

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2341 OF 2008**

Reserved on : March 25, 2008.

% Date of Decision: April 24 , 2008

Govind Prajapati Appellant
! Through Mr. R. Vasudevan, Advocate.

versus

\$ Union of India & Ors. Respondents

^ Through Mr. R.N. Singh, Advocate.

W I T H

W.P.(C) 2342 OF 2008

Bhaskar Joshi Appellant
! Through Mr. R. Vasudevan, Advocate.

versus

\$ Union of India & Ors. Respondents

^ Through Mr. R.N. Singh, Advocate.

CORAM:

* **HON'BLE MR. JUSTICE MANMOHAN SARIN**

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1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the digest? Yes

J U D G M E N T

MANMOHAN, J:

1. The issue that arises for consideration in the present two writ petitions is the scope of judicial review of a charge-sheet by the Central Administrative Tribunal and by this Court in writ jurisdiction under Articles 226 and 227 of the Constitution of India.

2. Petitioner, Govind Prajapati and Bhaskar Joshi, have filed the present writ petitions being W.P. (C) Nos. 2341 and 2342 of 2008 seeking quashing of the impugned judgment and orders of the Central Administrative Tribunal (for short “the Tribunal”) dated 19th February, 2008 passed in O.A. No. 1781/2007 and O.A. No.1881/2007 as well as for allowing of reliefs claimed in the above Original Applications filed before the Tribunal. In essence, the Petitioners seek revocation of their suspension, quashing of inquiry proceedings initiated against them and annulment of appointment of the Inquiry Officer. Since common issues of fact and law arise in both the writ petitions and further as they have been disposed of by a common judgment and order of the Tribunal, we are disposing of these two writ petitions by way of a common judgment and order.

3. Briefly stated, the material facts of these cases are that the two Petitioners who were working as empanelled casual artist and part-time

performer applied for the post of Lineman (Sound) and Actor respectively with the Song and Drama Division of the Ministry of Information and Broadcasting. According to the Petitioners, the advertisement in the Employment News contained a clause for relaxation of qualifications. The Selection Committee of the Song and Drama Division recommended the Petitioners for selection in the Song and Drama Division with two years' probation. Subsequently, Petitioners were confirmed in their respective posts.

4. The Respondents in their reply filed before the Tribunal have stated that while giving a response to an application filed under the Right to Information Act it was discovered by the Department that as many as 17 officials had been appointed in the years 1998-99, 1999-2000 and 2000-2001 without fulfilling the requisite qualifications prescribed for the post. It was also found that some of the selected candidates had given wrong factual information about their caste or submitted fake caste (ST) certificate. The Respondents further averred that the then Director in the Song and Drama division, Shri Prem Matiyani who was connected with the said irregular and fraudulent appointments obstructed the correct information from being given under the Right to Information Act. The Respondents also stated in their reply that on a detailed scrutiny of Petitioners' applications, a Deputy Director in the Respondents' Headquarters found that the Petitioner in W.P.(C)

No. 2341 of 2008 i.e. Govind Prajapati did not possess the professional qualification and experience required for the post of Lineman (Sound) to which he was appointed and he also did not possess the wireman's licence required for the post. Similarly, in the case of the Petitioner, Bhaskar Joshi in W.P.(C) No. 2342 of 2008, the Deputy Director found that the said Petitioner did not possess the professional qualification required for the post of Actor. According to the respondents a large number of irregular and illegal appointments had taken place in the Song and Drama Division during the tenure of Shri Prem Matiyani as Director.

5. In the month of August, 2007, both the Petitioners were placed under suspension and a separate memorandum was issued to each of them. Simultaneously, an Inquiry Officer was also appointed.

6. The Petitioners challenged the aforesaid action of the Respondents by filing petitions before the Tribunal. However, the Tribunal in its well reasoned order has, keeping in view the Supreme Court's guidelines for quashing of a charge-sheet, rightly held that any interference by it at the stage of issuance of the charge-sheet would amount to pre-judging the issue as the correctness of the charges are yet to be looked into by the disciplinary authority. The Tribunal has further directed the Respondents to complete the inquiry within a time bound manner after giving full opportunity to the Petitioners to defend

themselves.

7. Counsel for the Petitioners in the present proceedings sought to urge that the statement of imputation did not contain any allegation in support of the articles of charge against the Petitioners but only contained allegations against the then Director, Shri Prem Matiyani. The Petitioner, after referring to the statement of imputation in detail, made the following submissions :

(i) It would be inconceivable that a Lineman or an Actor could be responsible for the appointment of Shri Prem Matiyani, the then Director, S&DD as Selection Committee Chairman. In fact, a Lineman or an Actor could not have had any say in the constitution of the Selection Committee.

(ii) Similarly, the Petitioners could not have had any say in the alleged non compliance of instructions of the Ministry of Finance or non obtaining of the approval prior to filling up of the direct recruitment post.

(iii) The Charge-sheet is wholly based on surmises and conjecture. There is no indication or background facts which would even prima facie indicate collusion of the Petitioner.

(iv) Once the Selection Committee had voluntarily granted the relaxation, that issue could not be gone into.

