
(1998) 11 DEL CK 0040
In the Delhi High Court
Case No : CWP No. 4408 of 1995

Kamal Prashar

APPELLANT

Vs

National Airport Authority and Others

RESPONDENT

Date of Decision : 02-11-1998

Acts Referred:

Citation : (1999) 48 DRJ 331

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. B.S. Charya, for the Appellant; Ms. Anjana Gosain, for the Respondent

Judgement

Vijender Jain, J.—Petitioner was appointed as Assistant Aerodrome Officer with Director General of Civil Aviation initially. He was subsequently promoted as Aerodrome Officer. National Airport Authority was set up when National Airport Authority Act, came into existence in 1985. Petitioner along with other persons working with Director General of Civil Aviation were transferred to the newly created National Airport Authority. It is the case of the petitioner that the petitioner sought repatriation from National Airport Authority to its parent department i.e. Directorate General of Civil Aviation on 4th June, 1986. On 4th February, 1987, respondent No. 2 i.e. Director General of Civil Aviation agreed to the request of the petitioner and wrote to the respondent No.1, National Airport Authority, inter alias stating that the petitioner was posted as Priority Officer with the Director General of Civil Aviation in lieu of Shri Harbans Lal, who had retired on 31st January, 1987. The letter dated 4th February, 1987 is to the following effect:-

IMMEDIATE

No. A. 22013/1/87.E.II

Government of India

Office of the Director General of Civil

Aviation

New Delhi, dated, the 4.2.1987

To

The Chairman,

National Airport Authority,

New Delhi.

Subject: Filling up the post of Priority Officer.

Sir,

I have to refer to your note dated 22.1.87 recorded on file No. 22013/2/87-EA(A) forwarding therewith an application of one Sh. Kamal Prashar, Aerodrome Officer for posting him as Priority Officer in this office vice Sh. Harbans Lal, retired on 31.1.1987.

2. The post of Priority Office in this office is an included post of Aerodrome Officer's cadre. The whole discipline of Aerodrome Officers has been transferred to NAA from 1.6.86. But the officers transferred are on deputation on foreign service terms until they are absorbed in NAA. As such NAA are requested to relieve Sh. Kamal Prashar for filling up the post of Priority Officer in this office.

3. In this connection it is clarified that the transfer of Sh. Prashar for posting as Priority Officer in this office will be treated as reversion to his parent office from foreign service with NAA and he will have no claim for his re-deputation/appointment to NAA subsequently.

Yours faithfully,

(P.R. CHANDRASEKHAR)

Director Research & Development

For Director General of Civil

Aviation."

2. In the meanwhile, instead of relieving the petitioner, the respondent No.1 directed the petitioner to join at Varanasi. However, the petitioner continued to represent to the respondent No.1 to relieve him from deputation and further represented that the respondent No. 1 had no authority to post him at Varanasi. Thereafter, respondent No.1 issued charge sheet against the petitioner as the petitioner had not joined at Varanasi. On the basis of the charge sheet, an inquiry was initiated by the respondent No.1. Before the Inquiry Officer, petitioner took the stand that the disciplinary proceedings against the petitioner could not be initiated as he ceased to be the employee of respondent No.1 after

his repatriation having been agreed by the parent department on 4th February, 1987. At page 159, inquiry officer was also confronted with the problem as the petitioner belonged to the cadre of Director General of Civil Aviation. This is how, he has dealt with the problem :-

".....His application was recommended and forwarded by NAA to DGCA, who immediately requested NAA for the post of Priority Officer. Officers of the Operational Directorate did not like this situation and reflected their view points on records. Chairman, NAA decided not to relieve the officer due to acute shortage of ATC officers. The selection of pilots was made in 1987 when Sh. Parashar was sitting at home and there was no question of Considering him for the post of pilot. Even he applied for the post of priority officer when he was already struck off from Delhi and he had not joined at Varanasi. No option was taken from Sh. Parashar because proceedings were going against him for absence from duty since long. Why Parashar was not reverted back to DGCA recommending disciplinary action against him and NAA had initiated charge sheeting him and proceeded with disciplinary action? As an Inquiry Officer, I do not have answer to it."

3. It seems that after the report of the inquiry officer, Chairman of the respondent No.1 recommended major unspecified penalty and the matter was sent for consultation to the U.P.S.C. It was stated by learned counsel for the respondent that the U.P.S.C., inter alias impressed upon the respondent No.1 to first settle the matter of absorption of the petitioner. The matter is still pending with the Ministry.

4. Mr. Charya, learned counsel for the petitioner has assailed the issuance of charge sheet by respondent No.1 as the same was after lapse of the period of three years and as a matter of fact, he has contended that respondent No.1 waived their right to take any action against the petitioner. He has further contended that it was and exercise to harass the petitioner by the respondent No.1 as the petitioner stood repatriated to the respondent No. 2 by the letter dated 4th February, 1987. He has further contended that in spite of a letter issued by respondent No.1 on 13th March, 1995 which is at page 29 of the paper book placing the services of the petitioner at the disposal of the DGCA with immediate effect, the respondent No.1 did not relieve the petitioner. Subsequently, however, the aforesaid order was withdrawn but it has no bearing to decide the controversy in question. Petitioner joined the respondent No. 2 on 22nd June, 1996. Mr. Charya had contended that the petitioner was wrongly detained by respondent No.1 and he is entitle to all consequential benefits in terms of his salary, promotion and all other benefits.

