

(2005) 05 DEL CK 0030
In the Delhi High Court
Case No : Writ Petition (C) 8199 of 2005

Praveen Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Citation : (2005) 82 DRJ 699

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Umesh Sharma, for the Appellant; Rajan Sabharwal, Respondent No. 1 and Raj Birbal and Sachin Sood, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In this Petition it has been prayed that a Mandamus may issue directing Respondent No. 2, Hotel Corporation of India, to comply with the Circulars of the Central Vigilance Commission; that a Mandamus should issue quashing the so-called Regulations framed by Respondent No. 2 and that the Inquiry Officer appointed by Respondent No. 2, not being a public servant, should be changed. The Central Vigilance Commission (CVC) has, in terms of its letter dated 18.11.2004, directed Chief Vigilance Officers of Organisations such as Respondent No. 2, to review the service Regulations and amend them to ensure that retired persons are not appointed as Inquiring Authorities. It is quite clear that this letter is predicated on the decision of the Hon'ble Supreme Court in Ravi Malik v. National Film Development Corporation Limited and Ors., Civil Appeal No. 4481/2004, which is reproduced below in entirety, since it has not been reported:

Leave granted.

The respondent National Film Development Corporation Ltd. is a Government of India enterprise. Regulations were framed known as the Service Rules and Regulations 1982 (hereinafter referred to as the "Regulations") in respect of the

employees of the respondent No. 1. The Regulations, inter alia, contain conduct, discipline and appeal Rules, under which disciplinary action can be taken against an employee for misconduct by imposition of either a minor or a major penalty. As far as the procedure for imposing a major penalty is concerned, Rule 23 lays down the procedure. The subject matter of debate before us is the construction of Rule 23(b) which reads as follows:

"23 (b) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself enquire into, or appoint any public servant, hereinafter called the inquiring authority to inquire the truth thereof".

A retired judge of the City Civil Court was appointed as the Inquiry Officer for the purpose of inquiring into the truth of the imputations against the appellant. The appellant challenged this appointment by way of a petition under Art. 226 of the constitution of India. It was the appellant's submission that a retired judge was not a "public servant" within the meaning of Regulation 23(b). In addition the appellant challenged the refusal of the inquiry officer to make available certain documents to him.

The writ petition was partially allowed insofar as it pertained to the grant of copies of the documents. However, the submission relating to the competence of a retired judge to be appointed as an inquiry officer under Rule 23(b) was rejected. The High

Court construed the words "public servant" in the context of Rules 7 and 9 of the 1982 Regulations.

Rule 9 in fact has no application whatsoever. It provides for matters concerning the conditions of service of public servants not covered by the Rules and reads thus:

"Rule 9 : In respect of matters concerning the conditions of service not covered by these rules, or specified decision of the Board, rules and procedures set forth in the government of India's F.R.s and S.R.s including the orders and decisions of the Government of India under Audit instructions, there under, and the orders issued by the B.P.E. from time to time, may be considered as guiding principles of deciding any individual cases arising in the Corporation".

As far as Rule 7 is concerned it reads as follows:

"Rule-7. Interpretation not to be repugnant to Act : The interpretation of these regulations and issue of Administrative instructions pursuant thereto, shall not be repugnant to the provisions of the Companies Act, Articles of Association of the corporation and the various Acts, Rules, Notifications, directions issued by Government and other statutory authorities from time to time".

In this case the Central Vigilance Commission had issued instructions permitting

retired officers to be appointed as Inquiry officers. The words "public Servant" used in Rule 23(b) mean exactly what they say, namely, that the person appointed as an inquiry officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of "public servant" for the purpose of Rule 23(b). Rule 7 cannot be interpreted to mean that the direction issued by the Central Vigilance commission would override any interpretation which a Court may put, as a matter of law, on it.

The appeal is accordingly allowed and the finding of the High Court on the interpretation of Rule 23(b) is set aside. It will now be open to the respondents to appoint any serving public servant to hold the inquiry if it so desires. It is being made clear that the inquiry will proceed from the stage at which it has reached before the inquiry officer whose appointment is today held to be incompetent.

2. The directions of the CVC are not justifiably extractable or derivable from the said decision of the Apex Court as is evident from a reading of the Judgment in Ravi Malik 's case (supra) since the appointment of a retired Judge in that case was in conflict with the Regulations itself. This is not so in the case in hand. The two Rules are reproduced in juxtaposition in order to underscore the fact that so far as the Rules applicable to the parties in this case are concerned, the wordings "or any other person from outside the Corporation" is not found in the Rules applicable to the National Film Development Corporation Limited.

23(b) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself enquire into, or appoint any public servant, hereinafter called the inquiring authority to inquire the truth thereof."

2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiry into the truth of any imputation of misconduct or misbehavior against an employee, it may itself enquire into, or appoint any public servant or any other person from outside the Corporation (hereinafter called the inquiring authority) to inquire the truth thereof."

3. The Hon"ble Supreme Court, Therefore, clarified that since the appointment of a retired Judge of the City Civil Court was in the face of Regulations to the contrary, that appointment did not replace by law. Therefore, the Office Order of the CVC dated 18.11.2004 is based on a fallacious reading and understanding of the said precedent. What the CVC ought to have clarified is that the natural consequences of the decision in Ravi Malik's case (supra) is that if the applicable Rules envisage the appointment of a public servant, no other person could have been appointed as the Inquiring Authority. For these reasons I find no merit in the contention that a Mandamus must issue.

4. It is next contended that these Regulations have not been Notified or

Gazetted. Each and every Body of Service Rules does not require to be Notified. The purpose of having such Rules is to ensure the availability of at least an implied agreement that should be applied to all employees. Once Service Rules or Regulation are already in existence it obviates or eradicates any possibility of arbitrary action on the part of the Management. It is not the Petitioner's case that these Rules have been formulated and applied to him in a mala fide, special or singular manner.

5. It is next contended that the Petitioner must be held to the parameters within which WP(C) No. 2991/2005 was disposed of. In that case the Respondents had agreed to appoint a Serving Officer as the Inquiry Officer. On general principles I cannot accede to the argument that appointment of a retired person would not ensure an impartial inquiry. Persons within the Organisation concerned may harbour prejudices one way or the other which may affect their reasons and decisions. Persons within the Organisation are also vulnerable to pressures from senior officers. As against this the only critique in appointing retired persons or persons who are not public servants is that their independence may be purchased because of the unusually lucrative fees. There is more likelihood of a Serving Officer to be partial than of a person from the outside Organisation. The previous Writ Petition was clearly disposed of on the submission made on behalf of the Respondent itself that a Serving Officer would be appointed.

6. This Court had directed that the Inquiry should be finished within sixty days. It has been explained that the public servant, who is an employee of Air India, has not found time for the Inquiry. Inquiries are time-consuming and it is quite likely that public servant can be better utilised in other respects. The likelihood of such a situation recurring is borne out from this sequence of events and thus speaks in favor of the expediency of appointing persons outside the Organisation who have relatively more time and a greater inclination to complete the Inquiry expeditiously. The concession made in the previous Writ Petition cannot estop or act a res judicata against the Respondents in other matters. This has itself been clarified in the Order dated 1.3.2005 where the previous Writ Petition was disposed of.

7. On all counts, Therefore, I find the Petition to be without merit.

8. Dismissed.