

(2019) 08 DEL CK 0206

In the Delhi High Court

Case No : Civil Writ Petition No. 5769 Of 2016, Civil Miscellaneous Application
No. 16868 Of 2017, 25771, 25772 Of 2018, 4877 Of 2019

Mukesh Thakur

APPELLANT

Vs

Chairman Cum Managing Director, Engineering Projects India
Ltd. & Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Citation : (2019) 08 DEL CK 0206

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : K. K. Upadhyay, Jagriti Ahuja, Amol Sharma

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner prays as under:

(a) issue a writ of certiorari or any appropriate writ/order or direction calling for the records which led to the reduction in rank from the post of Group General Manager to General Manager and then suspension order by changing his headquarter from Jammu to Kolkata and thereafter issuance of article of charges dated 10.12.2014 and on consideration of the submissions made in the present writ petition, the same be quashed.

(b) set aside the order of reduction in rank.

(c) issue a writ of certiorari or any other appropriate order/direction calling upon the respondents not to take any steps pursuance to and in furtherance of the impugned order dated 29.09.2014.

(d) stay the operation of the impugned order dated 29.09.2014 as it was prayed by the petitioner to the Director Projects Disciplinary Authority vide letter dated 10.10.2014 that reversion from GGM to GM of applicant is a severe, final and

irrevocable step and no opportunity was given and management was very harsh in bye-passing the principles of natural justice.

(e) issue any other writ, order or direction granting the petitioner all other and consequential relief as are just and proper in the facts and circumstances of the case.

(f) since all the proceedings right from beginning i.e. the reduction in rank followed by suspension and thereafter issuance of charge sheet and then holding departmental inquiry be made null and void. The entire proceedings has been made just to debar the petitioner from further elevation to the next level of Executive Director within a period of one year and thereafter Board Level Post of Director of the Respondents Company or elsewhere in other Public Sector Enterprise through interview conducted by public Enterprises Selection Board after rendering one year service as Group General Manager,

(g) grant a further relief in the nature of mandamus is sought for commanding respondents not to take any further action either in furtherance or as a consequence of the impugned order dated 29.09.2014 and to grant and restore all benefits for which the petitioner is entitled but for the impugned punishment awarded to him vide order dated 29.09.2014.

(h) order consideration of candidature of the Petitioner for the post of Executive Director in the ensuing DPC, 2016 of EPIL as petitioner is eligible after completing 22 years service.

2. However, vide order dated 11.07.2016, learned counsel for the petitioner has submitted that the petitioner is confined to Prayer 'b', whereby he seeks to set aside the order for reduction in rank.

3. Case of the petitioner is that he had rendered 19 years of unblemished service in his previous service right from 06.09.1993 to 26.04.2012 wherein he has been on various positions - Assistant Engineer/ Engineer/ Sr. Engineer/ Dy. Manager/ Manager / now Sr. Manager in the pay scale of Rs. 43,200-3%-66,000.

4. The pre-employment history of the petitioner with SJVN Ltd. vis-a-vis EPIL with the designation and pay scale is appended below:

SJVN Ltd.

Sl. No.

Designation (level)

Period From to

Pay scale

Probation confirmation date

1.

Assistant Engineer

06.09.1993 to 31.12.1996

2250-400

Within stipulated period of one year

2.

Engineer

01.01.1997 to 31.12.1999

10750-300- 16750

Within stipulated period of one year

3.

Senior Engineer

01.01.2000 to 31.12.2002

13500-350- 18250

Within stipulated period of one year

4.

Dy. Manager

01.01.2003 to 31.12.2005

14500-350- 18700

Within stipulated period of one year

5.

Manager

01.01.2006 to 31.12.2008

16500-500- 22500

Within stipulated period of one year

6.

Senior Manager

01.01.2009 to 26.04.2012

43200-3%- 66000

Within stipulated period of one year

EPIL

Sl. No.

Designation (level)

Period From to

Pay scale

Probation confirmation date

1.

General Manager

27.04.2012 to 26.04.2013

43200-3%- 66000

Within stipulated period of one year

2.

Group General Manager

09.10.2013 to 08.10.2014*

-do-

(may please see footnote)

5. The Public Enterprises Selection Board (PSEB) has been set up with the objective of evolving a sound managerial policy for the Central Public Sector Enterprises ('CPSE') and in particular, to advise Government on appointment to their top management posts. However, if internal candidates are not available, preference is given to candidates working in other Public Sector Enterprises ('PSEs').

6. Learned counsel appearing on behalf of the petitioner submits that the petitioner has been aggrieved with the passing of impugned order of his reversion from his holding the substantive and permanent selection post of Group General Manager (E7A) in the pay scale of Rs. 43200- 3%-66000. The impugned reversion order dated 29.09.2014 was issued by lowering down his status and cadre affecting his overall seniority and his future advancement in career has been marred. The EPIL like other PSUs, made terms and conditions of Recruitment and Promotion Policy of the EPIL were made applicable to the petitioner like probation, confirmation etc.

7. The petitioner was confirmed to the post of General Manager (E7), on 26.04.2013 in the existing IDA pay scale of Rs. 43200-3%-66000 i.e. the probation period of the petitioner was timely and successfully completed within the stipulated period of one year.

8. The petitioner had been Senior Manager (Civil) in the same IDA pay scale of

Rs. 43200-3%- 66000 in his previous employment with SJVN Ltd. (A Joint Venture of Government of India and Government of Himachal Pradesh) and had been there in this pay scale from 01.01.2009 to 26.04.2012 and there also his services were confirmed within the stipulated period of one year.