5. Ms. Anjana Gosain, learned counsel for the respondent has contended that option given by the petitioner requesting for repatriation to the parent department in 1986 could not have been looked into by the respondents as for the first time, a scheme was made for seeking option from the persons serving in National Airport Authority in the year 1989. She has further contended that the

petitioner could not have been relieved as per the directive of the Ministry and even till date these options were invited and the same was subject to review and the petitioner was lawfully retained with the respondent No. 1 after 2nd October, 1989 as per directives and conditions set out under the National Airport Authority Act. Both the parties have relied upon Section 13 of the National Airport Authority Act. Second proviso of Sub-section (3) of Section 13 reads as under :-

"Provided further that any such employee who has in respect of the Proposal of the authority to absorb him in his regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of then Authority, shall not absorbed by the Authority.

6. On the basis of aforesaid proviso Ms. Gosain has contended that within such time as may be specified in this behalf by the Authority, time for exercise of the option was to be specified by the respondent No.1 which was exercised on 2nd October, 1989 and any earlier representation seeking repatriation by the petitioner was not valid and could not have been acted upon. She had contended that as the petitioner had not given any option after 1989, the petitioner continued to be employee of National Airport Authority and respondent No.1 was within its competence to issue a charge sheet and initiate disciplinary proceedings against the petitioner. She had further contended that the petitioner was sitting idle not doing any duty as he did not want to go to Varanasi and wanted to stay at Delhi. She has further contended that National Airport Authority Act being a Special Act, there was no provision under which a deputationist could request for repatriation on his own sweet will.

7. I have heard arguments from learned counsel for both the parties. It is not disputed that the petitioner was an employee of Directorate General of Civil Aviation, Ministry of Civil Aviation. It is not disputed that the services of the petitioner was placed at the disposal of National Airport Authority when the National Airport Authority came into existence in the year 1985. It is also not disputed that on the representation of the petitioner DGCA agreed for repatriation and the order of repatriation was passed on 4th February, 1987 intimating the respondent No.1 to relieve the petitioner. It was also specifically mentioned in the said order that the petitioner was to take place of Shri Harbans Lal who had retired in January, 1987. As a matter of fact, a wrong was committed by the respondent No.1 tried to keep the petitioner in an unauthorised and illegal manner in National Airport Authority. Moreover, proviso to Sub-section (3) of Section 13 of the National Airport Authority cannot be read to deny right to the petitioner which he had at the time his services were transferred on deputation with the National Airport Authority. The word occurring in the second proviso of the aforesaid sub-section (3) of Section 13 is an enabling provision for the benefit of such employees who were to be absorbed in the regular service of the National Airport Authority. It cannot be read to deny a right to an employee which he has on account of his service condition with his parent department under Fundamental Rules. As a matter of fact, this is a rule to benefit absorption

of an employee in the National Airport Authority. The arguments advanced by the respondents that prior to 2nd October, 1989, deputationist had no right to be relieved of his own, cannot stand the scrutiny of law. It is a right of an employee under the Fundamental Rules to ask for reversion from the deputation to join the parent department. In any event of the matter, if the respondent No.1 had any grievance against the petitioner, the right course for respondent No.1 was to obtain the permission of the respondent No. 2 to initiate any disciplinary action against the petitioner. It was also not done in this case. As a matter of fact, from the tenure of the notice, it seems that the respondent No.1 was taking action against petitioner against all well settled principles of service jurisprudence. Time and again petitioner brought to the notice of respondent No.1 that respondent No.1 had no jurisdiction to deal with the petitioner. The dilemma faced by the Inquiry Officer of respondent No.1 as I have reproduced above, speaks for itself. As a matter of fact, respondent No. 2 has ultimately had to give instructions to the respondent No.1 to relieve the petitioner and during the pendency of the writ petition, the petitioner joined the services of respondent No. 2 in the year 1996.

8. For the reasons stated above, I hold that non repatriation of the petitioner after 4th February, 1987 by the respondent No.1 was uncalled for and illegal. The respondent No.1 had no authority to retain the petitioner on its own after 4th February, 1987. As it is clear from the action on the part of respondent No.1 that the petitioner was not allowed to attend duty with the respondent No. 2, I direct that all the salary and consequential benefits up to the date of joining parent department in 1996 be paid by the respondent No.1 to the petitioner. Petitioner is not entitled to salary from the period of 15th May, 1986 to 4th February, 1987 as the petitioner chose not to work. As I have already held that the respondent No.1 did not have any authority to initiate any inquiry as the petitioner stood relieved from the services of the respondent No.1 from 4th February, 1987, the initiation to any disciplinary proceedings and the charge sheet based thereon has to be quashed and the same is hereby quashed. It is contended by Ms. Gosain that after the U.P.S.C. recommended to respondent No.1 that the matter regarding absorption of the petitioner be first settled, the question of absorption be decided by the Ministry as the matter is still pending with the Ministry. However, in view of directions that the charge sheet issued by the respondent No.1 was illegal, the issue does not survive any further. The petition is allowed. Rule is made absolute. The petitioner shall be entitled for all the consequential benefits and promotions in the office of respondents No. 2.

9. There will be no order as to costs.