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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 514/2018

K KRISHNA KURUP

..... Appellant

Through: Ms Malini Poduval and Ms Babita
Sant, Advocates.

versus

M/S M M T C LTD

..... Respondent

Through: Mr Sanjay Kumar Sharma with Ms
Malini Gola, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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22.10.2018

1. This appeal is directed against the impugned order dated 2nd July 2018 passed by the learned Single Judge of this Court dismissing W.P. (C) 8208 of 2002.

2. The challenge in the said writ petition filed by the Appellant was to an inquiry report dated 9th November 1998 of the Inquiring Authority ('IA') finding that Article 1 of the charges against the Appellant stood established. In terms thereof, the Appellant, who was working as Manager (Finance and Accounts) in the Sub-Regional Office ('SRO') of the MMTC, was alleged to have committed "grave acts of negligence" in the matter of sales of CC Copper Rods (sterlite-make) between February and August in 1995, on credit basis to Hindustan Transmission Products Ltd., Maharashtra against

Letters of Credit ('LoC') opened by the buyer in favour of MMTC. The allegation was that the alleged acts of omission and commission of the Appellant had resulted in failure by the MMTC to realize payments to the tune of Rs.15,92,75,387.40/- as also a failure to remit payments to M/s Sterlite Industries India Limited. The Appellant was exonerated of Article 2 of the charges.

3. The challenge in the writ petition was also to the consequential order dated 9th July 1999 of the Disciplinary Authority which upheld the inquiry report and imposed a penalty on the Appellant of "reduction to the lower post of reduction to the lower post of Deputy Manager in the Pay Scale of Rs.4000-175-7,150 with basic pay of Rs.4,000/- in terms of Rule 23 of CDA Rules".

4. The further challenge in the writ petition was to the order dated 11th November 1999 of the Appellate Authority, the consequential office order dated 17th November 2000 of Manager (Personnel) and an order dated 29th July 2002 passed by the Reviewing Authority, i.e. the Chairman-cum-Managing Director, upholding the order passed by the Appellate Authority.

5. Admittedly, the IA appointed to enquire into the charges against the Appellant was one Mr. A.K. Garde, former Secretary in the office of the Central Vigilance Commission. The office order dated 4th November 1997 appointing Mr. Garde states that the appointment by the Chief General Manager (MMTC) was in exercise of powers conferred by Rule 25(2) of the MMTC Discipline and Appeal Rules, 1975 (hereafter 'Rules'). The said sub-Rule reads as under:

“25 (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 an employee, it may itself enquire into or appoint any public servant (hereinafter called the Inquiry Authority) to inquire into the truth thereof in consultation with CVO.”

6. The above rule has to be read with Rule 3(o) of the Rules which defines a ‘public servant’ to “mean and include a person as mentioned in Section 21 of Indian Penal Code as amended from time to time”. It is not in dispute that at the relevant point in time, in terms of Rule 25(2), a retired government servant, who was specifically excluded from the purview of Section 21 IPC, could not have been appointed as the IA.

7. Further, admittedly, the Appellant did not raise any objection to the jurisdiction of the IA to hold the inquiry on account of his improper appointment either before the IA or the Disciplinary Authority, or even before the Appellate Authority. He, however, raised that objection before the Reviewing Authority.

8. As correctly noted by the learned Single Judge in the impugned order, the Reviewing Authority, while passing the impugned order dated 29th July 2002, did not deal with the objection raised by the Appellant as to the authority of the IA. In the impugned judgment, the learned Single Judge has, while dealing with this specific ground, observed as under:

“21. Adverting, first, to the submission, of Mr. Panigrahi, that the appointment of Mr. Garde as I/O was violative of the Rules, Specifically of clause (o) of Rule 2, I am of the view that it is not open, to the petitioner, to advance such a submission at this

stage. It is a trite position, in law, that objections to the jurisdiction of judicial, or quasi-judicial authorities, are required, to be taken at the earliest available opportunity, and not after several stages of the proceedings have been traversed. The Petitioner acquiesced to the jurisdiction of the I/O, never having objected thereto, during the inquiry proceedings. There is nothing to indicate that, till the stage of the review application, submitted by the petitioner to the CMD of MMTC, this objection was ever taken. Mr. Panigrahi is, to that extent, forthright in admitting that his client did, in fact, take the said objection, for the first time, before the reviewing authority. Even so, he would submit, the objection having been taken, the reviewing authority was bound to consider the same. Empirically expressed, this contention may appear attractive; however, the fact of the matter is that the reviewing authority did not return any finding thereon and, this writ petition having remained pending for over a decade and a half thereafter, I am not prepared to countenance the submission, on merits, today. For one, as already observed by me hereinabove, even if I were to agree with the petitioner, the petitioner himself having raised the issue belatedly at the stage of review, there is substance, in the submission of Mr. Sharma that, at the very worst, his client deserves to be given an opportunity to re-conduct the inquiry proceedings with a competent I/O - assuming, that is, that this court finds substance in the submission of Mr. Panigrahi regarding incompetence of Mr. Garde to have functioned as I/O. Secondly, Mr. Sharma has drawn the attention of this Court, to an Office Memorandum, dated 27th December, 1995, issued by the MMTC, which, on the basis of clarifications issued by the Government of India, stated that retired Government officials /judges/ public sector officers of proven integrity were eligibly appointed as I/Os in individual cases, under the Rules. This Officer Memorandum was, indisputably, extant, on the date when Mr. Garde was appointed as I/O. The legality of this Office Memorandum is not under challenge. It is clear, therefore, that, in appointing Mr. Garde as I/O, the MMTC acted on the basis of applicable executive instructions, which held the field. For this reason, too, I am unable to agree

