

(2014) 10 DEL CK 0034
In the Delhi High Court
Case No : Writ Petition (Civil) 3794/2011

Hitesh Sagar

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2014) 10 DEL CK 0034

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : K.C. Mittal and Ruchika Mittal, Advocate for the Appellant; Abhay Prakash Sahay, CGSC and Deepak Gupta, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by the order dated 24.09.2010 of the Central Administrative Tribunal (CAT) rejecting his application in OA 289/2010. The CAT also rejected his application for review by order dated 10.12.2010. The petitioner had challenged the order of the respondent (hereinafter referred to as "Government of India Press"), discharging/terminating him from its service on 18.01.2010.

2. Briefly the facts are that the petitioner responded through application to the advertisement by the Government of India Press, seeking applications from candidates for the post of Artist Retoucher on temporary basis in Government of India Press, Ring Road, Mayapuri in the pay scale of Rs. 5500-9000/-. The qualifications required for the post of Artist Retoucher was "degree in Printing Technology from a recognised university or institution, with two years experience or diploma in Printing Technology (Offset) from a recognized Institute of Printing and three years experience in Scanning, Planning and Retouching in an offset establishment of repute". The petitioner was interviewed after he was successful in a trade test, he joined the services pursuant to the offer of temporary appointment on 13.03.2008. In support of his claim that he possessed the requisite experience, the petitioner had relied upon two certificates issued by M/s. Peregrine Facilities Management Systems Pvt. Ltd. to the effect that he worked

with that organization for the period 01.05.2004 to 27.01.2007. He also relied upon a certificate issued by M/s. Paxton Trexim Private Ltd. (HT Media) stating that he had worked with that organisation between 29.08.2003 to 30.04.2004 as a Trainee Executive in production department.

3. On 07.07.2009 petitioner was directed to submit documentary evidence such as appointment letter, relieving order, salary slip/statement, identity card, ESI card of PF statement towards proof of employment with the said two concerns. Accordingly, he produced the certificates he relied upon to demonstrate his experience. On 18.01.2010, the petitioner was terminated from the services. This impelled him to approach the CAT with an application. In the course of the proceedings, Government of India Press, in its reply alleged that upon inquiry as to the genuineness of the certificates relied upon by the petitioner, it was found that both the concerns did not exist at the address given. The relevant averments in that record are as follows:-

"That further, while applying for the post of Artist Retoucher the applicant had submitted an experience certificate dated 28.07.2006 from M/s. Paxton Trexim Private Limited for the period 29.08.03 to 30.04.04 i.e. 8 months and 2 days. Later on he submitted another experience certificate dated 28.07.2006 from M/s. Peregrine Facilities Management Systems Pvt. Ltd. RZ- B, Kapashera Crossing, New Delhi -37 for the period 01.05.04 to 28.07.06 i.e. 2 years, 2 months and 28 days. It was noticed that the signatories of experience certificates obtained from Peregrine Facilities Management Systems Pvt. Ltd. and Paxton Trexim Pvt. Ltd. and furnished by the applicant at the time of application for the post of Artist Retoucher appeared to be the same which was noticed by the recruitment committee of the Govt. of India Press, Maya Puri. The genuineness of the certificates was investigated by the Directorate of Printing and it was found that there was no company by the name of M/s. Peregrine Facilities Management Systems Pvt. Ltd. at RZ-1B, Kapashera Crossing, New Delhi. Therefore, his total experience was 2 years and 11 months, which includes 2 years, two months and 28 days in a non-existent company.

3. That moreover, according to the recruitment rules a candidate must have three years experience in scanning, planning and retouching in an offset establishment of repute in addition to diploma in printing technology (offset). In the experience certificate furnished by the applicant one of which was from a non-existent company, it is not mentioned that he has gained experience in scanning, planning and retouching appeared to be the same which was not noticed by the recruitment committee of the Govt. of India Press, Mayapuri. The genuineness of the certificates was investigated by the Directorate of Printing and it was found that there was no company by the name of Peregrine Facilities Management Systems Pvt. Ltd. at RZ-1B, Kapashera Crossing, New Delhi. Therefore, his total experience was 2 years and 11 months which includes 2 years, two months and 28 days in a nonexistent company".

