

(2011) 09 DEL CK 0562

In the Delhi High Court

Case No : Writ Petition (C) No. 6032 of 2011

Ravi Kumar Pandit

APPELLANT

Vs

India Tourism Development Corporation Ltd. and Another

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0562

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Party in Person and R. Yamunah Nachiar, for the Appellant; Ujjwal Kumar Jha and Kanwaljeet Singh for R 1, Sunil Kumar, CGSC and Alok Kumar Shukla, for R 2, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—The Petitioner, a General Manager (Engineering) under India Tourism Development Corporation Limited (ITDC), was authorized to exercise powers of Vice-President (Engineering) / Senior Vice-President (Engineering) by order dated 2.1.2009 by the Chairman-cum-Managing Director of the ITDC. On 29.3.2011, the officiating charge of the Vice-President given to the Petitioner was withdrawn. Being grieved by such an action, the Petitioner approached the Central Administrative Tribunal, Principal Bench (for short, "the tribunal") in OA No. 1265/2011 for quashment of such an action / order.

2. It was set forth before the tribunal that the Petitioner was confirmed on the post of General Manager in ITDC vide order dated 17.9.2009. The Chairman-cum-Managing Director of the ITDC being satisfied, acknowledging and appreciating his work, promoted him to the vacant post of Vice-President (Engineering) on 21.10.2009 and at that juncture he was given the pay scale of Rs. 43200-6600(IDA). At the time of withdrawal of the charge, he was the senior most Engineer and his appointment was against a regular vacant post as the order of promotion would clearly show. It was urged before the tribunal that a decision was taken by the competent authority to reward him for the good work

done and, accordingly, he was promoted. It was averred that on 31.5.2010 and 2.6.2010 two enquiries were initiated against him with regard to development works at Barsana and purchase of split air conditioners for hotel Jammu Ashok for which minor penalties of censure and withholding of two increments respectively were imposed on 1.12.2010 by the disciplinary authority. The Petitioner has preferred appeals against these orders which are pending before the appellate authority. It was urged before the tribunal that when the infliction of the punishment have been assailed before the appellate authority it is not justifiable to revert him to the post of General Manager in view of the DOPT memorandum dated 24.12.1986.

3. The Respondents resisted the stand and stance put forth by the Petitioner contending, inter alia, that the withdrawal of officiating promotion of the Petitioner is in accordance with the rules. It was also highlighted that the appointment by the CMD was not justified as he has No. power to confer such a benefit. The said order passed by the CMD was put before the Board of Directors which is the only competent authority and it decided to withdraw the same. The irregularities in the act of the Petitioner causing wrongful loss to the Respondent were also pleaded in the counter affidavit. It was also put forth that the applicant has been issued a major penalty chargesheet on the advice of Central Vigilance Commission and the enquiry is in progress. Various irregularities were highlighted before the tribunal in the return filed by the ITDC. It was set forth that there was a singular sanctioned post of Vice-President in the Engineering division, which was held by one Mr. Bachketi earlier. On rejoining, Mr. Bachketi was given the charge of administration and consultancy due to CVC directives. The entire issue was kept before the Board of Directors which observed that the post of Vice-President be filled up on regular basis on the recommendation of the selection committee. The selection committee considered the eligible candidates for the said post. The Petitioner did not apply for the post of Vice-President as he had only completed one year against the requisite eligibility criteria of five years. The Petitioner was neither eligible nor he had applied for the post of Vice-President. The matter was placed before the Board of Directors in its meeting held on 23.2.2011 and the Board did not approve the officiating charge of Vice-President (Engineering) given to the applicant on 31.10.2009. It was also contended that the disciplinary proceedings had been initiated against him before expiry of one year from the grant of officiating promotion by issuance of chargesheets dated 31.5.2010 and 2.6.2010 and in accordance with the language employed in the office memorandum dated 24.12.1986, the grant of officiation was required to be withdrawn. That apart, it was clear that when the Petitioner had been awarded two punishments and facing a major penalty chargesheet, decision was taken by the Board that it would not be appropriate to continue him in the officiating charge of Vice-President(Engineering) and to withdraw the same with immediate effect.

4. The tribunal taking into consideration the initiation of the disciplinary proceeding, the language employed in the office memorandum dated

24.12.1986, the date when the Petitioner took charge of the vacant post and got the pay scale, that is, 21.10.2009, the issuance of second chargesheet and initiation of the major penalty proceeding, the distinction between issuance of a chargesheet and infliction of the punishment, the right of an incumbent in an officiating on a particular post to continue on the same post, the eligibility of Petitioner to be promoted to the post of Vice-President, the non-submission of application by the Petitioner to be considered for the post of Vice-President on regular basis came to hold that the Petitioner had No. right to continue on the post and the office memorandum dated 24.12.1986 did not protect him. Be it noted, the tribunal did not advert to the stand whether the Chairman-cum-Managing Director is authorized to confer the benefit of officiating promotion or it is the Board of Directors. That apart, the tribunal also opined that even if the appointment of the Petitioner on officiating basis was by a competent authority having been delegated powers, the competent authority, under the facts and circumstances, has rightly withdrawn the same.

5. We have heard Mr. S. Ravi Shankar, learned Counsel for the Petitioner, Mr. Ujjwal Kumar Jha, learned Counsel for Respondent No. 1, and Mr. Sunil Kumar, learned Counsel for Respondent No. 2.

6. At the very outset, we make it clear that while the tribunal had not adverted to the competence of authority extending the benefit of appointing the Petitioner on officiating basis we do not think it appropriate to advert to the same. The whole controversy would rest on the interpretation placed on the DOPT office memorandum dated 24.12.1986. It reads as follows:

(i) Where an appointment has been made purely on ad hoc basis against a short term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period of less than one year, the Government servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him.

(ii) where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.

7. On a perusal of the aforesaid office memorandum, it is clear as crystal that it only stipulates that if an appointment has been made on ad hoc basis purely for administrative reasons (other than a short term vacancy or leave vacancy) and the Government servant has held the appointment for more than one year, he shall not be reverted only on the ground that there has been initiation of a departmental proceeding. In the case at hand, the Petitioner has been reverted on the foundation that he had been issued two chargesheets and has been

visited with two punishments. The said situation makes a gulf of difference and the reliance on the said office memorandum melts into total insignificance. What the Clause (ii) of the office memorandum stipulates is that there should be No. reversion solely because of initiation of disciplinary proceeding. But when punishments have been imposed there is No. prohibition to revert an incumbent. As has been indicated earlier, two minor penalties, namely, one of censure and the other withholding of two increments for a period of two years without cumulative effect have been imposed. The learned Counsel for the Petitioner has contended that the order of reversion would amount to double jeopardy which is not permissible in law. The learned Counsel for the Respondent has contended that reverting him to the substantive post is not a punishment as the Petitioner was only allowed to officiate on the promotional post. In our considered opinion, the submission advanced by learned Counsel for the Respondent is justified inasmuch as the Petitioner has not been inflicted the punishment of reversion. He was never promoted to the higher post but was only allowed to officiate on the post and, thus, the concept of double jeopardy does not arise.

8. In the ultimate analysis, we do not perceive any illegality or infirmity in the order passed by the tribunal and, accordingly, we give the stamp of approval to the same. As a sequitur, the writ petition, being devoid of merit, stands dismissed leaving the parties to bear their respective costs.