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

+ W.P.(C) 586/2018 & CM No.2566/2018

LT. COL. HAWA SINGH JATTAYAN
(RETD.)

..... Petitioner

Through: Mr T. L. Garg and Mr Rohan
Garg, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Sanjeev Narula, CGSC with
Ms Anumita Chandra and Mr
Brajesh Kumar, Govt. Pleader
for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.02.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 08.09.2017 (hereafter 'the impugned order') passed by the Director General Resettlement (hereafter 'DGR'). By the impugned order, the petitioner has been dis-empanelled from DGR Coal Loading and Transportation Scheme.

2. The Directorate General Re-Settlement, Ministry of Defence has floated various schemes for providing an opportunity of employment to ex-servicemen. One such schemes is of sponsoring ex-

servicemen for taking up the work of loading/unloading and transportation of coal for Coal India Limited and its subsidiaries.

3. The Scheme to promote coal transportation companies by ex-servicemen was formulated between the Ministry of Energy (now Ministry of Coal) and Ministry of Defence in 1979 with the dual objective of providing assured transport for coal to Coal India Limited and for providing re-employment to rehabilitate ex-servicemen in civilian life. On 08.04.1993, a Memorandum of Understanding (MoU) was entered into between Ministry of Defence (Directorate General of Resettlement) and Ministry of Coal (Coal India Limited). This was superseded by another MoU executed on 16.04.1999.

4. In terms of the said scheme, the work of coal loading/unloading and transportation is provided to companies (ESM Companies) formed by ex-servicemen with the said object.

5. The petitioner, an ex-serviceman, applied to form an ESM Company with the object to take up the work of loading/unloading and transportation of Coal on 11.06.2012. The petitioner also submitted an affidavit on 11.06.2012.

6. The petitioner formed the Company - PCG Coal Carriers Pvt Ltd. - on 13.07.2012 along with three other ex servicemen. On 19.07.2012, the DGR sponsored the said ESM Company for a contract for transportation of coal for South Eastern Coalfields Limited SECL). And, the said ESM Company commenced operations for SECL on 18.09.2012.

7. It is stated that on 13.10.2015 and 07.06.2016, the DGR sent letters to Directors of ESM Companies to submit Form 26AS. The petitioner did not comply with the same as, according to the petitioner, the same was not required under the guidelines applicable to the petitioner.

8. On 17.10.2016, the DGR issued a show-cause notice calling upon the petitioner to show cause why he should not be dis-empanelled from the scheme on account of failing to submit the Form 26AS as directed.

9. The petitioner states that a meeting was held on 11.05.2017 at the office of the DGR where he was informed that the petitioner would have to resign from ECHS. The petitioner states that he informed the DGR that his contract with ECHS was expiring on 07.08.2017 and he would not renew that contract.

10. The DGR passed the impugned order dis-empanelling the petitioner. The reasons for taking the punitive action as set out in the impugned order are quoted below:-

“The following irregularities have been noticed in violation of MoU and Guidelines on Formation and Running of the Coal Loading and Transportation Companies by you:-

(a) Violation of Affidavit by you that you are/will not be employed in a Govt/Semi Govt/Private job after sponsorship of the ESM Coal company.

(b) You continued to work in ECHS Stn HQ, Hissar in contravention to the MoU & the Guidelines of DGR.”

11. Before proceeding further, it would be relevant to refer to the affidavit affirmed by the petitioner on 11.06.2012. The said affidavit reads as under:

“1. That is undertaking that an affidavit submitted earlier by me regarding employment self employed still holds goods.

2. That I am not employed in any manner.

3. That I reconfirm that I have not taken any assistance from ZSB/RSB/DGR earlier.

4. That I will adhere to all the provisions applicable to me of Memorandum of understanding (MOU) signed between DGR (MOD) and South Eastern Coalfields Ltd. (SECL) including employment of minimum of 75% of total regular employees as ESM in the sponsored Company.

5. That I also undertake that I will not in any manner and under any circumstances sub contract whole or part of the coal transportation work allowed to my company.

6. That I will submit half yearly return and annual return of the ESM Company on the prescribed performa as per the stipulated time lied down in para 21 (a) of the MOU. In addition I will also submit to DGR audited report of accounts of the company by 30th June every year.”

12. Mr Garg, the learned counsel appearing for the petitioner contended that the allegation that the petitioner had furnished any

incorrect affidavit was wrong. The petitioner was not employed at the material time when he had affirmed the affidavit in question. He further contended that the petitioner was also not prohibited from taking up the employment under the guidelines that were prevalent at the material time.

13. Mr Sanjeev Narula, the learned counsel appearing for the respondent countered the aforesaid contentions and contended that the said affidavit is incorrect and, therefore, the necessary action for dis-empanelling the petitioner was taken. He submitted that the petitioner was employed on 11.06.2012 - the date on which the affidavit was affirmed. He also submitted that in terms of the relevant guidelines applicable at the material time, the petitioner was proscribed from taking up any further employment.

