

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

+ **W.P.(C) 4678/2014**

KAMAL NAYAN BHATT

Through

..... Petitioner

Ms. Jyoti Singh, Sr. Advocate with
Mr. Sameer Sharma and Mr.
Amandeep Joshi, Advocates

versus

UNION OF INDIA & ORS.

Through

..... Respondents

Mr. Manish Mohan, Central
Government Standing Counsel
with Ms. Manisha Rana Singh, Mr.
Gaurav Sharma, Ms. Puja Sarkar,
Advocates for R-1 to 3 and 5

Mr. Naresh Kaushik, Ms. Amita
Kalkal & Ms. Aditi Gupta, Advs.
for R-4 UPSC.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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12.09.2014

KAILASH GAMBHIR, J. (ORAL)

1. The petitioner, presently working as Joint Director in Border Road Organisation and due for promotion to the next higher post of Director (Administration) has filed the instant writ petition under Article 226 of the Constitution of India. He seeks quashing of the Memorandum dated

19th March, 2012, whereby respondent No.2 has initiated minor penalty proceedings against him under Rule 16 of CCS (CCA) Rules, 1965. The reason for issuing the said memorandum is that the petitioner had issued an experience certificate in favour of one Mr. Virendra Dutt Joshi, Supervisor NT Grade-II GS-184797F, who was one amongst many candidates seeking appointment to the post of Administrative Officer (Group A) in the Border Road Organisation although the post occupied by him was neither a supervisory post nor a post relevant for making him eligible for consideration for appointment to the post of Administrative Officer in BRO.

2. The case of the petitioner is that the legality, validity and correctness of such experience certificates issued by GREF Officers and the Army officers in favour of the candidates seeking appointment to the post of Administrative Officer was a subject matter of writ petitions decided by a Division Bench of this Court vide order dated 10th July, 2013 in the case of *Vinod Singh and Ors. vs Union of India & Ors.*, wherein the Court took the view that the experience certificates issued by the officers in favour of such candidates were valid and proper and the same duly met the eligibility conditions notified by the UPSC. It is also

contended that Special Leave Petitions (Civil) Nos. 37734-37736/2013 were preferred by the Union of India challenging the decision of the Division Bench in CWP No. 4997/2011, CWP 5457/2011, CWP No. 6403/2011. The said SLPs were dismissed by the Hon'ble Supreme Court of India on 6.1.2014. The petitioner's grievance is that despite the validity of the experience certificates, issued by GREF officers and Army officers, being upheld by the Supreme Court, the respondents have not withdrawn the minor penalty proceedings against him; although the Competent Authority has already exonerated all the 30 Army officers who had issued identical experience certificates.

3. Ms. Jyoti Singh, the learned Senior Advocate appearing for the petitioner has taken us through the sequence of events right from the stage when the experience certificate was issued by the petitioner in favour of one Mr. Virendra Dutt Joshi till the stage when the vacancy for the post of Director (Administration) had arisen. Drawing attention of the Court to the experience certificate dated 01.10.2007 issued by the petitioner in his capacity as Senior Administrative Officer, the learned senior counsel pointed out that in the experience certificate, the petitioner had only certified that Mr. Virendra Dutt Joshi, Supervisor, Non-

Technical Grade-II was serving in the General Reserve Engineer Force since 10th June, 2002 till the date of issuance of the said certificate and also specified the nature of duties performed by him since his appointment on the said post. The learned senior counsel further submitted that little variations in the substance depended upon an individual's way of certification; that similar experience certificates were issued by Army officers as well as GREF officers. To draw a comparison of the experience certificate given in favour of Mr. Virendra Dutt Joshi with that of Mr. Indresh Kumar, who was occupying the same post and discharged similar duties as the former, the learned senior counsel pointed out that on comparison of these two certificates, one can clearly notice that in both the certificates, the nature of duties performed by the officers have been described as duties rendered in general administration, establishment, finance, accounts stores etc. The learned senior counsel also submitted that the experience certificate issued in favour of Mr. Indresh Kumar was a subject matter of the decision in the aforesaid writ petition although the experience certificate issued by the petitioner in favour of Mr. Virendra Dutt Joshi was not under the legal scrutiny of the Court because of his failure to make it to the list of short listed

candidates.