9. Learned counsel for the petitioner further submits that the petitioner had joined the present service in respondents company because pursuance to implementation of 2nd Pay Revision Committee Recommendations approved by the Government of India for upward revision of pay scales of Non- Board Level Executives as well as supervisory and unionized workman category employees by the Pay Revision Committee chaired by Justice Major Jagannadha Rao, Retd. Judge of the Supreme Court of India. The pay scales of all the PSEs were revised by respective PSE's on its financial capacity and on the basis of existing designations adopted the Revised Pay Scales.

10. The department of Public Enterprises, New Delhi vide its Office Memorandum dated 26.11.2008 notified the applicable Revised Pay Scales pursuance to 2nd Pay Revision Committee under the chairmanship of Justice M. Jagannadha Rao, Retd. Judge of Supreme Court of India to recommend the revision of pay scales for categories of employees following ID Pay scales.

11. Learned counsel further submits that there are consolidated instructions on probation/ confirmation in Central Services under Office Memorandum dated 21.07.2014 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) and a copy where has been marked for distribution to all the ministries and departments. As per the policy the appointing authority may declare successful completion, extend the period of probation or terminate the services of a temporary employee on probation, on the basis of evaluation of performance. It further says that it is not desirable that a government servant should be kept on probation for a long period. Under the Sub-Head of 'Promotion' of the above office memorandum the guidelines stipulates as under:-

"(i) Person who are inducted into a new service through promotion shall also be placed on probation but there shall be no probation on promotion from one grade to another but within the same group of posts, except when the promotion involves a change in the group of posts in the same service e.g. promotion from Group 'B' to Group 'A' in which case the probation would be for the prescribed period."

Apart from that under the head progress during probation "Instead of treating probation a formality, the existing powers to discharge probationers should be systematically and vigorously used so that the necessity of dispensing with the services of employees at later stages may arise only rarely.

".....but there should be a very careful assessment of the outlook, character and aptitude for the kind of work that has to be done in the service before a probationer is confirmed."

"Termination of Probation

The decision whether an employee should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period that is within six to eight weeks, and communicated to the employee together with the reasons in case of extension. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service in any way should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement."

12. It is further submitted that the respondents company EPIL is having written policy in Human Resource Manual (HRM) having details like Recruitment and Promotion Policy, Conduct Discipline and Appeal Rules and other welfare schemes - EPF, Gratuity, House Building Advance, Festival Advance, Accommodation of Allotment, Travel Allowances etc.

13. Now, here is the root cause which has germinated into fatal consequences in the career of the petitioner not only in the respondents company but his future prospects of director level post, to which he is eligible by way of submission of applications are blocked.

14. The Public Enterprise Selection Board, (A Government Body) keeps on issuing vacancies of the Board Level Post of Chairman, Director in the PSEs and by dint of sufficient grade service petitioner is eligible but he cannot expect unless the whole proceedings initiated against him are not made and declared ultra virus. The entire reputation of the petitioner has been put to stake by the stark and gross violation of not only the existing rules and regulations of the company covering the probation of the petitioner and other related consequential atrocities pertaining to his financial benefits and seniority as he has been rendered by the respondents company junior to his juniors and he has been denied annual increment for the last three years.

15. On the other hand, learned counsel appearing on behalf of the respondents submits that the present petition is a simple case where an employee was on probation for one year and during the probation period, his performance was not found satisfactory. In terms of the appointment letter dated 30.09.2013 his services could have been terminated by ending the probation period. However, instead of adopting this route the respondents have placed him back on the post over which he had a lien being a departmental candidate. It may also be noted that the petitioner herein has already availed the statutory remedy of departmental appeal against the impugned order which has culminated into a final order passed by the Appellate Authority.

16. The clause 20 of the EPI Recruitment Policy provides that all appointment in the company are governed by the rules relating to probation and confirmation as notified from time to time or specific terms of appointment. Similarly clause 13 of the policy provides that if performance of the employee during probation is not

found satisfactory he/she will be reverted to the post from which he was promoted.

17. The services of the employees of respondent (LIC) are governed by the rules and policies framed by and for respondent. The rules applicable to other PSUs are not applicable to the employees of respondent.

18. While relying upon the Guidelines on Corporate Governance for Central Public Sector Enterprises, learned counsel for the petitioner states that these Guidelines and policies evolved by the Central Government with respect to the structure, composition, selection, appointment and service conditions of Boards of Directors and senior management personnel shall be strictly followed.

19. He submits that the petitioner is a Senior Manager, therefore, the Guidelines of the Central Government is relevant in the present case. But the fact remains that the statutory rules are there, whereby the respondents have power to remove the employee who is on probation, based upon the performance, if not found satisfactory and has power to revert him/ her to the original post.

20. It is not in dispute that the probation of petitioner was for one year and to be extended by three months, but not twice. The petitioner was appointed as Group General Manager (Civil) on 30.05.2013 and an impugned order is passed on 29.09.2014. Thus, the impugned order passed by the respondent is within the extended period of probation. The Guidelines issued by the Central Government is not applicable in the present case for the reason that the respondent has satisfied the statutory rules, whereby the impugned order has been passed. If the other PSE has adopted the guidelines of the Central Government, that cannot be made mandatory for the respondent herein.

21. It is settled law that when the statutory rules and administrative guidelines both exist, the statutory rules will prevail over the administrative guidelines. Accordingly, this Court hereby finds no merit in the present petition and the same is accordingly dismissed.