14. In response to a pointed query as to what was material available with the respondents on the basis of which the DGR had concluded that a false affidavit was filed by the petitioner, the learned counsel referred to a copy of the Form 26AS available in the file of the respondent. The said form (which contains the details of the tax deducted at source) indicates that all the transactions referred therein are post 2014-2015 and none of the transactions as reflected in Form 26AS pertains to the period prior to 11.06.2012. Thus, the contention that the petitioner had affirmed a false affidavit that he was not employed, is without any basis and cannot be sustained.

15. It is also clear from the affidavit that the petitioner had not

affirmed that he would not be employed in a Govt/private job after sponsorship of the ESM Coal Company as observed in the impugned order. As noticed above, one of the two reasons for dis-empanelling the petitioner was his alleged violation of the terms of the affidavit submitted by him. This is, plainly, erroneous and the impugned order is liable to be set aside on this ground alone.

16. The next question to be examined is whether the petitioner has violated the MoU or the DGR Guidelines.

17. The petitioner had applied for formation of the ESM Company on 11.06.2012 and, thereafter, had formed the Company - PCG Coal Carriers Pvt Ltd.- on 13.07.2012 along with three other ex servicemen.

18. Mr Narula has handed over a copy of the relevant guidelines – “Guidelines on Formation and Running of Ex-Servicemen Coal Transport Companies” (hereafter ‘the Applicable Guidelines’) - as applicable at the material time and has drawn the attention of this Court to clause (iv) sub-paragraph (e) of paragraph 2 of the said guidelines, which is set out below:-

“ ELIGIBILITY

2. The eligibility criteria for various compliments of the ex-servicemen Coal Transport Companies to be sponsored to the coal subsidiaries are as under:-

XXXX XXXX XXXX XXXX

(e) Miscellaneous Instructions

XXXX XXXX XXXX XXXX

(iv) All ESM associated with ESM Coal Transport Company must have exemplary character, should not have been dis-qualified/debarred from employment/self employment assistance from DGR and should not be currently employed/self employed.”

19. A plain reading of the Applicable Guidelines clearly indicates that there is no prohibition for any sponsored Director to take up employment after the ESM Company has been formed.

20. There is also no term in the MoU dated 16.04.1999, which proscribes a Director of an ESM Company from taking up other employment. The MoU dated 16.04.1999 was superseded by another MoU executed on 14.12.2013; however, clause 22 of the said MoU expressly provided that “*Existing ESM Companies will continue to be governed by the previous MoU dated 16.04.1999*”.

21. Mr Narula, also referred to the order passed by this Court in ***Major General VN Prasad (Retd.) v. Union of India & Anr.: W.P.(C) 2369/2017, decided on 10.07.2017*** and drew the attention of this Court to paragraph no. 14 of the said decision, which reads as under:-

“14. The contention that any of the restrictions imposed under the Guidelines are violative of Article 19, is also unmerited. On the contrary, the Guidelines provide a framework for providing employment opportunities to ex-servicemen. The restriction that ex-servicemen availing such opportunities cannot carry on any other business has been inserted only to exclude such ex-servicemen who have other employment opportunities, from availing the

benefits of the resettlement scheme. This is to ensure that only the ex-servicemen who otherwise do not have the necessary opportunities are ensured some work post their retirement.”

22. On the strength of the aforesaid observations made by this Court, Mr Narula contended that the stipulation contained in the Applicable Guidelines must be read in the meaningful manner and to imply that the petitioner would continue to remain unemployed during the entire period of sponsorship/empanelment.

23. The aforesaid contention is plainly bereft of any merit. First of all, no such express prohibition can be read into the Applicable Guidelines. Secondly, the impugned order imposes a punishment on the petitioner. No such punitive measure can be taken for violation of a term which is not expressly stated or is clearly understood. In the event the DGR so desired, the stipulation for the petitioner not to take employment should have been clearly spelt out in no uncertain terms.

24. The decision in the case of **Major General VN Prasad (Retd.)** (*supra*) also does not assist the respondents in any manner as it does not pertain to the Applicable Guidelines. In that case, the guidelines as applicable clearly contained a provision which proscribed the sponsored ex-servicemen to take up any other employment during his tenure as a Director. The relevant clause of the guidelines as applicable in that case, reads as under:-

“2- **Eligibility**: The eligibility criteria for various categories of the ex-Servicemen (ESM) associated with the Coal Transport Companies are as under:-

(a) **Directors of the ESM Coal Transport Company :**

XXXX XXXX XXXX XXXX

(iii) At the time of sponsorship of the ESM Company and there after all through the tenure as Director of the company the Director is not to be employed/self employed or hold any position of profit in any institution other than that of the ESM Company.”

25. The petitioner was empanelled prior to the said guidelines coming in force and, therefore, the above stipulation is not applicable to the petitioner. The fact that the above restriction has been held to not violate Article 19(1)(g) of the Constitution of India cannot possibly read to mean that the Applicable Guidelines must be read to implicitly contain such stipulation so as to warrant a punitive action against the petitioner for violating the same.

26. The petition is, accordingly, allowed. The impugned order is set aside. The pending application also stands disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 01, 2018

MK/PKV