4. The learned senior counsel also invited attention of the Court to a copy of the letter dated 6th December, 2012 whereby the matter was taken up by the Director General, Border Road Organisation with the Deputy Secretary BRDB requesting them to re-examine the cases of the GREF officers for their exoneration, at par with the Army officers, who already stood exonerated for issuing the same kind of experience certificates so that there is no disparity in dispensing justice in identical cases. The learned senior counsel has further drawn the attention of the Court to the list of 30 Army officers, out of which 20 officers against whom show cause notices were issued but were exonerated and for the remaining officers, it was decided to not proceed further and the matter with regard to the issuance of experience certificates by the Army officers was treated as closed. The learned senior counsel has also invited the attention of the Court to a letter dated 18th October, 2012 written by the Additional Director General to the Secretary, Ministry of Defence recommending repeal of the Memorandum dated 19th March, 2012 issued against the petitioner. The petitioner had filed a detailed representation against it seeking dropping of the proceedings against him under Rule 16 CCS

(CCA) Rules, 1965 so that he is not deprived of being considered to the higher post of Director (Administration). However, no response or decision was taken thereon by the respondents.

5. Based on the above submissions, the learned senior counsel for the petitioner strongly urged that the respondents have deliberately not withdrawn the said Memorandum dated 19th March, 2012 only to deprive the petitioner from being considered to the higher post of Director (Administration), for which the DPC is likely to be held very shortly.

6. The writ petition has been strongly opposed by respondent Nos.1 to 3 and 5. They contend that the procedure and the guidelines to be followed for promotion of a Government servant, against whom disciplinary/ court proceedings are pending or whose conduct is under investigation, has been laid down in DoPT OM No.22011/4/91-Estt (A) dated 14.09.1992. Based on this DoPT guideline, the respondents argue that the petitioner against whom a chargesheet has already been issued, the DPC would assess his suitability along with other eligible candidates, without taking into consideration the disciplinary case and the assessment of the DPC, in so far as the final selection of the petitioner to the promotional post is concerned, the same will be kept in a sealed cover.

The respondents also contended that in the event of a Government servant being completely exonerated and allegations against him being ultimately dropped or disproved, in the disciplinary case, his promotion would be determined with reference to the position assigned to him in the findings kept in the sealed cover. He may be promoted notionally with reference to the date of promotion of his next junior and vice versa. If some penalties have been imposed on the Government servant as a result of the disciplinary proceedings, then the findings given in the sealed cover shall be acted upon. His case for promotion would be considered by the next DPC in the normal course, having regard to the penalty imposed on him.

7. With regard to the issuance of the experience certificate by the petitioner in favour of Mr. Virendra Dutt Joshi, the stand of the respondents is that a chargesheet vide BRDB Memorandum dated 19.03.2002 has already been issued to the petitioner and the concerned Vigilance Section is in the process of reviewing all the experience certificates issued by the GREF Officers in favour of the candidates seeking appointment to the post of 'Administrative Officer' in BRO and as long as the decision is not taken by the Vigilance Section, there is no option left with the DPC but to apply the sealed cover procedure in the

case of the petitioner.

8. A separate affidavit has been filed by respondent No.4/ UPSC and their stand is that they have not received any proposal so far from the BRO to convene a DPC to consider the promotion of the petitioner to the post of Director (Administration). They have also stated that the proposal for convening the DPC for considering promotion to the said post shall be processed expeditiously and the UPSC will scrupulously follow the guidelines as contained in DoPT OM No.22011/5/86-Estt (D) dated 10.04.1989.

9. Mr. Manish Mohan, the learned Central Government Standing Counsel made a desperate attempt to draw a difference between the experience certificate issued by the petitioner in favour of Mr. Virendra Dutt Joshi and the other experience certificates which were issued by the GREF Officers and the Army Officers in favour of the other candidates seeking their appointment to the post of Administrative Officer. The learned CGSC also contended that the experience certificate which was issued by the petitioner was not a subject matter of writ petitions which has considered the other experience certificates. Therefore, the petitioner cannot get any benefit of the said decision. The learned counsel

submitted that at the time of issuing the experience certificate, the petitioner did not annex the salary slip of the candidate, as from the pay scale of the candidate one could know whether the candidate was working in a supervisory capacity or not; that the petitioner in his reply dated 20.09.2013 to the Memorandum dated 19.03.2012 had himself admitted that the experience certificate issued by him was of general nature and not meant for seeking appointment to the post of 'Administrative Officer' Group- A as advertised by BRO in the year 2009; that it was the individual who had surreptitiously appended the back dated experience certificate of 2007 along with his application for the post of 'Administrative Officer' in the year 2009, instead of submitting a fresh experience certificate for the said post.

