

Tejinder Kaur Vs. Secretary (Department of Women and Child Development), Union of India (Uoi)

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Court : Delhi

Decided On : Mar-13-2006

Reported in : 2006(89)DRJ199; 2007(1)SLJ493(Delhi)

Judge : S. Ravindra Bhat, J.

Acts : Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 15; Central Civil Services (Conduct) Rules, 1964; [Constitution of India](#) - Articles 226

Appeal No. : WP(C) No. 6157/2002

Appellant : Tejinder Kaur

Respondent : Secretary (Department of Women and Child Development), Union of India (Uoi)

Advocate for Def. : Suresh Kait, Adv.

Advocate for Pet/Ap. : Party-in-Perso

Disposition : Petition dismissed

Judgement :

S. Ravindra Bhat, J.

1. The petitioner in these writ proceedings under Articles 226 of the Constitution seeks a direction to quash bye-laws 32-B & 32-C of the National Institute of Public Cooperation and Child Development ('NIPCCD'). The latter is a registered Society, under the control of the first respondent (hereafter referred to as 'Central Government').

2. It is averred that the supreme body of NIPCCD is the General body which has to finalize annual reports, and elect officers and members of the Executive Council. These Annual General Meetings are public functions and are held once a year after giving 21 days written notice to the Members. The Executive Council of NIPCCD, under its Constitution has to meet at least twice a year. Its powers and duties include supervision of Management and Administration of the NIPCCD in accordance with Rules and Bye laws, lay down broad policies; review and sanction budget estimates, and it includes, inter alia, the power to create posts and appoint staff. The Director of NIPCCD has to be appointed by the Executive Council. He is in charge of the Management of the Institute on a day-to-day basis. It is averred that the Union Minister, In-charge of the Department of Women and Child Department is the Chairperson of the Executive Council.

3. In terms of Bye-law 32, employees of NIPCCD are governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called 'CCS') Rules and related Circulars/ Memoranda of the Union of India. The petitioner questions the insertion/ inclusion of bye laws 32(b) and 33(c) impugned in these proceedings as procedurally untenable and, otherwise, unreasonable.

4. The said amendments, which were approved by the Executive Council of NIPCCD in its 51st Meeting held on 14.3.2002 read as follows :-

Bye-law 32-B:

Where the appellate authority is the Chairperson or the First Vice Chairperson, NIPCCD, orders of the appellate authority on appeals preferred before it may be communicated on behalf of the appellate authority under the signatures of an

officer of the Institute other than the disciplinary authority, who has been duly authorized in this regard by the appellate authority.

Bye-law 32-C:

Wherever in CCS(CCA) Rules or related orders of Government a reference is made to the President of India, for the purposes of application of the said rules to the employees of the Institute, the reference will be deemed to be to the President of the Institute.'

5. On two earlier occasions, the petitioner had approached this Court, aggrieved by orders initiating disciplinary proceedings and issuing certain adverse orders in WP (C) No.5588/2002 was disposed off on 8.10.2001 with the following directions:-

CWP No.5588/2001

This writ petition has been filed with the prayer that the petitioner's appeal which has been pending with Shri B.K. Chaturvedi, Secretary (WCD)-Cum-Vice Chairperson NIPCCD, Shastri Bhawan, New Delhi, the appellate authority, since 6.2.2001 has not been decided till date. The appellate authority is directed to dispose the appeal of the petitioner as early as possible and in any event within six weeks from today if not already disposed of.

6. In the other writ petition namely, WPC No.4905/2001, the claim was for a direction to the respondents to dispose of the petitioner's appeal in accordance with provisions of the CCS Rules. The respondent had taken the plea that the CCS Rules are only applicable mutates mutants in respect of NIPCCD and that the appeal had been disposed of by the Appellate Authority, which was duly communicated by the Deputy Director, with approval of the Appellate Authority. This Court disposed of WP(C) No.5905/2001 with a direction to the Appellate Authority to communicate the order under the signatures of that authority. The said order dated 17.10.2001 reads as follows :-

Having heard the learned counsel appearing for the parties and upon perusal of the documents on record, I issue a direction to the respondents to communicate

the order of the Appellate Authority, under the signature of the Appellate Authority, to the petitioner as early as possible preferably within two weeks. In terms of the aforesaid order, the writ petition stands disposed of.

7. The petitioner, who argued the case herself, is aggrieved by the introduction of the impugned amendments in so far as they remove the pre-existing requirement contained in Rule 15 of the CCS Rules, about the Appellate Authority having to communicate the orders, under its own signatures. It was contended that the issue regarding initiation of disciplinary proceedings through a charge sheet dated 7.11.2000 is pending before the Supreme Court and leave has been granted.

8. After the impugned amendments were carried out, the NIPCCD by its order dated 27.8.2002 informed the petitioner that the allegation that Director, NIPCCD was not the Disciplinary Authority, was unfounded. It also declined taking action against those officers of the Institute based upon her criminal complaint. Lastly, the order also rejected the request to quash the disciplinary proceedings and initiate action against four officers. The issue of disciplinary proceedings, however, being sub judice before the Supreme Court, further action was deferred.

9. In support of the petition it was contended that the impugned bye-laws were inserted without properly informing the Executive Council about its implications. It was contended that the said impugned provisions have the effect of altering the conditions of service of employees, which had required that the Appellate Authority namely, the Government of India to communicate its decision under the signatures of the official deciding the appeal.

