

**Sunil Kumar Vs. Union of India**

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**Court :** Delhi

**Decided On :** May-25-1999

**Reported in :** 1999IVAD(Delhi)506; 80(1999)DLT170; 1999(50)DRJ263; (2000)ILLJ332Del

**Judge :** K. Ramamoorthy, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** CW. No. 585 of 1988

**Appellant :** Sunil Kumar

**Respondent :** Union of India

**Advocate for Def. :** Mr. Mukul Rohtagi, Senior Adovcate and ; Mr. S.S. Mann, Adv.

**Advocate for Pet/Ap. :** Mr. Jagjit Singh, Adv.

**Judgement :**

ORDER

**K. Ramamoorthy, J.**

1. The facts necessary for the appreciation of the questions raised by the petitioners could be narrated in the following terms:

The petitioners, who are 24 in number in CW.585/88 and 7 in number in CW.1692/88, were appointed in Public Enterprises Services Association (PESA). The details of the designation and the date of joining of the petitioners are as under:-

Name & Designation Date of

Joining

Sh. Sunil Kumar, 25.03.85

Jr. Stenographer

Sh. Anil Kumar Vohra, 01.04.85

Jr. Stenographer

Sh. Ashwani Kumar Das, 10.07.85

Jr. Stenographer

Sh. Pradeep Kumar Das, 01.07.85

Jr. Accounts Assistant

Sh. K.N. Vishambharan, 19.06.85

Driver

Sh. P.C. Sharma,

Driver

Sh. Om Prakash

Peon

Sh. Satish Kumar

Tiwari, 13.06.85

Driver

Ms. Shanta K.V. 01.07.86

Typist

Ms. Sushma Kumari, 15.10.86

Jr. Stenographger

Sh. Mammen Mathai, 26.06.86

Driver

Sh. Bhuban Chandra

Bisht, 07.07.86

Driver

Sh. Rajiv Pande 08.07.86

Asstt. Engineer

Sh. Praphulla

K. Srivastava 02.08.86

Asstt. Engineer

Sh. Mukesh Dham, 12.09.86

Executive Engineer

Sh. Brij Mohan

Rustagi, 01.10.86

Manager (Fin. & Accts)

Sh. Dashrath Kumar, 01.07.86

Jr. Assistant

Ms. Vibha Manocha, 01.07.86

Jr. Assistant

Sh. Ravinder Kumar, 01.07.86

Jr. Assistant

Sh. Gutain Lal

Peon-cum-Ponterymen

Sh. T. Muralitharan, 31.10.86

Stenographer

Sh. P.S. Tellewar, 01.10.86

Superintending Engr.

(Elect. & Mech.)

Sh. A.K. Pathak, 02.08.86

Asstt. Assistant

2. According to the petitioners, the following six persons left their jobs which they were holding before joining PESA. The details of the previous employment of those six persons are as under:-

S. Name Organisation No. in which previously serving leaving which joined PESA. 1. P.S. Tellewar Holding permanent post of Senior Manager in Indian Tourism Development Corp. 2. Brijmohan Holding permanent Rustogi post of Deputy Manager in Indian Telecommunication Consultants India Ltd. New Delhi. 3. Mukesh Dham Project Manager, Ansal Group of companies, New Delhi. 4. G.

Subramanian Salal HydroElectric Project J&K; (Unit of National HydroElectric Power Corpn. Ltd. 5. A.K. Pathak Junior Engineer, NDMC, New Delhi. (He retained his lien in NDMC. He has now been taken back in NDMC. 6. Sunil Kumar Stenographer, Hindusthan Platinum (Pvt.) Ltd.

3. On the 3rd of July 1987, the resolution was passed in the Special General Body Meeting of PESA to dissolve PESA and transfer all assets and liabilities to SCOPE. The Resolution No.1 reads as under:-

'The General Body of PESA do and hereby resolve that, subject to Government approval, PESA be dissolved and all its assets and liabilities at book value and the existing contracts/arrangements be transferred to SCOPE and the entire organisational set up including the books of accounts, documents, records and employees be placed at the disposal of and under the control of SCOPE.'

