

Madanjit Kumar Vs. Central Electronics Ltd and ors

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Court : Delhi

Decided On : Sep-13-2013

Judge : Valmiki J. Mehta

Appellant : Madanjit Kumar

Respondent : Central Electronics Ltd and ors

Advocate for Def. : Mr. Rohit Jain

Advocate for Pet/Ap. : Mr. Deepak Tyagi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + WP(C) 4531/2012 13th September, 2013 % MADANJIT KUMAR Through: Petitioner Mr. Deepak Tyagi, Adv. versus CENTRAL ELECTRONICS LTD AND ORS Respondents Through: Mr. Rohit Jain, Adv. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not? VALMIKI J.

MEHTA, J (ORAL) 1. The petitioner who is an employee of the respondent No.1/Central Electronics Ltd. seeks two reliefs by way of this writ petition. First relief which is claimed is the challenge to the transfer order dated 7.4.2012 transferring the petitioner from Sahibabad, UP (NCR Delhi) to Bangalore. Second relief claimed is the challenge to the suspension letter dated 8.6.2012.

2. Taking the aspect of suspension first, it would be necessary to reproduce the relevant suspension letter dated 8.6.2012, and the same reads as under: Sri Madanjit Kumar, This has come into the knowledge of the Management with substantial evidences that you have been engaging yourself in the business of Pornography, Flesh Trading, Adultery and Human Trafficking through Internet since long in and around Delhi. The Company, in no way can allow and afford involvement of any of its officers or employees in such heinous and shameful act and business while in service of the Company. Such acts or yours are bound to bring disrepute to the Company, tarnish its image beyond imagination and adversely affect its business prospects. Therefore, Management is left with no other option but to place you under suspension with immediate effect. Further, initiating departmental proceedings, you are required to show cause as to why your services can not be terminated for commissioning acts amounting to criminal offence involving moral turpitude. You are required to submit your explanation within 72 hours of serving this show cause notice to you.

3. A reference to the aforesaid letter shows that there are very grave charges against the petitioner. If the charges are true, they can bring about serious consequences for the petitioner. If the charges are false however, the petitioner and his family would be irreparably prejudiced. The basic allegation against the petitioner is that as per a website www.gigolosde.escortgeosites.com and e-mail dial anamika@yahoo.com, petitioner is engaging himself in flesh trade. Respondent No.1 has also sent a letter dated 12.10.2012 to the cyber crime investigation cell of the police station and this letter reads as Dated 12/10/2012 No.2(1434)/pers/2012 Shri S.Balasubramaniam, Additional Superintendent of Police, Cyber Crime Investigation Cell, Central Bureau of Investigation, CGO Complex, Lodi Road, New Delhi-110003 Dear Sir, Kindly refer to our E-mail dated 08/06/2012 and letter of even no. Dated 19/06/2012 wherein we had requested for taking necessary action against one of our senior level employee Sr. Madanjit Kumar, Code no.14342, Resident of B-73/G-II, Dilshad Colony, Delhi-95 for his involvement in business of Flesh Trading and Adultery through Internet in and around Delhi using website www.gigolosde.escortgeosites.com and E-mail address dial anamika@yahoo.com. (Copy Enclosed) You are requested to kindly let us know the status of action taken in this connection for further submission in

Departmental Proceedings initiated against the concerned employee. With
Regards Yours Sincerely (M S Verma) Chief Manager(HRD)

4. The petitioner was in view of the aforesaid facts issued the subject suspension letter.

5. On behalf of the petitioner, it is argued that suspension of the petitioner is illegal because the additional documents filed in this petition show that, in the criminal case which was filed as per the FIR which was lodged by the petitioner with respect to the website, an untraced report was filed and case was closed by sending the file back to the concerned police station. This was done by the order dated 9.9.2013 of MM, Karkardooma courts, Shahdara, Delhi and the same reads as under:FIR no.416/2012 PS Seemapuri 09/09/2013 Pr.: Ld. Substitute APP for the State. IO/SHO Lekh Singh in person. Complainant -Sh.Madanjit Kumar in person. Fresh untraced report filed. The complainant state that he is satisfied with the investigation conducted in the case and has no objection if the case is consigned as untraced. Statement of complainant already recorded to this effect separately. In view of the same, file be sent back to PS concerned and shall be re-opened as and when some clue come through IO. (Susheel Bala Dagar) M.M.-02(SHD)/KKD/Delhi 9/09/2012