4. After considering the parties' contentions, the CAT, by its impugned order

dated 24.09.2010 rejected the petitioner's application principally on the basis that temporary government appointee had no enforceable right to such employment and that the impugned order terminating his services on 18.1.2010 was not stigmatic. The petitioner's attempt to have the order reviewed was unsuccessful.

5. Learned counsel for the petitioner has made threefold submissions. One, that after the termination order was made on 18.01.2010, the Government of India Press independently proceeded to hold inquiry into the alleged misconduct of one Mr. S.R. Bodra, Chairman of the Selection Committee in respect of its specific irregularity in the recruitment in question. It is pointed out that the inquiry report completely exonerated the charged official of the allegation to the effect that the documents were not genuine. Learned counsel emphasized that once the officers of the concerned firms, i.e. M/s. Peregrine Facilities Management Systems Pvt. Ltd. and M/s. Paxton Trexim Private Ltd. had verified the authenticity of the documents and certificates issued to the petitioner, the opinion - based on which the termination order was made on 18.01.2010, disappeared and consequently the petitioner deserves to be re-instated. Learned counsel highlighted that once the genuineness of the certificate was established and the concerned officer from HT Media Ltd. Shri Rampal Singh, Executive (HR) stated that experience in the prescribed field covered under the processes of printing were possessed by the petitioner, there ought to have been not a question of allowing the termination order to stand. Learned counsel lastly submitted that having regard to the decision of the Supreme Court in Union of India (UOI) and Others Vs. Mahaveer C. Singhvi, , any whisper of misconduct necessitates a public employer to hold an enquiry if it proposes to terminate a temporary employee or a probationer. The subsequent decision in State Bank of India and Others Vs. Palak Modi and Another etc., was also relied upon.

6. Counsel for Union of India submits that the Court should not interfere with the order of the CAT. It was argued that inquiry held against Mr. Bodra proceeded on a different angle, i.e., the role played by him as Chairman of the Recruitment Committee. Counsel emphasized further action on the enquiry report as yet has not been taken and in the circumstances this Court should base its decision on the report itself. It was highlighted, in addition, that the consistent stand of the Government of India Press, quite apart from the genuineness of the certificates relied upon by the petitioner is that he did not possess the requisite experience. Learned counsel relied upon the tenor and terms of the certificate themselves to say that nowhere did either or both of them disclose that the petitioner possessed experience in the requisite areas much less "reputed establishments". To support this submission, learned counsel relied upon file notings of Government of India Press in this regard.

7. This Court has carefully considered the submissions. The issues surrounding the termination letter impugned before CAT required consideration of two aspects.

(i) the determination about the genuineness of the certificates furnished by the

petitioner from the two concerns i.e. M/s. Peregrine Facilities Management Systems Pvt. Ltd. and M/s. Paxton Trexim Private Ltd. as to the initial report received by the respondent-Government of India Press - evident from a letter written to the Manager, Government of India Press on 19.05.2009 which is part of the record is that the two firms were not found at the given address on the face of the certificates. While there is no action, this fact of the matter did weigh the decision making, in addition to holding enquiry to determining that the petitioner did not possess requisite qualification in terms of the certificates given by him, the fact remains that as far as this aspect was concerned, the subsequent exoneration of Mr. Bodra to an extent undermines the determination itself. The finding in this regard to the discharge against Mr. Bodra is to the following effect:-

"Shri S.R. Bodra, while functioning as Chairman of the Recruitment Committee for making selection to the post of Artist Retoucher in the Govt. of India Press, Maya Puri, New Delhi on 5.2.2008 failed to point out the experience certificates produced by Shri Hitesh Sagar from M/s. Paxton Trexim Pvt. Ltd. and M/s. Peregrine Facilities Management Systems Pvt. Ltd. do not certify that he has experience of only 2 years and 11 months as against the experience of three years prescribed in the Recruitment Rules. Therefore, Shri S.R. Baroda failed in his duty as the Chairman of the Recruitment Committee and selected Shri Hitesh Sagar who did not fulfill the conditions or eligibility as prescribed in the recruitment rules.

