
(1997) 01 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ Petition No. 352 of 1995

A.K. Chopra

APPELLANT

Vs

Apparel Export Promotion Council and Others

RESPONDENT

Date of Decision : 20-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 12 : (1997) 66 DLT 327

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Siddharth Mridul, A.N. Parekh and A.P. Dhamija, for the Appellant;

Judgement

Dalveer Bhandari, JJ.

(1) The petitioner, who was working in the Apparel Export Promotion Council, for short, A.E.P.C., has preferred this petition, against his removal from service by the Director General by the order dated 25th October, 1994. The petitioner has challenged the validity and legality of this order and has prayed that the order be quashed and the petitioner be treated as continued in service. He further prayed that he be granted all arrears of salary, allowances and other monetary and service benefits.

(2) This case has a chequered history, against the order of removal, the petitioner had earlier filed a writ petition, being C.W.P. No. 1675/91, before this Court which came up for hearing before a Division Bench consisting of D.P. Wadhwa and R.L Gupta, JJ. The Division Bench allowed the writ petition filed by the petitioner and respondents 1 to 3 were directed to act upon the decision of the staff committee taken in its 34th meeting dated 25.7.1990, deciding the appeal of the petitioner, meaning thereby that the order of removal was set aside and the petitioner was directed to be reinstated with all consequential benefits.

(3) The Apparel Export Promotion Council preferred a SLP before the Supreme Court of India against the judgment of the Division Bench dated 30.3.1992. The

Supreme Court by its order dated 26.8.1994 set aside the order of the High Court and held that the alleged decision taken on the said-agenda No. 5 in the 33rd and 34th meeting in dispute and final decision on the same has not yet been taken and the alleged resolution on item No. 5 still awaits ratification. The Supreme Court held that the High Court was wrong in deciding the disputed questions of fact in favor of respondent No. 1. The order of the High Court was primarily set aside because the final decision on the resolution taken on the said agenda No. 5 has not yet be finally ratified. The Supreme Court further observed that "we are not inclined to consider the other questions sought to be raised in this appeal and the said questions are kept open." The Supreme Court further directed the appellant Company to convene the meeting of the Staff Committee as early as practicable but not exceeding two months so that the question of ratification of the resolution on the said agenda No. 5 taken in the meeting of the Staff Committee is finally decided.

(4) In compliance of the order of the Supreme Court, the Staff Committee considered the question of ratification of the draft resolution relating to agenda No. 5 of the 34th meeting held on 25.7.1990, and decided for reasons stated in its resolution, not to ratify the said draft resolution relating to the appeal preferred by Shri A.K. Chopra, the petitioner herein. The petitioner is aggrieved by the order of removal from service of the Council passed by the Director General, respondent No. 2 dated 28.6.1989 which has now been upheld by the Staff Committee being Appellate Authority by not ratifying item No. 5 of the 34th meeting of the Staff Committee and by rejecting the petitioner's departmental appeal. The instant writ petition is directed against the decision by which his appeal has been rejected. In this view of the matter, and while keeping the directions of their Lordships in views, I decided to hear the learned Counsel for the parties on all the issues raised in the petition.

(5) At this stage, it is necessary to give a brief factual background of the case. The petitioner was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council. The charge against him was that on 12.8.1988, he had tried to molest a woman employee of the Council, Miss Suchitra Vishnoi, Clerk-cum-Typist. inspire of the fact that she could not take dictation, Mr. Chopra had insisted Ms. Vishnoi to take dictation from the Chairman and after taking her to the Business Centre for typing the matter, he tried to molest her. The Inquiry Officer held the charge against the petitioner to be proved and consequently the Director General imposed on the petitioner the penalty of removal from the service.

(6) The petitioner has alleged that he is innocent and in fact has been made victim of personal prejudice, bias and mala fide of the Director General at the instance of the then Director (Personnel). The new Staff Committee has not applied its mind to the record of the case and has illegally and arbitrarily rejected the appeal without disclosing any reason to the petitioner. The petitioner has challenged the impugned order on the following grounds:

(I)The Director General was neither competent nor vested with the powers to impose major penalty of removal from service since he was holding the post of Secretary to the Chairman in the revised pay-scale having the maximum of not less than Rs. 4,000 .00 i.e. in the pay scale of Rs. 2000-4000 and thus he fell in Group-A in the cadre structure of AEPC.

(II)The members of the earlier Staff Committee who had taken decision in 34th meeting were not included in the present Staff Committee with mala fide intention at the instance of biased Director (Personnel) so as to revert the lawful decision of the earlier Staff Committee taken in the 34th meeting held on 25.7.1990. The Staff Committee had in its 34th meeting after setting aside the order of removal dated 28.6.89 of the then Director General and after reconsidering the report as the Disciplinary Authority had arrived at the conclusion that evidence appearing on record is circumstantial and the petitioner is entitled to benefit of doubt and awarded lesser punishment, the order passed by the earlier Staff Committee was correct and ought not to have been set aside.

