
(2005) 05 DEL CK 0149

In the Delhi High Court

Case No : Writ Petition (C) No. 5895 of 2005

S.K. Mutreja

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 121 DLT 499 : (2005) 82 DRJ 380

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Pradeep Gupta, for the Appellant; P.P. Malhotra, ASG and Gaurav Sharma, for Respondents Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—The Petitioner has prayed inter alias for the quashing of the appointment of Cmde. R.B. Prabhavalkar, Respondent No.5 as the Director (Operations) in Goa Shipyard Ltd., Goa, viz. Respondent No.4. This is the second round of litigation. The earlier Petition being Writ Petition (C) No.15851/2004 was disposed of with certain directions by Hon'ble Justice Manmohan Sarin dated 19th January, 2005. In those proceedings as well as in the present case the Petitioner has contended that he is presently appointed as Chief General Manager with Respondent No.4. He was empanelled for appointment to the said post of Director (Operations). The nothings in the file as narrated by my learned brother Manmohan Sarin, J were as follows:

The stumbling block faced by the petitioner is that petitioner figured in List-B in the year 1997, in List-A in the year 1998-99 and in 2000. He was under surveillance for these years. His name appeared in List-C again in the year 2001. The CBI had also recommended initiation of major penalty in a case relating to placement of an order. The Central Vigilance Commission (CVC) after discussion with CBI and the Department advised initiation of disciplinary proceedings for a minor penalty. The Chairman-cum-Managing Director of the Goa Shipyard took

the view that it was a case of breach of procedure in place of orders, urgently required to be executed to complete time bound projects. Further initiation of disciplinary proceedings would adversely affect the morale of senior officers and an oral caution was sufficient. This was accepted by CVC and acted upon.

2. My learned brother had also opined that "there can also be no doubt on the proposition that for top and sensitive posts persons with impeccable credential and integrity, without any pale of doubt, deserved to be appointed and preferred." However, Justice Sarin was of the view that it was not for the Court to consider whether the result would be the same regardless of whether the Petitioner had been placed in the "Doubtful Integrity List" or in the "Agreed List". For these reasons, keeping in view that the Order impugned in those proceedings had been passed on processing of a note which recorded the Petitioner having been placed in the "Doubtful Integrity List" rather than the "Agreed List", the selection was set aside with the direction that the case be re-processed.

3. Strong reliance has been placed by learned counsel for the Petitioner on the decision of the Hon''ble Supreme Court in Dr. A.K. Doshi Vs. Union of India, . In that case, however, it was obvious that the note prepared by the Secretary to the Appointments Committee to the effect that the Petitioner "does not seem to be a fit person of character and unblemished record, for occupying the Company Law Board" had not been placed before the Selection Committee which was presided over by Mr. Justice S.C. Agarwal, the nominee of the Chief Justice of India. Their Lordships were of the view that this noting would have affected the opinion of the Appointments Committee, and since it was de hors the material and information placed before the Selection Committee, it could not be acted upon. This judgment in my opinion is not an authority for the proposition that the noting of the Cabinet Secretary, for perusal of the Hon''ble Prime Minister, Home Minister and defense Minister, is illegal. Reliance has also been placed by learned counsel for the Petitioner on the decision of the Hon''ble Division Bench in Waris Rashid Kidwai v. Union of India and Ors. 1998 III AD (DELHI) 113. The Lordship have inter alias observed that clearance for a particular post does not automatically assure clearance for a higher post. It was opined that the argument that the "clearance is for the person and not for the post cannot be accepted in abstract." Mr. Gupta learned counsel for the Petitioner has relied on the observations of Waris Rashid Kidwai case (supra) to the effect that the "antecedents to an officer working for the public sector enterprises need not necessarily review officer's record from the very beginning and that if a person is functioning in a particular post the appointment to which was done after vigilance clearance, the CVC shall then limit its enquiry for the period spent in that particular post without going into the officer's entire past career." These observations, however, are greatly diluted by the subsequent observations of the Hon''ble Division Bench in that very judgment which have been set out above.

4. Mr. Gupta has also contended that the defense Minister had not concurred with the decision to appoint Respondent No.3, and that this was one of the reasons

why the court had held in favor of Waris Rashid Kidwai in the mentioned case. The original records have been produced, and their perusal the consultation and concurrence of the defense Minister is obvious from the records. The Appointments Committee of the Cabinet has unanimously approved the appointment of Respondent No.5 who was at Serial No.2 on the panel recommended by the PESB as Director (Operations), Goa Shipyard Ltd., obviously concurring with the opinion that appointments to such important assignments should be of persons with excellent unimpeachable reputation. The Appointments Committee of the Cabinet was fully aware of the Orders passed by Hon"ble Mr. Justice Manmohan Sarin, which on a holistic reading do not assist the Petitioner so far as his suitability for the post is concerned. The gravaman of the Judgment is that the decision for the appointment to the said post must be taken keeping in perspective the fact that the Petitioner had been placed in the "Agreed List" and not in the "Doubtful Integrity List". These directions in the previous writ petition has been followed on letter and spirit. The contention that the Petitioner's previous record should not be looked into at all is untenable on the grounds of res judicata. The service record of Respondent No.4 is unblemished and untarnished.

5. No warrant for exercise of the extraordinary jurisdiction in this Court under Article 226 of the Constitution is called for and the Writ Petition is dismissed.