
(2011) 10 CHH CK 0017
In the Chhattisgarh High Court
Case No : Writ Appeal No. 481 of 2011

Randhir Deyasi

APPELLANT

Vs

Chhattisgarh Lok Aayog and Others

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Chhattisgarh Lok Aayog Adhiniyam, 2002 — Section 11, 19(4)(ii), 2(h)

Citation : (2012) 2 MPHT 85

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Vivek Sharma, for the Appellant; Sumesh Bajaj, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—Heard. This writ appeal has been filed against the order dated 29-9-2011 passed by the learned Single Judge in W.P. (C) No. 5820/11 dismissing the writ petition filed by the petitioner/appellant herein against the order dated 31-5-2011 passed by respondent No. 1 in Case No. 497/03.

2. Facts of the case, in brief, are that on 26-2-2001 complainant-Dr. S.N. Agarwal lodged a complaint against the appellant herein with the respondent No. 1 alleging that the appellant herein is in possession of the properties disproportionate to his known sources of income. On receipt of the complaint, the respondent No. 1 conducted an inquiry and found that the appellant along with one Shri Ashish Toppo, Assistant Engineer, has committed misconduct as defined u/s 2 (h) of the C.G. Lok Aayog Adhiniyam, 2002 (hereinafter shall be called "the Adhiniyam, 2002") and therefore, vide order dated 31-5-2011 the respondent No. 1 recommended for initiation of Departmental Enquiry against the appellant herein. Respondent No. 1 further recommended that in the Departmental Enquiry if the charge of misconduct is proved against the charged public servants then penalty of compulsory retirement from the services be imposed on them. Being aggrieved by the said recommendations, the appellant

has preferred a writ petition and the same has been dismissed by the learned Single Judge vide impugned order.

3. Learned Counsel for the appellant would argue that the recommendations made by the respondent No. 1 to take disciplinary action against the appellant etc., are arbitrary and contrary to the provisions of Section 11 of the Adhiniyam, 2002, as the same violates principles of natural justice and also beyond the powers conferred on the respondent No. 1 by law.

4. On the other hand, learned Counsel appearing for the respondent No. 1 has supported the orders passed by the learned Single Judge and the respondent No. 1.

5. We have heard learned Counsel for the parties. We have also perused the impugned order as also the order passed by the respondent No. 1.

6. Learned Single Judge has dismissed the writ petition on the ground that the same is premature at this stage as no order has been passed pursuant to notice dated 29-7-2011 issued to the petitioner along with copy of the report of respondent No. 1.

7. Section 11 of the Adhiniyam, 2002 reads as under:--

11. Reports of Lok Aayog. - (1) If after enquiry of any action in respect of which a complaint has been received the Lok Aayog is of the opinion that the complaint is established, it shall by a report in writing, communicate its findings and recommendations along with the relevant documents and other evidence to the Competent Authority.

Explanation:- Opinion of Lok Aayog in relation to any complaint including a decision, report, finding or conclusion thereon, means the opinion of the majority of its members.

(2) The Competent Authority shall examine the report forwarded to it under sub-section (1) and intimate to the Lok Aayog within three months of the date of receipt of the report, the action taken or proposed to be taken thereon.

(3) If the Lok Aayog is satisfied with the action taken or proposed to be taken on its recommendations, it shall close the case under information to the complainant, the public servant and the Competent Authority, and if in any case the Lok Aayog is of the opinion that the case so deserves, it may make a special report upon the case to the Government and also inform the complainant.

8. A bare reading of Section 11 of the Adhiniyam, 2002 would show that after enquiry of any action, in respect of which a complaint has been received, the Lok Aayog is of the opinion that the complaint is established, it shall by a report in writing, communicate its findings and recommendations along with the relevant documents and other evidence to the Competent Authority, who, in turn, shall examine the report forwarded to it under sub-section (1) and intimate to the Lok Aayog within three months of the date of receipt of the report, the action taken

or proposed to be taken thereon.

9. Further, according to definition given in the Concise Oxford English Dictionary, the word "recommendation" means "suggestion or proposal as to the best course of action".

10. In view of the above, it is clear that report of the Aayog is only a recommendation based on which no punitive action can be taken by the Competent Authority as under the statute, i.e., C.G. Civil Services (Conduct) Rules, 1965 or any other relevant disciplinary rules, as applicable in the case of a charged public servant concerned, the procedure has been laid down to take action by the Competent Authority on receipt of the recommendations of respondent No. 1. Therefore, any decision taken by the Competent Authority merely on the basis of recommendations of respondent No. 1 would be a futile exercise. Therefore, we are of the opinion that report of respondent No. 1 along with relevant documents can form part of the charge-sheet or show-cause notice, but the Competent Authority has to take an independent decision in respect of the charged public servant after following the procedure as laid down in the applicable service rules.

11. This Court in Writ Appeal No. 24/2010 (Lakshman Chaturvedi Vs. Chhattisgarh Lok Aayog, Raipur) had observed that during course of enquiry before the Lok Aayog, if any opinion is made by the Lok Aayog and the Government accepts the same and takes any action by which the charged public servant feels aggrieved, it is always open for him to take recourse of law.

12. In the instant case also, only show-cause notice has been issued to the appellant herein calling upon him to explain as to why disciplinary action u/s 19 (4) (ii) of the C.G. Civil Services (Conduct) Rules, 1965 should not be taken against him. Therefore, we felt that the learned Single Judge has not committed any mistake in holding that the writ petition, seeking quashment of the order passed by respondent No. 1 and notice issued by respondent No. 2, is premature one, for the reason that the appellant herein is not only having the opportunity to submit his reply to the said show-cause notice but also to challenge the procedure, if not followed properly, and ultimate decision of the Competent Authority, which would be an independent decision, by taking recourse of law available to him under the rules.

13. In view of the above observations, this Court is of the view that the instant appeal has no substance, the same is liable to be dismissed and it is hereby dismissed. No order as to costs. Certified copy as per rules.