

(2005) 11 AHC CK 0212

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23237 of 2004

Dilip Kumar Singh

APPELLANT

Vs

Bharat Sanchar Nigam Ltd.

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 409
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2006) 5 AWC 4712 : (2006) 1 UPLBEC 230

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.K. Chaubey and R.K.S. Chauhan, JJ, for the Appellant; B.N. Singh, G.S. Hajela and S.S.C., for the Respondent

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioner and Sri B.N. Singh for respondents 1 to 3. Sri G.S. Hajela for the respondent No. 4 is not present.

2. By means of this writ petition, the petitioner has sought for a writ of mandamus directing the respondents to send him for training for the post of Junior Accounts Officer along with other successful candidates and permit him to join on the promotional post of Junior Accounts Officer.

3. Brief facts of the case are that after completion of requisite training, the petitioner is working as a Senior Telephone Operating Assistant (P) G.M.T.D., Allahabad. The examination for the promotional post of Junior Accounts Officer Part I was held by the Department in October 2002 in which the petitioner was declared successful. The petitioner also passed the examination of Junior Accounts Officer Part II in the year 2003 and the candidates who had appeared along with him were sent for training but the petitioner was discriminated and was not sent for training till date. In these circumstances, the petitioner has filed this writ petition. After qualifying in the examinations of Junior Accounts Officer Part I and II, the petitioner made a representation application to the respondents dated 18.9.2003 to relieve him for training for the post of Junior Accounts

Officer, but the application remained unactioned. Thereafter the petitioner made successive representations dated 23.10.2003. 1.12.2003."5.4.2004 and 10.6.2004, which also met with the same fate.

4. It appears from record that the petitioner was suspended vide order dated 17.5.2001 on the charge of embezzlement which were brought to the notice of the Department and were under investigation of the C.B.I. The order of suspension was subsequently revoked on 21.8.2001. It also appears that during the pendency of investigation, a search warrant was issued and a search of the premises of the petitioner was made in which nothing incriminating was found. The report dated 6.6.2002 regarding the search is appended as Annexure 9 to the writ petition.

5. In response to the query of the Assistant General Manager of the Department as to whether any vigilance enquiry was pending against the petitioner, he was informed vide letter dated 11.9.2003 contained in Annexure 10 to the writ petition that no vigilance enquiry is pending against the " petitioner. The contents of the said letter dated 11.9.2003 are as under:-

Preshak.

Up. Man Abhi. M.B.E.E.

Sewa Men.

Sahayak Mahaprabandhak (Prashasan) ka Neej 9.52 Samchar Alld.

Patrank San. Es.Dce.Dec./Km.Dcc.Ef.Dee. 100 A Allahabad Dinank 11.9.03

Visay: Sri Dileep Kumar Singh C.T.O.A. (P) ke satarkta ka anushasnatmak mamle ke sambandh me.

Mahapralvandhak Door Sanchar Allahabad ke patrank E.9/J.A.O/Training G.M.T.D./27 Dinank 11.9.03 ke anupalan men soochit kiya jata hai ki Sri Dileep Kumar Singh C.T.O.A. (P) ke viruddha satarkta sambandhi koi mamla vicharadhin ya lambit nahin hai.

Sd/-illegible (Seal) Up Mandal Abhiyanta M.B.F.E 10 O. Doorbhas Kendra Civil Lines, Allahabad 211001

Note: (The original letter is in Devnagri script which is given hereinabove in Roman script clue to technical reason).

6. A short counter-affidavit and two supplementary counter-affidavits have been tiled on behalf of Tele-Communication Department, Bharat Sanchar Nigam Ltd, The learned Counsel for the respondents has "placed reliance on paragraphs 6 and 7 of the short counter-affidavit wherein it has been averred that the Divisional Engineer (A & P), Office of Telecom District Manager, Shahjahanpur vide his letter dated 20.3.2003 informed that investigation by the C.B.I. is going on against the petitioner for making fake figures in the computer which facilitated huge public money to be embezzled by certain officials of the Telecom

District Manager, Shahjahanpur. It is also stated therein that as the investigation against the petitioner is pending he could not be relieved for training of Junior Accounts Officer Part II. It is further averred that the matter was referred to the Circle Officer, Lucknow but no orders have been issued by the Chief General Manager U.P., East Circle, Lucknow to relieve the petitioner for training in view of the investigation by the C.B.I.

