
(2006) 03 DEL CK 0003
In the Delhi High Court
Case No : Writ Petition (C) 2832 of 2002

Anand Darbari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4, 4(6), 7(3), 7(3A)

Citation : (2006) 88 DRJ 663

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sunil Kumar and Shree Prakash Sinha, for the Appellant; Arun Birbal, Monika Garg, Archana and Linda for respondent No. 1 and Arjun Harkauli in W.P.(C) 2832/2002 and Arjun Harkauli, for Mr. Rajeev Mehra in W.P.(C) 3669/2003, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Since the questions of fact and law in both the writ proceedings are overlapping, they were heard together, with consent of counsel for parties. In the first writ proceedings, namely, W.P.(C) 2832/2002, (hereafter 'the first petition'), the petitioner claims the relief of payment of retiral dues/gratuity and other amounts together with interest. In W.P.(C) 3669/2003 (hereafter referred to as "the second petition"), the relief claimed is for a direction to quash an order dated 19.5.2003, by which the Central Government appointed an Enquiry Officer, to enquire into the charges against the petitioner.

2. The petitioner was appointed as Chairman and Managing Director of the Cement Corporation of India (hereafter called "CCI"), in 1989. Upon expiration of his initial tenure, he was granted a further, extended tenure. The petitioner participated in the selection process for the post of Chairman and Managing Director, Airport Authority of India; it is an undisputed position that he was selected for the post on 11.9.1996. At the time of finalisation of the recruitment

process, certain doubts and queries were voiced, to his candidature; as a result the matter was investigated; ultimately the Central Vigilance Commission (hereafter called "CVC") by its order/letter dated 23.5.1997 denied vigilance clearance for the appointment. This led to the cancellation/withdrawal of the panel, prepared by the Public Sector Enterprises Board in July 1999. The CVC advised for registration of case by the Central Bureau of Investigation (CBI) and also initiation of departmental proceedings.

3. On 24.11.1997, the Central Government issued a charge-sheet to the petitioner, levelling six allegations. The next date, it also complained to the CBI; a case was registered by the latter organisation. The petitioner had approached this Court by filing W.P.(C) 3376/1998 challenging the issuance of the charge-sheet on the ground that the Central Government had independent power to consider the facts and its decision to act could not be fettered by the opinion of the CVC regarding initiation of departmental proceedings; it had duty to consider all relevant materials. Another writ petition, namely, W.P.(C) 4794/1997 had been initiated, questioning the decision to cancel/withdraw the panel for appointment to the Chairman and Managing Director, Airport Authority of India. A learned Single Judge of this court allowed both the writ petitions; W.P.(C) 3376/98 was allowed on 28.7.1999 whereas the W.P.(C) 4749/1997 was allowed on 5.3.2001. As a result, the charge-sheet issued to the petitioner, stood quashed; likewise the decision of the Central Government cancelling the panel was also quashed.

4. The judgment in both the cases was carried in appeal to the Division Bench, which by its common order dated 29.5.2002, disposed off the appeals. The Division Bench was of the opinion that the Single Judge ought not to have quashed the charge-sheet having regard to the circumstances. The Division Bench held as follows:

We, are furthermore of the opinion that interest of justice would be subserved if the respondents are directed to conclude the departmental proceedings within a time frame. They are directed to do so. In our opinion, departmental proceedings having regard to the facts and circumstances of the case, should be directed to be completed within three months from the date of communication of the order subject of course to rendition of all cooperation by the first respondent.

The inquiry officer who has been appointed may continue to hold the inquiry and if he is not available, another inquiry officer may be appointed within two weeks from date. The first respondent may file his written statement of defense within three weeks thereafter, where after the inquiry proceedings should commence and if possible the same should continue on day to day basis.

We have no doubt that the inquiry officer and the disciplinary authority shall act independently and without any prejudice whatsoever against the first respondent. PESB may also hold its meeting immediately upon completion of the departmental proceedings and decide the matter one way or the other.

Subject to the outcome of the departmental proceedings the case of the first respondent may be considered for appointment along with other eligible candidates. We may further observe that in this case role of CBC had not been very fair. Its discretion to the effect that departmental proceedings may be held against members of the committee as also the authorities of CBI who had held investigation are absolutely uncalled for and unwarranted. We hope that CVC, which is not even a statutory authority would learn its lessons from this case and in future would act strictly within the four corners of law.

These appeals are disposed of accordingly but without any order as to costs." 5. During the pendency of writ proceedings, the petitioner's tenure as the Chairman and Managing Director of CCI ended. The Central Government by an order dated 29.6.1999 relieved him from the post of Chairman-cum-Managing Director with immediate effect. The order also recorded that this Court had directed appraisal report of the PSEB to be forwarded to the Appointment Committee of the Cabinet (``the ACC'') and that the ACC, after considering all the materials did not approve the recommendation for extension of tenure of the petitioner.

