect

to in due course of official business and, most certainly, with bonafide intention. No one can be allowed to circumvent the provisions of law governing the service conditions in order to play ~~h~~ trick over the system. Here, we find that the applicant for the obvious reason to avoid any contemplated departmental proceeding and also not to obey the effect of transfer in right earnest, proceeded on leave without prior sanction and also issued notice seeking voluntary retirement. In our considered opinion, such step~~s~~ was quite violative of the established norms and certainly unbecoming of a ~~sincere~~ officer seeking due remedy admissible in law.

9. Insofar as the notice for voluntary retirement was concerned, we find that the first notice being dated, 29th June, 1995 (Annexure-A/7), was defective on the face thereof and, accordingly, the respondents authorities responded to it by a letter of reply dated, 7th August, 1995 (Annexure-A/8) pointing out three defects in the notice, for example :- (i) The rule under which voluntary retirement was sought for had not yet been mentioned.

(ii) There was no notice period given, and
(iii) The letter should have been addressed to the competent authority through proper channel.

10. For these reasons, the notice was turned down and no action was taken as already communicated to the applicant through Annexure-A/8. Thereupon the applicant sent another notice dated, 17th August, 1995 (Annexure-A/9), seeking voluntary

retirement. By this notice, he asked for retirement w.e.f. 1st October, 1995, which was obviously violative of the statutory period of three months as required under Rule 48(A) of the Pension Rules under which the voluntary retirement was sought for. Be that as it may, we find that by this time the report of the Vigilance department finding various irregularities committed by the applicant during the period from October, 1991 to August, 1992, had come to the surface so as to initiate a departmental proceeding after due exercise of preliminary investigation. For example, the Vigilance Officer asked the applicant through his letter dated, 24th August, 1995, to submit sanction particulars for purchase of Ambassador car, either in the name of applicant or his family member. The applicant replied the query by his letter dated, 6th September, 1995, vide Annexure-A/11. The Director of Microwave Project, Bhuvneshwar, had also issued two letters asking show cause to the applicant; one being dated, 17th August, 1995 (Annexure-R/22), and yet another dated, 26th October, 1995 (Annexure-R/23), pointing out irregularities in executing works and loss of the department therefor.

11. Therefore, it was for the valid reasons, as noticed in the preceding paragraph, that the respondents took decision as per the impugned letters dated. 10th October, 1995 (Annexure-A/13), and 13th October, 1995 (Annexure-A/14), that the three months notice (for voluntary retirement), as given by the applicant would be treated commencing from 17th August, 1995, and further that his notice

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could not be accepted till finalisation of the disciplinary cases pending against him. In the result, there was nothing wrong with the decision as taken by the respondents authorities.

12. Next, as to the impugned order of suspension (Annexure-A/15), the only plea raised by the applicant was that it was invalid and ineffective because of his deemed voluntary retirement. It has been seen above that the notice for voluntary retirement had not been accepted, instead, it has been turned down for the reasons already discussed above and hence, the suspension order issued by the respondents contemplating departmental proceeding against the applicant, can not be treated to be invalid in any respect. The applicant's case thus, fails on this score also.

13. Lastly, coming to the relief sought for granting leave salary, the facts already narrated above would depict on the record that the respondents authorities have~~not~~ not taken any decision in regard to the applicant's period of absence from duty. The leave applied for has not yet been~~not~~ settled by the respondents and i.e., for certain valid reasons that some medical reports, as required, are also wanting and also because the joining reports submitted by the applicant from time to time had not been sent through proper channel. In any view of the matter, unless the respondents authorities take any final decision in the matter, it would not be possible for this Tribunal to go into the same at the present~~not~~ stage. All that~~be~~ can be insisted upon the respondents in this regard is that they should take an early decision

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exercising discretion of their own in accordance with law. It is true, that leave can not be claimed as a matter of right, but the concerned authority has definitely to pass a reasoned order one way or the other determining the period of absence in terms of the leave rules. In any view, ~~as~~ no cause of action has arisen as yet for the reason that the respondents have not yet taken any final decision.

14. In the result, we arrive at a definite conclusion that the applicant was not entitled to the reliefs, as sought for, and, accordingly the instant O.A. is dismissed with the observations, as above. There shall be no order as to costs.

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(L.R.K.PRASAD)
MEMBER(A)

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S. Narayan
(S.NARAYAN)
VICE-CHAIRMAN

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