

R.P. Sharma Vs. Vice Chairman Delhi Development Authority and anr.

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Court : Delhi

Decided On : Sep-23-1993

Reported in : 1993IVAD(Delhi)39; 1994(28)DRJ197

Judge : D.P. Wadhwa and; Vijentler Jain, JJ.

Acts : Delhi Development Authorities Act, 1957 - Sections 52

Appeal No. : Civil Writ Petition No. 2402 of 1991

Appellant : R.P. Sharma

Respondent : Vice Chairman Delhi Development Authority and anr.

Advocate for Pet/Ap. : S.C. Gupta,; R.K. Bhutani,; Arun Jaitley,;

Judgement :

D.P. Wadhwa, J.

(1) This petition is directed against the order of the Vice Charman, Delhi Development Authority, dated 13February 1991 imposing a penalty of reduction in the petitioner's milk, an Executive Engineer in the Delhi Development Authority ('D.D.A.' for short), a body constituted under the Delhi Development Act, 1957 ('the Act' turn short). The petitioner has .sought a declaration that Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 (for short 'Regulations of 1961') are in force and binding upon the respondent D.D.A.,

and further to declare that powers to initiate disciplinary action for major penalty against Class I officer in which category the petitioner was placed vests only in the Central Government and that the order imposing penalty upon him could have been imposed only by the Central Government and not by The Vice Chairman.

(2) The impugned order is dated 13 February 1991 whereby the Vice Chairman, D.D.A., in exercise of powers conferred under regulation 16 of the Regulations of 1961 imposed a penalty on the petitioner of reduction to the next lower grade/time scale on the minimum of that grade/time scale for a period of two years without cumulative effect.

(3) The principal question involved in this writ petition is as to who is competent to impose a major penalty on the petitioner, whether the Central Government, the Chairman or the Vice Chairman of the D.D.A.

(4) The petitioner is governed by the provisions of the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961. Under section 2(b) of the Act, 'regulation' means a regulation made under this Act by the D.D.A. Under sub-section (1) of section 4 of the Act, the Central Government may appoint the Secretary and Chief Accounts Officer of the D.D.A. to exercise such functions as may be prescribed by regulations or delegated to them by the D.D.A. or the Chairman. Then under sub-section (2) of this section, subject to such control and restrictions as may be prescribed by the rules, the D.D.A. may appoint such number of other officers and employees (including experts for technical work) as may be necessary for the efficient performance of its functions and may determine their designations and grades. The petitioner would be such an employee falling under sub-section (2) of section 4 of the Act. Under section 57, the D.D.A. with the previous approval of the Central Government, may, by notification in the Official Gazette, make regulations to carry out purposes of the Act and such regulations may provide for-..... '(c) the salaries, allowances and conditions of service of the secretary, chief accounts officer and other officers and employees.' As noted above, the Delhi Development Authority (Salaries, Allowances and Conditions of Services) Regulations, 1961, have been framed by the D.D.A. on an authority under this section with the prior approval of the Central

Government. Section 52 of the Act may also be referred to where under the D.D.A. may by notification in the Official Gazette direct that any power exercisable by it under this Act except the power to make regulations may also be exercised by such officer or local authority etc. as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein. This section will, therefore, show that though the D.D.A. has power to delegate any power exercisable by it under the Act, but this will not apply to the making of the regulations. If we look at the Regulations of 1961 if it is Class I post with the maximum of over Rs.850.00 , appointing authority is the Central Government and the authority empowered to impose penalty of (a) reduction to a lower service, grade or post, or to a lower time scale of pay, or to a lower stage in a time scale, (b) compulsory retirement, (c) removal, and (d) dismissal, is the Central Government, and in that case no appeal lies. If, however, the person is holding Class I post with a maximum of Rs.550.00 then the authority empowered to appoint is the D.D.A. and it is the D.D.A. which has all the powers to impose all the penalties. In this case the appeal will lie to the Central Government.

(5) D.D.A. has contended that these Regulations of 1961 were amended in 1979 wherein it provided that for the persons in Group A post with a maximum pay of over Rs.2,000.00 , the authority empowered to appoint would be the Chairman with the prior approval of the Central Government, but the disciplinary authority empowered to impose penalties of (a) reduction to a lower service, grade or post, or to a lower time scale of pay, or to a lower stage in a time scale, (b) compulsory retirement, (c) removal, and (d) dismissal, would again be the Central Government. 'For the persons in Grade A post with a maximum pay of Rs.1,600.00 and above and up to Rs.2,000.00 , the authority empowered to appoint is the Vice Chairman who is also the authority to impose all the penalties and in that case appeal lie to the Chairman of the D.D.A. Same is the case for the persons holding Group A post but with a maximum pay of Rs.1,600.00 . The notification which was issued allegedly amending the Regulations of 1961 would show that this was issued under sub- section (1) of section 52 of the Act and not under section 57 of the Act with the prior approval of the Central Government as provided therein. It is a clear case where the notification of 1979 amending the Regulations of 1961 is not valid and is non est. The D.D.A. has no authority to amend the Regulations of

1961 without the prior approval of the Central Government.

