

Binay Kumar Vs. Union of India and ors.

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Court : Delhi

Decided On : Jan-21-2000

Reported in : 2000IIAD(Delhi)373; 83(2000)DLT686; 2000(52)DRJ767

Judge : A.K. Sikri, J.

Acts : [Constitution of India](#) - Article 226; Power grid conduct, Discipline & Appeal rule - Rule 20(1)

Appeal No. : CWP. No. 6301 of 1999

Appellant : Binay Kumar

Respondent : Union of India and ors.

Advocate for Def. : Mr. Soli J. Sorabjee, Attorney General of India, ; Mr. Mukul Rohtagi, Additional Solicitor General

Advocate for Pet/Ap. : Mr. K.K. Rai, Adv

Judgement :

ORDER

A.K. Sikri, J.

1. The petitioner is working as Director (Personnel) in the Public Sector Undertaking known as Power Grid Corporation of India which is imp leaded as

respondent No.4. It is a common case that the appointment to the post of Director (Personnel) is a Board level appointment which is made by Central Government/Union of India (respondent No.1) on the recommendation of Public Enterprises Selection Board (respondent No. 2) after the approval of Appointment Committee of Cabinet. The appointment of the petitioner is governed by terms and conditions contained in letter dated 9th June, 1999 by respondent No.1. Reference to the relevant terms and conditions as incorporated in this letter would be made at the appropriate stage. At this stage it would be sufficient to mention that as per paragraph 13 of these terms and conditions Conduct, Discipline and Appeal Rules framed by Respondent No. 4 in respect of its non-working category staff are to apply to the Petitioner mutates-mutants with the modification that Disciplinary Authority in his case would be the President of India, since the Appointing Authority is the President.

2. In the present petition the petitioner is aggrieved by the order dated 1st October, 1999 placing the petitioner under suspension with immediate effect. He has challenged this order on three counts, namely ;

(i) Order of suspension can be passed, under rule 20 (1) (a) of Power Grid Conduct Discipline and Appeal' Rules, only when disciplinary proceeding is either contemplated or pending against the petitioner. However, as on 1st October, 1999 when the impugned order of suspension was passed, no disciplinary proceedings were either contemplated or pending. thereforee, according to the petitioner, the suspension order could not have been passed on 1st October, 1999 and the order is illegal on this count;

(ii) Order is actuated by mala fides inasmuch as it is passed at the behest of respondent No. 3 who is Chairman-cum-Managing Director of respondent No. 4 and inimical towards the petitioner;

(iii) Before passing the impugned order of suspension petitioner was not heard in the matter and no opportunity was given to him to explain his point of view in respect of the alleged misconduct and, thereforee the impugned order is vocative of principles of natural justice.

3. To appreciate the aforesaid challenge of the petitioner to his suspension, it would be useful at this stage to mention the facts in some more detail. However I may hasten to add that while elaborating the facts unnecessary details are avoided.

4. The petitioner claims himself to be a person of outstanding merit with remarkable achievements at his credit. He joined respondent No. 4 on 20th May, 1992 and was appointed as General Manager on 16th December, 1995. Thereafter he was selected as Director (Personnel) and was appointed to this post vide order dated 7th July, 1998 as already pointed out above. The petitioner alleges in the petition that all throughout respondent No. 3 has shown his attitude qua the petitioner which is vindictive and for oblique purposes and extraneous reasons petitioner is victimised at his hands. According to the petitioner on 1st August, 1992 respondent No. 3 was promoted out of turn to the post of Additional General Manager when, at that point of time, both the petitioner and respondent No. 3 were Deputy General Managers. The petitioner had made representations against the promotion of respondent No. 3 as Additional General Manager. This angered respondent No. 3. enough to spoil the petitioner's career in future. He states that thereafter his Annual Confidential Report was spoiled even when the petitioner was appointed to the post of General Manager on 16th December, 1995. Respondent No. 3 had opposed the same and notwithstanding his opposition the petitioner was appointed to the said post. He even got the petitioner's candidature to the post of Executive Director rejected when the said post was sought to be filled in November 1997, on the basis of ACRS already spoiled by respondent No. 3. According to the petitioner even when the petitioner participated in interview for the post of Director (Personnel) respondent No.3 opposed his selection tooth and nail. When petitioner was selected for appointment to the post of Director (Personnel) inspire of the protest put in by respondent No. 3 and efforts made by respondent No. 3 he tried to put spokes by creating other hurdles. When respondent No. 3 did not succeed even thereafter, he got all relevant powers of Director (Personnel) withdrawn vide office order No. 34/98 dated 20th May, 1998. After the assumption of petitioner's office as Director (Personnel), respondent No.3 continued to create hurdle in his functioning scuttled various attempts of the petitioner to agonies the Human Resource Department, took away from the

petitioner's functional and administrative control and the petitioner was not even permitted to place the problem regarding his job responsibility in the Board meetings including Agenda incorporating many items being references to violations in personal matters to which respondent No.3 was a direct party. Various instances of such violations are given in the petition. He further states that he is subjected to continuous humiliation, harassment and social torture causing immense personal trauma and irreparable damage to him personally as well as dignity of the post of Director (Personnel) which the petitioner occupied. The petitioner further alleges that respondent No.3 is hell bent on seeing the ouster of the petitioner as Director. He first opposed his selection as Director and thereafter withdrew his powers. After withdrawing his major functions as director, he recommended his termination. The petitioner had to file CWP No.5680 of 1999 pursuant to which this Hon'ble Court directed the Public Selection Enterprises Board to consider all his objections vide its order dated 20.9.99(Annexure-A-6). The petitioner had to file another writ regarding withdrawal of powers vide CWP No. 6066 of 1999 in which the notice has been issued making it returnable on 1.12.99. The respondent No.3 also spoiled the Confidential Reports of the petitioner for the year part-1995, 1996 and 1997 by usurping the power of countersigning authority whereas he could have acted only as reviewing officer. Even the adverse entries were not communicated to him. The same is subject matter of CWP No. 6197 of 1999. The respondent No.3 has been committing gross irregularities in discharge of his public duties. The petitioner is being victimized for not becoming a convenient tool in his hands who has been opposing him tooth and nail. It is further alleged that even the aforesaid acts of victimisation did not satisfy the ego of respondent No. 3 who made false allegations against the petitioner and at his behest' the impugned order of suspension dated 1st October, 1999 is now passed. This order is being challenged in the present writ petition on the grounds which have already been enumerated above.

5. Before dealing with the grounds on which the suspension order is challenged, let me first deal with the preliminary objection raised by the respondents.

6. It was vehemently contending that the petition filed by the petitioner deserves to be dismissed as the petitioner is guilty of perjury inasmuch as copy of the Office

Order No.7/99 dated 24.9.1999 (Annexure A-19) filed by the petitioner is substantially different from the actual order dated 24.9.1999. Annexure A-19 to A-22 are at pages 147 to 151 of the petition. The correct office order is filed by the respondent No. 1 Along with his counter affidavit as Annexure-B and according to the respondents following are the material difference between the two orders :

ACTUAL

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