6. A reference to the documents which are filed by the petitioner also show that the petitioner in his letter dated 7.8.2012 to the respondent No.1 has stated that allegations against him are totally untrue and that he has no control on a website where someone has posted his mobile number. By this letter, the petitioner has also requested the Delhi police to enquire into the call details of his mobile number to find the truth. The petitioners family is very much disturbed and which is seen from the fact that the wife of the petitioner addressed a letter on 29.5.2012 to the respondent No.1 that her letter should be treated as a suicide note and that anything happens to her and her family in future, Dr.K.Jayakumar, Mr. J.P.Singh and Mr. M.S.Verma of the respondent no.1 shall be held responsible. This threat of the petitioners wife was informed by the respondent No.1 to the police by its letter dated 29.5.2012 and which reads as under: No.2(1434)/Pers. May 29, 2012 S.H.O. Police Station Link Road, Sahibabad, Ghaziabad. Dear Sir, One of our

employees Sh.Madanjit Kumar, Code No.14332, Senior Manager(PR)R/0 B-73/G-II, Dilshad Colony Delhi - 95 was transferred to our Regional Office, Bangalore vide office order of even no. dated 15.03.2012. Since then, he has been urging to revert his transfer and submitting his applications to the management in this regard. Today, his wife Mrs. Supriya, has sent an email & fax to Dr. K.Jayakumar, IAS, Joint Secretary in our Ministry forwarding copies to other HODs (Email copy is enclosed) narrating that,. this letter of mine shall be treated as suicide note, if anything happens to me and my family in future, Dr.K.Jayakumar, Mr. J.P.Singh and Mr. M.S.Verma shall be held responsible. It is requested that necessary action in this connection may please be taken, accordingly. Thanking you, Yours faithfully, For CENTRAL ELECTRONICS LIMITED CHIEF MANAGER(HRD)

7. The petitioner also has a small daughter aged about four years who suffers from a rare disease called west-syndrome as a result of which the daughter is not able to speak or stand and needs competent medical assistance. Obviously, for the reason of the medical condition, the daughter cannot travel for long and the petitioner contends that the best treatment is available only in Delhi.

8. In the writ petition it is pleaded that the petitioner is being made a victim by the respondent No.3/Dr.K.Jayakumar, a Joint Secretary in the Ministry of Science and Technology because petitioner had complained about wrong utilization of funds.

9. I have narrated in great detail various facts which show that this is a very serious situation. Either the charges against the petitioner are true or the charges are completely false. This required to be enquired into. In a writ petition, I cannot arrive at findings on disputed questions of fact, more so, which are of a very serious nature as in the facts of the present case. Truth or falsity of allegations will only come out in the departmental proceedings which are pending against the petitioner.

10. The petitioner after being issued the suspension letter dated 8.6.2012 has been served with a detailed charge sheet on 26.7.2012. Enquiry Officer has also been appointed on 17.8.2012. The petitioner sought time to file reply to the charge sheet by letter dated 4.8.2012 and reply was filed on 7.8.2012. The aspect with respect to petitioner being served with a charge sheet on 26.7.2012 appears to

have not been brought to the notice of the Court when this writ petition came up for first time for hearing on 31.7.2012 and interim order of status quo was sought for and passed by a learned Single Judge of this Court.

11. Law with respect to challenge to suspension has been stated in the decision of the Supreme Court in the case of State of Orissa vs. Bimal Kumar Mohanty (1994) 4 SCC 12. and relevant para of this judgment reads as under: It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the

ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge. (underlining added) 12. Therefore, Courts do not ordinarily interfere in the suspension orders, more so in serious cases such as the present case. If the allegations against the petitioner are ultimately found to be true, suspension would be justified. If the allegations are not found to be true then suspension would not be justified and petitioner would get all consequential benefits. I am conscious of the fact that serious issues as in the present case can be decided either in favour of the petitioner or in favour of the respondent, however, on an overall perspective, I do not want to interfere with the suspension order, and the challenge thereto is therefore dismissed, however, I am ultimately passing directions for expeditious completion of the enquiry proceedings.