4. On the 1st of August, 1987 in the 65th Executive Board Meeting of the SCOPE, it was decided:

'It was noted by the Board that the General Body of PESA decided to dissolve the organisation and handover the assets and liabilities of the management to SCOPE. The Executive Board decided to take over the management, assets and liabilities of the erstwhile PESA with the immediate effect. The Secretary General was authorised to take over the management. It was, however decided that a Committee presided over by Prof. N.K. Singh, with Mr. S.N. Jain, Mr. U.S. Awasthi, Mr. S.K. Sharma may examine the future management set-up of the Project. The Committee was fully authorised to take such steps as may be deemed necessary to establish an appropriate system of management of the Project. It was also suggested that committee may consider selection of one of the public enterprises to take up the project on a turn-key basis.'

5. On the 25th of August, 1987, the SCOPE wrote to Mr. C.N. Garg, Chairman & Managing Director of Cement Corporation of India, who is the person who is to implement the decision, in the following terms:-

'Please find enclosed herewith an extract of the minutes of the meeting of Executive Board of SCOPE held on 1.1.87. According to the resolution passed, SCOPE has accepted to assume the management, assets and liabilities of PESA now dissolved under the resolution passed by General Body of PESA on 3.7.87. This assumption of management by SCOPE is subject to the approval of Government.

SCOPE is considering in consultation with BPE the future system of the project. The moment decision is taken, an appropriate mechanism will be set up.

The personnel in the secretariat of erstwhile PESA, its bank account, and all other assets and liabilities would get transferred on the date the Government approval is obtained. In the meantime, the process of handing over the charge may kindly be completed at the earliest possible.'

6. On the 26th of August, 1987, the Bureau of Public Enterprises, Minister of Industry, Government of India, wrote to Mr. C.N. Garg, Chairman, Managing Committee, PESA in the following terms:

'Please refer to your letter No. P&A;/242/SGM 5023 dated the 10th August, 1987, on the subject mentioned above. I am directed to convey herewith the approval of the Government to the Resolution passed in the Special General Body meeting of the PESA on 3rd July, 1987 (Resolution No. 1) regarding dissolution of PESA and handing over of its assets and liabilities etc. to Standing Conference of Public Enterprises (SCOPE).'

Thus, the approval of the Government of India for the taking over of the assets and liabilities of PESA by SCOPE had been granted.

7. On the 14th of September, 1987, handing over of the assets and liabilities is recorded and the same is as under:

'Public Enterprises Services Association (PESA) at its General Body Meeting held on 3.7.1987 have passed the resolutions 1,2 & 3 (Annexure-I).

The resolutions were accepted by the Executive Board of Standing Conference of Public Enterprises (SCOPE) which was communicated by the Secretary General, SCOPE through his letter No.SCOPE87/SG/4 dated 25.8.1987

(Annexure-II).

As required under resolution No.1, Bureau of Public Enterprises through its letter No. 20/9/86-GM dated 26.8.1987 (Annexure-III) have conveyed the Government approval.

The Management Committee of PESA have decided to 'en-block' hand over the set up along with all its assets and liabilities, Bank Accounts, employees etc. and to place it under the Management & Control of SCOPE at its meeting held on 8.9.1987.

Now, in pursuance of the above decision, I, C.N. Garg, Chairman, Management Committee, place the complete set-up, bank accounts, assets and liabilities 'en-block' under the control of Standing Conference of Public Enterprises (SCOPE) on this day, the 14th September, 1987.'

8. On the 22nd of December, 1987, the Executive Board of the SCOPE decided:

'The Board noted the decisions taken in the meeting held on 10.11.987 & 12.11.1987 under the Chairmanship of SCOPE and ViceChairman of SCOPE respectively. Mr.B.D.Gupta informed that NIDC will manage the Laxmi Nagar Project. A Building Committee consisting of the following members has been constituted by the Chairman which will be an empowered Committee of the Executive Board of SCOPE and it will have all financial, Administration and technical and executive powers to manage the affairs of the project.

1. Maj. Gen.S.C.N. Jatar Chairman  
2. Sh. S.K. Sharma Member  
3. Sh. U.S. Awasthy Member  
4. Sh. P.C. Gupta Member  
5. Sh. M.K. Garg Member  
6. Secretary General Member  
Additional members could be co-opted by the Building Committee.

A copy of the framework of the functioning of the Building was also placed on the table. The Board approved the framework which is placed as Annexure-I to these minutes.

Mr. Suresh Kumar from BPE, mentioned that induction of NIDC would result in good management of the project. However, since the Architects had already entered into an agreement with the SCOPE for their services, he wanted to know if the services of Architects were being reviewed. Mr. R.C. Bajpai, CMD, NIDC stated that for a project of this nature, the role of Architects is very important from conception till the completion of project. therefore, the Architects' services would be certainly utilised. The CMD, NIDC also stated that out of about 45 and odd employees of the project. The Board decided that the services of the surplus staff be terminated by SCOPE.'

