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(2012) 08 DEL CK 0500

In the Delhi High Court

Case No : Writ Petition (C) No. 3352 of 2012 and CM No. 7104 of 2012

N.S. Padmanabhan — APPELLANT

Vs

EDCIL (India) Ltd. — RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:
Constitution of India, 1950 — Article 14, 20(2)

Citation : (2012) 08 DEL CK 0500

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : P. Venkataramani, Ms. Antima A. Bazaz and Mr. Ardhendumauli K. Parsad, for the Appellant; Shobha, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner seeks quashing of the charge sheet/memorandum dated 14.05.2012, as being arbitrary, unreasonable, in excess of jurisdiction and being violative of Article 14 as well as Article 20 (2) of the Constitution of India. Mr. P. Venkataramani, learned senior counsel appearing on behalf of the petitioner has submitted that the impugned charge sheet has been issued on the very same set of facts/allegations, on which the Competent Authority had already sought for clarification from the petitioner and having considered the detailed reply submitted by the petitioner, the Competent Authority i.e. CMD of the respondent corporation was pleased to close the matter vide its order dated 14.07.2009, having found no substance in the allegations made therein against the petitioner.

2. The learned counsel has further submitted that the very same issue has now sought to be opened by the impugned charge sheet without even whispering about the earlier departmental enquiry and without having assigning any reason to justify the second round on the same set of allegations, which is impermissible for the respondent corporation to reopen the closed matter in which the petitioner had already been exonerated on consideration of his reply.

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3. Learned counsel for the petitioner has relied upon the law laid down by the Hon''ble Supreme Court in a matter of Lt. Governor, Delhi & Ors. Vs. HC Narender Singh (2004) 13 SCC 342, wherein it has been held that second proposed action on the same cause of action, upon which action was already taken, would amount to double jeopardy.

4. Similar view has also been taken by the Hon''ble Supreme Court in Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, .

5. He has also relied upon Kanailal Bera Vs. Union of India (UOI) and Others, , wherein it was held that second enquiry on the same charge which could not be proved during the first enquiry is not permissible.

6. Learned counsel for the petitioner has submitted that the respondent in the counter-affidavit has even admitted that the Competent Authority after examining the memorandum dated 05.01.2009 issued by the then CVO, reply dated 30.01.2009 of the petitioner to the same memorandum and the relevant file, came to the conclusion that there was no evidence on record to prove any manipulation or mala fide on the part of the petitioner. Therefore, the said complaint was closed. The petitioner was only counseled to be careful in future.

7. In reply, the respondent also stated in response to the communication dated 27.03.2012 that CVC advised for initiation of minor penalty proceedings against three officers including the petitioner, otherwise the matter was closed at the departmental level by the Competent Authority.

8. Mr. P. Venkataramani, learned senior counsel appearing on behalf of the petitioner has submitted that the CVC is not even competent to give first stage opinion on the issue and the memorandum issued against the petitioner on the recommendations of CVC is without jurisdiction.

9. Learned counsel has referred to A. N. D''Silva Vs. Union Of India, 1962 Suppl 1 SCR 968, wherein it was held that Commission''s function is purely advisory. It is not an Appellate Authority over the Inquiry Officer or the Disciplinary Authority. Therefore, the advice tendered by the Commission is not binding on the Government. Therefore, no third party like CVC or the Central Government could dictate the Disciplinary Authority or the Appellate Authority as to how they should exercise their power and what punishment they should impose on the delinquent officer.

10. Ms. Sobha, learned counsel appearing on behalf of the respondent has submitted that the respondent has received communication dated 06.07.2010 from the Ministry, therefore, issued the memorandum in question against the petitioner. She has fairly conceded that no evidence was available against the petitioner and the Competent Authority i.e. CMD has already exonerated the petitioner. Even it is established by the respondent that third person was responsible for the misdemeanor not the petitioner.

11. After hearing learned counsel for the parties, it is emerged that after taking

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clarification from the petitioner and considering his reply, the Competent Authority i.e. CMD of the respondent corporation closed the matter against the petitioner vide order dated 14.07.2009, having found no substance in the allegations made against the petitioner. Therefore, on the same set of allegations another second charge sheet/memorandum cannot be issued against the petitioner as law has already been settled in the case of Lt. Governor, Delhi & Ors. Vs. HC Narender Singh (supra).

12. It is also emerged from the above discussion that the respondent council has received a communication dated 06.07.2010 from the Ministry and thereafter issued the memorandum dated 14.05.2012, in question, against the petitioner which, in my opinion, is arbitrary, illegal and without jurisdiction because of the fact that the aforesaid charge sheet/memorandum dated 14.05.2012 was issued against the petitioner in pursuance to a communication dated 27.03.2012 issued by CVC, wherein it advised for initiation for minor penalty proceedings against three officers including the petitioner. Once the matter has been closed by the Competent Authority, the second charge sheet is, therefore, illegal and without jurisdiction.

13. Before parting with the judgment, it is pertinent to mention here that during the course of arguments, learned senior counsel for the petitioner has submitted that in case the petition is allowed, the respondent should not create any hurdle in case the petitioner seeks relieving from them as he has received an offer of appointment as Senior Manager in the National Institute of Immunology and the last date for joining is 03.09.2012.

14. Learned counsel appearing on behalf of the respondent has assured this Court that in case any request comes from the petitioner, the same shall be accepted in time without any further ifs and buts. In view of the above discussion, the instant petition is allowed with no orders as to costs.

CM No. 7104/2012

With the disposal of the petition itself, the instant application has become in fructuous and the same stands disposed of as such.

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