

Delhi High Court

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+ W.P.(C) 2862/2013 vs Union Of India & Ors on 7 August, 2013

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 07.08.2013

+ W.P.(C) 2862/2013

DIG K.P.S.RAGHUVANSHI Petitioner Through:Mr.B.P.Singh, Advocate.

versus

UNION OF INDIA & ORS. Respondents Through:Mr.B.V.Niren, CGSC for respondent/UOI. CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The three appeals filed by the petitioner before the Central Information

Commission were disposed of by a common order dated 17.4.2012. The order, to

the extent it is relevant, reads as under:-

"The parties are heard and records perused. With mutual consent of the parties, the following decision is given. File No.CIC/LS/a/2011/002531

(a) Information may be supplied in regard to para 2a, para 2b para 2c and 2k of the attachment to the RTI application dated 28.02.2011.

(b) The appellant and/or his counsel may be given inspection of the three files relating to the following ROGs.
i. ROG for revoking of censure dated 29.11.2008 ii. ROG for expunction of ICR submitted to MOD and iii. ROG for revoking censure dated 29.03.2010

W.P.(C) 2862/2013 Page 1 of 4 The inspection will be given in the presence of a Commissioned officer of Coast Guard. The Appellant will be permitted to take brief notes from the files but no documents will be provided to him.

3. In addition to the above, the appellant also had sought the following information

"Release of IG Vacancy, Making of CGO 02 of 2009 and seeking time period waiver for Reviewing officer (DGCG) to facilitate him to review ACR without completing statutory time period of 90 days."

Adv Pramatama Singh submits that he wants to have copy of the rules which provide for review of ACR of an officer reported upon by the Reviewing Officer even when the latter has not supervised his work and performance for 90 days. Shri Sharma submits that the rules provide for review of ACR even when the Reviewing Officer has not supervised the work and performance of the officer reported upon for 90 days in special circumstances.

4. In view of this, the CPIO is here by directed to provide a copy of the relevant rules free of cost to the appellant."

It would, thus, be seen that the aforesaid order was a consent order passed in the presence of the parties after hearing them. The appellant before the Commission was represented by Shri Pramataama Singh and Ms.Rashmi Raghuvanshi.

2. After passing of the order dated 17.4.2012, the petitioner appeared before the Commission on 10th May, 2012 and submitted that he would like to take inspection

W.P.(C) 2862/2013 Page 2 of 4 of certain additional affidavits relating to amendment of criteria for promotion of

the officer cadre. The following order was then passed on 14th May, 2012:-

"... the appellant personally appeared before the Commission on 10.5.2012 and submitted that he would also like to take inspection of certain additional files relating to the amendment of criteria for promotion in the officer cadre. He amplified that as per CGO-2/2005, the criteria for promotion was to consider 5 ACRs of the officer concerned subject to their availability, in the same rank. However, this criteria was modified by CGO-2/2009 which provides that if 5 ACRs are not available in the same rank, then the competent authority may consider the remaining ACRs in the previous rank.

2. In view of the request of the appellant, it was thought expedient to issue notice to the Indian Coast Guard is represented by Shri Kalpit Dixit, DIG Shri M.V.Pathak, DIG Comdt. Gursharan Singh and Shri R.K.Singh, SCSO. The parties are heard and the records perused. The officers of Coast Guard have no objection to give inspection of the relevant files referred to above to the appellant."

3. It would, thus, be seen that at no stage the petitioner questioned the order passed by the Commission on the ground that he had not consented to the said order being passed. The learned counsel for the petitioner has drawn my attention to the appeal for review dated 5th September, 2012 filed by the petitioner before the Commission. I have perused the application. It contains no averment that the order dated 17.4.2012 was not passed with the consent of the petitioner. In these circumstances, I cannot accept the contention of the learned counsel for the petitioner that the order dated 17.4.2012 was not a consent order. In case the

W.P.(C) 2862/2013 Page 3 of 4 petitioner had not consented to the said order, he ought to have immediately thereafter moved an application stating therein that he had not consented to the

order dated 17.4.2012 and therefore his appeal should be decided on merits. That having not been done, the petitioner cannot now question the said consent order dated 17.4.2012. This is more so considering that even when the petitioner appeared before the Commission on 14th May, 2012, he did not claim that the order dated 17.4.2012 was not a consent order. He only sought inspection of additional documents and such inspection was also allowed by the Commission. In any case nothing prevents the petitioner from filing a fresh application under RTI Act, seeking copies of the documents desired by him. But, he cannot be allowed to question a consent order by way of a writ petition. In these circumstances, I find no ground to interfere with the order passed by the Commission.

The writ petition is dismissed.

V.K. JAIN, J

AUGUST 07, 2013/ks

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