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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 3732/2013 & CM Nos. 6984-85/2013

31st May, 2013

MEENA PREMCHANDANI

.....Petitioner

Through: Mr. Nitin Thakur, proxy counsel for Mr.
Sachin Chauhan, Advocate.

VERSUS

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Sanjay Ghose, Advocate for R-2 and R-
3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition impugns the order dated 12.4.2013 of the Sindhi Academy, which is represented by respondent nos. 2 and 3. By the impugned order Sindhi Academy has appointed Mr. A.K.Hajelay, Advocate as an Enquiry Officer. Challenge is laid to the factum of appointment of a person who is not an employee of the organization-M/s Sindhi Academy as an Enquiry Officer and that the Enquiry Officer has to be a public servant which the Enquiry Officer is not.

2. This case was argued yesterday and matter was listed today for further directions including on the aspect of response of M/s Sindhi Academy to the letter of CVC dated 25.3.2003 filed as Annexure P-18 to the writ petition.

3. Today, counsel appearing for respondent nos. 2 and 3 - Sindhi Academy states that the petitioner is misleading the Court by relying upon the CVC circulars/letters inasmuch as the Central Vigilance Commission Act, 2003 applies only to Central Government and organizations under the control of the Central Government. It is argued that M/s Sindhi Academy is a society under the Societies Registration Act, 1860 under the control of Government of the NCT of Delhi. It is accordingly argued that CVC circulars hence would have no binding force upon M/s Sindhi Academy.

4. The only argument urged on behalf of the petitioner is by placing reliance upon Rule 14(2) of the CCS (CCA) Rules to argue that a person who is appointed as an Enquiry Officer cannot be an Advocate who is not an employee of Sindhi Academy and who is also not a public servant as required. Rule 14(2) of the CCS (CCA) Rules reads as under:-

“14. Procedure for imposing major penalties

(1) xxxxx

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule, or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.”

5. A reference to the aforesaid Rule shows that it is not a requirement of this Rule that a public servant or a retired Judge or an employee of an organization is

only entitled to be appointed as an Enquiry Officer. The expression qua an Enquiry Officer is only 'an authority'. Therefore, the argument urged on behalf of the petitioner in this regard is wholly incorrect. All that this Rule 14(2) states that an authority has to inquire into the truth of allegations contained in the chargesheet, and authority is not confined to an employee of the employer-organization or a retired Judge or a public servant as is sought to be argued on behalf of the petitioner.

6. Learned counsel for the respondent nos. 2 and 3/Sindhi Academy rightly relies upon a judgment of the Supreme Court in the case of *Union of India Vs. Alok Kumar AIR 2010 Supreme Court 2735* and paras 24,27,28,33 and 38 thereof to contend that the expression 'authority' should not be narrowly construed. These paras read as under:-

“24. It is clear from above that there is some unanimity as to what meaning can be given to the expression 'authority'. The authority, therefore, should be understood on its plain language and without necessarily curtailing its scope. It will be more appropriate to understand this expression and give it a meaning which should be in conformity with the context and purpose in which it has been used. The 'other authority' appearing in Rule 9(2) is intended to cover a vast field and there is no indication of the mind of the framers that the expression must be given a restricted or a narrow meaning. It is possible that where the authority is vested in a person or a body as a result of delegation, then delegatee of such authority has to work strictly within the field delegated. If it works beyond the scope of delegation, in that event it will be beyond the authority and may even, in given circumstances vitiate the action.

27. The learned Counsel appearing for the respondents wanted us to accept the argument that provisions of Rule 9(2) have an implicit exclusion in its language

and exclusion is absolute. That is to say, the framers have excluded appointment of former employees of Railway Department as other authority (Inquiry Officer) under these provisions. We find no merit in this contention as well. **An exclusion clause should be reflected in clear, unambiguous, explicit and specific terms or language,** as in the clauses excluding the jurisdiction of the court the framers of the law apply specific language. In some cases, as it may be, such exclusion could be read with reference to irresistible implicit exclusion. In our opinion the language of Rule 9(2) does not support the submission of the respondents. Application of principle of exclusion can hardly be inferred in absence of specific language. Reference in this regard can be made to the judgment of this Court in the case of New Moga Transport Co. v. United India Insurance Co. Ltd. AIR 2004 SC 2154.

