

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

+ **WP(C) 1355 OF 2001**

% Date of Decision: 12th August, 2010

! **G.K. SRIVASTAVA** Petitioner

Through: Mr. A.K. Verma, Advocate.

Versus

\$ **EXPORT INSPECTION COUNCIL OF INDIA & ANR.**

... Respondents

^ Through: Mr. R.K. Chaudhary, Advocate

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J(ORAL)

The petitioner was employed with respondent no.1 Export Inspection Council of India, which was established under The Export(Quality Control and Inspection) Act, 1963 as an autonomous body and has been functioning under the Ministry of Commerce, Government of India. He was placed at the disposal of Export Inspection Agency-Delhi, a body established by the respondent no.1 under Section 7 of the Export(Quality Control &

Inspection) Act,1963. The petitioner had been climbing the success ladder during his long tenure of service and getting promoted from time to time and finally attained the position of Joint Director.

2. During his tenure as Joint Director he was asked by the Director of the respondent no.1 to initiate criminal proceedings against M/s Pepsi Foods Private Ltd. in February, 1993 for an offence punishable under Section 11 of the aforesaid Act of 1963 and vide consent order passed by Shri D.C.Majumdar, Director(Insp. & Q/C) of respondent no.1 on 26th February,1993 the petitioner was authorised to file the criminal complaint. He accordingly filed a criminal complaint on behalf of Export Inspection Agency against M/s Pepsi Foods Private Ltd. on 24th March,1993 in the concerned Court. However, that complaint case was dismissed in default on 24th May,2003 because of non-appearance of anyone on behalf of the complainant and the petitioner happened to be on leave that day. That dismissal of the criminal complaint against M/s Pepsi Foods Private Ltd. was considered by the respondent no.1 to be a result of a conspiracy hatched by the petitioner with the Additional Director Mr. K.J.Srivastava and M/s Pepsi Food Private Ltd. to favour Pepsi Foods Private Ltd. and in turn to get undue pecuniary advantage for themselves. Accordingly, the petitioner was served with a Memo dated 15th June,1993 by the Director of respondent no.1, Shri D.C.Majumdar alleging that he had deliberately not appeared in the Court to pursue the case against M/s Pepsi Foods Private

Ltd. with a view to favour it and had got the case dismissed in default. He was called upon to show cause as to why appropriate action be not taken against him. The petitioner offered his explanation on 17th June, 1993 to the effect that he had not pursued the case against Pepsi Foods Private Ltd. under the instructions of Shri K.J. Srivastava, Additional Director, Export Inspection Agency. Thereafter the respondent no.1 not only did not take any action against the petitioner but it gave him stagnation increment also in November, 1995. In the meanwhile the Director of respondent no.1 Shri D.C. Majumdar had retired from service and one Shri S. Lakshmikanthan had taken over as the Acting Director. He had opted for voluntary retirement and was to be relieved from service on 31st May, 1996 and the petitioner was also due for retirement in June, 1996 but before that Mr. Lakshmikanthan decided to initiate disciplinary proceedings against the petitioner for his having got dismissed the criminal complaint against Pepsi Foods Private Ltd. and accordingly the petitioner was served with a charge-sheet dated 6th May, 1996.

3. The two charges levelled against the petitioner in the charge sheet are being reproduced below:

“Charge - I

That the said Shri G.K. Srivastava while functioning as Joint Director, Export Inspection Agency –Delhi during the period from June, 1991 to June, 1993 has failed to comply with and has willfully defied the lawful and reasonable orders and instructions of the Director (Inspection and Quality Control), Export Council with a view to favour M/s Pepsi Foods Private Ltd., New Delhi.

Charge-II

That during the aforesaid period and while functioning in the aforesaid capacity, the said Shri G.K. Srivastava has entered into a criminal conspiracy by willfully absenting himself from Court proceedings on 24.5.1993 with Shri K.J. Srivastava, Additional Director and with M/s Pepsi Foods Pvt. Ltd, by illegal means with a view to cause undue pecuniary advantage to themselves and/or M/s Pepsi Foods Pvt. Ltd., and consequently the case was dismissed in default.

By his aforesaid acts, he has failed to maintain absolute integrity, devotion to duty and committed acts unbecoming of a public servant. He, therefore violated the provisions of Rule 3 (1), (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964 as applicable to Export Inspection Council/Agency Employees.”

4. The petitioner had submitted reply to the aforesaid charges. He had claimed that the criminal complaint was, in fact, directed by the Additional Director of the Council not to be pursued. He also claimed that since he was to be on leave he had in advance made a note in the departmental file in respect of the instructions conveyed to him on behalf of the Additional Director Shri K.J. Srivastava that the aforesaid criminal complaint was not to be pursued.

5. The respondent no.1 did not feel satisfied with the aforesaid explanation given by the petitioner and therefore decided to initiate formal departmental inquiry. Inquiry Officer who conducted the inquiry gave his report dated 26th May, 1998. In that report the Inquiry Officer came to the conclusion that charge I was proved partly inasmuch as the petitioner had not complied with the consent order given by the Director in full by filing the complaint against Pepsi Foods only on behalf of Export Inspection Agency and not on behalf of Export Promotion Council also but that was

not wilful. Regarding the second charge it was held that there was no conspiracy hatched between the charged officer (petitioner herein) and Mr. K.J. Srivastava for causing any undue advantage to M/s Pepsi Foods Private Ltd. and further that the criminal complaint against M/s Pepsi Foods Private Ltd. was not got dismissed in default deliberately by the petitioner but still it was held that this charge was held to be partly proved since the Inquiry Officer was of the view that even if the criminal complaint was not to be pursued the same should have been withdrawn instead of getting it dismissed in default.

