

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

Original Application No.205/2018

Date of C.A.V. : 02.01.2019

Date of Order : 26.04.2019

Between :

B.Venkataramudu, S/o late Gurappa,
Aged 57 years, SDO (Phones),
BSNL, Madanapalle – 517 325,
R/o Madanapalle, Chittoor District.

... Applicant.

And

1. The Bharat Sanchar Nigam Limited,
Rep. by its Chairman & Managing Director,
Corporate Office, Bharat Sanchar Bhavan,
4th Floor, Janpath, New Delhi – 110 001.

2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
AP Telecom Circle, 3rd Floor,
BSNL Bhavan, Vijayawada – 520 004.

3. The General Manager,
Telecom District,
Bharat Sanchar Nigam Limited,
HPO Compound,
Tirupathi – 517 501, Chittoor District.

... Respondents.

Counsel for the Applicant	...	Mr.V.Jagapathi, Advocate
Counsel for the Respondents	...	Mrs.K.Sridevi, SC for BSNL

CORAM:

<i>Hon'ble Mr.Justice R.Kantha Rao</i>	<i>...</i>	<i>Member (Judl.)</i>
<i>Hon'ble Mrs.Naini Jayaseelan</i>	<i>...</i>	<i>Member (Admn.)</i>

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

Heard Sri V.Jagapathi, learned counsel for the applicant and Smt.K.Sridevi, learned standing counsel for the respondents.

2. The applicant is working as Sub-Divisional Officer (Phones) under the control of the Divisional Engineer, Madanapalle Division, BSNL, Chittoor District, A.P. After rendering 37 years of service in the department he submitted an application dated 30.11.2017 requesting for voluntary retirement from BSNL service on the afternoon of 01.03.2018 i.e. on completion of 90 days from the date of application under the provisions of Rule 37 A (11A) of CCS (Pension) Rules, 1972. The application seeking voluntary retirement was submitted on the ground that the applicant was not keeping good health and also he has some domestic problems. The first respondent who is the competent authority upon considering the material placed on record issued an order dated 27.02.2018 according permission to retire voluntarily with effect from the afternoon of 01.03.2018. According to the applicant he applied for leave from 02.03.2018 anticipating his retirement from BSNL service on 01.03.2018. However, the second respondent – Chief General Manager, BSNL addressed a letter dated 28.02.2018 to the first respondent stating that the voluntary retirement of the applicant has not been considered on the ground that the Form-VI notice dated 12.09.2008 was issued by the District Level Scrutiny Committee, Ananthapur District to the applicant calling upon him to show cause as to why his SC certificate shall not be cancelled. The applicant on receiving the said notice filed a Writ Petition No.21190/2008 before

the Hon'ble High Court of A.P. to quash the said notice and the issue relating to the community certificate produced by the applicant at the time of joining service is pending consideration before the Hon'ble High Court. In this connection it requires to be stated that in WP MP No.27685/2008 in the said Writ Petition, the Hon'ble High Court granted interim suspension of Form-VI notice dated 12.09.2008 and subsequently the said order was made absolute by dismissing the vacate stay petition filed by the District Collector, Ananthapur District. Though the said interim order dated 21.07.2011 is made absolute, Writ Petition is still pending before the Hon'ble High Court. The Hon'ble High Court in its order specifically mentioned that as the Writ Petition is ripe for final hearing, the interim order is made absolute and the petition seeking vacate stay is dismissed.

3. The version of the applicant is that when the first respondent who is the competent authority has considered all the details including the issue of caste certificate of the applicant and accorded permission to him to retire voluntarily w.e.f 01.03.2018, there is no justification for the second respondent to withhold the said permission. Subsequently the first respondent cancelled his earlier order of approval for voluntary retirement by letter dated 23.03.2018. According to the applicant the said order lacks jurisdiction as the same was passed after expiry of notice period of voluntary retirement. He filed the present OA to set aside the order dated 28.02.2018 passed by the second respondent and also the letter dated 23.03.2018 of the first respondent where under the earlier approval for voluntary retirement was cancelled. A direction was sought to the respondents to

sanction pension, gratuity and all other retiral benefits till 01.03.2018 with interest @ 18% per annum from the date on which the pensionary benefits fell due to the applicant.

