

(2013) 01 DEL CK 0395

In the Delhi High Court

Case No : LPA 799 of 2012 and CMs 20352, 20353, 20354 and 20354 of 2012

Rajesh Gouhari and Another

APPELLANT

Vs

N.S. Padmanabhan and Another

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Central Vigilance Commission Act, 2003 — Section 17

Citation : (2013) 01 DEL CK 0395

Hon'ble Judges : D. Murugesan, C.J.; V.K. Jain, J

Bench : Division Bench

Advocate : Pyoli, for the Appellant;

Final Decision : Dismissed

Judgement

1. Respondent no. 2 Educational Consultants India Ltd. issued a Memorandum to respondent no. 1 Mr. N.S. Padmanabhan, on 5.1.2009, seeking his clarification on a complaint made against him in respect of appointment to the post of Manager (Finance) in respondent no. 2. He submitted his reply dated 30.01.2009 and refuted the allegations made against him. It appears that the complaint against respondent No. 1 was also investigated by the Chief Vigilance Officer of respondent no. 2 and a report dated 27.3.2009 was submitted by him to respondent no. 2. Vide order dated 14.7.2009, the CMD of respondent no. 1, who was also the Disciplinary Authority in his case accepted the clarification submitted by the respondent no. 1 and held that there was no substance in the allegations made against him. Vide OM dated 12.11.2009, the Central Vigilance Commission (CVC) advised Ministry of Human Resource Development to submit the case through CMD of respondent no. 2 for obtaining its first-stage advice with draft charge-sheet and other requisite documents. This led to a charge-sheet dated 14.5.2012 being issued to respondent no. 1 on the very same allegations which were contained in the OM dated 5.1.2009 which had already been dealt with by his Disciplinary Authority vide a speaking order dated 14.7.2009. The respondent no. 1 filed a writ petition being W.P.(C) No.

3352/2012 challenging the aforesaid charge-sheet, inter alia, on the ground that another charge-sheet on the very same set of facts/allegations could not have been issued, since doing so would amount to double jeopardy. The learned Single Judge vide impugned order dated 17.8.2012 upheld the contention of the respondent no. 1 and allowed the writ petition.

2. The appellants who were not a party to the writ petition is seeking leave to file an appeal against the aforesaid order primarily on the ground that the Disciplinary Authority, before deciding to close the matter was required to refer the matter back to the Commission along with the reasons for disagreement with the Commission. This is also the case of appellant no. 1 Mr. Rajesh Gouhari that the disciplinary action against respondent no. 1 was initiated on the complaint made by his father. The appellant no. 2 is an Association of SC/ST Employees Welfare of respondent no. 2.

3. It is not in dispute before us that the Memorandum dated 14.5.2012 was based upon the very same allegations which were dealt with by the Disciplinary Authority of respondent no. 1 vide the aforesaid order dated 14.7.2009. We also find from a perusal of the impugned order that respondent no. 2 Educational Consultants India Ltd. had admitted before the learned Single Judge that there was no evidence available against respondent no. 1 and the Competent Authority had already exonerated him. We also find that from the perusal of the impugned order that the respondent no. 1 had issued the Memorandum dated 14.5.2012 on account of a communication dated 6.7.2010 which it had received from Government of India, Ministry of Human Resource Development and a communication dated 27.3.2012 was sent by CVC advising minor penalty proceedings against three persons including respondent no. 1 in the appeal. Section 17 of Central Vigilance Commission Act, 2003, on which reliance has been placed by the learned counsel for the appellant/petitioner, inter alia, provides that the report of the inquiry undertaken by any agency, on a reference made by the Commission, shall be forwarded to the Commission which shall, on considering such report and after taking into consideration other factors advise the Central Government, corporation established by or under any Central Act or the Government company as the case may be, as to the further course of action. The Central Government, the corporation, or Government company etc., as the case may be, is required to consider the advice of the Commission and take appropriate action. In case they do not agree with the advice of the Commission, they are required to communicate the same to the Commission along with the reasons to be recorded in writing. It would thus be seen that the aforesaid provision applies to only those inquiries which are made on reference by the Commission. Neither the Memorandum dated 5.1.2009 nor does the decision of the Disciplinary Authority dated 14.7.2009 indicates that the inquiry resulting into the decision dated 14.7.2009 was initiated on a reference from the Commission. If that be so, the provisions of Section 17 of Central Vigilance Commission Act, 2003 would not apply. The impugned order dated 17.8.2012 has been accepted by the respondent no. 2 Educational Consultants India Ltd.

which has not filed any appeal against the said order. As noted earlier, the case of respondent no. 2 before the learned Single Judge was that there was absolutely no evidence against the respondent no. 1. Though CVC was not a party to the writ petition filed by respondent no. 1, no application has been filed by it seeking permission to file an appeal against the order dated 17.8.2012 on the ground that the aforesaid order was in contravention of the provisions contained in Section 17 of the Central Vigilance Commission Act, 2003. The Ministry of Human Resource Development, which was issued communications dated 6.7.2010 and 27.3.2012 by the CVC has also not sought leave to file an appeal against the impugned order dated 17.5.2012. In these circumstances, when the Disciplinary Authority has not challenged the impugned order and neither the CVC nor the Union of India seem to be aggrieved from the said order, we see no justification for granting permission to the appellant to file an appeal against the aforesaid order. Accordingly, we dismiss the appeal as well as the accompanying applications.