10. We have heard the learned counsel for the parties at a considerable length and given our thoughtful consideration to the arguments advanced by them.

11. When this matter was taken up for preliminary hearing, the Court would have expected that in such a case the respondents would not have taken any negative stand insofar as it relates to dropping of minor penalty proceedings against the petitioner were concerned, especially since the

issue concerning the experience certificates had attained finality. But instead, time was sought by the respondents to file a counter affidavit to contest the case. Mr. Sanjay Jain, the learned Additional Solicitor General, Union of India had also entered appearance on the very first date but he too took refuge under the legal proposition that no prejudice would be caused to the petitioner even if the DPC is held and his case for promotion to the next rank of Director (Administration) shall be kept in a sealed cover due to the pendency of disciplinary proceedings against him.

12. There is no denying the fact that the respondents have every right to take legal recourse whenever there is a dispute concerning the legal position in a particular matter but, the issue that exasperates us, is as to why is there a need for vexatious contest which is brought regardless of its merits, with the sole purpose of harassing the litigating adversary. It is an abuse of judicial process, there should be responsible litigation, Government is not an ordinary litigant and the endeavour of the Government and Public Bodies should be to put an end to the unnecessary and frivolous litigation. The Court's dockets are inundated by litigation undertaken or contested by the Government and its various Public Bodies and the Para Military Forces.

13. We will not detain ourselves to draw a fine distinction between the experience certificate issued by the petitioner in favour of one Mr. Virendra Dutt Joshi and the experience certificates issued by the Army officers and the GREF officers in favour of other candidates, as every individual officer is entitled to give certification in a manner and style which may not match with the manner and style of another officer. No specific guidelines or criteria has been laid down in this regard, as to in what manner the experience certificate was required to be given. Suffice to mention that the experience certificate given by the petitioner in favour of Mr. Indresh Kumar was also a Supervisor, Non-Technical Grade-II and was one of the petitioner in the Writ Petition bearing CWP Nos. 4997/2011, CWP 5457/2011, CWP No. 6403/2011. On comparing the two, one cannot find any dissimilarity in the experience certificate issued by the petitioner in favour of the Virendra Dutt Joshi who was also working on the same post. In the year 2009, the UPSC has published and circulated an advertisement inviting applications for appointment to the 31 posts of 'Administrative Officer' (Group A Post) in the BRO. One of the conditions to seek appointment to the said post was for the candidate to have the requisite experience certificate of a post in a supervisory

capacity. Various candidates who had applied in response to the said advertisement were working in different capacities with BRO either under the Army Officers or under the GREF Officers and accordingly the experience certificates in favour of such candidates were either issued by the Army Officers or by the GREF Officers. After completing the selection process, the UPSC had short-listed 38 candidates for their appointment to the post of 'Administrative Officer' but before these officers could be appointed, the Office of the BRDB made a request to the UPSC to reconsider their decision. The three members Screening Committee constituted by the BRDB vide their report dated 28.02.2011 recommended cancellation of the entire selection process and the prime reason for the said cancellation was the invalidity of the experience certificates issued in favour of such candidates by the Army Officers and by the GREF Officers. Hence, the selected candidates being aggrieved by the decision taken by the officers of the BRDB, challenged the same before this Court in W.P.(C) No. 4997/2011 and other writ petitions. In para 12 of their order dated 10.07.2013, the Division Bench held that the only factual question which arose before them and was pressed for adjudication was the validity of the experience certificates issued by the

Army Officers/ GREF officers. In the said order, there is a reference to the reply given by BRDB in the Parliament to a starred question on the issue of the validity of experience certificates and the relevant paras of the judgment are reproduced as under:

"21. The petitioners have also placed before us an additional affidavit dated 29th November, 2012 making detailed assertions about the duties of the petitioners in supervisory capacity and enclosing documents in support along with. In addition, the petitioners have placed on record the following documentary material in support of their contention:-

(i) Starred question in the Parliament as to whether the Border Roads Organization has recruited a large number of Administrative Officers between 1983-96 based on wrong experience certificates as pointed out by BRDB by the letter dated 25th July, 2011? If so, as to how many officers have been recruited during the period and what action has been taken on the issue.

