
(2007) 03 PAT CK 0146
In the Patna High Court
Case No : CWJC No. 12666 of 2002

Braj Behari Tewary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Citation : (2007) 3 PLJR 753

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. The petitioner has challenged the order dated 7.11.2002, by virtue of which his appointment in Bihar State Electronics Development Corporation Limited (hereinafter to be referred to as the Corporation) was terminated after more than 21 years of service on the ground that the appointment in question was irregular. The petitioner challenges the above decision of the Managing Director to terminate his service as an act of haste, non-application of mind, violation of principles of natural justice, promissory estoppel as well as the order itself being based on non est grounds. The contention of the petitioner with regard to the challenge thrown at the impugned order shall be dealt with subsequently as it is important to take note of some facts which has bearing on the decision of the case.

2. The petitioner obtained a B.Sc. Engineering degree in Electronics and Communication from B.I.T. Sindri. His first appointment was as a Assistant Engineer in Akashwani, Patna. In the year 1972, on the basis of an All India Competitive Examination, the petitioner came to be selected and appointed as an Assistant Foreman in the Department of Defence Production, New Delhi. The petitioner thereafter continued to serve the same said department.

3. State of Bihar incorporated a Company, which is Bihar State Electronics Development Corporation Limited. This was done on 21.2.1978 and the same

was registered as a Government Company having its own Memorandum as well as Articles of Association. After the incorporation of the Company to promote its object of giving impetus to the electronics industry in the State of Bihar the company went on a head hunting spree. The Corporation advertised a post of Deputy Director, Electronics Testing and Development Centre under the Corporation. A very High Power Committee was set up for conducting interview and selection to be made for the same said post. The Committee vide its decision dated 21st September, 1979 short-listed three candidates for appointment to the said post. Petitioner figured at serial number 2. A perusal of Annexure-1 would show that the Committee consisted of some eminent officials of the State of Bihar of their time including a technical expert member, who was Major General K.K. Mehta, Advisor to the Department of Electronics, Government of India.

4. One Shri G.L. Labru, by virtue of being placed at serial number 1 of the merit list was offered appointment on deputation for a period of three years since he too was working with Government of India. Mr. Labru left his post soon after his joining leaving the post vacant.

5. The petitioner as already indicated above was working with the Defence Production Department, Government of India. A letter dated 30.6.1980 was sent to him by the Administrative Officer of the Corporation. The letter informed the petitioner that in view of the selection which was made by the High Power Committee and in view of vacancies available against various sanctioned posts in the Corporation they were inclined to offer him appointment on deputation. The petitioner expressed his desire. Thereafter the Managing Director of the Corporation made several communications with Government of India to work out the deputation of the petitioner as well as the terms and conditions on which he could be deputed with the Corporation. These communications are there on record and may not be referred to in detail. Suffice it to say only after several exchange of communications that the final modalities of deputation was worked out. In this regard notice may be taken of the letter dated 17.9.1981, which is Annexure-7 to the writ application. This letter confirms that the terms and conditions communicated by the Ministry of Defence with regard to deputation of the petitioner has been accepted and approved by the Board of Directors of the Corporation. The letter also takes note that both the sides have the option of reverting back the services of the petitioner by giving three months notice on either side.

6. The petitioner thereafter joined the Corporation on 4.11.1981. This appointment was for a period of two years but it seems, looking at the work of the petitioner as well as the requirement, the Managing Director of the Corporation wrote a letter to the Under Secretary, Government of India, Ministry of Defence requesting for extension of the tenure of the petitioner by another two years. The petitioner was granted extension by additional two years by the Ministry of Defence. It was during this period of extended services that the Board of Directors in its 30th Meeting held on 19.11.1985 decided to absorb the

