

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

+ WP (C) No. 7521/2005

Judgment reserved on: 09.04.2009

% Judgment delivered on: 30.05.2009

Pradeep Kumar Kashyap Petitioner
Through: Mr. V.S.R. Krishna, Advocate

versus

Managing Director, Hotel Corporation
Of India Limited Respondent
Through: Ms. Padma Priya, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

*

1. By way of this petition filed under Art. 226 read with Articles 14 & 16 of the Constitution of India, the petitioner assails the actions of the respondent in denying due and admissible in-service and post retiral benefits. The petitioner assails show cause notice dated 28/4/2003;

charge sheets dated 5/5/2003 & 9-12/12/2003; order dated 12/2/2004 recovering Rs. 4,650/- from retiral dues along with 18% penal interest; letter dated 21/5/2004 denying to refund the amount of Rs. 4,650/- and also the notice dated 15/10/2004 denying admissible benefits.

2. The brief conspectus of the facts as set out in the petition are as under:

The petitioner joined service under respondents w.e.f. 23.1.1984 and took voluntary retirement from service w.e.f. 23.1.2004. The last post held by the petitioner was that of Assistant Manager (Accounts). The respondents vide their Staff Notice dated 9.7.2002 displayed office order No. MD/HCI/DEL/OR-VRS/041 dated 8.7.2002 captioned as 'Voluntary Retirement Scheme' calling for options for VRS from eligible officers/staff latest by 7.8.2002. Pursuant to the aforesaid, the petitioner opted for voluntary retirement under the Scheme. The respondents vide their letter dated 9.11.2002 intimated to the petitioner that his name has been included in the list of employees who had opted for VRS. The petitioner was served with impugned show cause notice dated 28.4.2009 calling upon him to explain his position vis-à-vis alleged misappropriation of Rs.4650/- towards

settlement of TA bill of one Shri S.K. Vij. The petitioner replied to the aforesaid notice vide his letter dated 2.5.2003 denying his involvement or being privy to such an allegation in any manner whatsoever. The petitioner was served with impugned charge sheet dated 5.5.2003 in which charges leveled in the show cause notice were reiterated. Petitioner replied to the said charge sheet vide his letter dated 15.5.2003 expressing his innocence. Ignoring petitioner's reply to the charge sheet, respondents decided to proceed with the inquiry proceedings and appointed inquiring Authority vide their letter dated 11/13.6.2003. Vide letter dated 7.8.2003, petitioner was informed that pursuant to his option for VRS, he would be relieved on 5.9.2003. The petitioner was accordingly relieved vide order dated 5.9.2003. The petitioner's relieving order for VRS was abruptly withdrawn vide order dated 9.9.2003 purportedly to conclude the departmental proceedings at the earliest. He accordingly resumed duties in CHDA. The inquiry proceedings, in the first spell were conducted on various dates, i.e. 26.6.2003, 8.7.2003, 14.7.2003, 25.7.2003 and 4.8.2003, however, without any conclusive end. Not contented with the unwarranted humiliation perpetrated upon on the hapless petitioner by withdrawing the relieving order after acceptance of VRS and

initiation of departmental proceedings just at the verge of retirement, petitioner's salary from 8th to 12th September, 2003 was also not paid to him despite several letters written by him. During the course of ongoing proceedings, with a mala fide intention and solely to harass and humiliate the petitioner, the Disciplinary Authority issued memo dated 9/12.12.2003 asking him to give his statement to the CVO for further investigation. The petitioner replied to the above memo vide his letter dated 18.12.2003. The Board of Directors of HCI, in the meanwhile, took a conscious decision on 30.12.2003 to drop the disciplinary proceedings (not court cases) and allow the concerned employee to proceed under VRS. In the face of HCIL Board's decision dated 30.12.2003 to drop the proceedings and allow the concerned employee to proceed on VRS, continuation of the domestic inquiry was illegal and arbitrary. In the second spell, the proceedings were held on 13.1.2004, 16.1.2004 and 21.1.2004, in which petitioner also duly participated, but again without any conclusive end. The petitioner was ultimately granted VRS vide order dated 23.1.2004. After the petitioner had been relieved on 23.1.2004 in supersession of the earlier relieving order dated 5.9.2003, the Disciplinary Authority vide its impugned memo dated 12.2.2004 while admitting (i) that the said