10. On behalf of the Central Government, it was contended that the petition is bereft of any merit since the petitioner is allegedly addicted to litigation. It is averred and submitted on behalf of the respondent that the petitioner has initiated a spate of litigations before the Court over trivial issues. It was contended that the agenda item pertaining to the relevant meeting of the Executive Council, contained a reference to the proposed amendment. It was also submitted that no employee has vested a right to insist that conditions of service, and that too procedural ones relating to signatures of the Appellate Authority are to be preserved for ever. Being an autonomous Body, the NIPCCD could vary such conditions, which do not

materially affect the employees.

11. I have gone through the Agenda note and that the Minutes of Meeting which led to the issuance of the impugned amendment. By the Minutes of the 51st Meeting, particularly Item XII, the proposal to amend the impugned bye laws which put up before the authority. The Agenda contained the following note:-

As per Bye-Law 32 of NIPCCD Bye-Laws, in matters of discipline, the Central Civil Services (Conduct) Rules, 1964 and in matters of appeal the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as amended from time to time and applicable to the Central Government Employees will apply mutates-mutants to the employees of the Institute. Accordingly, in Schedule-I and is of the Bye-Laws, the appellate authority has been delegated powers to decide appeals of the concerned categories of the staff of the Institute. In respect of Group-A staff Secretary (WCD)-cum-First-Vice-Chairperson, NIPCCD being the appointing authority, Minister of State (Women & Child Development)-cum-Chairperson is the appellate authority. In respect of Group-B staff, Director being the appointing authority, Secretary(WCD)-cum-First-Vice-Chairperson, NIPCCD is the appellate authority.

a. Recently in respect of a group-B staff of the Institute (WCD)-cum-First-Vice-Chairperson, NIPCCD in his capacity as the appellate authority, had decided an appeal preferred by the said employee and Department of Women & Child Development conveyed that the said employee may be communicated about the decision of the appellate authority by an officer of NIPCCD other than the disciplinary authority. Accordingly, the orders were communicated under the signature of Deputy Director (Admn.) of the Institute. The said employee was aggrieved by this and filed a writ petition in the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi disposed of the petition with a direction to the respondent viz. Secretary (WCD)-cum-Vice-Chairperson, NIPCCD to communicate the order of the appellate authority under the signature of the appellate authority, as this is the requirement laid down by CCS(CCA) Rules.

b. The Department of Women and Child Development with reference to this case has conveyed vide its letter no.12-1/2001-NIA dated 15/11/2001 that NIPCCD may

obtain approval of the Executive Council for making a provision in the bye-laws that where the appellate authority is either the First Vice-Chairperson or the Chairperson, NIPCCD, the orders on appeals will be communicated on behalf of the appellate authority under the signature of an officer of NIPCCD duly authorized by the appellate authority.

c. In view of the above, Executive Council may kindly approve inserting the following addition to Bye-law 32 as Bye-law 32B as under :

Where the appellate authority is the Chairperson or the First Vice-Chairperson, NIPCCD orders of the appellate authority on appeals preferred before it will be communicated on behalf of the appellate authority under the signature of an officer of the Institute other than the disciplinary authority, who has been duly authorized in this regard by the appellate authority.

d. Further, Department of Women and Child Development has recently concurred in view of the Institute that a reference to the President of India in the CCS(CCA) Rules should be construed as a reference to the President of the Institute since the President is the highest constitutional authority for the Institute. It is, therefore, proposed to clarify the issue for all employees by insertion of an addition to Bye-Law 32 as Bye-Law 32C as under :

Wherever in CCS(CCA) Rules or related orders of Government a reference is made to the President of India, for the purposes of application of the said rules to the employees of the Institute, the reference will be deemed to be to the President of the Institute.

12. It is well settled that the conditions of service of a public employee are not a matter of contract and are based upon norms evolved and put in place by the public body or authority. In this case there is no dispute that NIPCCD is one such public body. As per the existing conditions of service the Conduct Rules are generally applicable to all the employees. However, in the light of past experience it was felt that the requirement of the Appellate Authority having to communicate its decision under its own signature was not appropriate.

13. It had been contended in the course of proceedings that there is no right of appeal in respect of matters such as the one for which the petitioner has the grievance. However, the representation had to be considered by the Secretary (Department of Women & Child Welfare). This was deemed cumbersome and consequently the authorities of NIPCCD gave onto themselves the power to deal with and communicate decisions on such representation/ appeal.

14. I am of the opinion that the petitioner's grievance in these proceedings is unfounded. As observed in the earlier part of the judgment, no public official or employee has an absolute right to insist that conditions of his or her service have to be left unaltered for the entire duration the career. The impugned amendments, to my mind do not infringe or adversely affect the employees' rights. In event of adverse orders by disciplinary authorities so long as there is appeal to a higher body, which considers it fairly and in accord with established principles of law and procedure, no grievance can be articulated that its decision is not communicated under the signatures of that Body or person, but is communicated through some other official. Such situations are found quite often both in Government functioning as well as the Autonomous Bodies and Public Sector Undertakings. It is also settled law that an appeal is a creation of law, or prescribed procedure, regulated by the instrument which governs it. Change in the methodology of communication of the appellate decision can not be a matter of prejudice, unless it is so manifest as to materially affect the decision on the merits.

15. For the foregoing reasons, I am of the opinion that the petitioner's claim is un-merited. The writ petition is accordingly dismissed with no orders as to costs.