petitioner in the Corporation on regular basis. This decision of the Board was communicated to the petitioner vide Annexure-9 which is dated 3.1.1986. Vide Annexure-10 dated 19th March, 1986 the pay of the petitioner on the post of Deputy Director was fixed at Rs. 2150/- per month. This salary was a replacement scale of pay, which was Rs. 1575-50-1775-75-2300. The petitioner has thereafter brought an order dated 2.6.1989 which is Annexure-11 by virtue of which the petitioner was given promotion based on a decision taken by the Board of Directors. The petitioner was designated as a Director in the Electronics Testing and Development Centre. This promotion, however, was subject to approval by the Bureau of Public Enterprises. The Bureau of Public Enterprises was thereafter requested to accord its approval. Vide letter dated 29.1.1990 the Bureau of Public Enterprises not only approved the absorption of the petitioner in the Corporation on the permanent basis but also informed the Corporation that the decision on the promotion issue will be communicated to the Corporation in due course. Therefore, one thing which surely emerges from the above narration is that since 1981, the petitioner continues to work on various posts in the Corporation as a permanent employee of the Corporation.

7. However, all of a sudden the Managing Director of the Corporation issued a show cause dated 4.10.2002 to the petitioner. This show cause is Annexure-16 to the writ application. By virtue of this show-cause the petitioner was asked to respond within 14 days as to why his appointment be not cancelled for reasons cited in the show-cause. The show-cause did take notice of the fact that the petitioner was initially appointed in the Corporation on deputation and thereafter he continued as such. It, however, states that the initial absorption of the petitioner in the Corporation was illegal because after the appointment of the first candidate short listed by the High Power Committee the panel had lapsed and the appointment of the petitioner was made after more than 5 years from the said panel and, therefore, any appointment made thereafter more so of the petitioner from the said panel was illegal. The second reason given in the show-cause was that in terms of Article 124 of the Articles of Association of the Corporation any appointment made to the posts by the Board whose minimum salary exceeded Rs. 2000/- had to be made only after a decision of the Governor in this regard. The show-cause states that as the present pay-scale of Mr. Tewary was Rs. 1575-2300 and this appointment was never approved by the Council of Ministers in terms of Articles of Association as well as Rules of Executive Business, therefore, the appointment of the petitioner was invalid.

8. The show-cause surely came as a bolt from the blue. The petitioner, however, gathered his wits and gave his tentative reply which is contained in Annexure-17 of the writ application. The petitioner in the said show-cause also requested the Managing Director to make available some basic documents available with the Corporation which would support as well as establish that the appointment of the petitioner was made after due procedure, deliberations and approval obtained at various levels within the Corporation as well as in the Government. To the shock of the petitioner, the petitioner was categorically told vide a communication

dated 16.10.2002 contained in Annexure-19, that since the petitioner was aware of the facts, there fore, there was no question of providing any document by the Corporation to him It is further stated that if the petitioner did not respond to the specific queries of the show-cause within seven days, the Corporation was free to take its decision.

9. The petitioner without the support of official documents, however, gave a detailed reply dated 23.10.2002. which is Annexure-20. The petitioner contends that a mere reading of Annexure-20 would indicate that how misplaced was the decision of the Managing Director to issue him a show-cause with regard to his appointment in the Corporation. Since the petitioner was working on the post of Director in the Corporation, obviously there is something which had irked the Managing Director and compelled him to take this extreme position with regard to the appointment of the petitioner and his continuance in the Corporation as such.

10. In the year 2002 when the petitioner filed his show-cause before the Managing Director of the Corporation, the petitioner was posted at Ranchi as Regional Manager-cum-Managing Director of Beltron Video Systems Limited (BVSL) under the Corporation. The petitioner was awaiting for a suitable response from the Managing Director, however, it seems that the Managing Director had made up his mind to get rid of the services of the petitioner without applying himself to the facts or to the law. The impugned order dated 7.11.2002 contained in Annexure-21 to the writ application came to be issued. By virtue of this order the services of the petitioner was brought to an end. The above office order thereafter was also published in Hindi "Hindustan" in its edition dated 8.12.2002 for information to one and all, may be including the petitioner since the copy of the impugned order contained in Annexure-21 could not be reached to him at Ranchi immediately.