6. Accepting the Inquiry Officer's report, the Disciplinary Authority, considering the fact that the petitioner had in the meantime retired on 30th June, 1996, imposed the penalty of cut of Rs.25/- from his pension for a period of three months from December, 1998 vide order dated 8th December, 1998. Then the petitioner's pension was calculated on the basis of index prevailing in 1998. The petitioner filed an appeal to the Appellate Authority but the same was rejected vide order dated 27th September, 1999. He then filed a review petition but the same was also rejected. Feeling aggrieved, the petitioner came to this Court and filed the present writ petition under Article 226 of the Constitution of India for setting aside the order dated 8th December, 1998 of the Disciplinary Authority as also for refund of pension amount of Rs. 75/- and payment of arrears of pension calculated at the index prevailing in the year 1996 when he had retired and

when his pension should have been fixed. He also claimed damages for mental agony suffered by him.

7. As per the petitioner an enquiry was held against Mr. K.J. Srivastava also on same allegations of his conspiring with the petitioner and Pepsi Foods Pvt. Ltd. but he was not held guilty.

8. After having heard the learned counsel from both the sides and having perused the inquiry record placed on record by the petitioner himself and the Inquiry Officer's report this Court is of the view that this petition deserves to be allowed and the Inquiry Officer's report, disciplinary Authority's decision accepting that report and the Appellate Authority's decision rejecting the petitioner's appeal all deserve to be set aside.

9. Learned counsel for the petitioner had submitted that the Enquiry Officer could not have held the petitioner guilty of charge no. I even partly since in the consent order dated 26th February, 1993 issued by the Director of respondent no. 1 council all that the petitioner was required to do was to file a case against Pepsi Foods Pvt. Ltd. which he did. However, during the course of enquiry proceedings the departmental representative had made an oral submission to the effect that the complaint filed against Pepsi Foods Pvt. Ltd. should have been on behalf of Export Inspection Agency as

well as Export Inspection Council while the petitioner had filed the same only on behalf of Export Inspection Agency. That submission was accepted by the Enquiry Officer and therefore, he held that charge no. I had been proved partly since it had not been established by the department that that was done by the petitioner to favour Pepsi Foods Pvt. Ltd. It was also submitted that it had not been mentioned in the charge-sheet that the petitioner had not complied with the Director's orders by not filing the complaint on behalf of the Export Inspection Agency as well as Export Inspection Council and, therefore, the Enquiry Officer should not have entertained the submission made by the Presenting Officer for the first time during the course of enquiry proceedings. Learned counsel for the respondents had really nothing to say in opposition to these submissions of the learned counsel for the petitioner on charge no. I except that this Court should not interfere in the decision taken by the disciplinary authority after holding proper enquiry and giving him full opportunity to defend himself.

10. In my view, the learned counsel for the petitioner was right in his submission that when in the charge-sheet itself it was not alleged that he had to file a joint complaint on behalf of Export Inspection Agency as well as Export Inspection Council against Pepsi Foods Pvt. Ltd. he could not have been held guilty of having not complied with the orders of his Director and also because Enquiry Officer had also concluded that non-filing of the complaint on behalf of the Agency as well as the Council was

not deliberate and on this short ground alone the findings of the Enquiry Officer in respect of charge I need to be set aside.

11. The second charge against the petitioner was that of wilful absence from Court proceedings in respect of the criminal complaint against M/s Pepsi Food Private Ltd. in conspiracy with Shri K.J. Srivastava, Additional Director and M/s Pepsi Food Private Ltd. but that charge was not upheld by the Inquiry Officer. During the course of enquiry proceedings the department's own witnesses had supported the petitioner's defence that the criminal complaint against Pepsi Foods Pvt. Ltd. was not to be pursued. The departmental witness Shri A.K. Saxena(PW-5) had admitted that he had conveyed to the petitioner the message of the Additional Director not to go to Court on 24th May, 1993 as conveyed by the Director. Similarly, PW-4 Shri A.B. Kashiv had deposed that sometime in the end of April or 1st or 2nd of May, 1993 he was informed by the Additional Director Shri K.J. Srivastava that the case was not to be pursued and that decision Shri K.J. Srivastava had also conveyed to their counsel Shri Prahlad Dayal on 12th May, 1993 and further that there was no purpose to appear in Court on 24th May. The Enquiry Officer had noted in his report that the petitioner had well in advance made a noting in the departmental file that he had received the note to pursue the case against Pepsi Foods Pvt. Ltd. It was also observed by the Enquiry Officer that even after the petitioner had received instructions for not perusing the case he should have at least

attended the Court on 24th May, 1993 and even if he was on leave he should have done that and his not doing that constituted a lapse on his part. It was, of course, also held that that lapse was not deliberate in order to favour Pepsi Foods Pvt. Ltd. PW-3 Shri Karamchari had categorically stated in his examination-in-chief itself that the integrity of the petitioner was beyond doubt and charge against him was false and malicious. Once the Inquiry Officer came to the conclusion that his absence from the Court was not willful, the very foundation of the charge fell to the ground and thereafter there was no justification whatsoever for holding the petitioner guilty even partly in respect of charge No.2 also.

12. For all these reasons this writ petition is allowed and the punishment awarded to the petitioner is set aside and as a consequence thereof he shall be entitled to all consequential benefits including fresh calculation of his pension as if he had retired without any blemish in the year 1996.

P.K. BHASIN,J

August 12, 2010
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