4. The respondents inter alia contended in their reply statement that the District SC & ST Employees Federation, Cuddapah vide their letter dated 20.07.2003 complained against the applicant to Vigilance Officer, O/o Chief General Manager, BSNL Hyderabad and others intimating that the applicant does not belong to SC caste and requested to investigate into the social status of the applicant and also as to the genuineness of the caste certificate produced by the applicant at the time of his initial appointment. There upon the department requested the District Collector, Chittoor to inquire into the matter and consequently Form-VI notice was issued to the applicant which led to filing of the Writ Petition No.21190/2008.

5. It is submitted by the respondents that the first respondent accorded permission to the applicant to voluntarily retire from service subject to vigilance clearance in the applicant's case and thereafter the 2nd respondent upon thoroughly considering the matter intimated the first respondent that the applicant's voluntary retirement is not being considered due to the pendency of decision with regard to the caste certificate. After verification of the caste certificate, the competent authority cancelled the permission of voluntary retirement granted to the applicant w.e.f. 01.03.2018.

6. Nextly it is contended that as per FR 56 (K)(1)(c) it is open to the appropriate authority to withhold permission to a Government servant who seeks to retire under the said clause when judicial proceedings on charges which may amount to grave misconduct are pending. According to the respondents the right of a Government servant to retire voluntarily is not an absolute right, but is subject to FR 56(K)(1)(c). They asserted that the pendency of the Writ Petition No.21190/2008 before the Hon'ble High Court amounts to pendency of judicial proceedings against the applicant in respect of a grave allegation and therefore the applicant has no right to insist upon the respondents to accept his request for voluntary retirement. They also contended that if in the inquiry under the Community Certificate Act 1993 it is found that the applicant obtained a false community certificate he will be liable for punishment under Section 10 and 11 of the Act and it will effect the forfeiture of the past service. Therefore according to the respondents terminal benefits as prayed for by the applicant cannot be granted to him during the pendency of the Writ Petition which involves a decision in respect of the caste certificate produced by the applicant. They clarified that so far no disciplinary action against the applicant has been initiated on account of the interim order granted by the Hon'ble High Court suspending the Form-VI notice. Contending as above the respondents sought to dismiss the OA.

7. The applicant in the rejoinder reiterated the same facts which he narrated in the original application. His main contention is that he obtained

vigilance clearance and in view of the fact that the Hon'ble High Court suspended the Form-VI notice, he has a right to retire voluntarily from service and the respondents are not justified in revoking the permission already granted to him.

8. Obviously the first respondent granted permission to the applicant for voluntary retirement subject to the vigilance clearance. The applicant claims that he obtained the vigilance clearance and produced the document to that effect. The vigilance clearance may be in all respects, but not with regard to the issue of community certificate produced by him. He cannot deny the fact that the Writ Petition No.21190/08 is pending before the Hon'ble High Court and the issue before the Hon'ble High Court relates to the community certificate produced by the applicant claiming to be a candidate of S.C. The learned counsel appearing for the applicant seeks to argue that since the Form – VI notice was suspended by the Hon'ble High Court, it is no longer open for the respondents to deny permission for voluntary retirement on the ground of pendency of the Writ Petition. Even if the contention of the learned counsel appearing for the applicant that in view of the interim order passed by the Hon'ble High Court the Form-VI notice is no longer in existence, the fact remains that the Writ Petition is still pending before the Hon'ble High Court.

9. The order passed by the Hon'ble High Court in WPMP No.27685/2008 and WVMP No.792/2012 in WP No.21190/2008 obviously indicates that the Hon'ble High Court was not inclined to vacate the interim order on the ground

that any such order would render the Writ Petition infructuous and also on the ground that the Writ Petition itself is ripe for final hearing. Therefore, the issue relating to grave charge concerning the community certificate produced by the applicant is pending consideration in a judicial proceeding before the Hon'ble High Court.