6. Since the subject matter of both the earlier petitions did not concern validity of the retirement order, but the issuance of the charge-sheet and also the decision to cancel the panel of selected candidates, those facts were not brought to the notice of the Court. However, after the Division Bench decided the appeal of the Central Government, the petitioner approached the Court with the review petition. The specific averments and contentions in those proceedings were that since the relevant facts were not before the Court, the ending of the petitioner's tenure, in the absence of any rule authorising continuation of disciplinary proceedings, after his cessation from employment constituted sufficient cause for review of the earlier order to the extent that it permitted the respondents to continue with departmental proceedings. The Court was of the opinion that the review petition was filed after a considerable delay of 406 days. It also noticed the pendency of W.P.(C) 3669/2003 (i.e the second petition). The Court held as follows:

(ii) In any case, even if the review petition is to be entertained on its merit, ignoring for time being the fact that it is time barred, it is not necessary to go into the rival contentions advanced in this review petition because of subsequent developments which have taken place. As pointed out above, the review petition has filed CWP No. 3669/2003 for quashing the order appointing Inquiry Officer. In this writ petition precisely same grounds are taken on which the present review petition is filed in addition to other pleas in this behalf. It would be open to the review petition to press into service these submissions as in the judgment dated 29th May, 2002, these aspects were not taken into consideration as they were not pointed out. It will also be open to the respondents to contest the case on any grounds available to them.

(iii) Judgment dated 29th May, 2002, review of which is sought, is in LPAs. In

these appeals veracity of the judgment in the writ petitions filed by the review petitioner was challenged. Such a material, on the basis of which the review is now sought, was not available even in the writ petition. Whether the review petitioner could take up these grounds even in LPA, itself is disputed as contention of learned counsel for the respondents is that irrespective of Rule 30A an argument regarding departmental proceedings against the review petitioner could not continue after his retirement, was available to him which was not taken; Rule 30A has no application in the case of the review petitioner who did not retire but whose contractual period came to an end and further that 3rd CBI report could not affect the decision to issue chargesheet as chargesheet could be issued even if a person is acquitted in a criminal case. When these issues are pending in CWP No. 3669/2003 filed by the review petitioner and observations by us either way may affect the parties and for this reason alone it would not be proper to indulge into this exercise in a review petition. This aspect has been dealt with in detail at the appropriate stage."

7. The principal contention of the petitioner is that with the cessation of his employment with the CCI, the contract of service came to an end and that in the absence of any rule which existed at that time, authorising the respondents to continue with departmental proceedings, it is not lawful for them to do so.

8. Learned counsel for the petitioner has contended that several judgments of the Supreme Court, particularly, the decisions reported as State Bank of India Vs. A.N. Gupta and Others, , C.L. Verma Vs. State of M.P. and another, , Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, and Zile Singh Vs. State of Haryana and Others, support the proposition that in the absence of any rule or condition of service which existed at the time of the petitioner's exit from the CCI, it is not open for the respondents to continue with the departmental proceedings.

9. Learned counsel for the petitioner also relied on the observations contained in the review order of the Division Bench to say that this aspect was not advisedly gone into on the merits and that the Court consciously left open the legality of the enquiry to be decided in these writ proceedings.

10. The contention of the respondents is that that by virtue of an amendment introduced and made applicable to the CCI w.e.f. 29.3.2000, if disciplinary proceedings were initiated while the employee was in service, whether before his retirement or during his re-employment, the same can nevertheless be continued by the concerned authority. Rule 30A was introduced consequent to the decision of the Board of Directors of the CCI in its 249th Meeting held on 6.3.2000. It reads as follows: "Rule 30-A

i) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner

as if the employee had continued in service.

ii) During the pendency of the disciplinary proceeding, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in a disciplinary proceeding or judicial proceeding to have been guilty of offences/misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated."

11. It has been averred and contended on behalf of the respondents that since the disciplinary proceedings were initiated against the petitioner while he was in service and he was charge-sheeted on 24.11.1997, the rule would operate fully and empower the authority to continue with the enquiry.

12. It was contended in the course of hearing by Mr. Arjun Harkauli, Advocate for the respondents that the terms of the order of the Division Bench was very clear; the judgment categorically entitled the respondents to continue with the proceedings. It was contended that the order in review did not give any substantive relief to the petitioner. If the petitioner indeed had any grievance about the continuation of departmental proceedings, he should have raised that issue when the proceedings were pending before the Court. Not having done so, it is not now open for him to argue with the departmental proceedings are without jurisdiction.

