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IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO: 2022/DHC/002363



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Date of decision: 02.06.2022

+ **LPA 376/2022 & CM APPL. 26407/2022**

SANJAY KUMAR

..... Appellant

Through: Mr Vinay Kumar Garg, Sr Adv. with Mr
Mritunjay Singh, Mr Parv Garg, Mr
Pawas Kulshrestha and Mr K.S. Rekhi,
Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms Monika Arora and Mr Yogesh
Panwar, Advs. for R-1 & 2.
Ms Neha Gupta and Ms Swati Rana,
Advs. for R-3 & 4.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):-

CM APPL. 26407/2022

1. Allowed, subject to just exceptions.

LPA 376/2022

2. This appeal is directed against the order dated 23.05.2022, passed by the Learned Single Judge in CM No.23560/2022 in W.P.(C.) No.7695/2022, save and except to the extent the appellant's subsistence allowance was restored to 50% of his pay.

3. Although, before the Learned Single Judge, several reliefs were sought for, the issues raised before us on behalf of the appellant by Mr Vinay Kumar Garg, learned senior counsel, are the following:

3.1. First, the inquiry against the appellant could not have been triggered by the Committee of Administration [in short 'COA'].

3.2. Second, the Inquiry Officer was appointed, even before considering the

petitioner's reply to the charge sheet served upon him.

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3.3. Third, the appellant has not been served with the statement of imputations of misconduct, list of documents and witnesses, along with the charge sheet as mandated under Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [in short "CCS(CCA) Rules, 1965"].

4. To be noted, before the Learned Single Judge, the relief sought for concerned the following:

(i) Revocation of the suspension order dated 23.06.2021.

(ii) Stay the operation of the order dated 27.04.2022 whereby subsistence allowance of the appellant was reduced to 25 percent, with effect from 18.04.2022.

(iii) Stay the proceedings emanating from the charge sheet dated 27.01.2022

5. It is not in dispute that the Learned Single Judge has, in fact, taken on record the statement made on behalf of respondent nos.3 and 4 by their counsel that they will enhance the subsistence allowance of the petitioner to 50 percent. This and other aspects concerning statement of imputations of misconduct, list of witnesses and documents have been noticed by the Learned Single Judge in paragraphs 9 and 10 of the impugned order.

5.1. For the sake of convenience, the said paragraph is extracted below:

"...9. She further submits that the petitioner has finally submitted only a preliminary reply on 20.05.2022, wherein no such plea has been taken that the annexures mentioned in the charge sheet were not served on him. She, however, concedes that no list of witnesses appears to have been annexed to the chargesheet and therefore submits that since the formal inquiry in terms of the chargesheet will commence only after the petitioner submits his reply, a list of witnesses along with imputation of charges, if not already supplied, will be served on him before commencement of the inquiry. She further submits that the petitioner's plea that before initiation of the inquiry against him, approval from respondent no.2 was mandatory, is also misplaced as the respondent no.2 has already issued a communication clearly informing respondent no.3 that no such approval would be required for holding of

inquiries in disciplinary matters. She is, however, not in a position to dispute that the subsistence allowance has been reduced from 50% to 25% even before a formal inquiry has commenced and, therefore, submits on instructions that the subsistence allowance of the petitioner will be immediately restored to 50%.

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10. I have considered the submissions of the parties and perused the record. In so far as the petitioner's grievance regarding the reduction in subsistence allowance being paid to him is concerned, in view of the stand taken by respondent no.3 and 4, no orders in this regard are required to be passed and the statement made by the learned counsel for the respondent nos.3 & 4 that the petitioner's subsistence allowance will be forthwith restored to 50% w.e.f. 18.04.2022, is taken on record. This will, however, not preclude the respondents from taking any action in this regard on a later stage, if the need so arises....”

6. As far as the objection concerning failure to consider the reply to the charge sheet is concerned, Mr Garg has conceded before us that an initial, *albeit* brief reply to the charge sheet was filed on 20.05.2022.

6.1. Mr Garg says that pursuant to the liberty given by the Learned Single Judge for filing a further reply to the charge sheet, the appellant has, in fact, filed a detailed reply on 31.05.2022.

7. Furthermore, the Learned Single Judge has also directed respondent nos.3 and 4 to ensure that a formal list of documents, along with a list of witnesses and imputation of charges, in consonance with the charges levelled against the appellant, is furnished expeditiously, and in any event, one week before the inquiry proceedings are formally commenced.

7.1. Thus, as is evident, the appellants' concern with regard to consideration of the replies to the charge sheet, furnishing of statement of imputations, list of documents and witnesses have been addressed by the Learned Single Judge. As noticed above, the appellant has availed of the leeway granted by the Learned Single Judge and filed a detailed reply to the charges. There is substantial compliance of procedural safeguards provided under the CCS (CCA) Rules, 1965. Element of prejudice, if any, has been removed by respondent nos.3 and 4.

8. That said, the core of Mr Garg's submission before us conc
competence of the COA to trigger an inquiry against the appellant.