case came up for discussion before the Board of Directors of HCI wherein direction was taken to relieve the petitioner for VRS and (ii) that it has been decided not to pursue the departmental injury, but still imposed penalty to recover a sum of Rs.4650/- plus penal interest @ 18% P.A. from 2.5.1996. VRS compensation was released to the petitioner vide order dated 27.2.2004 but the petitioner was denied benefit of one month's notice salary under VRS as per the Scheme. The petitioner made repeated requests by way of his representations dated 10/11.1.2004, 20.1.2004, 28.1.2004, 30.1.2004, 17.2.2004, 11.3.2004, 26.3.2004, 23.4.2004, 13.5.2004, 26/28.5.2004 and 10.6.2004 to seek release of wrongly withheld remaining benefits as enumerated above but to no avail. Aggrieved with the said actions of the respondent, present petition has been filed by the petitioner.

3. Mr. V.S.R. Krishna counsel for the petitioner contended that the action of HCIL authority is mala fide, illegal, arbitrary and harrasive besides being stigmatic. The counsel contended that the action of the respondent is violative of the law laid down by the Hon'ble Apex Court in **Punjab National Bank & Ors. Vs. Kunj Behari Misra – (1998) 7 SCC 84** and **Manjushree Pathak vs. Assam Industrial Development Corporation & Ors. – (2000) 7 SCC 390**. The counsel

urged that the action of the respondent in denying due and admissible in-service and post retiral benefits in the face of the fact that the HCIL Board had decided on 30/12/2003 not to pursue the departmental proceedings and allow VRS optees to proceed for voluntary retirement, is illegal, arbitrary and discriminatory beside being violative of Articles 14, 16 and 21 of the Constitution of India. The counsel contended that once the option for VRS was accepted by the competent authority, there was no justification in cancelling the same and recalling the petitioner. The counsel maintained that once the competent authority dropped the charges or decided not to pursue the departmental proceedings, nothing survives thereafter. The counsel contended that initiating departmental proceedings at the verge of retirement are malicious and as such the action of denial of retiral dues has caused great mental agony to the petitioner. The counsel urged that the action of the respondent is violative of the decision of the Apex Court in **Jankiraman's case**, wherein, it has been laid down that there are two stages at which the departmental proceedings can be instituted. First, is the stage when the alleged misconduct is committed and second, is when the alleged misconduct comes to notice. The counsel submitted that in the instant case, the alleged misconduct was committed in the

year 1996 and the proceedings came to be instituted after three years, which is also violative of CVC guidelines on the subject. The counsel submitted that the petitioner served the respondent for 20 years and had an impeccable service record and did not deserve such a derisive treatment at the hands of the respondent. The counsel maintained that once the decision to accept the voluntary retirement had been conveyed to the petitioner then as per para 3.2 of the VR Scheme, it attained finality and thereafter respondents were estopped from cancelling and recalling the petitioner and placing him under suspension. The counsel submitted that as per Regulation 85 (A), the petitioner who had opted for VRS could have been allowed to proceed for VRS and disciplinary proceedings, if any, pending at that time could continue. However, the ruckus created by respondents in accepting voluntary retirement, relieving the petitioner, cancelling the same and recalling the petitioner but not giving any posting thereafter and still denying pay and allowances for the same period is totally arbitrary, harrassive and discriminatory. The counsel contended that no penalty of recovery could be imposed/effectuated unless procedure under service regulations was completed.

4. Per contra, Ms. Padma Priya, counsel for the respondent contended that the contentions raised by counsel for the petitioner are baseless and the present petition has been filed by the petitioner with an ulterior motive to mislead the court and thus, should be outrightly rejected. The counsel maintained that there is no infringement of any legal right of the petitioner much less the violation of any constitutional rights. The counsel submitted that the actions of the respondent cannot be termed as illegal, arbitrary and discriminatory. The counsel denied that the alleged in-service and post retiral benefits claimed by the petitioner are due and admissible to him. The counsel contended that the petitioner's option for VRS was never cancelled at any point of time. The counsel also denied any misuse of power or authority by the respondent. The counsel also denied that the action of the respondent was illegal and arbitrary or violative of any CVC guidelines or any regulations or against any judgment of the Apex Court. The counsel maintained that the misappropriation of funds by the petitioner came to the knowledge of the respondent in 2003, when the final settlement of dues of Mr. S.K. Vij along with his TA/DA bill was being processed and upon gaining such knowledge, immediately show cause notice was sent to the petitioner. The counsel urged that the

respondent did not act arbitrarily or in excess of its authority in imposing penalty of recovery of the amount which was encashed by the petitioner but not paid to Mr. Vij and for the same, the respondent cannot be saddled with the responsibility.