13. I may note that the contention of the petitioner to challenge the suspension order by placing reliance upon Rule 28 of the Conduct, Discipline and Appeal Rule of the respondent No.1 is not on sound basis because the said rule, in my opinion, is only directory and not mandatory. This is for the reason that no rule has been cited before me that in case charge sheet is not given within 7 days of suspension, then suspension order falls for this reason. Therefore by not issuing the charge-sheet in 7 days the consequence of suspension order being automatically withdrawn does not exist, and therefore, because in the present case the charge sheet has been issued after 7 days of the suspension order, that will not make the suspension order bad in law. It also bears note that the Charge Sheet has already been issued without excessive delay to the petitioner who has replied to the same and departmental proceedings are pending. No prejudice is caused to the petitioner by the delay in service of the chargesheet. Thus, this argument of the petitioner for challenging the suspension order by placing reliance upon Rule 28 of the relevant Rules of the respondent No.1 is rejected.

14. So far as the challenge to the transfer order is concerned, it is settled law that Courts do not interfere with the functioning of organizations and transfer orders which are passed because organizations know best how to take the services of its employees. Transfer is an incident of service. No doubt in certain extreme cases,

including transfer orders passed in violation of laid down policies, Courts do interfere, but I do not find existence of ex facie malafides whereby petitioner has been transferred. However, in the interest of justice I am issuing certain directions as are subsequently stated.

15. In the present case besides alleging malafide against the respondent No.3, counsel for the petitioner has also placed reliance upon a circular dated 15.2.1991 of the Government of India, Department of Personnel and Training and which reads as under: OFFICE MEMORANDUM Subject: Posting of Government employees who have mentally retarded children. The undersigned is directed to say that there has been a demand that an employed parent of a mentally retarded child should be given posting at a place of his/her choice. This demand has been made on the plea that facilities of medical aid and education of such children are not available everywhere. Also looking after such children does require special care and patience and is expensive. Hence some concessions from the Government at least in matters of posting at a place of choice is called for.

2. The matter has been examined. Considering that the facilities for medical help and education of mentally retarded children may not be available at all stations, a choice in the place of posting is likely to be of some help to the parent in taking care of such a child. While administratively it may not be possible in all cases to ensure posting of such an employee at a place of his/her choice, Ministries/Departments are requested to take a sympathetic view on the merits of each case and accommodate such requests for posting to the extent possible.

16. On the basis of this circular dated 15.2.1991, it is contended on behalf of the petitioner that the petitioner should not have been transferred. The argument of petitioner is not correct because when we look at the circular, this circular does not say that transfer should be stopped, what is only stated is that where an employee has a mentally retarded child, then the employee should be given a choice of his place for posting. I do not think that medical facilities would not be available in Bangalore as that city is one of the largest metropolitan cities in the country. Medical facilities would be almost as good or in about the same type of facilities which would be available in Delhi. Therefore, I do not think that the petitioner can

take benefit of this circular dated 15.2.1991 for stopping his transfer, however the spirit of later part can be used for the petitioner to make a representation to consider his case for re-transfer to Delhi on sympathetic grounds. I note that the circular in question is of the Government of India and such circulars only bind the Government employees but it does not automatically apply to all autonomous organizations including the respondent No.1, which is governed by its own policies with respect to transfer of employees and nothing has been filed to show that respondent no.1 has adopted this circular.

17. Therefore, the petitioner cannot seek to challenge his transfer order, and the challenge hence fails.

18. Therefore, the challenge by the petitioner to the suspension order and the transfer order fails and the writ petition would stand dismissed, however, in the peculiar facts of the present case while dismissing the writ petition, the following directions are issued: i) Let the petitioner within a period of about two weeks from today give a detailed representation to the respondent No.1 to seek his re-transfer to Delhi, and, the respondent No.1 will constitute a committee of two Board level officers to look into the request of the petitioner because the petitioner admittedly has a mentally challenged daughter. If re-transfer is possible, without affecting the working of the respondent No.1/organization, the committee can sympathetically consider the request of the petitioner for retransferring him to Delhi. ii) Considering that the petitioner has already himself requested the police for enquiring into his call details and Metropolitan Magistrate has sent back the file to the police station as the person who created the website was found to be not traceable, and also that the petitioner himself had filed an FIR to enquire into the website existing and the mobile number of the petitioner also existing at the site, let the enquiry proceedings in this case be completed in a most expeditious manner, and preferably within three months from today. I may state that neither the petitioner nor the department should be given any unnecessary adjournments by the enquiry officer. If possible, enquiry officer may give his report even before the outer limit of three months.

19. Writ petition is accordingly dismissed, subject however to the aforesaid directions. VALMIKI J.

MEHTA, J SEPTEMBER 13 2013 ak

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