8. Before we proceed further, we may extract the Article of Charge and the Statement of Imputation of misconduct issued to one of the Petitioners (namely in W.P.(C) 2341 of 2008) :

Statement of article of charge against Shri Govind Prajapati, Lineman (Sound), Song & Drama Division, New Delhi.

Article of charge: *Shri Govind Prajapati does not fulfill the professional qualifications required for the post of Lineman (Sound) in Song & Drama Division, Ministry of Information & Broadcasting to which he was appointed with effect from 29.05.2000. But by utilizing his association with authorities of Song & Drama Division he managed to get called for interview, then selected and appointed to the post of Lineman (Sound) at S&DD, New Delhi in an irregular, manipulative and fraudulent manner. Thus, he is liable for disciplinary action as per Government of India Instruction No.2 below the Rule 11 of CCS (CCA) Rules, 1965.*

Statement of imputations of misconduct in support of the article of charge made against Shri Govind Prajapati, Lineman (Sound), Song & Drama Division, New Delhi.

Article of charge: *Shri Govind Prajapati vide his application dated nil applied to a post of Lineman (Sound) at S&DD, New Delhi. In accordance with the Recruitment Rules (RRs) for the post of Lineman (Sound) in S&DD and advertisement issued as per the said RR, qualification of (1) Matriculation or its equivalent and (2) Grade II Wireman's license from an institute recognized by the Government and (3) Practical experience of not less than two years in handling/installations Public Address System, Sound*

equipment and laying of cables etc. are essential. As per his application he does not possess the qualifications mentioned at item (2) and (3) above. However, he was called for interview.

As per Ministry of I&B's ID letter No.1/2(4)(98)-F(S) dated 12.10.1998, Shri B.S. Biswas, then Joint Director should have functioned as Section Committee Chairman. But instead Shri Prem Matiyani, then Director, S&DD function as the Selection Committee Chairman. Further, the then Deputy Director (Admn.) in the S&DD Hqrs. should have functioned as Appointing Authority as per letter No. I-14013/1/85-Spl./Vig. Dated 24.04.1976. Whereas, Shri Prem Matiyani, then Director, S&DD functioned as Appointing Authority also approving his own recommendations as Selection Committee Chairman.

On the basis of the recommendations of the Selection Committee, Shri Govind Prajapati was given offer of appointment vide Memorandum No.A-12024/29/2000-Admn.II dated 22.05.2000 and he joined the post on 29.05.2000.

In accordance with the Instructions of Ministry of Finance circulated by the Min. of I&B vide OM No.G-20011/5/99-B&A dated 17.08.1999, review of all vacant posts were required to be taken by S&DD through the AS&FA in the Min. of I&B and approval of Ministry of Finance was required to be obtained before filling up the direct recruitment posts. But this was not done and Shri Govind Prajapati was appointed in gross violation of the instructions of the Ministry of Finance.

The afore mentioned facts of the case indicate the full details of irregularity indulged by Shri Govind Prajapati in collusion with the authorities of S&DD for the irregular appointment.

The above mentioned irregularities are enough to prove the charge made against Shri Govind Prajapati and proceed against him as per Government of India Instruction No.2 below the Rule 11 of CCS (CCA) Rules, 1965.

9. It is well settled that in the case of charges framed in a disciplinary inquiry, a Tribunal or Court can interfere only if on the charges framed read with imputation of charges, no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to law. At the stage of issuance of the charge-sheet, the Tribunal or Court has no jurisdiction to go into the correctness or the veracity of the charges. The Tribunal or Court cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to reappraise the evidence or substitute the findings of fact recorded by the disciplinary authority by their own.

10. In fact, the Hon'ble Supreme Court in the case of ***Union of India vs. Kunisetty Satyanarayana*** reported in (2006) 12 SCC 28 has held :

“14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no

jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or chargesheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

11. In the present case, we find that it is alleged that a large number of unqualified persons have been appointed in the Song and Drama Division of the Ministry of Information and Broadcasting. In today's time employment scams are not unknown. Since in the present case it is an admitted position that the Petitioners did not possess the requisite qualification for the post, yet they were called for interview, selected and appointed. The matter certainly needs an indepth investigation as to their role and involvement. On a reading of the charge-sheet or the imputation of charge one cannot say that no case is made out against the Petitioners or that the Respondents did not have the jurisdiction or

power to issue the charge-sheet. There may be certain aspects of the charge-sheet which exclusively deal with or pertain to appointment of Shri Prem Matiyani or the non-compliance of the instructions of Ministry of Finance, but the same would not render the charge-sheet against the Petitioners as nullity or render the enquiry futile.

12. Consequently, in our view the Tribunal was right in dismissing the applications filed by the Petitioners with a direction to the Respondents to complete the inquiry within a period of six months after giving full opportunity to the Petitioners to defend themselves. In our view the judgment and order of the Tribunal does not call for any interference in writ jurisdiction.

13. Consequently, the present writ petitions being devoid of merit are dismissed with costs of Rs.2,000/- (Rupees two thousand) to be paid by each Petitioner.

[MANMOHAN]
Judge.

[MANMOHAN SARIN]
Judge.

April 24, 2008.
jt.