

*** HIGH COURT OF DELHI : NEW DELHI**

Judgment reserved on : July 20, 2009

Judgment delivered on: July 27, 2009

+ W.P. (C) No. 6396/2003

Brahm Prakash ... Petitioner
Through: Petitioner in person.

versus

Union of India & Ors. ... Respondents
Through: Ms. Padma Priya, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. Unauthorized absenteeism by the Petitioner in the year 2001, while he was working as Assistant Manager, Centaur Hotel, New Delhi, led to his removal from service, consequent upon a departmental inquiry, which is under challenge in this petition.

2. Initially, the departmental inquiry against the Petitioner was conducted by Shri S.K. Bakshi, Deputy General Manager of the Respondent – Hotel and as per the Inquiry Report (Annexure P-17), Petitioner did not participate in the said inquiry and in the meanwhile

Inquiry Officer Mr. S.K. Bakshi was transferred outside Delhi and the inquiry against the Petitioner was conducted by Shri K.S. Panwar. Petitioner was informed to appear before the Inquiry Officer Mr. K.S. Panwar, on 24th April, 2003 at 14.30 hours, but the Petitioner did not appear and another chance was given to the Petitioner to explain his position. But, due to the non-appearance of the Petitioner before the Inquiry Officer, the inquiry proceeded ex-parte. Ms. D. Sangma, Deputy Manager, Mr. Mahesh Sharma, Senior Assistant Manager Lobby, Mr. R.D. Sharma, Assistant Manager Lobby (Times Office In-charge) of the Respondent-Hotel, had deposed in the inquiry proceedings.

3. The finding of the Inquiry Officer as per the Inquiry Report of 10th June, 2003 (Annexure P-17) is as under:-

“All the above factors/observations confirm that Mr. Brahm Prakash is habitual absentee and irregular in attendance. He has not shown any improvement on the lapses on his part in spite of best efforts made by his colleagues, seniors and the management. Hence, the above omissions and commissions on the part of Mr. Brahm Prakash are clear violation of Regulation 60 of the Hotel Corporation of India Limited Employees Service Regulations and as such the charges of misconduct leveled against him vide charge sheet No.HO/Admn/122, dated 10/15.1.2002 are proved and he is responsible for these lapses on his part.”

4. Respondent-Hotel vide order of 23rd July, 2003, (Annexure P-19), imposed the penalty of removal from service upon the Petitioner under Regulation 78 of the Hotel Corporation of India Limited Employees Services Regulations.

5. Regulation 87 of Hotel Corporation of India Limited Employees Services Regulations, as applicable, provides for statutory Appeal against the Inquiry Report (Annexure P-17), but the Petitioner did not avail of it. The reason for not availing of the remedy of statutory Appeal, as given by the Petitioner, is that statutory Appeal had to be filed before the Managing Director of the Hotel Corporation of India and in March, 2003, Shri R.C. Aggarwal was the Managing Director of the Hotel Corporation of India and he had harbored ill will against the Petitioner, as in March, 2003, the first wife of Mr. R.C. Aggarwal, alongwith his son, came to the office of Hotel Corporation of India and requested the Petitioner that they wanted to meet Mr. R.C. Aggarwal and the Petitioner did not know about the strained relations of Shri R.C. Aggarwal with his first wife and he had sent his first wife with her son inside to meet Mr. R.C. Aggarwal and due to this, Mr. R.C. Aggarwal was unhappy with the Petitioner and deliberately the Inquiry Officer was changed, as the earlier Inquiry Officer Shri S.K. Bakshi had exonerated the Petitioner from the charge of absence from duty on 5th March, 2002 and the charge sheet of 10th/15th January, 2002 was dropped. According to the Petitioner, he was surprised to learn

on 22nd May, 2002 that Mr. S.K. Bakshi, Deputy General Manager, Administration had been appointed as an Inquiry Officer in respect of charge sheet of 15th January, 2002 regarding the charge of unauthorized absence from duty against the Petitioner. Order of 5th March, 2002, (Annexure P-6) purporting to exonerate the Petitioner is, infact, an order granting leave to the Petitioner from the period from 21st December, 2001 to 2nd March, 2002, but without pay. It does not talk of exoneration of the Petitioner of the charges, as contained in the Charge sheet (Annexure P-4).

6. Petitioner has sought to justify the absence from duty of seventy six days by stating that his father had expired on 9th January, 2002 and his mother was bed ridden owing to cataract and he was the only person, who was to look after his ailing parents and he was pre-occupied with the treatments of his ailing parents.