11. The petitioner has challenged this order of dismissal on several grounds which I have already taken note of in the early part of the order. One thing which surely does emerge on perusal of the impugned order is that there seems to be some kind of a haste on the part of the Managing Director to come to the decision to terminate the services of the petitioner. The reason given in the order that his appointment was illegal does not seem to be borne out from the records available in the writ application.

12. There are two basic reasons in the show cause, which were given by the Managing Director, as to why the appointment of the petitioner was considered to be illegal. One was that since the panel by virtue of which the selection of the petitioner was made had come to an end by appointment of the first person on the merit list, therefore, there was no occasion for the Corporation to appoint the petitioner from the panel after five years thereafter. Secondly, that since the prior approval of the State Government or the Governor was not taken for an appointment carrying salary of more than Rs. 2, 000/-, therefore, this appointment was illegal. There is no other reason given in the show-cause. The

order of termination only says that since the appointment of the petitioner was illegal, therefore, his services is being brought to an end. It is significant to note that the petitioner was going to superannuate in March, 2004.

13. The petitioner's contention is that both the reasons given in the show-cause are totally misplaced and the decision taken has no correlation to the reasons indicated in the show-cause. The petitioner states that from perusal of the various communications specially Annexure-2 would show that the petitioner's appointment was not made strictly from the so-called panel which was prepared by the High Power Committee. He was surely one of the persons placed at serial number 2 of the merit list consisting of three persons. As already taken note of that the so-called panel was drawn-up on 21st September, 1979 and since the person standing at the top of the so-called panel decided to quit that the respondent-Corporation wrote a letter dated 30.6.1980 exploring the possibility whether the petitioner would be willing to take the responsibility of the post in question. A perusal of this letter contained in Annexure-2 would show that it only refers that the petitioner had appeared in interview for the post of Deputy Director on 21st September, 1979 and since a large number of duly sanctioned posts were available for various projects under the Corporation they made a request if the petitioner would consider accepting the responsibility on deputation.

14. Two things surely emerge. First this offer sent to the petitioner was not after five years but was made within nine months of his selection by the High Power Committee. Secondly, the letter itself nowhere indicates that decision of the Corporation to appoint the petitioner was based on his short listing only in the interview. It is more likely that since the petitioner had already shown his merit before the Interview Committee and had shown his interest at that point of time by participating, the Corporation in its wisdom thought to explore the possibility of approaching the petitioner for accepting the post in question. In either of the two situations, therefore, the reason given by the Managing Director that the petitioner was appointed from a lapsed panel after more than five years is totally misplaced.

15. The second reason given in the show-cause that since the Corporation had not taken approval of the Government/the Governor for making appointment to a post carrying more than Rs. 2000/-, therefore, his appointment was illegal is again misplaced. Perusal of Annexure-1 would itself show that the post of Deputy Director carried a pay-scale of Rs, 1060-50-1400-55-1515-1580. The petitioner was offered appointment on the above pay-scale which is nowhere near Rs. 2000/- which the Managing Director has talked about. Since the post's salary was much below Rs. 2000/- therefore, there was no occasion for the Corporation to obtain approval of the Government/Governor under Article 124 of the Articles of Association of the Corporation as well as the so-called Rules of Executive Business. The petitioner would like to categorically state that the pay-scale which has been indicated in the show-cause as well as the order of termination contained in Annexure-21 was a replacement scale given to the petitioner with

effect from 1.11.1985. This fact stands corroborated by perusal of Annexure-10 which is an office order dated 19.3.1986. A replacement scale given to an employee, therefore, at subsequent stage is not a scale on which the petitioner was initially appointed under the Corporation. In any case the Corporation obtained approval of the Bureau of Public Enterprises the nodal body under the Government and the same was accorded approval vide order dated 29.1.1990 contained in Annexure-14. The petitioner, therefore, contends that both the reasons assigned in the show-cause are not only contrary to records but totally misplaced. Both the grounds given in the show-cause which culminated in passing of the final order of termination being alien to the decision making, is therefore non est in the eye of law and is fit to be interfered with as well as quashed.