(6) A controversy was raised if the petitioner was occupying Class I post with a maximum of over Rs.850.00 , or with a maximum of Rs.850.00 . The D.D.A. contends the petitioner, an Executive Engineer, was though holding a Class I post, but it was with a maximum of Rs.850.00 and as such it would be the. D.D.A. who would be empowered to impose the penalty in question. Even if that is so, Vice Chairman of the D.D.A. who has imposed the penalty in the present case, is not the D.D.A. inasmuch as Regulations of 1961 are valid and applicable as of date. It is not, therefore, necessary for us to go into the question if the petitioner was holding a Class I post with a maximum of over Rs.850.00 . Since arguments have been addressed on this question we may well consider the same.

(7) When the D.D.A. was constituted there was no post of Executive Engineer. Admittedly, such a post came into existence in 1963. Mr. Gupta, learned counsellor the petitioner, contended that the D.D.A. itself has issued various circulars adopting the scale of pay of the Executive Engineer as applicable to the engineers in the -service of Central Public Works Department of the Central Government. There is no denial to this. The petitioner has brought on record a chart showing the standard pay scales in Class I posts and how it was revised from time to time on the recommendations of various pay commissions. There is no dispute on this. The chart is as under:

Name of post	Prescribed scale	Revised scale	Revised scales	4th Pay	before 2nd
Pay as per 2nd	as per 2nd	as per 3rd	Pay Commission	Commission	Pay Commission
Commission w.e.f.	applicable up to	ion w.e.f.	w.e.f.	1.1.73.	1.1.1986.
1.7.1959.					30.6.1959

Junior Class-I	350-850	400-950	700-1300	2200-4000	Assistant	Executive
Engineer General	Central	600-1150	700-1250	1100-1600	3000-4500	
Service, Class-I		(Executive			Engineer).	

(8) The petitioner is presently in the pay scale of Rs.3,000-4,500, and as on 1 July 1959 the scale of pay of the Executive Engineer was Rs.700-1,250. On this analogy if we go back to the date when Regulations of 1961 were brought into force, petitioner will certainly be holding a Class I post with a maximum of over Rs.850.00 and thus the competent authority in this case would be the Central Government. Mr. Gupta also referred to the definition of disciplinary authority as appearing in regulation 2(4) of the Regulations of 1961. This provides that 'disciplinary authority' in relation to the imposition of a penalty on member of the service, means the authority competent under these regulations to impose on him that penalty. He said the expression 'under these regulations' clearly I meant Regulations of 1961. and not to any alleged amendment thereto by means of delegation of powers as notified in 1979 on the authority of section 52 of the Act. Mr. Gupta also referred to section 21 of the General Clauses Act, 1897, to contend that the Regulations of 1961 could be amended only with the prior approval of the Central Government. This section 21 is as under :-

'21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notification, orders, rule or bye-laws so issued.'

We are of the opinion that Mr. Gupta is right in his submissions. When a law requires a thing to be done in a particular manner it cannot be done in any other manner. Any amendment to the Regulations has to be done with the prior approval of the Central Government. This is regulation 57. D.D.A. could not assume power under section 52 of the Act to amend the regulations. It could have done so only if section 57 of the Act provided otherwise and specific power was with the D.D.A. for the purpose. Mr. Jaitley, however, said that under sub-section (2) of section 4 of the Act the Executive Engineer would be one of the employees of the D.D.A. and it would be D.D.A. who is authorised to appoint him with a necessary consequence to take action against him. Though it may be true that posts are to be created by the authority under sub-section (2) of section 4 of the Act. but the argument of Mr.

Jaitley misses the point that the salaries, allowances and conditions of service of these employees are to be governed by regulations framed under section 57 of the Act with the prior approval of the Central Government.

(9) In view of our discussion above, the Vice Chairman, D.D.A., was not competent to impose this penalty on Mr. R.P.Sharma, the petitioner. It was submitted before us that in case we took the view that Vice Chairman, D.D.A., had no power to impose any penalty on employees holding Class I post as provided in the Regulations, then many such orders in other cases will fall. This is hardly a consideration for us not to interpret the law as it stands.

(10) In this view of the matter the petition is allowed. The order imposing the penalty on the petitioner by the Vice Chairman, D.D.A., as per order dated 13 February 1991 is quashed. It is held that the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 are applicable in the case of the petitioner, and the amendment to these regulations made by sub-section(l) of section 52 of the Act under which the D.D.A. delegated such of its powers to such of its members, officers as mentioned in the schedule attached thereto has no effect. However, our order should not be understood to have debarred the D.D.A. from taking action against the petitioner on account of charges levied against him culminating in the impugned order, if permissible under the law. There will be no order as to costs. Rule is made absolute.