

(1996) 11 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Appeal No. 1619 of 1996 and Civil Miscellaneous Petition No"s. 2974, 6624 and 7305 of 1996

A.K. Chawla

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 5 AD 604 : (1997) 40 DRJ 192

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : A. Subhashni, E.X. Joseph, Jyoti Singh, V.R. Reddy and A.K. Ghosh, for the Appellant;

Judgement

Jaspal Singh, J.

(1) Consequent upon the interview of the petitioner A.K. Chawla by the Public Enterprises Selection Board for the post of Director of Finance in Schedule-C in the Rural Electrification Corporation, he received an offer of appointment on March 26, 1991 and assumed charge as Director (Finance) of the said Corporation on April 16, 1991. The appointment was for a period of five years. The term of appointment admittedly expired on April 15, 1996. It is also not in dispute that his tenure has not been extended. His grievance is that non-extension of his tenure is arbitrary and in contravention of the norms laid down by the Government of India requiring the Department concerned to carry out four months in advance of the end of an officer's term an appraisal of the past performance in consultation with the Public Enterprises Selection Board. The petitioner alleges that it was only after the filing of the present writ petition by him that the process of appraisal commenced. He thus claims that he should be allowed to continue in his present assignment till the date of his superannuation in March, 2000.

(2) Needless to say, the respondents have found the writ petition unpalatable. It

is claimed that though the process of appraisal had not been finalised before the filing of the writ petition, it now stands completed and the petitioner has been found to be unfit for further extension. It is also the case of the respondents that the process for appraisal had commenced on 3rd November, 1995 and that mere delay in the completion of the process would not entitle the petitioner to the relief sought. The charge that the entire exercise was arbitrary has also not been accepted by the respondents.

(3) During arguments my attention was drawn by Ms. A. Subhashini, the learned counsel for the petitioner to the Resolution dated 3rd March, 1987 of the Ministry of Personnel, Public Grievances & Pension (Dept. of Personnel & Training) which recognises the need to develop a cadre of professional managers within the public sector and which lays down that unless markedly better candidates are available from outside, internal candidates, employed in the public sector enterprises should be preferred for appointment to Board level posts. My attention was also drawn to a copy of the demi official letter dated 10/12th December, 1986 issued by the Cabinet Secretary and sent to all the Secretaries. The relevant portions of the said letter need to be reproduced. They are as under :-

"2. It has come to the notice of the Prime Minister in a recent case, that the term of a competent Chief Executive of a Public Sector Enterprise was not extended by the Administrative Ministry. The matter also did not come up before the Appointments Committee of the Cabinet, as only extension of the term of appointment is presently being submitted to the Committee. 3. In order to ensure that the cases of competent executives are not disposed off by the Administrative Ministries at the end of their term without further consultation either with the Pesb or ACC: it has been decided that in future, in cases where the term of Chief Executive/Director is not proposed to be extended beyond the term already approved by the Acc (except on superannuation of the officer) the Administrative Ministries/Departments should carry out, in consultation with the Pesb, an appraisal of the past performance of the Chief Executive/Director four months in advance of the end of his term. After such appraisal, these cases would fall broadly into the following three categories: (i) Cases in which on the basis of the positive appraisal the Administrative Ministry and Pesb decide, to seek extension of his term and send a proposal to the E.O. for approval of ACC: ii) Cases in which a change in the incumbency of Chief Executive/Director is considered necessary on account of: a) the dismal performance of the Chief Executive/Director as well as of the Company necessitating a change in the leadership. In such cases, the Administrative Ministry after consulting Pesb will come to Acc through E.O. for appointment of the new Chief Executive/Director. b) Cases in which the performance of the Chief Executive/Director is considered satisfactory/positive, but due to certain other reasons, the Administrative Ministry and/or Pesb desires to have a change; in all such cases, the Administrative Ministry would first consult the Acc invariably before terminating the appointment. Such cases, which were not being referred to Acc hitherto by

the Administrative Ministries would now require the approval of the Acc before termination of appointment as per direction of the Prime Minister. Yours sincerely,
sd/- (B.G. Deshmukh)"

(4) On the basis of the documents referred to above it was argued that despite recognition of the need to develop a cadre of professional managers within the public sector and despite directions to prefer internal candidates this was given a go-bye in the case of the petitioner and thus great prejudice had been caused to him. It was further argued that though as per the norms laid down by the Cabinet Secretary in the letter referred to above, the appraisal of the past performance of the petitioner ought to have been completed four months in advance of the end of his term, even the process for such appraisal was not initiated and whatever took place, it was much after the filing of the writ petition. This in itself, it was contended, was sufficient to entitle the petitioner to the relief sought for by him. Of course, it was also urged that the entire process of appraisal of the performance of the petitioner was arbitrary inasmuch as it was not only against the norms referred to above but also at the back of the petitioner and unsupported by any material.

(5) Undoubtedly, the Resolution of 3rd March, 1987 to which reference has already been made by me above, does recognise the need to develop a cadre of professional managers within the public sector and to give preference to internal candidates where markedly better candidates are not available from outside. However, Let's not forget that the petitioner's was not a case of fresh appointment but of extension after the expiry of the period of his fixed tenure and such extension is to be granted or refused not on the basis of the Resolution referred to above, but on the basis of appraisal of his past performance. This, of course, leads us to the norms laid down by the Cabinet Secretary in his letter dated 10/12th December, 1986.

(6) It is true that as per the norms laid down in the letter of the Cabinet Secretary, the appraisal of the past performance of the petitioner ought to have been completed four months in advance of the end of his term and that though the process was initiated on 3rd November, 1995 it was not completed till after the filing of the writ petition in April, 1996 but then, I am not inclined to agree with the learned counsel for the petitioner that mere failure on the part of the authorities concerned to complete the appraisal within the time fixed would in itself entitle the petitioner to extension or to enable him to continue till he reaches the age of superannuation. It was a mere administrative lapse with no such consequences. In any case, the petitioner was allowed to hold office till the process of appraisal was completed and thus the said lapse cannot be said to have caused any prejudice to him.

(7) I have gone through the record which was brought by the respondents at the instance of the petitioner himself. The record shows that the appraisal was objective and analytical and based on the material brought on the record. Though it was claimed, during arguments, that the petitioner had unblemished

record and had distinguished himself by his performance, there were complaints against him. In any case, to be fair to him and to attain objectivity the petitioner was granted a personal hearing. It cannot thus be said that the appraisal was arbitrary, in the sense that it was not objective or in the sense that it was based on no material.

(8) I may hasten to add that no malafides were attributed to anyone by the petitioner. I do feel one with Mr. E.X. Joseph, the learned counsel for the respondents No.1 to 3 that when a high level committee assesses the performance of an officer objectively on the basis of the material before it, this court cannot sit over the assessment as an appellate authority. In support reference may be made to Smt. Nutan Arvind Vs. Union of India and another, . Consequently no exception can be taken to the legality or validity of the impugned order.

(9) No other point was agitated before me.

(10) For what has been recorded by me above I find no merit in the writ petition. The same is hereby dismissed but with no order as to costs.