16. The petitioner also contends that the way and the manner in which the order has been passed against the petitioner not only indicates a preconceived mind of the Managing Director but the same said decision has been passed in gross violation of the principles of natural justice. From the records itself it emerges that even though the petitioner came to be appointed as a permanent employee of the Corporation no enquiry whatsoever was held against him before arriving at the decision to terminate his service. Not only that, when the petitioner asked for the necessary documents from the Corporation to fortify his claim and substantiate his show-cause he was told in clear terms that no records would be made available to him by the Corporation. A cryptic order of termination has been passed, which could not have been passed by any reasonable mind if he had only bothered to go through the show-cause filed by the petitioner, which is contained in Annexure-20 to the writ application. If the Managing Director had cared to go through the show-cause and verified the facts and records available with the Corporation reference of which the petitioner had given in Annexure-20 the occasion to pass the impugned order would not have arisen. But since the Managing Director had already made up his mind to get rid of the petitioner by ignoring all the facts, records, as well as the procedure and the law he rushed to the decision contained in Annexure-21.

17. The petitioner also questions the authority of the Managing Director to issue the order of termination at his level without taking approval of the Board since the petitioner's appointment and subsequent confirmation and promotion was made after a decision taken by the Board and not by any individual much less the Managing Director of the Corporation.

18. Counsel for the respondent-Corporation submits that there are enough reasons available which is part of the show-cause which was issued to the petitioner and since the respondent-Managing Director in his wisdom came to a conclusion that the appointment of the petitioner was illegal, therefore, he took the decision of terminating the services of the petitioner. There is no illegality in the order therefore. He has placed his reliance on the decisions rendered in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain

and Others, and in the case of Secretary, State of Karnataka vs. Uma Devi, 2006(2) PLJR (SC)363 to justify their action. But the petitioner submits that the above cases have no relevance to the present issues raised in the writ application. In fact Uma Devi case (supra) is in favour of the petitioner especially paragraph 44 of the judgment. The contention of the petitioner does not seem to be misplaced and, therefore, the said decisions, relied upon, do not support the contentions of the respondent-Corporation.

19. The State has also filed its counter affidavit and taken the stand that the Corporation being an independent legal entity the State Government has nothing to do and the Corporation is free to take its own decision.

20. this Court is unable to understand the stand as well as the reason due to which the services of the petitioner has been cut short when he was going to superannuate in another 14-15 months. The petitioner was not a low down employee but was working on the post of a Director and has a good service record. The petitioner has been able to establish that the reason for coming to the impugned decision is totally misplaced because none of the grounds indicated in the show-cause seem to reflect the true state of affairs. There does seem to be a deliberate effort on the part of the respondents to ignore the factual situation available on records not only of the writ application but also of the Corporation and to arrive at a preconceived consequence. It is also true that no enquiry whatsoever was carried out to establish the fact that the appointment of the petitioner was in any manner illegal or irregular. His services was terminated only on the basis of a show-cause issued to him. Not only that he was not even given proper opportunity to substantiate his case by the stonewalling attitude taken by the Managing Director of the Corporation. The tenor and tone of the letter of the Managing Director contained in Annexure-19 shows his attitude.

21. That being the position this Court has no hesitation in coming to the conclusion that the decision to terminate the services of the petitioner as contained in Annexure-21 based on the so-called grounds indicated in Annexure-16 is not only arbitrary exercise of powers but an illegal exercise of power as well. The decisions are based on non est grounds. The decision has been arrived in violation of principles of natural justice and the decision taken by the Managing Director to terminate the services of the petitioner has been done without following any procedure or obtaining due approval of the Board of Directors in this regard.

22. Accordingly, the order dated 7.11.2002 contained in Annexure-21 is quashed. Since the petitioner has already superannuated in 2004, the respondents are directed to pay to him his salary, allowances and all the consequential benefits to which he maybe entitled to, as if the impugned order had never intervened till he reached the age of his superannuation, which is stated to be March, 2004. The petitioner shall also be entitled to such other retiral dues as to which he may be entitled to under the service conditions of the Corporation. This writ application is accordingly allowed with the aforesaid observations and directions. However,

there shall be no order as to costs.