(III)The allegations in the charge-sheet are false and frivolous and were concocted at the instance of the Director General, and were leveled due to personal bias against the petitioner. These allegations were meant to malign the character of the petitioner and ruin his future career prospects,

(IV)According to the petitioner, the falsity of the allegation is established by the fact that the complainant did not file the complaint for five days. Only after 5 days of the incident, she met Shri A.K. Singh, Director (Personnel) and narrated the incident though all the senior officials were present at the time of the incident.

(V)The petitioner also submitted that there is no such provision in the Council that till the Minutes of a particular Meeting are approved in a subsequent meeting, those Minutes could not be acted upon. As a matter of fact, there have been various cases where without awaiting confirmation of the Minutes in the next Meeting, the AEPC has taken action on the decision taken in a Staff Committee meeting without Minutes having been approved or confirmed in any subsequent meeting.

(VI)The petitioner has also contended that a copy of the Inquiry Report has not been given to him despite repeated requests which is clearly vocative of the principles of natural justice.

(VII)The petitioner also submitted that the entire charge against him is manipulated and concocted. The petitioner only asked the complainant to carry out the dictation which was part of her job and duty. It is submitted by the petitioner that she had agreed to take the dictation. The petitioner also submitted that the charge against him is totally devoid of any merit because the complainant did not make any complaint about the incident to any of the officials of the Council who were present in the hotel at the time when the alleged incident had taken place. The complainant did not make any complaint for 5

days. Only thereafter at the behest of the then Director (Personnel), this complaint against the petitioner had been engineered.

(VIII) The petitioner also submitted that because of the pay-scale i.e. Rs. 2200-4000, he was placed in Grade-A, and the Director General was not competent to remove him from the service.

(IX) The petitioner further submitted that the Staff Committee could not review its own decision. The review is a creation of the Statute and unless there is a specific provision of review, the same cannot be reviewed. The learned Counsel has placed reliance on *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, . The Supreme Court in this judgment has laid down that power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. He also placed reliance on the Division Bench judgment of this Court reported in *Kailash Prasad Sinha v. Union of India & Another*, 1985 38 Slr 24. In this case, it has been laid down that merely being a Head of the Department is not sufficient by itself to exercise the power of review.

(7) The learned Counsel for the petitioner submitted that copy of the Inquiry Report ought to have been supplied to the petitioner in consonance with the principles of natural justice. He placed reliance on the judgment of learned Single Judge of Calcutta High Court, *Kanwar Singh v. Inspector General of "Police, C.R.P.F., 1983 (4) Slr 575*.

(8) Mr. Parekh, the learned Counsel appearing for the respondent-Council submitted that in the instant case, the petitioner tried to molest a woman employee "of the respondent-Council, Therefore, no leniency should be shown by the Court. This would affect the morale of the women employees of the Council.

(9) Mr. Parekh, the learned Counsel also submitted that at the relevant time, when the alleged incident had taken place, immediately thereafter an Inquiry was instituted and concluded. At that time, there was no requirement of supply of the Inquiry Report. Therefore, the respondent/Council was justified in not supplying the copy of the Inquiry Report to the petitioner.

(10) The learned Counsel for the respondent placed reliance on the judgment of the Supreme Court in *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, . "This judgment has been cited to strengthen the submission that a writ of certiorari under Article 226 of the Constitution cannot be granted to quash the decision of an inferior Court within its jurisdiction on the ground that the decision is wrong. Before a writ of certiorari can be issued, it must be shown that the authority which passed the order acted without jurisdiction and in excess of it or in violation of principles of natural justice. Only then, the High Court will be justified in interfering in its jurisdiction under Article 226 of the Constitution.

(11) I have heard the learned Counsel for the parties and carefully perused the relevant documents on record. During the relevant period, when the Inquiry in

the instant case had taken place, there was no requirement of supplying the copy of the Inquiry Report. Therefore, the submission of the petitioner regarding the supply of the copy of the Inquiry Report is devoid of any merit.

(12) The Staff Committee has reviewed the decision on the directions of the Supreme Court given in its earlier petition. Therefore, I do not find any infirmity in the respondent/Council reviewing its own decision because this was done on the directions of the Supreme Court. The Council had to follow the directions given by the Apex Court.

(13) I do not find any merit in submission of the petitioner that the Director General was not competent to pass the order of removal only on the ground that the petitioner was in the pay-scale of Rs. 2200-4000. This factor alone would not place the petitioner in category "A". He remained as Class-B officer and the Director General was competent to pass the order of removal.

(14) I have taken into consideration the entire facts and circumstances of this case and the allegations of mala fide leveled against the respondent. I have also considered this aspect of the case in proper perspective that the allegation is that the petitioner tried to molest and not that the petitioner had in fact molested the complainant. I also considered the significant aspect of the case that for five days the complainant did not mention anything about this incident to anyone despite the fact that number of senior officials were present at the time of the alleged incident.

(15) In the totality of facts and circumstances, ends of justice would meet if the petitioner is reinstated in service but he would not be entitled to any back wages. The Council shall consider this period as on duty and would give consequential promotion to the petitioner. He shall be entitled to all the benefits except back wages. The petitioner shall be posted in any other office outside Delhi at least for a period of two years.

(16) The writ petition is disposed of with the aforesaid directions. In the facts and circumstances of this case, the parties are directed to bear their own costs.