
(2002) 04 DEL CK 0172

In the Delhi High Court

Case No : Civil Writ Petition No. 4946 of 2001

Paresh Nath Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Citation : (2002) 04 DEL CK 0172

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Dinesh Dwivedi and Geetanjali Mohan, for the Appellant; Jayant Bhushan, Manish Bishma and Arun Bhardwaj, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioner was appointed as Director (Finance) of respondent no.3 on 10.4.1995 after going through the due process of selection for a period of five years and completed the tenure on 14.5.2000. A selection Board was again held which recommended the appointment of the petitioner for another five years period of time and on 13.11.2000 an order was passed by respondent no.2 for continuation of the petitioner until further orders.

2. The second appointment on regular basis for period of five years did not take place as the Central Vigilance Commission, respondent no.4 has not granted its clearance and the order dated 13.11.2000 was passed pending such clearance from respondent No. 4.

3. Respondent No.4 conducted a preliminary enquiry in respect of certain complaints against the petitioner during his tenure with respondent No.3 and submitted its recommendations to the Ministry of Commerce which recommended major penalty proceedings should be held against petitioner in respect of certain charges after holding the departmental enquiry. On 4.5.2001 a charge sheet was issued to the petitioner. There has been certain interim exchange of views since the Central Vigilance Office of the Ministry had recommended that the enquiry against the petitioner should be brought to an

end but when the matter was again referred to the CVC, the said view did not find favor with CVC-respondent No. 4.

4. The petitioner is aggrieved by what is contended by learned Sr. counsel for the petitioner to be the termination of his service even though the inquiry proceedings are pending against him. It is the contention of the learned Senior counsel for the petitioner that the petitioner has been and is willing to join the enquiry proceedings to clear his fair name but the service condition of the petitioner should be protected till such time the enquiry is completed as otherwise the very purpose of holding enquiry would be frustrated.

5. Learned counsel for the petitioner contends that the procedure followed for the preliminary enquiry against the petitioner is contrary to the regulations of the respondent No. 1 in this behalf and specifically referred to regulation 12.2.3 which is as under :

12.2.3 During the course of preliminary enquiry, the concerned employee may as a fundamental administrative requirement also be given an opportunity to tender his version of the facts so as to find out if he has any plausible Explanation. In the absence of such an Explanation. In the concerned employee may be proceeded against unjustifiably. There is, however, no question of making available to him any document at this stage. Such an opportunity need not be given in cases in which a decision to institute department proceedings is to be taken without any loss of time., e.g. in cases in which the public servant is due to superannuate soon and it is necessary to issue the change-sheet to him before his retirement.

6. Learned counsel for the petitioner thus contends that during the course of the preliminary enquiry, the petitioner should have been given an opportunity to put forth his point in view. The result of the so called one sided enquiry according to learned counsel for the petitioner is that the petitioner has been visited with serious civil consequences without giving the petitioner an opportunity and thus the procedure is contrary to the regulations, not fair or just and violative of the Constitution of India.

7. Learned counsel for respondents 1 and 2 on the other hand has contended that the petitioner has no right to continue to occupy the post in view of the fact that the initial appointment of the petitioner was itself only for a period of five years which he has rendered and the petitioner was continued in service only pending the final result of the recommendations to appoint him for a second term which did not fructify in view of the ultimate opinion of respondent No. 4 to the effect that after due consideration prima facie case has been made out against the petitioner which was sufficient to deny the petitioner a clearance and calling for appropriate departmental proceedings.

8. Learned counsel for respondents 1, 2 and 4 has also contended that the purposes of the regulation 12.2.3 of the CVC regulations are not mandatory as the expression "may" has been used and has further contended that the basic

purpose of the preliminary enquiry is to find out whether the allegations made against the petitioner were without any basis or whether there was some substance which required departmental proceedings.

9. Learned counsel for the respondents has also submitted that the enquiry proceedings can be conducted expeditiously but the petitioner has no right to continue on the post of Director (Finance) of respondent No. 3 since his term has ended nor he can claim right for the post to be kept vacant pending the enquiry since the exigencies of Administration may require filling up of the said post. It is contended that the petitioner will have a chance to clear his name in the enquiry proceedings though if in the meantime some other officer is appointed to the said post, petitioner will not be able to claim appointment to the said post but that his consequence is an exigency of service and of the denial of Vigilance certificate.

10. I have heard the learned counsel for the parties and considered the material placed on record. I have also had the benefit of going through the files of the CVC and the noting made in respect of the proposed action to deny the petitioner the vigilance certificate.