7. In the supplementary counter-affidavit filed on behalf of respondent Nos. 1 to 3 filed along with application No. 236733 of 2004, it has been averred that the petitioner was sent for training of Junior Accounts Officer due to oversight but he failed in the second attempt also and was returned back and that the criminal investigation by the C.B.I. is still under investigation and the petitioner has not been given clean chit by the C.B.I. till date, as such he cannot be sent for training as is evident from copy of the letter dated 28.7.2004 which has been appended as Annexure C.A. 1. A perusal of the letter dated 28.7.2004 shows that the C.B.I. is of the view that the promotion of the petitioner during the pendency of the investigation by C.B.I. is an internal matter of the Department and the Department has been advised to take action within the provisions of the relevant departmental rules and vigilance manual in the matter in this regard.

8. In the second supplementary counter-affidavit filed along with application No. 26659 of 2004 the same facts are reiterated as in the short counter-affidavit.

9. The learned Counsel for the respondents submits that the contention of the learned Counsel for the petitioner that C.B.I. has submitted its report in respect of investigation is not correct. Unless and until report is submitted by the C.B.I. and is accepted by the Magistrate and the petitioner is exonerated of the charge, he cannot be sent for training and as such the prayer of the petitioner for an interim order to send him for training during the pendency of the writ petition is liable to be rejected.

10. In rebuttal, the petitioner replied the averments in supplementary rejoinder-affidavit. In paragraph 6 it has been averred that the charge sheet has been issued against the delinquent employees of T.D.M. Office, Shahjahanpur by the C.B.I. but no charges have been framed against the petitioner, as much there is no justification for denying promotion to him even after qualifying the departmental examination of Junior Accounts Officer Parts I and II.

11. In the counter-affidavit filed on behalf of respondent No. 4, Superintendent of Police, Central Bureau of Investigation, Lucknow only paragraphs 10 and 12 of the writ petition have been replied to in paragraph 4 of the counter-affidavit as tender;-

4. That the contents of the para 10 and 12 denied. It is submitted that against the petitioner Dilip Kumar Singh a case has been registered by the CBI at its Branch at Lucknow and case registered at RC No. 2(A) 2002 under Sections 120B/409 IPC and 13(2) R/W Section 13(1)(d) Prevention of Corruption Act 1988. This case was registered on 17.1.2002 and accused D.K.Singh is named

accused in that FIR. Even a house search was conducted at the house of the petitioner Dilip Kumar Singh on 6.6.2002 in the presence of independent witnesses. At present in the above noted case: investigation is still going on.

12. In reply to rest of the paragraphs, i.e., 1 to 8 and 11 to 18 it is stated that they need no reply or no comments.

13. It is evident that in so far as other suspended employees in the matter are concerned the C.B.I. has issued charge sheet to them, but no charge sheet has been issued to the petitioner by the C.B.I. His house was searched out and nothing incriminating has been found. From the letter dated 28.7.2004 it is apparent that the C.B.I. is of the view that the question of promotion of the petitioner is an internal matter of the Department. From the record it is also evident that the petitioner had been sent for (training and was called back in the midst of training. It is further evident that other candidates along with the petitioner who had passed the examination have been sent for training. The career of the petitioner is being jeopardized only because he is not being sent for training due to the alleged investigation in which neither incriminating articles have been found till date nor any charge sheet has been issued to the petitioner.

14. For the reasons stated above, the writ petition is disposed of with the direction to the respondents to send the petitioner for training forthwith. However, the enquiry pending against the petitioner may go on. The petitioner may be promoted to the post of Junior Accounts Officer which shall be subject to the finalization of the criminal investigation by the C.B.I.