

(2010) 08 DEL CK 0004

In the Delhi High Court

Case No : Writ Petition (C) No. 2034 of 2010

Shailesh Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Citation : (2010) 5 SLR 194

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Jyoti Singh and Amandeep Joshi, for the Appellant; Parag Tripathi, ASG, S. Farasat, V.S.R. Krishna, Manisha Dhir and Priti Dalal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Shailesh Singh, an officer of the Indian Police Service belonging to Madhya Pradesh Cadre is aggrieved by the judgment and order dated 17.3.2010 passed by the Central Administrative Tribunal dismissing OA No. 2806/2009 filed by him in which he challenged the order dated 25.09.2009 prematurely repatriating him to his parent department. Undisputed position is that vide order dated 04.03.2008, the petitioner proceeded on deputation as a Zonal Director General of Foreign Trade at Mumbai. The tenure for which he had to remain on deputation was five years. Vide order dated 25.09.2009 he was repatriated to his parent organization. The order in question, i.e. order dated 25.09.2009 states no reason and alleges no misconduct against the petitioner. It simply states that Shri Shailesh Singh, Zonal Joint Director, Foreign Trade, Mumbai stands repatriated to his parent department.

2. It is the case of the petitioner as pleaded before the Central Administrative Tribunal that the repatriation is on the basis of certain complaints received against the petitioner and that he has been punished on the basis of a complaint; he has been denied even the basic right to submit a response to the said complaints. As per the petitioner, he improved the working in the office of Director General of Foreign Trade, Mumbai. He weeded out brokers, touts and

commission agents who were flourishing in the office. People ganged against him to lodge a flurry of frivolous complaints and that his premature repatriation is premised on the said unsubstantiated complaints. As per the petitioner, though the order repatriating him is an innocuous order, but by lifting the veil behind the order, truth would be revealed. The petitioner states that he has been stigmatized.

3. During arguments, learned Counsel for the petitioner, Ms. Jyoti Singh, conceded that a person who proceeds on deputation for a fixed tenure does not have any vested right to work in the transferee department for the period stipulated and in the exigency of service the tenure may be curtailed. Counsel conceded that only if it could be shown that there is either mala-fide in law or mala-fide in fact, can such an order be interdicted by the Court.

4. Now, no mala fide of fact has been alleged against any person and thus our job is to see whether there is any mala fide in law when impugned order dated 25.09.2009 was passed.

5. Needless to state, the Tribunal has repelled the challenge to the said order impugned by the petitioner before the Tribunal.

6. Since the petitioner had himself made reference in the petition before the Tribunal that there were a flurry of complaints against him and these complaints were the basis on which action has been taken against him; legal mala-fide alleged was of not even calling upon the petitioner to respond to the complaints; the Tribunal has taken pains to refer to the complaints by looking into the record of the department.

7. Needless to state, the result thereof is a reflection of the complaints against the petitioner in the impugned order and this has rubbed salt in the wounds of the petitioner; it was urged by Ms. Jyoti Singh that the impugned decision has stigmatized the petitioner evidenced by the fact that the Chairman of the Tribunal, Justice V.K. Bali, has categorically held that the record shows that the petitioner could not come up to the terms and requirements of the job and that the various comments on the file show that the working of the petitioner was unsatisfactory with reference to the particular job assigned to him. Thus, counsel states that it is apparent that the petitioner's repatriation has been found to be stigmatic.

8. Now, where a person keeps on harping that certain complaints are the foundation of the action taken against him, he compels the decision making authority to reflect upon the complaints and the inevitable result is that the allegations in the complaints do get reflected in the decision. But, this would not mean that a stigma has been cast upon the character or the working of the person concerned.

9. It is all a matter of language. How the author reflects on the issue is personal to the author of the decision. But, it is the substance which matters and not the

form.

10. Having perused the impugned decision as also the record of the respondents, we may prima facie express ourselves that the manner in which the Tribunal has reflected the record while penning the impugned decision could certainly have been avoided, for the reason the record shows that the competent authority was fully satisfied that each and every complaint against the petitioner is without any substance or basis and has thus not acted upon the complaints to curtail the tenure of the petitioner. What has happened is something completely different and as we proceed along, we shall highlight the same.

11. The record produced before us shows that a few months after the petitioner took over as the Zonal Joint Director in the office of the Director General of Foreign Trade at Mumbai, a series of complaints were received not only at the office but even in the Ministry of Commerce and also by the Central Vigilance Commission. The complaints can be put into four categories being; (a) rude and high-handed behavior of the petitioner; (b) concentration of high value cases in his hands; (c) demanding bribe under pain of imposing 100% bank guarantee conditions on firms while issuing licenses and lastly (d) of requiring virtually every file to pass through him and thereby making the process of movement of the files very cumbersome. In respect of the last category of complaints, it is of importance to note that it is the requirement of trade and commerce that issues pertaining to import and export are dealt with not with a pedantic approach but with an approach to further trade and commerce.

12. The file commences with a note dated 15.05.2009 stating that a report may be obtained from the petitioner with respect to the complaints.

13. The file was processed pursuant to the note and ultimately the Additional Director General did not agree for any comments to be obtained from the petitioner in as much as vide note dated 23.06.2009 he categorically opined that since the complaints were anonymous, they could not be looked into and secondly for the reason he found no substantive issues raised in the complaints.

14. Needless to state, the note dated 23.06.2009, far from indicting the petitioner has fully exonerated him on two counts. Firstly, that the complaints being anonymous could not be looked into and secondly, on a matter of substance, the complaints being opined to be as raising no substantive issue.

