

(2012) 04 DEL CK 0409
In the Delhi High Court
Case No : Writ Petition (C) 7541 of 2011

BSNL and Another

APPELLANT

Vs

Raj Kumar and Another

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Bharat Sanchar Nigam Limited (Conduct, Discipline and Appeal) Rules, 2006 — Rule 33, 33A, 33B

Citation : (2012) 04 DEL CK 0409

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Alakh Kumar with Mr. Vaibhav Manu Srivastava, for the Appellant;
D.S. Mehandru, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—The petitioner is aggrieved by the order dated 20.07.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 1373/2011 whereby the respondent's said Original Application was allowed and the order dated 04.04.2011, cancelling the ad hoc promotion order issued in respect of the respondent on the ground that there was a disciplinary / vigilance case pending against him, was set aside. The Tribunal has, however, given opportunity to the petitioner to take appropriate action as per the Conduct, Discipline and Appeal Rules after giving the respondent a notice to show cause. The only issue which arose before the Tribunal for consideration was whether the respondent ought to have been furnished with a show cause notice and, consequently, an opportunity to respond thereto prior to his reversion from the post of Executive Engineer (Electrical) to which he was promoted on an ad hoc and temporary basis by virtue of a promotion order dated 23.02.2011.

2. According to the respondent, the principles of natural justice require that before he was reverted to his substantive post of Sub-Divisional Engineer (Electrical), he ought to have been given an opportunity of presenting his case

against the reversion. On the other hand, the learned counsel for the petitioner submitted that since it was merely a cancellation of an ad hoc and temporary promotion, it did not amount to any penalty and, therefore, there was no necessity of giving any show cause notice to the respondent before his promotion on an ad hoc and temporary post was cancelled. Reliance was placed by the learned counsel for the petitioner on the Explanations contained in Rule 33 of the Bharat Sanchar Nigam Limited (Conduct, Discipline and Appeal) Rules, 2006 (hereinafter referred to as "the said Rules"). We may point out that Rule 33 relates to penalties. Rule 33 (A) relates to minor penalties and Rule 33 (B) relates to major penalties. After the said penalties have been stipulated, there are Explanations contained in the said Rule 33. The Explanation that is relevant for our purposes is Explanation (iv), which reads as under:-

Explanations:

The following shall not amount to a penalty within the meaning of this Rule:-

(i) xxxx xxxx xxxx xxxx

(ii) xxxx xxxx xxxx xxxx

(iii) xxxx xxxx xxxx xxxx

(iv) Reversion of an employee officiating in a higher grade or post to a lower grade or post on the ground that he is considered to be unsuitable for such higher grade or post or on any administrative grounds unconnected with his conduct;

(v) xxxx xxxx xxxx xxxx

(vi) xxxx xxxx xxxx xxxx

(vii) xxxx xxxx xxxx xxxx"

The learned counsel for the petitioner also placed reliance on a clarification dated 11.05.2007 issued by the BSNL which is to the following effect:-

No.10-2/2007-WS&I/O&M/Part II

Dated: 11th May, 2007

To

All Heads of Telecom Circles / Metro Districts/ Functional Units of BSNL.

Sub:- Initiation of disciplinary proceedings against the ad hoc BSNL employee - Regarding reversion to his substantive grade.

Kindly refer to this office letter No. 102-2/2004-WS &1/O & M dated 10th Oct. 2006 vide which BSNL CDS Rules, 2006 were circulated. The following is clarified w.r.t. Explanation No. (I) under Rule 33(B) of BSNL CDA Rules 2006.

Till the time ad hoc promotions are being given in the BSNL, in the case of an

employee promoted on ad hoc basis and has held the post for a period less than one year, the BSNL employee shall be reverted to the post held by him substantively or on a regular basis when a disciplinary proceeding is initiated against him. In case the said employee has held the appointment for more than one year, he need not be reverted to the post held by him only on the ground that disciplinary proceedings has been initiated against him.

This has the approval of CMD, BSNL.

Sd/-

(P.C. Mehta)

DDG (WS & I)"

3. The learned counsel for the petitioner pointed out that in view of the clarification, the position becomes absolutely clear that insofar as the ad hoc promotions are concerned, if a person, who has been so promoted, is subjected to any disciplinary proceedings within one year of the promotion, then he is required to be reverted to the post held by him substantively or on a regular basis. However, if a person promoted on an ad hoc basis has held a promotional post for a period of more than one year, then he need not be reverted to the post held by him only on the ground that the disciplinary proceedings had been initiated against him. In the present case, the respondent had been promoted by virtue of the promotion order dated 23.02.2011 to the post of Executive Engineer (Electrical) on an ad hoc and temporary basis. A charge-sheet had been issued to him on 15.03.2011. Consequently, the disciplinary proceedings had been initiated against him within the period of one year of his having been promoted on an ad hoc and temporary basis to the post of Executive Engineer (Electrical). As a result, according to the learned counsel for the petitioner, in terms of Explanation (iv) in Rule 33 of the said Rules read with the clarification dated 11.05.2007, the respondent could have been reverted to the post which was substantively held by him, that is, Sub-Divisional Engineer (Electrical) without the requirement of any show cause notice or opportunity of hearing.