During the enquiry, it has been observed from the experience certificates produced by Shri Hitesh Sagar that he had worked with different firms i.e. M/s. Paxton Trexim Pvt. Limited and M/s. Peregrine Facilities Management Systems Pvt. Limited and was deployed at the sites of HT Media Limited. Subsequently, the genuineness of the certificates was also verified by the firms vide M/s. Paxton Trexim Private Limited's letter dated 12.05.2009 and M/s. Peregrine Facilities Management Systems Private Limited's letter dated 03.06.2010. However, the undersigned issued Notices (By Speed Post and BY FAX) to Shri Ram Pal Singh, Executive (HR) and Shri Davidson, HR Department, HT Media Limited for appearance of Shri Ram Pal Singh regarding the genuineness and verification of all the experience certificates issued by him to Shri Hitesh Sagar. As per the statements given on 05.11.2012 by Shri Ram Pal Singh, Executive (HR), HT Media Limited that Shri Hitesh Sagar has worked for a total period of 03 years 04 months 29 days with different two firms i.e. M/s. Paxton Trexim Pvt. Ltd. and M/s. Peregrine Facilities Management Systems Pvt. Ltd. in the prescribed field fully covered under processes and printing operations. Shri Ram Pal Singh has physically authenticated and verified the experience certificates issued under this signatures.

The copies of documents i.e. PAN Card No. AADCP 2499N issued by the Income Tax Department, Government of India to M/s. Peregrine Facilities Management Systems Private Limited and Certificate of Incorporation issued by the Registrar

of Companies, NCT of Delhi and Haryana submitted by Shri Ram Pal Singh during the enquiry on 05.11.2012. These documents have not been declared incorrect by the issuing authorities.

It has been observed during the enquiry that no official letter (s) sent by Post or otherwise by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi. As such, it is not understood that what prompted them to carry out the field enquiry. Thus, it is needless to mention that the existence of the firms cannot be challenged on the basis of various documents produced during the enquiry, which had been issued by the different Government Departments."

8. At the same time this Court is conscious of the fact that no final orders have been made by the disciplinary authority. The file noting on the other documents, in the court proceedings, indicate that it was not the petitioner's recruitment which was under scrutiny before the departmental proceedings - but others as well. Further, Mr. Bodra as part of the Recruitment Committee, was subject to the departmental proceedings and chargesheets. In the view it cannot be said that the view expressed was wholly without foundation.

9. As far as the question of experience is concerned, this Court is of the opinion that even after the certificates are found to be genuine this facet has to be viewed separately. In other words, the decision making of the Government of India Press as to the suitability of the candidate based on the experience certificate would then be on the assumption that certificates are genuine.

10. The file noting preceding the termination order- the last of which has made observations about the petitioner's experience - is forthright; in this, the concerned authorities consistently were of the opinion that experience certificates were unclear as to the nature of the processes undertaken by the petitioner. Finally the two certificates do not spell out in any manner as to what was the work which prevailed in the two firms which the petitioner was involved or the nature of duties and responsibilities he discharged. Having regard to the circumstances this Court is of the opinion that petitioner's argument that the termination order is illegal, is not sound. Mahaveer Singh (supra) is an authority for situations in which the public employer proposes to dispense with the services of the probationer based on an alleged misconduct. In that case, it was held that if an order of discharge is passed as a punitive measure without giving the probationer an opportunity to defend himself, then it would be invalid. On the other hand, "if no enquiry was held or contemplated and the allegations were merely a motive for the passing of an order without giving him a hearing, the same would be valid. (para 31)". The Court is to look at the real intention. In such circumstances, the Supreme Court has ruled in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, that if the authority is satisfied on the basis of existing material that the employee is not suitable to hold the post there is no obligation to hold an enquiry.

11. In view of this circumstance, this Court is of the opinion that no fault can be

found in the impugned order of the CAT.

12. The writ petition is, therefore, dismissed.