9. On the 7th of January, 1988, the SCOPE recorded:

'The set of bio data of Twin Tower Project employees has been handed over to NIDC for their assessment towards absorption in NIDC. NIDC has expressed to interview employees on or after 11.1.1988. They have also informed that some or all those who will be selected by NIDC may be posted out of Delhi. Besides, absorption will be for a certain contracted period.

This is also to put on record that Maj. Gen. S.C.N. Jatar, Chairman Building Committee and Shri Waris R. Kidwai, Secretary-Genel, SCOPE are extremely conscious about the human problem associated in the overall situation. The undersigned totally agrees with them. It is also expected that the other members of the Building Committee will share the same sentiments.

All out efforts will be made to eliminate or reduce hardships of employees if it is otherwise not unavoidable.

Chief Engineer (TTP) SCOPE is requested to keep TTP staff informed about NIDC's likely call for interview.'

10. The CE/TTP noted on the 8th of January, 1988: 'I agree with the approach. Let all the employees be assured that we will do the best we can. We are fully aware

of human problems.'

11. On the 8th of January, 1988, the employees concerned made a representation to the Secretary-General, SCOPE in the following terms:

'We the employees of SCOPE are in receipt of above Memo and are very much surprised to note the contents that the employees have to appear for interview in NIDC. It is categorically denied that we gave our bio-data for consideration of NIDC and interview by them.

Previously BPE had given the direction that the erstwhile PESA should be dissolved and merged enblock with SCOPE. Accordingly we are now employees of SCOPE. It is understood from the discussions with high level officers that role of NIDC in Twin Tower Project is yet to be finalised. Even before this the career of employees has been at stake. In case the project is transferred to some other agency we should also be transferred to such public sector on enblock basis.

Basically we are unable to understand as to why such changes are required. If the TTP tower is to be constructed then they would need engineering and auxiliary staff for completion. It appears that this project would be taken up employing some other engi neers. This is nothing but victimisation of the employees and arassment to the extent of retrenchment and dismissals. It is requested that in case the project is to be transferred to any other public sector like NIDC then we should be transferred enblock.

Incidently, it is seen that there are some employees who have completed their probation period but so far confirmation orders are not issued. It is just that unconfirmed employees should be confirmed before such changes are made so that they will have permanent status. In case the employees are transferred en block then there would be no need to any interview as was not required while merging of erstwhile into SCOPE.

Decision of merging into SCOPE was as per the directions given by BPE, but it is seen that the same guide lines have not been taken into consideration for transferring the project further from SCOPE to NIDC.

It is further pointed out that some of us have not Major Gen.Jatar, Chairman, Building Committee of this project and expressed that we were selected in this organisation by a properly constituted Selection Committee and proper interview and valid appointment orders were given to us to join this organisation, and further added that we may not be asked to appear for the same interview again. Such interviews would not be favourable for the employees. It is further stated that our appointment in the present Department is not on contract basis and we are not prepared to accept such changes in terms and conditions of our appointment orders.

In view of above, it is requested that our representation may kindly be considered sympathetically.'

12. On the 18th of January, 1988, in the minutes of the first meeting of the Building Committee of the SCOPE decided to entrust the work of the Twin Tower Project in the following to a third party. On the 13th of February, 1988, as the petitioners were not willing to go for any interview to NIDC, the services of the petitioners were terminated and the order of termination is as under:-

'We regret to inform you that your services are no longer required by SCOPE. Your services are, therefore, hereby terminated with effect from 15.2.88 (A.N.).

A draft for Rs.\_\_\_\_\_ being three months salary in lieu of notice in accordance with the terms of appointment is enclosed herewith.

You are requested to hand over the charge to Mr.R.P.Singhal, Executive Engineer, SCOPE, immediately.'

13. Respondents 1 & 4 filed the counter-affidavit on the 6th of August, 1988. The third respondent filed a separate counter on the 27th of September, 1988. By giving brief history, the third respondent in his counter has stated:-

'Standing Conference of Public Enterprises began as Public Sector information centre in September, 1970 under the name and style of New Horizon. The New Horizon was a society registered under the Societies Registration Act. The main objective of New Horizon was to disseminate information about the activities and

achievements of Public Sector Enterprises. In 1973 the New Horizon converted itself into the representative body of all Central Public Sector Enterprises and acquired its present name, standing Conference of public Enterprises. It was intended that 'SCOPE' would provide a forum for exchange of experience among the Public Sector Enterprises with a view to improving their efficiency, productivity etc. and to identify problems within and take up activities requiring collective action.'