4. The learned counsel for the respondent controverted these pleas by submitting that the clarification that was issued on 11.05.2007 was not actually part of the said Rules. He further submitted that this was not a case of reversion on any administrative grounds unconnected with his conduct and the reversion order dated 04.04.2011 did not specify that he was being reverted on the ground that he was unsuitable for working in the higher grade of Executive Engineer (Electrical). Consequently, he submitted that the respondent ought to have been given a show cause notice and ought to have been given an opportunity of hearing as that was the requirement of natural justice.

5. In rejoinder, the learned counsel for the petitioner placed before us a decision of the Supreme Court in the case of Punjab State Electricity Board and Another Vs. Baldev Singh, in support of his plea that in the case of a reversion, where the

promotion was purely on an ad hoc basis, there is no requirement of giving any opportunity of hearing prior to the passing of the reversion order.

6. After having heard the counsel for the parties, we are of the opinion that the Tribunal has erred in holding that the respondent was required to be issued a show cause notice and, consequently, given an opportunity of hearing. There is nothing in the rules which makes such a prescription. As indicated above, the Explanation (iv) contained in Rule 33 makes it abundantly clear that the reversion of an employee officiating in a higher grade or post to a lower grade or post on the ground that he is considered to be unsuitable for such higher grade or post or on any administrative grounds unconnected with his conduct, would not amount to penalty within the meaning of the said Rule 33. This means that if a reversion takes place in accordance with what is stipulated in Explanation (iv) contained in Rule 33, that would neither be a major penalty nor a minor penalty and, therefore, the strict procedure prescribed prior to the imposition of penalty, need not be followed.

7. After reading the said Explanation (iv) with the clarification issued on 11.05.2011, it becomes abundantly clear that in a case where disciplinary proceedings are initiated against a person who is promoted on an ad hoc basis within one year of his promotion, it can be considered to be a case of the person being unsuitable for the higher grade or post. Consequently, the reversion of the respondent by virtue of the order dated 04.04.2011, whereby his promotion to the post of Executive Engineer (Electrical) on an ad hoc and temporary basis was cancelled, cannot be regarded as being penal in nature. As a result, even if we consider the matter de hors the clarification, it was not at all necessary on the part of the petitioner to have issued any show cause notice to the respondent and / or to have given him an opportunity of hearing prior to the issuance of the order dated 04.04.2011. We are also supported in this view by the decision of the Supreme Court referred to by the learned counsel for the petitioner in the case of Punjab State Electricity Board (supra). The Supreme Court in the said decision held as under:-

3. The sole question that is argued by the learned counsel appearing for the appellant in this Court is, that in view of the nature of appointment of the plaintiff against the post of Assistant Lineman on mere ad hoc basis, no rights had accrued in favour of the plaintiff and, therefore, the question of giving an opportunity of hearing before passing an order dated 8-1-1981 reverting the plaintiff to his substantive post of Charge I Mate does not arise. According to the learned counsel, the lower appellate court as well as the High Court committed serious error of law in interfering with the order on a wrong notion about applicability of the principle of natural justice to the case in hand. The learned counsel appearing for the respondent, however, contended that since the plaintiff had been posted as a Regular Assistant Lineman, before passing any order and altering his position he was entitled to be heard and no opportunity of hearing having been given, the impugned order could not have been sustained in law,

and, therefore, the lower appellate court rightly set aside the order of termination.

4. Having heard the learned counsel for the parties and examining the materials on record we have no hesitation to hold that in the facts and circumstances of the case the question of giving an opportunity of hearing to the plaintiff before passing the order dated 8-1-1981 does not arise. Since the plaintiff's appointment/promotion to the post of Assistant Lineman was purely on ad hoc basis and the higher authorities directed to discontinue such ad hoc appointment, the competent authority passed the impugned order posting the plaintiff against his substantive post of Charge I Mate. The plaintiff had not acquired any right to the post of Assistant Lineman and further, the impugned order dated 8-1-1981 cannot be held to be penal in nature.

5. In that view of the matter, the question of giving an opportunity of hearing does not arise. The lower appellate court as well as the High Court committed serious error in interfering with the judgment of the trial court."

(emphasis supplied)

Therefore, in whichever manner the case is looked at, the Tribunal's order cannot be upheld. There was no need for the petitioner to have given any show cause notice or any opportunity of hearing to the respondent prior to the issuance of the cancellation order dated 04.04.2011. As a result, the impugned order is set aside. The writ petition is allowed. There shall be no order as to costs.