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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2170/2016

Date of decision: 17th March, 2016

V.K. BAHUGUNA

..... Petitioner

Through: Mr. Harsh Pathak with Ms. Shweta Mahajan
& Mr. Siddhartha Shukla, Advs.

versus

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE
CHANGE

..... Respondent

Through: Ms. Shiva Lakshmi, CGSC with
Mr. Arindam Dey, Mr. Udit Grover &
Mr. Ashok Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Mr. V.K.Bahuguna by this writ petition impugns the order dated 26th February, 2016, whereby his OA No.381/2016 challenging appointment of Mr. Mukesh Kumar as the Inquiry Officer stands dismissed.

2. The limited issue raised before the Central Administrative Tribunal, Principal Bench, New Delhi and before us is whether Mr. Mukesh Kumar, Director, Central Vigilance Commission, Commission of Departmental Inquiry can act as the Inquiry Officer under Rules 8(2) and 8(3) of the All India Services (Discipline and Appeal) Rules, 1969.

3. Mr. Mukesh Kumar, it is submitted, is an outsider as he is not a member/officer of the Indian Forest Service and is not a senior officer, i.e., holder of a post/rank higher to that of the petitioner. Reliance is placed on the decision of the Ernakulam Bench of the Central Administrative Tribunal in OA No.1862/2010 titled ***Tomin J Thackankary IPS vs. State of Kerala & Ors.***

4. Having considered the submissions made by the learned counsel for the petitioner, we regret our inability to agree.

5. Rules 8(2) and 8(3) of All India Services (Discipline and Appeal) Rules, 1969 read :-

“8(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 member of the Service, it may 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.

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3 of the All India Services (Prevention of Sexual Harassment) Regulations, 1998, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable, in accordance with the procedure laid down in these rules.

8(3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer

of the Service to which the member of the Service belongs.”

Sub-Rule (2) stipulates that *whenever the disciplinary authority is of the opinion that there are grounds of inquiring into the truth of any imputation of misconduct or misbehaviour, it may appoint under these Rules or under the Provisions of Public Servant (Inquiry) Act, 1850, an authority to inquire into the truth thereof.* Thus, the Disciplinary Authority has the option to appoint an Inquiry officer under the Rules or under the provisions of Public Servant (Inquiry) Act, 1850. This is a dual option which is given to the Disciplinary Authority. We are not concerned with the proviso which applies to cases where there is a complaint of sexual harassment.

6. Sub-Rule (3) to Rule 8 is applicable, where a Board is constituted to act as the Inquiring Authority. The Board shall consist of two or more senior officers and at least one member should be an officer of the service to which the member facing disciplinary proceedings belongs. The stipulation in Sub-Rule 3 regarding one of the member of the Board, would not apply when an individual is appointed as an Inquiry officer, as is the position in the present case. The wordings of sub-Rule (2) are conspicuously different and without such stipulation. The said sub-Rule does not prescribe that the individual appointed as the inquiry officer should be from the same service. The expression “Senior Officer” used in Sub-Rule 3 of Rule 8, means that the members of Board should be high rank officers keeping in view the rank of the charged officer. The Sub-Rule (2) does not postulate or prescribe that the Inquiry officer must be senior

to the charged officer. There is a difference between the Disciplinary Authority and the Inquiry Officer who is appointed by the Disciplinary Authority. Their ranks would generally not be the same and the Inquiry Officer would be of a lower rank/post.

7. The petitioner in the present case, before his retirement on 31st August, 2014 was the Director General, Indian Council of Forestry Research and Education at Dehradun in the apex scale of Rs.80,000/-. The said post is a stand-alone post and the highest post in the hierarchy of the said organization. Charges relate to his tenure as the Director General of the said Institute. Counsel for the petitioner contends that this post is equivalent to the post of Secretary, Government of India, a contention which is disputed by the counsel for the respondent. We need not go into this aspect for deciding the limited issue raised in the present petition.

8. Mr. Mukesh Kumar, the Inquiry Officer, is undoubtedly a senior officer, presently working as the Director in the Central Vigilance Commission. He holds the post for departmental inquiry, a special post meant to deal with cases of Departmental Inquiry. To ascertain whether Mr. Mukesh Kumar is a group 'A' officer, we had directed the Counsel to verify facts as it was asserted that the nominated Inquiry Officer is not a Group A officer. Learned counsel for the respondent has produced the order dated 20th October, 2015 as per which, Mr. Mukesh Kumar is a Group 'A' officer in pay band Rs.37,400-67,000/- with a grade pay of Rs.10,000/-. We are satisfied that the officer in question is a senior officer.