5. I have heard learned counsel for the parties and perused the record.

6. It is an admitted fact that charge sheet dated 5.5.2003 was served on the petitioner but vide order dated 12.2.2004 the competent authority i.e. Board of Directors of the respondent No. 2/HCI Ltd. decided not to pursue the departmental enquiry initiated against the petitioner. It would be relevant to reproduce pars 3 and 4 of the said order dated 12.2.2004, which is at page 22 of the paperbook.

“Shri Pradeep Kashyap, Ex-Assistant Manager-Accounts, Staff No. 87302, Centaur Hotel, Delhi was relieved on VRS with effect from 5th September, 2003. However, the Order relieving him on VRS with effect from 5th September, 2003 was withdrawn as departmental disciplinary proceedings had been initiated against him prior to his release on VRS vide above said chargesheet. The case of Shri Pradeep Kashyap came up for discussion before the Board of Directors of HCI who decided to relieve Shri Pradeep Kashyap on VRS and accordingly he was relieved on VRS with effect from 23rd January, 2004 vide letter No. CHD/PER/87302/197 dated 23.01.2004.

In view of his release under VRS, it has been decided not to pursue the departmental inquiry initiated against him under Chargesheet No. MD/HCI/DEL/194 dated 05.05.2003 and of his admission having withdrawn the amount of Rs. 4650/- towards meeting the TA/DA claim of Shri S.K. Vij and his further admission that the signatures of Shri S.K. Vij had not been obtained on the cash voucher. The undersigned directs that the amount of Rs. 4650/- along with penal interest of 18% p.a. with effect from 03.05.1996 i.e. the date of encashment of the Cheque No. "677998" 1100021361:13 dated 02.05.1996 be recovered from his terminal benefits."

7. On perusal of the above, it is manifest that the Board of Directors decided to relieve the petitioner under VRS as the petitioner opted from the same and dropped the proceedings initiated against him pursuant to chargesheet dated 5.5.2003 but still direction was given to recover the amount of Rs. 4650/- with 18% interest. At this stage it will be useful to refer to Hotel Corporation of India Employee's Service Regulations; specially Regulations 60, 78 and 82 as the same would be relevant to decide the present controversy and are reproduced as under:-

"60. MISCONDUCT

Any breach of these regulations shall be deemed to constitute a misconduct as provided hereinafter:

Without prejudice to the generality of the term "misconduct", the following be treated as misconduct:

- (1) Theft, fraud or dishonesty in connection with the business or property of the Corporation or of property of another person within the premises of the Corporation.
- (2) Taking or giving bribes or any illegal gratification.
- (3) Possession of pecuniary resources or property disproportionate to the known source of income by the employee or on his behalf by another person, which the employee cannot satisfactorily account for.
- (4) xxxx
- (5) Acting in a manner prejudicial to the interest of Corporation.
- (6) Willful insubordination or disobedience whether or 'not in combination with others, of any lawful and reasonable order of his superior.
- (7) xxxx
- (8) xxxx
- (9) Neglect of work or negligence in the performance of duty including malingering or slowing down of work.
- (10) to (16) xxxx
- (17) Commission of any act, which amounts to a criminal offence involving moral turpitude.
- (18) to (41)

Note: The above instances of misconduct are illustrative in nature and not exhaustive.

78 PENALTIES

The following penalties may be imposed on an employee, as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons.

MINOR PENALTIES

- (a) Censure;
- (b) Withholding of increments of pay with or without cumulative effect;
- (c) Withholding of promotion;
- (d) Recovery from pay of such or other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders.

MAJOR PENALTIES

- (e) Reduction to a lower grade or post or to a lower stage in a time scale;
- (f) Removal from service which shall not be a disqualification for future employment.
- (g) Dismissal.