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8.1. In this context, Mr Garg has drawn our attention to Article 40(6) of Articles of Association of the Carpet Export Promotion Council (CEPC). For the sake of convenience, the said provision is extracted hereafter:

*“6. To appoint and at its discretion remove or suspend employees, officers, clerks, agents, servants whether permanent, temporary or special as it may, from time to time, think fit and to determine their powers and duties and fix salaries or emoluments and to require securities in such instances and to such amount as it may deem fit, **provided that the appointment or removal of Executive Director-cum-Secretary/Deputy Director or Assistant Director, or any other officer equivalent thereto shall be with the prior approval of the Central Government in the Ministry of Commerce/Textiles.**”*

[Emphasis is ours.]

8.2. It is Mr Garg's submission that even for triggering an inquiry against the appellant, who was, at the relevant time, working as the Executive Director-cum-Secretary [in short 'EDCS'], the approval of the Central Government i.e., the Ministry of Commerce/Textiles ought to have been taken.

8.3. In other words, Mr. Garg says that since no approval was taken, the inquiry could not have been triggered against the appellant.

8.4. To our minds, this submission is misconceived, apart from the fact that it does not seem to have been articulated before the Learned Single Judge in the manner in which it is put forth before us.

8.5. Be that as it may, Article 40 concerns the powers of the COA. There are several powers conferred on the COA and amongst such array of powers, power to appoint, remove or suspend employees are also conferred on the COA, as would be evident upon a perusal of Article 40(6), extracted above.

8.6. However, insofar as EDCS/Deputy Director, Assistant Director or any other officer equivalent thereto is concerned, the appointment or removal of such officers cannot be effected by the COA without the prior approval of the



9. As is evident from the record, the stage for removal of the appellant has not been reached in the matter, as yet.

9.1. Therefore, to our minds, while the COA was empowered to trigger an inquiry against the appellant, if, however, a decision is to be taken to remove the appellant, who, at the relevant time, as indicated above, was working at the post of EDCS, in terms of Article 40(6), the prior approval of the Central Government, that is, the Ministry of Commerce and Textiles will have to be taken.

9.2. Whether this stage [i.e., of removal] will be reached or not, is a matter which will get revealed only after the inquiry is concluded.

9.3. Ms. Neha Gupta, who appears on behalf of respondent nos.3 and 4 does not dispute this position. Ms. Monika Arora, who appears for respondent nos.1 and 2 submits likewise.

10. This brings us to another aspect raised before us by Mr Garg i.e., the appointment of the Inquiry Officer even prior to the consideration of the reply filed by the appellant depicted predisposition qua the charges levelled against the appellant. The Learned Single Judge, in our view, has furnished an answer to this objection in paragraph 11 of the impugned order. For the sake of convenience, the same is extracted hereafter:

“11. However, insofar as the petitioner's prayer for interim stay of the charge sheet is concerned, having perused the serious seven charges levelled against him, I find absolutely no reason to stay either the chargesheet or the suspension order passed against the petitioner, The petitioner has urged that the inquiry against him has commenced without even giving him adequate opportunity to submit a reply to the chargesheet. In my considered view, once the respondents have taken a stand before this Court that a formal inquiry will be initiated against the petitioner only after considering his reply, the petitioners' grievance in this regard stands redressed. The petitioner is, however, granted further five days time to submit without prejudice to the rights and contention, a reply to the chargesheet

The respondents will ensure that a formal list of documents along with the list of witnesses and imputation of charges, in consonance with the charges already levelled in the chargesheet is furnished to the petitioner expeditiously and in any case one week before the inquiry proceedings are formally commenced.”

[Emphasis is ours.]



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10.1. It is evident that the position which respondent nos. 3 and 4 took before the Learned Single Judge was that it was only a preliminary step which would fructify into a formal inquiry, only after consideration of the replies filed by the appellant i.e., the preliminary reply dated 20.05.2022 and the detailed reply dated 31.05.2022, which, as noticed above, was filed pursuant to the leave given in that behalf by the Learned Single Judge *via* the impugned order.

11. Insofar as the last aspect of the matter is concerned, which is, that the statement of imputations, list of documents and list of witnesses were not submitted with the charge sheet, and, therefore, the rights of the appellant, in a sense, have been compromised—in our opinion, this apprehension, at this stage, is misconceived.

11.1. The Learned Single Judge has issued directions, as noticed above, which preserves the rights of the appellant.

11.2. This is also in line with the view taken by the Learned Single Judge that the matter is at the preliminary stage. Clearly, whether or not a full blown enquiry will commence against the appellant will be known after consideration of replies filed by the appellant.

12. At this stage, Mr. Garg adds an appendage to his argument, and says there is an element of malice, as the complainants are the ones who have triggered the inquiry against the appellant. The suggestion is that the COA is acting with malice.

12.1. This argument, at this stage, in our view, is not tenable, as this was not evidently pressed before the Learned Single Judge, as is apparent from a plain reading of the impugned order.

12.2. Besides this, we may also note that all members of the COA have been arrayed as parties in the writ petition. We are told that the COA consists of 18 members. Allegations of malice have to have the attribute of specificity and not a broad brush approach, as is sought to be adopted by the appellant. Charges against the appellant are serious, including charges concerning sexual harassment and embezzlement.

12.3. Therefore, these are aspects which can be addressed in the pending writ petition, as they do not emerge from the impugned order.

13. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned order.

14. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JUNE 2, 2022/ rb

Click here to check corrigendum, if any