14. The third respondent has also given the purposes for which the SCOPE was established. It is also stated by the third respondent that it is not a State within the meaning of the Article 12 of the [Constitution of India](#). While dealing with the Twin Tower Project, the third respondent has stated:-

'The petition further ought to be dismissed on the ground that it is malafide. I submit that for a period of almost three years the T.T.P. project was practically dormant. Hardly any work had progressed. This was the time that the petitioners working with PESA. The petitioners who formed a part of PESA did nothing to get the project moving. They will be being paid during this period for doing nothing. Now when the project is on its feet and work is going on full swing the petitioners are once again trying to ensure that the work is somehow stopped. It the petitioners with NIDC as was suggested to them by SCOPE. The petitioners rejected this opportunity to get a job with NIDC saying that they should be absorbed en-bloke without an interview.

The petitioners thus made it clear that they did not wish to be taken by merit. I further say that the petitioners intention seems to only to get paid without working as was the portion at the time when they were working with PESA. therefore, I submit that the petitioners petition should be dismissed on this ground.'

15. The third respondent has also stated that the proper remedy for the petitioners is to raise an industrial dispute under the Industrial Disputes Act, 1947.

16. The learned counsel for the petitioners, Mr. Jagjit Singh, submitted that the petitioners were appointed by PESA, and as per the understanding between PESA and the SCOPE, the services of the petitioner were taken over by the third

respondent SCOPE, and the termination of the services by the third respondent is not valid and it is contrary to the dictum laid down by the Supreme Court. The learned counsel for the petitioners, Mr. Jagjit Singh referred to the following judgments of the Supreme Court in support of his contention:-

1. 'Central Inland Water Transport Corporation Limited & Another Vs . Brojo Nath Ganguly & Another', : (1986)IILLJ171SC

2. 'West Bengal State Electricity Board', : (1985)ILLJ373SC

3.'O.P.Bhandari Vs . Indian Tourism Development Corpn. Ltd. & Others', : (1986)IILLJ509SC

17. The learned counsel for the petitioners, Mr. Jagjit Singh, submitted that the order of termination is liable to be set aside and the third respondent may be directed to reinstate the petitioners with all consequential benefits and backwages.

18. For the third respondent Mr. Mukul Rohtagi, the learned senior counsel, appeared and submitted that the facts of the instant case are entirely different from the facts of the cases dealt with by the Supreme Court, and the third respondent is an organisation formed for a particular purpose. He submitted that the petitioners were employed by PESA and in order to accommodate the petitioners, they were asked to appear for interview in NIDC which the petitioners refused. therefore, the petitioners cannot claim the reliefs prayed for in the writ petition and order of termination is valid. The learned senior counsel for the third respondent Mr. Mukul Rohtagi, submitted that the petitioners were not appointed as against the permanent posts, and having regard to the facts and circumstances, the petitioner cannot claim permanency in the post against which they were appointed.

20. Before the petitioners could claim the relief, they have to establish: What are the projects in which PESA was involved; when was this Twin Tower project was commenced, what was the position of that project at the time of the transfer; whether the employment was against permanent vacancy; what was the reasons for the third respondent directing the petitioners to appear for an interview before NIDC; what were the circumstances under which the petitioners exclude

themselves from appearing in an interview proposed by the SCOPE; whether the employment of the petitioner was justified and assuming it was not justified, whether the petitioners could be entitled to reinstatement or the petitioners would be entitled to only compensation.

21. These questions can be decided only on the basis of evidence adduced by the parties and the questions raised by the petitioners are questions of fact and the claims of the petitioners are disputed by the third respondent. Under these circumstances, the appropriate remedy for the petitioners is to raise an industrial dispute under the Industrial Disputes Act, 1947. The ratio laid down by the Supreme Court in the cases referred to above by Mr.Jagjit Singh, the learned counsel for the petitioners, would not apply to the facts and circumstances of the case in the instant writ petitions.

22. Under these circumstances, I am unable to persuade myself to accept the case of the petitioners. I am of the view that the petitioners have to raise an industrial dispute under the Industrial Disputes Act,1947. Granting that liberty to the petitioners, both the writ petitions are dismissed.

23. There shall be no order as to costs.