13. Learned counsel for the respondents also relied upon the judgment of the Andhra Pradesh High Court in D.K. Savitramma v. Anantapur District Co-operative Central Bank 1990 LAB. I.C. 614 and the judgment reported as State Bank of Mysore, Bangalore Vs. Smt. Saroja Shivakumar, to say that there is authority in support of the proposition that departmental proceedings can be continued even after retirement or cessation of the contract of employment in the context of claims for release of gratuity/terminal dues. Learned counsel contended that in the absence of any prohibition, the right of an employer to continue with the departmental proceedings cannot be shut out, particularly, where grave and serious charges have been leveled against the official.

14. The counsel for the CCI, Mr. Arun Birbal, adopted the submissions of the respondent Central Government. He also contended that the claim in the first petition is towards gratuity which is the creation of statute. The respondent CCI was of the opinion that since departmental proceedings were pending, it could withhold the amounts of gratuity. In case, the petitioner had a grievance on that score, he ought to have approached the appropriate authorities under the Payment of Gratuity Act.

15. It was submitted that the terms of Rule 30A relied upon by the respondents is

wider than Section 4(6) of the Payment of Gratuity Act which enables the employer to withhold gratuity in certain circumstances. It was also submitted that the provisions of law, the terms and conditions have to be interpreted in order to preserve power of the employee rather than to under-mine it.

16. The first question which arises for consideration is whether the Central Government could have issued the impugned order in the second writ petition, appointing an Enquiry Officer to go into the charges against the petition.

17. The charge-sheet was indisputably issued on 24.11.1997. The charge- sheet had been questioned in writ proceedings before this Court. The file of W.P.(C) 3376/1998 shows that during pendency of the writ proceedings, the enquiry had been stayed. Eventually, the charge-sheet was quashed and the matter reached the Division Bench on appeals being preferred by the Central Government as well as the CCI. The Division Bench set aside both the judgments of the Single Judge and held that the charge-sheet was validly issued. In the light of that finding, a further direction was issued to complete the departmental proceedings.

18. The order of the Division Bench allowing the appeal of the respondents was passed in the year 2002. There is nothing suggestive of the fact that the petitioner ever brought to the notice of the Division Bench the circumstances of his tenure coming to an end and, Therefore, the departmental proceedings itself being rendered infructuous. He, Therefore, moved a review petition which was considered and disposed off in terms of order quoted above.

19. In normal situations where a departmental proceedings are to be initiated against a person who retires or in respect of allegations which pertain to a period when the employee was working but leveled after the employment terminated, the Supreme Court has been consistently holding that the employer does not have any authority to institute such proceedings. Likewise, the second situation is concerned with the continuation of proceedings where the employee ceases to be in service. In such cases too the Supreme Court has ruled that in the absence of conditions of service or statutory rules, the departmental proceedings cannot be held. The underlying premises in both situations is the snapping of the jural relationship between employer and employee.

20. The two circumstances where Courts have upheld the rights of an employer to continue with the enquiry even where the employee died during the pendency of the departmental proceedings and claim for gratuity as well as provident fund/ other dues were made. Both the Andhra Pradesh and Karnataka High Courts held that such dues would not accrue as a matter of right, since the employee's name and reputation was under a cloud at the time of his death. The Courts held that the proceedings could be continued, for the limited purpose of establishing whether the employee was innocent of the charges, and enabling payment of his terminal dues to the legal representatives.

21. The two judgments of the High Court cited on behalf of the respondents, in my opinion, do not afford a parallel to this case. The factual matrix in both the

cases pertained to death of an employee during pendency of disciplinary proceedings. Such an event or circumstance is not usual and that has to be perhaps viewed as an exceptional one. At any rate, the Division Bench of the Karnataka High Court did not take into consideration the judgments of the Supreme Court which ruled that upon the snapping of jural relationship between employer and employee in the absence of rules or conditions of service the employer cannot lawfully maintain disciplinary proceedings.

22. The present case, nevertheless, in my opinion, itself present certain complexities which cannot be lost sight of. As observed earlier, in normal situations, the continuation or otherwise of departmental proceedings would have to be guided by the rules. In the present case, however, a singular feature which has to be kept in mind is that the petitioner approached the Court questioning departmental proceedings. Pending final decision, the enquiry itself stood stayed. Later, the charge-sheet was quashed. The challenge to the charge-sheet and drawing up of departmental proceedings was alleged improper exercise of power and non-application of mind. There was no challenge to the charge-sheet on the basis of its having been issued without authority or competence. In other words, the complaint of the petitioner, as indeed the judgment which endorsed it did not hold that the charge-sheet was a nullity; it ruled upon its invalidity, touching upon the consideration of materials relevant or otherwise. By the time, the Division Bench restored the status quo ante, the petitioner ceased to be in the employment of the CCI. The question, Therefore, is whether not so much as the lack of initial power to commence an enquiry and issue a charge-sheet as much as the subsequent event of the petitioner have ended his tenure as Chairman and Managing Director of the CCI.