10. Further unless the competent authority under the Community Certificate Act 1993 renders a decision on the genuineness or otherwise of the caste certificate produced by the applicant it is not possible for the respondents to initiate any disciplinary action against the applicant if at all they propose to do so.

11. Learned counsel appearing for the applicant relied on **(2001) 3 SCC 290 Tek Chand Vs. Dile Ram**, wherein the Hon'ble Supreme Court held that in case the authority's failure to refuse permission to retire the Government servant voluntarily before the expiry of the specified period, the retirement shall be effective from the date of the said period and acceptance by the authority is not essential for coming into force of voluntary retirement. On the above judgement it is argued by the learned counsel appearing for the applicant that since automatically the voluntary retirement become effective from the date of three months period mentioned in his application the relief prayed for by him in the OA can be granted.

12. The judgement relied on by the learned counsel is not applicable to

the facts of the present case since the request for voluntary retirement was accepted subject to the vigilance clearance which includes the issue of caste certificate and subsequently it was cancelled by the competent authority.

13. The right to retire voluntarily is not an absolute right of a Government servant. If a judicial proceeding in relation to a grave charge is pending against the Government servant the competent authority can refuse to accept the request of the Government servant for voluntary retirement.

14. Before arriving at an appropriate decision on the issue involved in the present OA, it is necessary to peruse the following judgements relied on by the learned standing counsel appearing for the respondents :

(i) ***(2007) 5 SCC 336 – Additional General Manager – Human Resource, Bharat Heavy Electricals Limited vs. Suresh Ramkrishna Burde***

In the case before the Hon'ble Supreme Court the Government servant obtained appointment in a post reserved for ST community by producing a false caste certificate. The falsity of the caste certificate was detected after 9 long years of appointment and further 13 years was spent in the litigation. The Hon'ble Supreme Court held that in such circumstances the termination of the service of the Government servant is justified.

(ii) ***(2005) 7 SCC 690 – Bank of India and another vs. Avinash D.Mandivikar and others***

In the case before the Hon'ble Supreme Court the scrutiny committee

found that the employee obtained the caste/ST certificate by fraudulent means. There was a delay of 10 years in making reference to the scrutiny committee. The Hon'ble Supreme Court held that in the light of such finding, very foundation of the appointment collapses and the same is no appointment in the eye of law. Mere delay in making a reference does not invalidate order of scrutiny committee, especially when the foundation alleged is fraud.

The Hon'ble Supreme Court further held that the right to salary or pension after retirement flows from a valid and legal appointment. The appointment of the employee is void and non est due to the fraud played by the employee in obtaining false caste ST certificate. The person who comes to the court with false claims cannot plead equity or invoke sympathy, nor would court be justified to exercise equity jurisdiction in his favour. Compassion cannot be allowed to bend the arms of law in a case of fraud. Hence the tenure of service of respondent and his proximity to retirement are inconsequential. The Hon'ble Supreme Court ultimately denied the salary, pension and other service benefits to the employee.

15. In the above cases the Hon'ble Supreme Court justified the punishment of removal of an employee who obtained the job by producing a false caste certificate. In the case in hand the applicant filed a Writ Petition when the competent authority issued a notice to him in Form-VI seeking his explanation as to the genuineness of the certificate produced by him for securing appointment. The said issue is pending consideration before the Hon'ble High Court of A.P. in

the Writ Petition filed by the applicant himself. Basing on the decision in the Writ Petition the further steps would follow in relation to the caste certificate produced by the applicant. If the caste certificate produced by the applicant is declared by the competent authority / committee to be false and obtained by fraud, the department must be in a position to initiate appropriate disciplinary action against the applicant.

16. Therefore, we are of the considered view that the department having regard to the facts and circumstances of the case is justified in refusing the permission to the applicant to voluntarily retire from service. By filing a Writ Petition to resist the departmental action and obtaining an interim order suspending the Form – VI notice, the applicant cannot claim that he had an absolute right to voluntarily retire from service.

17. For the foregoing reasons, we absolutely see no merit in this application and dismiss the same without any order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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