Explanation: The following shall not amount to a penalty within the meaning of this Regulation:-

- (i) Withholding of increment of an employee on account of his work being found unsatisfactory or not being of the required standard, or for failing a prescribed test or examination.
- (ii) Non-promotion whether in an officiating capacity or otherwise of an employee to a higher post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case.
- (iii) Reversion to a lower grade or post, of an employee officiating in a higher grade or post, on the ground he is considered after trial to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct.

(iv) Reversion to his previous grade or post; of an employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment.

(v) Termination of service:-

(a) Of an employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment.

(b) of an employee appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and

(c) of an employee on reduction of establishment.

82. PROCURE FOR IMPOSING MINOR PENALTIES

(1) Where it is proposed to impose any of the minor penalties specified in clauses (a) to (i) of Regulation 78 the employee concerned shall be informed in writing of the imputations of misconduct or misbehavior against him and given an opportunity to submit his written statement of defence within a period not exceeding 7 days. The defence statement, if any, submitted by the employee shall be taken into consideration by the Disciplinary Authority before passing orders.

(2) The record of the proceedings shall include:

(i) a copy of the statement of imputation of misconduct or misbehavior delivered to the employee;

(ii) his defence statement if any; and

(iii) the orders of the Disciplinary Authority together with reason therefor.

8. On perusal of the above Regulations, it is clear that for imposing minor penalties of the type imposed on the petitioner herein, it is not

essential to hold a detailed departmental enquiry. But it is also clear that before a minor penalty is imposed on an employee, it is essential to appoint a Disciplinary Authority and the record of the proceedings should include the statement of imputation of misconduct or misbehavior; defence statement and order of Disciplinary Authority backed by reasons thereof. In the instant case, vide show cause notice dated 28.4.2003, disciplinary enquiry for major penalty was initiated and this fact is further strengthened from chargesheet dated 5.5.2003 and preliminary investigation Report dated 9.12.2003. Meanwhile the petitioner had applied for VRS but due to pendency of disciplinary enquiry against him, the matter was resolved by the Board of Directors as discussed above vide order dated 12.2.2004 and in the same order minor penalty was imposed on the petitioner. The said minor penalty has clearly been imposed ignoring Regulation 82 of the HCI Employee's Service Regulation.

9. The respondent No. 2 clearly has not only acted in violation of Regulation 82 of the HCI Employees Service Regulation but has imposed minor penalty upon petitioner, which visited him with civil consequences without even giving him an opportunity of being heard before passing such an order of recovery. It is no more res integra that

the basis of principles of natural justice lies in duty to act judicially and fairly and the application of the principles of natural justice is not confined to judicial or quasi-judicial enquiries but extends even to administrative orders, which have civil consequences. A case of “no opportunity”, “no notice” and “no hearing” has to be seen from the point of view that such violation amounts to prejudice and the delinquent officer or employee loses his right to defend himself properly and effectively, which is the objective underlying principle of being heard or rule of audi alteram partem. In this regard, the Hon’ble Apex Court has in **Kumaon Mandal Vikas Nigam Ltd. vs Girja Shankar Pant (2001) 1 SCC 182** observed as under:-

“20. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste; this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of *Sayedur Rehman v. State of Bihar*⁸ seem to be rather apposite. This Court observed: (SCC p. 338, para 11)

The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated 22-4-1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.”

10. In view of the above discussion, the petition is allowed and the show cause notice dated 28/4/2003; charge sheets dated 5/5/2003 & 9-12/12/2003; order dated 12/2/2004 directing recovery of Rs. 4,650/- from retiral dues along with 18% penal interest; letter dated 21/5/2004 denying to refund the amount of Rs. 4,650/- and also the notice dated 15/10/2004 denying admissible benefits are hereby quashed being illegal and arbitrary. Resultantly, the respondent No. 2 is directed to refund Rs. 4650/- along with interest @18% p.a. from the date when the said amount was withheld till the payment is finally made. Directions are also given to the respondent No. 2 to release pay and allowances from 8.9.2003 to 12.9.2003 and one month's salary in lieu of notice as per the VRS and all other left over retiral benefits within a period of two months from the date of this order.

11. With the above directions, the petition is allowed.

May 30,2009

KAILASH GAMBHIR, J.