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

\+ LPA 357/2018

UNION OF INDIA & ORS ..... Appellants

Through: Mr. Sanjeev Narula, CGSC

versus

LT COL HAWA SINGH JATTAYAN (RETD) ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **09.07.2018**

<u>CM No.26476/2018</u>

Allowed, subject to all just exceptions.

<u>LPA No.357/2018 & CM No.26475/2018(Delay)</u>

This intra court appeal filed under Clause X of the Letters Patent Act, is belated and delayed by 111 days. Accordingly, CM No. 26475/2018 for condonation of delay has been filed. However, before issuing notice on the said application, we deem it appropriate to consider the appeal and issue on merits.

2. Present appeal impugns the order and judgment dated 1st February, 2018 passed by the learned Single Judge in W.P.(C). No. 586 of 2018; whereby the order dated 8th September, 2017 passed by the Director General Resettlement(hereinafter referred to as DGR), dis-empanelling the respondent from the DGR Coal Loading & Transportation Scheme has been set aside.

3. In 1979, a scheme to sponsor ex-servicemen coal transportation companies was formulated by the Ministry of Energy (now Ministry of Coal) and the Ministry of Defence with the twin objective of

having "union free captive transport organizations" in coal subsidiaries and providing re-employment to rehabilitate ex-servicemen in civilian life.

4. On 8th April, 1993, a Memorandum of Understanding (MoU) was entered into between Ministry of Defence (DGR) and Ministry of Coal (Coal India Limited). This was superseded by another MoU dated 16th April, 1999.

5. The respondent herein, Lt. Col. Hawa Singh Jattayan, an ex-serviceman, who was registered with DGR (Registration No. 11742) had applied to form an Ex-Service Men Company (hereinafter referred to as ESM Company) with the object of taking up work of loading/unloading and transportation of coal. The respondent had submitted an affidavit of the same date, stating therein that he was not employed in any manner. On 13th July, 2012, the respondent along with three other ex-servicemen formed the company "PCG Coal Carriers Pvt. Ltd." On 19th July, 2012, the DGR sponsored the said ESM Company for a contract for transportation of coal for South Eastern Coalfields Limited (SECL) and the ESM commenced operations for SECL on and from 18th September, 2012.

6. Empanelment of PCG Coal Carriers Pvt. Ltd. and their sponsorship was governed by the guidelines on "Formation and Running of ESM Coal and Transportation Companies, 2007" (hereinafter referred to as 2007 Guidelines).

7. Relevant eligibility condition under the 2007 Guidelines applicable as on 11th June, 2012 is as under:

"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) <u>Miscellaneous Instructions</u>

XXXX XXXX XXXX XXXX

(iv)All ESM associated with ESM Coal Transport Company must have exemplary character should not have been disqualified/debarred from employment/self employment from DGR <u>and should not be currently employed/self employed.”</u>

(emphasis supplied)

As per said eligibility norm the applicant should not have been currently employed or self employed on the date of making the application to the DGR.

8. It is an undisputed position that the respondent was not employed or self-employed, as on 11th June, 2012. In the affidavit submitted by the respondent, it was clearly and unequivocally stated that the applicant was not employed in any manner. This factual position is not disputed and challenged by the appellant.

9. Subsequently, the MoU dated 16th April, 1999 was revised and superseded by another MoU dated 12th December, 2013 between DGR and Coal India Limited. Thereafter, "Formation And Running Of Ex-Servicemen Coal Transport Companies, 2013" (hereinafter referred to as 2013 Guidelines) were issued with new stipulations and conditions. Pertinently, Clause 22 of the MoU dated 12th December,

2013 had expressly provided that *"Existing ESM Companies will continue to be governed by the previous MoU dated 16.04.1999".*

10. Paragraph 2 of the 2013 Guidelines on eligibility was also changed and the new stipulation reads as under:

> *"2. **Eligibility**: The eligibility criteria for various categories of the ex-serviceman (ESM) associated with the Coal Transport Companies are as under:*
>
> *(a)* ***Directors of the ESM Coal Transport Company:***
>
> ....
>
> *(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."*

The new eligibility norm regarding employment/self employment in the 2013 Guidelines is substantially and materially different from the eligibility norm in the 2007 Guidelines. 2013 Guidelines state and mandate that at the time of sponsorship and throughout the tenure every director of the ESM Company cannot be employed/self employed or hold any position of profit in any other institution. 2007 Guidelines, as noticed above, had stated that applicant ex-serviceman should not be currently employed/self employed.

11. MoU dated 12th December, 2013 requires all ex-servicemen directors

in ESM Coal Companies to submit AS-26 form/certificates in June each year, with the aim and objective of verifying their employment/self-employment status.

12. Notwithstanding the aforesaid position, DGR on scrutiny of AS-26 form/ certificates, had issued show cause notice dated 17th October, 2016 and thereafter vide order dated 8th September, 2017 had dis-empanelled the respondent on the ground of violation of the stipulation that a director should not take employment or hold a position of profit in any organization, other than in the ESM company. The reason being, post sponsorship and appointment as a director, the respondent had been receiving fee for professional or technical services from the ECHS Cell, Station HQ, Hisar.

13. Ld. Single Judge has quashed and set aside this dis-empanelment order dated 8th September, 2017 stating that 2007 Guidelines were applicable, and on plain reading there was no bar for a director from taking employment post formation of the ESM company. MoU dated 16th April, 1999 did not have such stipulation. MoU dated 12th December, 2013 vide Clause 22, had specifically stated that existing ESM company would continue to be governed by the previous MoU dated 16th April, 1999. In the absence of express prohibition, the action was contrary to law. Appellants were not justified in imposing and taking punitive action for violation of a term which was not either expressly stated or clearly understood.

14. Counsel for the appellants has submitted that eligibility norm in the 2007 Guidelines should be interpreted liberally for the objective was that the ex-servicemen should not have dual employment and sources of income. The scheme was to facilitate resettlement opportunities for ex-servicemen, who were not in employment, and this was the inherent and basic feature of

the scheme.

15. We have considered the said contention but do not find any merit in the same for the relevant eligibility condition in 2007 Guidelines had used the expression '*should not be currently employed / self-employed'*. There was no express prohibition and bar from future employment in the earlier MoU dated 16th April, 1999. When the language of the eligibility clause in the guidelines was clear, plain and unambiguous and susceptible to only one meaning, we have to give effect to the said meaning. There is no other way we can understand and interpret the word '*currently*' in the 2007 Guidelines. MoU dated 12th December, 2013 in Clause 22 had clarified that the existing ESM companies would be governed by the previous MoU dated 16th April, 1999. Thus, the appellants themselves had understood that the guidelines effective from 14th December, 2013 consequent to the MoU dated 12th December, 2013 had undergone a substantial and material change. Hence they would not be applicable retrospectively. Moreover, the appellants should have taken caution and care to warn the directors, if they felt that dual income was not acceptable.

16. In view of the aforesaid discussion as we do not find any merit in the present appeal, we are not issuing notice on the application for condonation of delay. Application and appeal would be treated as dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JULY 09, 2018/tp