7. Petitioner has relied upon an order of 23rd May, 2002 of the Respondent-Hotel to show that in a similar case of absence from duty, similarly placed employee, Mr. R. Malik, of the Respondent-Hotel, was let off with a warning, whereas in the case of the Petitioner, a harsh punishment of removal from service has been arbitrarily imposed, which is patently illegal. Re-instatement in service with retrospective effect with consequential benefits has been sought by the Petitioner.

8. The contesting Respondents in the counter affidavit, have raised preliminary objection regarding maintainability of this petition and have asserted that effective alternate remedy by way of appeal was available to the Petitioner, which has not been availed of. On merits, it has been stated by Respondents that the facts have been distorted and present petition is mis-conceived.

9. In the rejoinder, the averments made in the Writ Petition have been reiterated by the Petitioner.

10. Petitioner has chosen to argue this petition himself and had submitted that he has already placed on record his written submissions and had urged this Court to decide this petition in the light of the written submissions, placed on record by him.

11. Counsel for Respondents has also placed on record a short synopsis of submissions. Both the sides have made oral submissions as well. The written submissions placed on record by the Petitioner are more or less on the same lines as is the Writ Petition.

12. The reason put forth by the Petitioner for by-passing alternate remedy of appeal and review, as provided under Regulations 87 and 88 of Hotel Corporation of India Limited Employees Services Regulations is that Mr. R.C. Aggarwal, Managing Director of the Respondent-Hotel was biased against him. In deciding the question of bias, human probability and ordinary course of human conduct

have to be taken into consideration. Apex Court in “*Dr. G. Sarana vs. University of Lucknow and others*”, **AIR 1976 SC 2428**, on the bias aspect, has observed as under:-

“What has to be seen in a case where there is an allegation of bias in respect of a member of an administrative Board or body is whether there is reasonable ground for believing that he was likely to have been biased.”

13. Petitioner wants this Court to believe that simply because the Petitioner had permitted first wife of Mr. R.C. Aggarwal, Managing Director of the Respondent-Hotel to meet him in the office, would be sufficient for Mr. R.C. Aggarwal to hold a grudge against the Petitioner. In normal course, the Peon-cum-Attendant outside the office of the Managing Director of the Hotel or the Private Secretary of the Managing Director of the Hotel is the person, who would permit any person to meet the Managing Director of the Respondent-Hotel and that too, after the Managing Director agrees to meet such a person. Petitioner does not state in his petition or in the written submission as to what was the occasion for the first wife of Mr.R.C.Aggarwal, to have come to the Petitioner and had sought the permission from the Petitioner to purportedly meet her husband Mr. R.C. Aggarwal. To say the least, allegation of bias, leveled against Mr. R.C. Aggarwal, then Managing Director of the Respondent-Hotel

lacks substance and is not sufficient to permit the Petitioner to bypass the remedy of Statutory Appeal.

14. The law must take its own course. This Court in *“Tej Singh vs. FCI, (152) 2008 DLT 243*, has noticed that existence of alternative remedy is not an absolute bar to exercise the jurisdiction under Article 226 of Constitution of India but at the same time, the person invoking the writ jurisdiction, without exhausting the alternate remedy has to make a strong case as to why the available remedy has not been exhausted.

15. During the course of the arguments, it was brought to the notice of this Court by counsel for the Respondent that Mr.R.C. Aggarwal is no more the Managing Director of the Respondent-Hotel and it was stated on behalf of the Respondents that the Petitioner must be relegated to avail of the alternative remedy, which is efficacious one.

16. It stands acknowledged in *“Madhukar & Ors. Vs. Sargam & Ors.”, AIR 2001 SC 2171*, that remedy of appeal is valuable right. In the facts of instant case, it would be indeed appropriate to relegate Petitioner to avail of remedy of appeal.

17. This Court is conscious of the fact that the time for filing of the statutory Appeal against the order of Inquiry Officer has elapsed but since the Petitioner is being relegated to obtain the alternative remedy, therefore, the time spent by the Petitioner here, before this

Court, has to be excluded. Meaning thereby, Petitioner's statutory Appeal under Regulation 87 of Hotel Corporation of India Limited Employees Services Regulations shall be entertained by the Authority concerned under the aforesaid Statute, as the delay in filling of the statutory Appeal deserves to be condoned.

18. Petitioner is granted one month time from today to prefer the statutory Appeal under Regulation 87 of the Hotel Corporation of India Limited Employees Services Regulations against the impugned orders (Annexure P-17 and Annexure P-19) and it is expected that the Appellate Authority would expeditiously decide the Petitioner's statutory Appeal, preferably within a period of three months of being apprised of this order.

19. This petition is disposed of, with the observation that anything stated herein shall not be taken to be an expression on merits while deciding Petitioner's appeal.

20. No costs.

SUNIL GAUR, J.

July 27, 2009
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