11. The first aspect which needs to be examined is the right of petitioner to continue in service. Admittedly the petitioner's appointment was made only for a period of five years which ended on 14.5.2000. In my considered view thereafter there is no right in the petitioner to continue to work on the said post. The petitioner has, however, continued to work in view of what I consider it to be an interim arrangement pending appointment in pursuance to the recommendations by the concerned authorities. In order for the recommendation for the second five year to come into operation, CVC's clearance was required. For the sake of argument if it is assumed that another person was to be so appointed for the next five years, it was always open to the respondent-authorities to continue the petitioner in service beyond the period of five years as an interim arrangement pending completion of formalities for the new candidate. There would be no difference just because the petitioner happens to be the same candidates who was earlier working with respondent No. 3. Thus in my considered view it is not permissible in law to restrain the respondents from taking any appropriate action they may deem expedient in respect of the continuation or cessation of the extended period of service of the petitioner and the petitioner cannot claim any right to continue in service.

12. The second aspect which arose for consideration is the proposed departmental proceedings in pursuance to the recommendations of respondent No. 4. There is force in contention of the learned counsel for the respondents that it is not a mere complaint which had resulted in the proposed action. Certain preliminary enquiries were made and the respondent No. 4 came to the conclusion that there was merit in the complaint though the detailed departmental enquiry was necessary. There is no doubt that in regulations 12.2.3 the word used is "may". It may also be noted that petitioner will get a chance at

the stage of the enquiry to clear his fair name. Learned counsel for the respondent in this behalf has referred to the judgment of Supreme Court in the case of Champaklal Chimanlal Shah Vs. The Union of India (UOI), to contend that the scheme of preliminary enquiry and the final enquiry is different. Learned counsel for the respondent also referred to the para-II of the said judgment and referred to the observations in respect of the termination of the service of a temporary servant when the spot he is holding come to an end and in which case nothing further is to be done. Learned counsel referred to analogy to contend that once the term for which the petitioner was appointed came to an end, petitioner would have no further rights on the post.

13. There is no doubt that once there is cessation of the services of the petitioner, there will be no question involved of termination of his services as a consequence of the departmental proceedings. The petitioner will, however, have an opportunity to clear his name before the departmental proceedings and in any case if his is aggrieved by any mode or manner or the conduct of the disciplinary proceedings, that will be a matter of recourse to different legal proceedings.

14. Learned Sr. counsel for the petitioner referred to the judgment of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, in support of his contentions that procedure to be followed should be just and fair and once civil rights are being adversely affected, the party has a right to be heard. Learned counsel also referred to the judgment of Supreme Court in S. Govindaraju Vs. Karnataka S.R.T.C. and Another, again for the same proposition that there must be minimal compliance of the principles of natural justice by affording the aggrieved party to submit an Explanation failing which the impugned order was liable to be quashed.

15. Learned counsel for the respondent on the other hand referred to the judgment of Supreme Court in the case of State of U.P. and another Vs. Girish Bihari and others, to contend that there was no right of extension of the petitioner in service and no right to be heard before grant of such extension.

16. In so far as the grant of extension is concerned, I have already held as aforesaid that the petitioner has no right for such extension. There is no doubt that before the petitioner can be visited with any adverse consequences, he must have a right to be heard and present his point of view. The question remains whether such a right is to be given both at the stage of preliminary enquiry and at the stage of final enquiry or the principles would be met if such an opportunity was given at the stage of final enquiry.

17. The purpose of the preliminary enquiry is to find out whether there is some merit in the complaint as to warrant detailed enquiry or that the matter should be closed at the threshold. Once it is decided that proper departmental enquiry is to be held and the petitioner is to be afforded an appropriate opportunity to defend himself in such proceedings, in my considered view requirement of natural justice would stand fulfilled and the petitioner will have remedy against

any civil consequences if he is aggrieved by the final order of the disciplinary authority.

18. It has to be appreciated that end of service of the petitioner is strictly not by termination in the normal sense of the world. This is so since tenure for which the petitioner was appointed was a fixed tenure. The continuation of the petitioner after the end of fixed tenure was only an interim arrangement pending the final appointment which has not taken place since petitioner was the person recommended by the PESB but ultimately could not be appointed due to lack of clearance from the CVC.

19. However, it is necessary to bring to an end quickly this issue since continuation of departmental proceedings over a longer period of time would cause prejudice to the petitioner for any employment. Learned counsel for the respondents on instruction states that the departmental proceedings can be completed within a period of three months. It is directed that the petitioner will cooperate with proceedings and respondent will take all steps to complete the disciplinary proceedings within a period of three months.

20. I am of the considered view that exigency of administration may require to filling up of the post and thus it is not feasible to restrain filling up of the post. However, if the petitioner is exonerated after departmental proceedings and the post has still not been filled up, the case of the petitioner shall be considered favorably in view of the fact that the petitioner had been selected by PESB and only impediment in the appointment of the petitioner was the refusal of respondent No. 4 to issue the vigilance certificate.

21. The writ petition is disposed of in aforesaid terms leaving the parties to bear their own costs.

CM 8527/2001

In view of the order passed in the writ petition, the application does not survive for consideration and is dismissed. Interim orders stand vacated.