with the contention, of Mr. Panigrahi, that these proceedings stand vitiated, ab initio, solely because Mr. Garde, in his perception, was incompetently appointed as I/O.”

9. Learned counsel for the Respondent drew attention to the Office Memorandum (‘OM’) dated 27th December 1995 issued by the MMTC on the basis of the clarifications of the Government of India that even retired government servants could be appointed as IA. However, as rightly pointed out by Ms. Malini Poduval, learned counsel for the Appellant, at the relevant time, Rule 25(2) of the Rules applied and could not have been over-ridden by an OM by the MMTC. In fact, it does appear that, subsequently, there has been an amendment in the Rules. Learned counsel for the Respondent has placed before the Court the amended Rule 25(2) into which a proviso has been inserted with effect from 5th May 2011 specifically permitting the appointment of “retired public sector officers, retired government servants/retired judges of proven integrity” as IAs in individual cases.

10. The authority of an IA to conduct an inquiry goes to the very root of the matter. While it is true that this issue ought to have been raised by the Appellant at the earliest opportunity, nevertheless with it having been raised before the Reviewing Authority, it was incumbent upon the Reviewing Authority to have considered that objection. It would have been possible for the Reviewing Authority, if there was merit in the contention of the Appellant, to have ordered a fresh inquiry by an IA having such jurisdiction to hold the inquiry.

11. This Court is not persuaded by the reasoning of the learned Single Judge that on account of the pendency of the writ petition in this Court for over 16

years (the writ petition was filed in 2002 and disposed of in 2018 by the learned Single Judge), the Appellant should be precluded from succeeding on this ground which really went to the root of the matter. Merely because a subsequent clarification was issued by the MMTC permitting the inquiry to be held by even a retired government servant, it would not change the position that such instructions/OM could not have overridden the Rules applicable at the time of the inquiry against the Appellant.

12. The report of the IA is legally unsustainable since the IA did not have the jurisdiction to hold the inquiry. In the considered view of the Court, the Appellant is entitled to succeed on this short ground. This Court, therefore, disagrees with the learned Single Judge as far as the conclusion arrived in the impugned order on this ground is concerned.

13. As a result of the above discussion, the report of the IA orders under challenge in the writ petition obviously cannot be sustained in law and are hereby set aside, as is the impugned judgment of the learned Single Judge.

14. As for the consequential directions, this Court is conscious that due to the passage of a considerable amount of time, and with the Appellant having superannuated, the question is really now about the fixation of the correct retirement benefits of the Appellant, assuming that he may have succeeded in the inquiry proceedings. The Court is also faced with a situation where, in terms of Rule 25(2) of the Rules as it presently stands, the inquiry can be held by a retired public sector officer or retired government servant.

15. Learned counsel for the Respondent states that the MMTC has a panel of

such possible IAs and if time bound directions are issued, it would be possible that the inquiry may be concluded at an early date.

16. In that view of the matter, this Court directs that in terms of the proviso to Rule 25(2) of the Rules, the Disciplinary Authority of the MMTC will proceed to appoint an IA by 15th November 2018, and will communicate to the Appellant, no later than 22nd November 2018, the name of such an IA. The entire records of the inquiry will be placed before the said IA and he will proceed from the stage of considering the submissions of the Appellant with regard to the charges on the basis of the replies already filed by the Appellant. The statements of the witnesses already recorded will also to be available to the IA so that the entire exercise need not be repeated again. An additional affidavit can, however, be filed both by the Appellant as well as the Presenting Officer on behalf of the MMTC before the new IA, no later than 15th December 2018. The new IA will proceed to consider the matter afresh, uninfluenced by either the report of the earlier IA or by any of the orders that have been set aside by this Court and submit his inquiry report, not later than 1st February 2019. Thereafter, it would be open to the Appellant as well as the MMTC to proceed in accordance with law.

17. The appeal is disposed of in the above terms, but in the circumstances, with no orders as to cost.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 22, 2018/mw