(ii) The reply dated 13th December, 2012 sent by the DGBR to the effect that recruitment in the past by the UPSC must have been done with due diligence as per the rules and regulations in vogue and that the issuance of experience certificates by the employer to the employees for the works done by them is within the ambit

of office procedure and ethics and that in the present case no situation of blame or error has been established at any level of scrutiny.

(iii) A communication dated 6th December, 2012 sent by DGBR referring to the disciplinary action initiated against the GREF officers with regard to the experience certificates (as relied upon by the petitioners) issued by them who stood discharged in the disciplinary proceedings.

23. However, this aspect of the matter does not need to detain us any further. In consonance with response of the respondents to the parliamentary question, the respondents have filed an affidavit dated 1st July, 2013 in WP(C)No.4997/2011 (page 281). The para 4 of this affidavit deserves to be considered in extensor and reads thus:-

"4. That it is submitted that the supervisory experience certificates have been issued by officers of BRO following the practice and precedence hitherto existing in the matter of issuing certificate for the similar posts in the absence of any guidelines on the subject matter." (Emphasis supplied)

24. It is clearly evident from the above that respondents have affirmed the authenticity as well as correctness of the certificates on which the petitioners were placing reliance. It is also clearly stated that such certificates were being issued in due course and as prescribed by the Border Roads Organization.

25. In this background, the issue as to the validity

of the certificates on which the petitioners place reliance and the question as to whether they were performing duties in a supervisory capacity or not finds finally settled and needs no adjudication.

29. The experience certificates relied upon by the petitioners have to be thus considered as valid and proper. No issue at all remains with regard to the experience possessed by the petitioners before this court and as such the service of the petitioners in WP(C)Nos.6403/2011 as well as 5457/2011 are required to be considered as meeting the requirements of the eligibility conditions notified by the UPSC are valid.

14. It can be seen from the aforesaid findings of the Division Bench that the experience certificates issued by the Army officers/ GREF officers in favour of the candidates seeking appointment to the post of 'Administrative Officer' were held to be proper, legal and valid in accordance with the prevailing practice and procedure. The experience certificates were for the same post as per the specific guidelines on the subject matter. Accepting the prayer of the petitioners in the said writ petitions, the Division Bench had quashed and set aside the decision of the three members Screening Committee which rejected the candidature of the petitioners therein on the alleged ground of invalid experience certificates. The decision of the High Court was challenged by the Union

of India in SLPs No. 37734-37736/2013 and vide order dated 06.01.2014, the said SLPs were dismissed.

15. There is no gainsaying that the issue with regard to the validity and authenticity of the experience certificates has attained finality with the dismissal of the SLPs filed by the Union of India but to our utmost shock and astonishment, respondent Nos.1 to 3 and 5 still wish to wait for the report of the Vigilance inquiry, as a corollary till then it would deprive the petitioner for consideration for promotion to the next higher post of Director (Administration) by adopting the sealed cover procedure. Necessarily, if the sealed cover procedure is adopted in the case of the petitioner, then the only other candidate who will be benefited, will be respondent No.5, since he would be the only other eligible candidate to be considered for appointment to the said post, because the two other officers senior to the petitioner have already retired in May, 2014. Evidently, there is a calculated effort to keep alive the said disciplinary proceedings against the petitioner, so that in the meanwhile the next officer in seniority can be appointed to the said post of Director (Administration) in the forthcoming DPC.

16. It is an oddity that while by one stroke, the Competent Authority

has exonerated all the 30 Army Officers who had issued similar experience certificates, as can be seen from the communication dated 06.12.2012 signed by one Col. Sandeep Yadav, but as against the petitioner and other GREF officers, the respondents obliquely wish to await the report of the Vigilance inquiry. We also fail to comprehend as to how any vigilance inquiry can be held on an issue which has attained finality through judicial determination by the highest court of law. Any step in that direction in fact would be in complete defiance of the orders passed by the High Court and the Supreme Court. The impugned Memorandum is arbitrary and without any basis. The conduct and stand of the respondents is exasperating.

17. In the above circumstances, we hereby quash the Memorandum dated 19.03.2012 as well as the chargesheet issued against the petitioner for initiating minor penalty proceedings under Rule 16 of CCS (CCA) Rules, 1965.

We also impose a cost of Rs.1,00,000/- in favour of the petitioner and against the respondents for causing him unnecessary harassment and constraining him to take recourse to legal proceedings and consequent expenses, for an issue which already stands settled.

The present writ petition is allowed in the above terms.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

SEPTEMBER 12, 2014
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