

(2003) 05 DEL CK 0029
In the Delhi High Court
Case No : LPA 122 of 2003

Binay Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Citation : (2003) 5 AD 509 : (2003) 69 DRJ 151

Hon'ble Judges : S.N. Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : Shymla Pappu and K.K. Rai, for the Appellant; Mukul Rohtagi, ASG, Sanjay Jain and Richa Chandiwalla, for the Respondent

Judgement

Khan, J.—Appellant was working as Director (Personnel) in Power Grid Corporation of India and was suspended on 1.10.1999. He challenged this in CWP 6301/1999 which was dismissed by order dated 21.1.2000. His suspension was later revoked pursuant to some negotiations and on his agreeing to be transferred to NHPC. He was put on compulsory waiting for this which he challenged in CW No. 4654/2000 but which was dismissed on 9.4.2001 as infructuous after he expressed his willingness to be so transferred. He was again put on compulsory waiting which he again challenged in CWP 3536/2001 and which was dismissed by order dated 11.5.2001. He took appeal against this in LPA 295/2001 which was disposed of by a consent order of sorts dated 1.6.2001. In this he expressed his willingness to be transferred to NHPC and so did R-1 agree to recall his fresh suspension order. Pursuant to this order his suspension was revoked and his case for transfer to NHPC processed culminating in order dated 7.8.2001 whereby he was ordered to interchange place with one Sh.A.I.Bunet, Director (Personnel) NHPC, for the balance period of the respective tenure of the two officers. He acted upon this order and joined NHPC on 9.8.2001. After he had worked there for more than one year there, he again filed yet other CWP 6479/2002 to challenge this order dated 7.8.2001 on the plea that R-1 had used the word "interchange" in place of "transfer" to deprive him of

a fresh tenure of five years from the date of his joining in NHPC in terms of OM dated 17.9.1975. The writ court over-ruled his plea on taking the view that the OM in question was not applicable to his case and that his shifting to NHPC was governed by provision of order dated 7.8.2001. Hence this appeal.

2. Appellant in a repeat exercise again contends that his shifting to NHPC was to be a transfer covered by provisions of OM dated 17.9.1975 which would guarantee him a 5 year tenure in NHPC. According to his counsel R-1 had all along processed his case for transfer to NHPC under this OM. So much so that even order dated 1.6.2001 of this court passed in his LPA 295/2001 provided for his transfer and consequently he could not be asked to interchange place which was substituted last minute for "transfer" to flout the terms of this OM and to deprive him of its benefit of enjoying a 5-year tenure at NHPC. She also invited our attention to order dated 9.8.2000 to suggest that he was selected for transfer with the concurrence of Public Enterprises Selection Board also and that these terms could not be later varied to his detriment.

3. All that falls for consideration is whether respondent's shifting to NHPC was covered by terms of OM of 1975 and whether he could enjoy a 5-year tenure from the date of joining in the NHPC under this even though his original tenure in the Power Grid Corporation was to expire earlier on 7.7.2003. This in our view, is the crux of the matter.

4. We have examined the OM of 1975 which clarifies certain issues related to transfer of Directors from one public sector Enterprise to another. Assuming it to be in force still it provides that each appointment to a top post by transfer will be considered a fresh appointment requiring approval of Public Enterprises Selection Board or the appropriate selection committee as well as concurrence of appointments committee of the cabinet and the tenure of appointment in these posts will also count afresh and if read in the context of query raised would last five years. Needless to underscore and emphasise that whatever the import and worth of the provisions of this OM it would be applicable to an appointment by transfer under this OM. In other words its terms would be attracted to a case where an appointment is made to a top post which may include the post of Director also by transfer pursuant to this OM and that too if original tenure of the appointee survives the fresh tenure under the OM where the original terminates earlier, as in the case of appellant, the question of benefit of 5-year tenure under the OM would not arise and if this view was accepted, it would change the nature of the basic appointment and extend a transferees tenure indefinitely. That in our view can't be the rationale or intent behind the relied upon OM.

5. In the present case appellant has been asked to change places for the balance period of his tenure. He has not been appointed to the post of Director in NHPC by transfer under the OM of 1975 so as to become entitled to whatever benefits are available under it. His shifting to the NHPC is governed by the impugned order dated 7.8.2001 which makes it clear that his stay there would be for the balance of his tenure. There is no dispute that he was appointed in the Power

Grid Corporation of India for 5 years from the date of his taking over the charge or till the date of his superannuation whichever was earlier vide Power Ministry's order dated 7.7.1998. It is also admitted that he took over the charge on 7.7.1998 itself and his tenure there was to expire on 7.7.2003. All this is recorded in the impugned order which makes it abundantly clear that he would be in the NHPC for the balance of his original tenure in the Power Grid Corporation. He had acted upon this order with eyes open and we are at adds to appreciate how he could turn round to challenge its terms by invoking the OM of 1975 which had no relevance or application in the matter. He seems to be catching at straws to prolong his tenure on one plank or the other ignoring that he had to sink or swim with the provisions of order dated 7.8.2001 which he could not accept in part and reject in part.

6. We also find it difficult to appreciate how appellant could draw support from the OM in question to claim a tenure far in excess of his original tenure fixed by his basic appointment order in the Power Grid Corporation. Even if R-1 had used word transfer instead of "interchange" in the order, it would not have altered the position in any way or extended his original tenure in the Power Grid Corporation.

7. Appellants contention that R-1 had inserted the word "interchange" last minute in a mala fide exercise of power is also belied by the official record which we have examined and found that his "interchange" was contemplated all along after the High Court order dated 1.6.2001, in the facts and circumstances of his case. It is not the word "transfer" was used in the memorandum submitted to the Cabinet Committee which was later changed to "interchange" depriving him of any benefit in the process.

8. Therefore, looking at it from any angle we find no merit in this appeal which is dismissed and writ court order affirmed, though on a different reasoning.

9. At this stage it was submitted by appellant's counsel that appellant's extension in tenure in NHPC was under consideration. If that be so, nothing said in this order shall have any bearing on the consideration to be accorded to him for any further extension there under rules and regulations.