
(2005) 11 DEL CK 0121
In the Delhi High Court
Case No : Writ Petition (C) 3750 of 1998

Pradeep Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Citation : (2005) 125 DLT 323 : (2005) 85 DRJ 424 : (2006) 3 SLJ 107

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : U. Srivastava, for the Appellant; Gaurav Duggal, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—The writ petition has already been admitted on 28th February, 2000. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition challenges the termination order dated 24th November, 1997 passed by Adm Officer, CO I for Commander of Border Road Task Force, respondent No.5.

3. The facts of the case as averred in the writ petition as follows:-

The petitioner was serving in Border Roads Task Force(now known as `GREF`) since 19th November, 1993. He was on probation initially for a period of two years and his probation was extended after taking into account his overall performance. Initially the period of probation was extended from 19th November, 1995 to 18th November, 1996. Thereafter the period of probation was again extended from 19th November, 1996 to 18th November, 1997. The petitioner was issued a Memorandum dated 24th October, 1993 where certain shortcomings/misconduct on his part were pointed out and the Commandant had came to a prima facie conclusion that the petitioner was not a fit person to retain in service.

4. The memorandum dated 24th October, 1997 read as follows:-

"Keeping the above misconducts in view, the undersigned being the appointing authority arrived to the conclusion that the said GS-17507N L/Hand (NT) Pradeep Kumar is not a fit person to retain in GREF service and to be removed from service during the extended period of probation period.

GS-1750/5N L/Hand (NT) Pradeep Kumar is hereby given an opportunity to submit his Explanation in order to justify why he should not be removed from service during the extended probationary period.

Your reply should reach the undersigned within 10 days from the date of receipt of this letter."

The petitioner submitted in his reply denying the charges made in the aforesaid application on 31st October, 1997. However, it appears that the respondents did not pursue the said memorandum and in fact resorted to a simple order of termination dated 18th November, 1997. The petitioner has challenged the aforesaid termination on the ground that in spite of the termination being founded on the allegations for which the petitioner was issued memorandum on 24th October, 1997 and had submitted a reply on 31st October, 1997 his services were terminated by a seemingly innocuous order of termination dated 24th November, 1997. He submitted that no enquiry was conducted. The services of the petitioner was terminated and were obviously founded on the said allegations and thus stood vitiated as per the law laid down by the Hon"ble Supreme Court in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, . The relevant portion of the said judgment in Dipti Banerjee's case (supra) reads as follows:-

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

5. The learned counsel for the petitioner, Shri U. Srivastava has relied upon the first part of the said paragraph to contend that the order of termination dated 24th November, 1997 was founded on the allegations and thus vitiated. However, the learned counsel for the respondents, Shri Gaurav Duggal has in fact relied upon the same judgment in Dipti Banerjee's case (supra) and has contended that if the enquiry was not held and no findings were arrived at and the employer eventually not inclined to conduct an enquiry, the memorandum of charges at

best could be construed to be a motive of the order of termination and hence the order could not be held bad as laid down by the Hon''ble Supreme Court in the aforesaid judgment in Dipti Banerjee's case (supra).

6. Taking into account the facts of the case which indicates that the petitioner was issued a memorandum on 24th October, 1997 and submitted his reply to the said memorandum but since no enquiry was eventually held and no findings were arrived at in the enquiry, as per the position of law laid down in the above case in Dipti Banerjee's case (supra), at best the petitioner's misconduct as alleged in the memorandum dated 24th October, 1997 could be a motive for leading to the impugned order and could not thus be faulted. In the absence of an enquiry and findings pursuant to an enquiry the termination cannot be said to be founded on the allegations comprising the memorandum.

7. The learned counsel for the petitioner has relied upon the judgments of the Hon''ble Supreme Court in D.K. Yadav v. J.M.A. Industries Ltd., reported as 1993 SCC 723 and Dayaram Dayal Vs. State of M.P. and another [OVERRULED], wherein the following position of law has been held in D.K.Yadav's case (supra):-

"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, the Constitution Bench held that 'civil consequences' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affect a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country ... they include...rights capable of being enforced or redressed in a civil action.... In State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice."

In our view the said judgment related to a fair and reasonable opportunity in accordance with the principles of natural justice so as to enable an alleged delinquent a fair opportunity to meet the case before any decision adverse to the employee is taken. The above judgment in our view has no direct bearing on whether the charges contained in the memorandum dated 24th October, 1997 were the foundation or the motive for the order of termination of the petitioner's service dated 24th November, 1997.

8. Accordingly we find no merit in the writ petition which is dismissed and stands disposed of accordingly.