28. In the present case, neither of these ingredients appear to be satisfied. Ultimately, what is the purpose of a departmental inquiry? It is, to put to the delinquent officer/official the charges or article of charges and imputation and seek his reply in the event of there being no substance to hold an inquiry in accordance with the rules and principles of natural justice. The Inquiry Officer appointed by the disciplinary authority is a delegatee and has to work within the limited authority so delegated to him. The charges and article of charges and imputations are served by the disciplinary/competent authority. The inquiry report is submitted again to the competent authority which is expected to apply its mind to the entire record and then decide whether any punishment should be imposed upon the delinquent officer or not. Thus, all substantive functions are performed by the disciplinary or the specified authority itself. It is only an interregnum inquiry. It is conducted by the delegatee of the said authority. That being the purpose and specially keeping in mind the language of Rule 9(2), we are unable to accept the contention that 'other authority' has to be a person in service alone. Thus, it is not only the persons in service who could be appointed as Inquiry Officers (other Authority) within the meaning of Rule 9(2). Reliance placed by the respondents upon the judgment of this Court in the case of Ravi Malik (supra) is hardly of any assistance to them. Firstly, the facts and the Rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression 'public servant' appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that public servant should be understood in its common parlance and a retired officer would not fall within the meaning of public servant, as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. 'other authority' and 'person/persons'. In other words, the absence of the word public servant of

the Government is conspicuous by its very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance. Another factor which we may notice is that the definition of the public servant appearing in the Indian Penal Code (for short 'the Code'), reliance upon which was placed by the respondents, was not brought to the notice of the Court while dealing with the case of Ravi Malik (supra). In terms of Section 21 of the Code a public servant denotes a person falling under any of the descriptions stated in the provision. While it refers to a different kind of persons it also brings within its ambit every arbitrator or every person to whom any cause or matter has been referred for decision or report by any court or any other competent public authority. Furthermore, as per the 12th clause of inclusion, in this very section, even "every person" can be a public servant. In fact, in terms of Section 21(a) a person who is in service of the Government or remunerated by fees or commission for the purpose of any public duty of a Government is also a "public servant".

33. Still another aspect of the case can be that, the expression "public servant" cannot be equated to the term "other authority". Both these expressions cannot be treated as inter-changeable or synonymous. They have different connotations and meaning in law. "Public servant" is a term which is well defined and explained in the field of law, while "authority" is a generic term and is used in different places with different meanings and purposes. 'Authority' thus is an expression of wide magnitude and is frequently used not only in legal jurisprudence but also in administrative and executive field. Therefore, it is to our mind not permissible to permit restricted meaning of this term.

38. It will be useful to apply the rule of contextual interpretation to the provisions of Rule 9. It would not be permissible to import any meaning or make additions to the plain and simple language of Rule 9(2) in relation to "other authority." The rule of contextual interpretation requires that the court should examine every word of statute in its context, while keeping in mind the preamble of the statute, other provisions thereof, *pari material* statutes, if any, and the mischief intended to be remedied. Context often provides a key to the meaning of the word and the sense it carries. It is also a well established and cardinal principle of construction that when the rules and regulations have been framed dealing with different aspects of the service of the employees, the Courts would attempt to make a harmonious construction and try to save the provision, not strike it down rendering the provision ineffective. The Court would normally adopt an interpretation which is in line with the purpose of such regulations. The rule of contextual interpretation can be purposefully applied to the language of Rule 9(2), particularly to examine the merit in the contentions raised by

respondent before us. The legislative background and the object of both the Rules and the Act is not indicative of any implied bar in appointment of former employees as inquiry officers.”

7. The aforesaid judgment of the Supreme Court has thereafter been followed by the Supreme Court in its judgment reported as *Union of India & Ors. Vs. P.C.Ramakrishnayya JT 2010 (9) Supreme Court 29*. Para 13 thereof reads as under:-

“13. In **Alok Kumar** this Court considered in great detail, the meaning of the word "authority" occurring in Rule 9(3) and came to find and hold that a retired officer could also be vested with the delegated authority of the Disciplinary Authority (see paragraphs 26-62) to hold the inquiry. It may also be noted that in **Alok Kumar**, this Court also considered the decision in **Ravi Malik v. National Film Development Corporation Ltd. (2004) 13 SCC 427** and distinguished it by pointing out that it was in the context of Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. In paragraph 45 of the judgment, the Court observed as follows:

45. Reliance placed by the respondents upon the judgment of this Court in **Ravi Malik** is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression "public servant" appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that "public servant" should be understood in its common parlance and a retired officer would not fall within the meaning of "public servant", as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section [3](#) of the Act have used a very different expression i.e. "other authority" and "person/persons". In other words, the absence of the words "public servant" of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance.

8. The provision being Rule 9 (2) which was in question before the Supreme Court in the case of *Alok Kumar (supra)* is more or less identical to Rule 14(2) of the CCS(CCA) Rules.

9. It is also clear from the record that the petitioner has been unnecessarily causing delay in the conduct of the enquiry. The petitioner had objected to the earlier Enquiry Officer, who was a retired public servant and the employer-organization M/s Sindhi Academy had thereafter on account of objection of the petitioner changed the Enquiry Officer to the present Enquiry Officer Mr. A.K.Hajelay, Advocate.

10. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

MAY 31, 2013
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VALMIKI J. MEHTA, J.