15. Since the complaints were being sent to the Central Vigilance Commission and the said Commission was in touch with the nodal Ministry, i.e. the Ministry of Commerce, the Director General was of the opinion that the complaints may be summarized and a draft letter may be sent to the petitioner to obtain his response. The notings on the file show that a draft letter to be sent to the petitioner was prepared. It was vetted at various levels and ultimately a letter was addressed to the petitioner seeking his comments with reference to the summary of complaints. This was under cover of the letter dated 24.06.2009.

16. The petitioner furnished a reply which was considered and in respect whereof the Deputy Director General, Foreign Trade penned a note dated 07.07.2009 summarizing the response filed by the petitioner. The file was processed thereafter at various levels and ultimately it resulted in an approval that the matter be closed as there was no substance in any complaint.

17. Thus, on the issue of complaints against the petitioner, suffice would it be to state that no misdemeanour whatsoever has been recorded by anybody against him and on the contrary he has been fully vindicated. His honour and reputation is fully intact.

18. Unfortunately, the Tribunal has not highlighted this aspect of the matter and the way the decision has been penned by the Tribunal leaves a lurking feeling in the mind as if something was amiss and notwithstanding the complaints being filed, action has been taken on the basis of the complaints in question.

19. The Tribunal appears to have perused only File No. 1/16/2009, (Vigilance) in which the complaints have been kept and in respect whereof the aforementioned notings on the file have been reflected upon by us. There exists a second file being File No. A-12022/2/07 E.I. Had the Tribunal perused the said file it would have dawned as to what had actually led to the repatriation of the petitioner.

20. In the said file, there exists a note dated 06.07.2009 which refers to the fact that the complaints against the petitioner appear to be motivated and in any case are without substance. The charge against the petitioner of demanding bribes or otherwise harassing people with mala fide intent has been categorically negated. But what needs to be highlighted is that the note brings out that it appears to be a case of too much of centralization of movement of files which was not called for or warranted. The note records that half of India's foreign trade is transacted from Mumbai Zonal Office and thus proposes that "for sound administrative reasons it is imperative that Shri Singh be moved."

21. It is apparent what has happened. It appears to be a case of the petitioner being extremely strict when he took over as the Zonal Joint Director in Mumbai. We highlight that it is the claim of the petitioner that he streamlined everything in Mumbai and ensured that the touts, dealers and power brokers had no say in the office. It appears to be a case where as a result of a strict regime put into place by the petitioner, an over-centralisation, with the centre being the petitioner resulted. Now, in such a situation, people would start doubting the motives of the person concerned who requires virtually every file to pass through his scanner. The doubting Thomases would wag their tongues and question? They would furnish the answer themselves by saying that the petitioner wants to keep all the money with him and share none with others. Now, this is the usual cry whenever there are financial implications involved. The rumour mill starts. All and sundry complaints are made. Most of them are based on suspicion and no more. This is the reason why all the complaints against the petitioner have been found to be without substance.

22. But, a fact which came to the notice of the authorities was the concentration of power in the hands of the petitioner which created problems in the movement of the files. Needless to state, the office dealt with exports and imports where movement of files with utmost speed is of great importance, for the reason trade and commerce requires quick decisions to be taken and the files being on an onward march and not "stand-at-ease" at the same point.

23. It is in the second file and pursuant to the note dated 06.07.2009 that we find substance to the cause that the petitioner has to be shifted out.

24. In a nutshell, the general feeling of despair in Mumbai amongst the exporters; of power being concentrated in the hands of the petitioner and the opinion of the superior authorities that too regimented and strict regime being enforced by the petitioner was not in ethos with the requirement of the office of the Director General of Foreign Trade for the reason, trade and commerce required commercial decisions to be taken keeping in view the requirement of trade and commerce and not literal compliance with the letters of the law; a decision was taken to repatriate the petitioner.

25. We find neither malice nor ill will against the petitioner. We find that the decision making authority has acted very transparently and as was to be expected, the complaints against the petitioner have categorically been found to be without substance. The petitioner has been consulted with respect to the complaints. While looking into the complaints, the authority got the feel of the work culture imposed in the office by the petitioner and as noted by us hereinabove a bona-fide decision has been taken that how-so-ever good may be the intentions of the petitioner, the strict regimented regime sought to be put into place by him was not warranted.

26. We may only add that it may happen that a most competent person with the most honest intention may not gel with the working of the office since the same requires a wholly different approach to the problems faced.

27. Now, we do not blame the petitioner for what has happened, for the reason his training as an IPS officer teaches him to have a command structure where there is only one command so that there is accountability of the person concerned and the troops are made aware that they are answerable to one boss. As an IPS officer, the petitioner would obviously be new to the ways of the business world. The ways of the business world do not accept power concentration in one hand. The pathway of the business world is not a highway. There are by-lanes and by-roads which have to be used in the onward march. Decisions relating to trade and business have not to be by the letter of the law but by the spirit of the law with primacy to least barriers in the flow of commerce.

28. Repeating once again that the petitioner alleges no mala-fide against any particular officer, and noting that the file and the notings on the file do not reveal any legal mala-fide, we hold that the repatriation of the petitioner is bona-fide and as penned in the note dated 06.07.2009, the repatriation is on account of

sound administrative reasons. The said reasons surely are not casting any aspersions on the conduct, honour and reputation of the petitioner.

29. We find that valid and cogent reasons for the premature repatriation of the petitioner are clearly discernible from the notings on the file and thus we dismiss the writ petition.

30. No costs.