9. The submission that an outside Inquiry Officer, not from the

same service, will necessarily be unfair, unjust and partisan is only to be noticed and rejected. This is a farfetched and unworthy contention. An Inquiry officer may or may not belong to the same service. An Inquiry Officer from a different service can have its own advantage. A fair and true-blue Inquiry officer would not have any preconceived notions, beliefs and prejudices. Sub-Rule (2) does not support this contention. Reading any such stipulation into Sub-Rule 2, founded on a chimerical supposition must be rejected. This interpretation is unwarranted and would be adding to the words of Sub-Rule 2 to Rule 8, which is impermissible. It would re-write the said Sub- Rule.

10. We have examined the judgment of the Central Administrative Tribunal, Ernakulam Bench in the case of ***Tomin J Thackankary (supra)***. In paragraph 6, it is observed that as per Rule 8 of the aforesaid Rules, an Inquiry Authority ordinarily should be a member of All India Services (AIS). The expression used in the paragraph 6 is ‘ordinarily’. Obviously, the Tribunal did not mean or imply that word ‘ordinarily’, means must or mandatory. We do not find or notice any such stipulation and requirement in the Sub-Rule 2 to Rule 8. Thereafter, the Tribunal had referred to Clauses (2) and (3) of Rule 8 of the All India Services (Discipline and Appeal) Rules 1969 and observed:-

“If a Board is appointed as Inquiring Authority, it shall consist of not less than two senior officers out of which one member shall be an officer of the service to which the applicant belongs. If two officers at least have to be in a Board, then there is no scope ordinarily for a single person-

Inquiring-Authority, consisting of an outsider. A plain reading of Rule 8 shows that ordinarily an officer senior to the applicant should conduct departmental Inquiry against him. In an extra ordinary situation, say, of not having a senior officer, then the 1st respondent with reasons to justify may appoint an outsider as Inquiring Authority. In the instant case, the 1st respondent has not shown any reason in the impugned order to appoint the 2nd respondent as Inquiring Authority instead of an AIS officer.”

The aforesaid quotation refers to a Board appointed under Sub-Rule (3) to Rule 8, which as noticed above, has a specific stipulation. This paragraph does not interpret sub-Rule (2) to Rule 8, where the expressions used are conspicuously different. The said paragraph also records that in extraordinary situations, an outsider can be appointed as the Inquiring Authority. Referring to the factual matrix of the said case, the Bench recorded that the first respondent had not given any reason for appointment of the second respondent as the Inquiring Authority. We would for reasons recorded in paragraph 12 below, at this stage observe that the statutory Rules do not require recording of reasons as to why the person named has been appointed as the inquiry officer, though in a given case, the Disciplinary Authority may record them.

11. Learned counsel for the respondent had drawn our attention to paragraph 7 of the said judgment, which reads:-

“The absence of prohibition in AIS (Discipline and Appeal) Rules, 1969, against appointing any authority as Inquiring Authority does not enable the 1st respondent to empower the 2nd respondent to enquire into the allegations against the applicant, who is statutorily outside his jurisdiction. The issue is not that, there is no prohibition against appointing

any one as Inquiring Authority but whether the spirit of Rule 8 of AIS (Discipline and Appeal) Rules, 1969, is properly understood and followed by the 1st respondent. It is relevant to note that in O.A. No.94/1992, the Bangalore Bench of this Tribunal vide order dated 29.05.1992, quashed the order of the Karnataka Government appointing Lokayukta as the Inquiring Authority in a disciplinary proceedings against an AIS officer. The power to appoint the Inquiring Authority under Rule 8 of AIS (Discipline and Appeal) Rules, 1969, cannot be over stretched, without justifying the appropriateness or the imperative need of appointing the 2nd respondent beyond his jurisdiction to conduct a simple domestic Inquiry when senior AIS officers are available, ignoring the spirit of Rule 8.”

12. We are not in agreement with some of the observations in the aforesaid paragraph, including the ratio that the Inquiry Officer from outside would statutorily lack jurisdiction. There is no embargo or impediment in appointing an individual Inquiry officer, who may or may belong to same service as Sub-Rule (2) of Rule 8 does not stipulate and specify who can be the Inquiry officer. However, under Sub-Rule (3) of Rule 8, when a Board is appointed, then one of the members of the Board should be an officer of the service to which the member belongs. As held above, we would not read and include the aforesaid requirement in Sub-Rule (2) to Rule 8. The spirit of Rule 8(2) is not violated and infringed when a person who is not from the same service is appointed as the inquiry officer. The disciplinary authority should have some discretion in such appointments. Observation that appointment of an inquiry officer must be justified by elucidating and stating appropriate or imperative need has to be rejected. Appointment of an inquiry officer is an administrative

decision. Reasons may or may not be recorded. Judicial intervention in such cases would be rare.

13. In the present case, it is not alleged or urged that the enquiry is biased or prejudiced.

14. In view of the aforesaid reasoning, we do not find any merit in the present writ petition. The writ petition is dismissed with no orders as to costs.

15. We clarify that we have not expressed any opinion on the charge sheet or the allegations made against the petitioner.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MARCH 17, 2016/ak