23. Viewed from the perspective canvassed by the petitioner undoubtedly, there was no rule or condition of service authorising the continuation of proceedings after he ceases to be in employment. That rule came into existence in the year 2000. Apparently, the Government had initiated the move to introduce such a condition previously prior to the ending of petitioner's tenure, on 26.10.1999. The fact, however, remains that no rule existed as on the date when the petitioner's tenure came to an end. However, the interim order of the Court which had stayed the hands of the respondents, who admittedly issued the charge sheet before the petitioner's service came to an end, cannot be lost sight of in these proceedings. The petitioner got the benefit of the interim order between 24.11.1997 and 29.6.1999. If he had not initiated the proceedings, or the interim order had not been granted, the situation would have been entirely different. The departmental proceedings would have continued and may even have ended before 29.6.1999 or such other extended date as the Central Government deemed appropriate.

24. The articles of charges issued against the petitioner contain allegations regarding improper placement of an order for supply of 20,000 Metric Tonnes (MT) of Assam Meghalaya Coal and then repeating the supply order to the same

party. The charges also alleged undue favor granted to one M/s. Chander Prabhu on 6.4.1995 for a quantity of 20,000 M.T. Of coals valued at Rs. 4.5 crores; and other charges pertaining to irregularities connected with award of work of living linkage coal worth Rs. 4.3 crores etc. The charges are undoubtedly serious.

25. It is well settled that an order of Court cannot prejudice anyone (*actus curiae neminem gravabit*). This position has been explained by the Supreme Court, in *O.N.G.C. and Another Vs. Asson. of Natural Gas Consuming Inds. and Others*, , where it was held that an interim order of the court cannot ensure beyond the life of the substantive proceeding, when the litigant, ultimately loses on the merits of the case, and that the maxim entitles the succeeding party to be put back into a position which existed, at the time when no interim order subsisted. In *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*, it was held by the Supreme Court that when on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed.

26. In this case, the interim order of this court suspended the enquiry proceedings and prevented the respondents from proceeding further. I am of the opinion that this circumstance or fact sets apart the present case from all the other reported decisions cited on behalf of the petitioner. In each one of the cases, particularly, the decisions of the Supreme Court, the Court was confronted with either issuance of charge-sheet or continuation of departmental proceedings after the retirement or cessation of the employment of the employee. The circumstance of an intervening litigation, and interim order in such judicial proceeding, impeding the course of an enquiry, however, did not arise for consideration. If this aspect to be kept in mind, the matter acquires a different dimension. All public offices constitute trust. The initiation of departmental proceedings signals the apprehension of the employer that such a trust has been shaken. Absent allegations of mala fide, illegality or bias, the right of a public employer to hold departmental enquiry is un-controverted; indeed judicial review is extremely limited in such cases. Hence, the petitioner, in my considered opinion, cannot be permitted to take advantage of an interim order which had impeded the course of the enquiry, when, ultimately the cause for that interim order, namely, the writ petition stood dismissed in the Letters Patent Appeal. With that development, the parties had to be relegated to a position as nearly as was possible at the time of issuance of the impugned order which meant for the charge-sheet had to be proceeded with on the merits.

27. Another added circumstance is that even though the petitioner was not an

appellant before the Court, nothing prevented him from raising the contention regarding want of jurisdiction, in proceeding with departmental enquiry, in appeal. Indeed, he could have raised that even in the writ proceedings by moving an appropriate pleading. He did not chose to do so. In view of the above circumstances, I am of the opinion that it would not be a proper exercise of discretionary jurisdiction under Article 226 of the Constitution to hold that departmental proceedings are either illegal or vitiated on account of lack of jurisdiction.

28. As far as the claim for terminal benefits are concerned, once it is held that departmental proceedings can continue, a question of determination of such benefits and their payment would have to be considered by the appropriate authorities after culmination of the enquiry in the light of the orders and findings rendered. I am not inclined, at this stage to examine the correctness of the submissions, regarding withholding of gratuity. In this case, the claim for gratuity is founded on an entitlement under the Payment of Gratuity Act. The facts of this case do not warrant or justify exercise discretion to permit the petitioner to agitate the claim, on merits, without first approaching the authorities, constituted to examine such issues, under the Payment of Gratuity Act.

29. For the foregoing reasons, the writ petitions are dismissed with no orders as to costs.