

BEFORE THE LOKAYUKTA, DELHI
Justice Manmohan Sarin

Complaint No. C-42/Lok/2007/

Sh. G.P. Sewalia,
presently working as Secretary,
Commission for OBC

Vs.

Sh. Baleshwar Rai,
Chairman PGC (Retired).

Present :-

None for the Complainant/Petitioner

Complainant/Petitioner

Mr. Narender Kumar Sharma, Advocate for the respondent Sh. Baleshwar Rai and Sh. J.P. Gaur, UDC from the PGC.

Respondent

ORDER

1) The complainant Sh. G.P. Sewalia, at the relevant time was working as Secretary, Public Grievance Commission, Govt. of NCT of Delhi. He alleges in the complaint that the Respondent Sh. Baleshwar Rai, the then Chairman of Public Grievance Commission, had been continuously causing undue harm and harassment to the complainant by misusing his official position as Chairman, Public Grievance Commission.

It is urged that the same was actionable under Section 2 of the Delhi Lokayukta and Uplokayakuta Act, hereinafter referred to as the Act. He prays for recommendation by the Lokayukta for the removal of the Respondent, Sh. Baleshwar Rai, who he alleges is unfit on account of his above actions to hold the public office meant for redressal of grievances.

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(2) Complainant's grievances and allegations of harassment may be grouped under three heads :-

(1) Delay in sanction and withdrawal of LTC Advance.

(2) Stopping and delaying the reimbursement of medical claim for a paltry sum of Rs. 450/-.

(3) Unjustifiably delaying release of GPF advance of Rs. 10 Lakhs by raising frivolous and mischievous queries.

(3) The Complainant suspects that the stand taken by the Complainant regarding non-entitlement of camp Office facilities to retired officials such as the Respondent who are re-employed, was perhaps the cause for the Respondent to act in the manner he did against the complainant.

(4) Detailed pleadings were filed by the parties. The Complainant has also filed written submissions together with documents. Sufficient opportunity had been granted to the parties of personal hearing. The Complainant in his communication dated 3rd December 2008, while enclosing the written submissions stated that it was not possible for him to appear personally and requested that the complaint be considered and disposed of in the light of the written submissions. As the matter was adjourned to 5th December, 2008 at the request of the respondent counsel, another opportunity was given to the Complainant to be present on 5th December, 2008. The Complainant, however, did not appear. Ld. Counsel for the Respondent was heard in opposition to the complaint.

(5) Let us first consider the complaint with regard to delay in sanction & availability of LTC advance. The Complainant claims to have applied for

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LTC advance on 16.11.2006, for ensuing vacation between 20.11.2006 to 22.12.2006. The Complainant claims that as a result of non sanctioning of LTC advance, he was unable to undertake the proposed journey and perforce changed his programme. Further, he also had to use his credit card. The record shows otherwise. On 20.11.2006, he applied for cancellation of the said leave

due to what he describes as “unexpected judgment” delivered by the Special Judge in the criminal case for possession of assets disproportionate to known sources of income. He sought Earned Leave for 26 days from 4.12.2006 to 29.12.2006 and requested that the earlier request to be treated as cancelled. Further, he may be given LTC advance as per new schedule. Though having applied for and sought leave from 4.12.2006 to 29.12.2006, he in fact terminated his leave and resumed duty on 11.12.2006 and sought cancellation of leave from 11.12.2006. Instead visiting Lakshadweep as planned, the Complainant travelled to Ooty. It is only on return from Ooty, he sought reimbursement of expenses. The Respondent therefore, contends that in these circumstances with the change in the leave programme and the itinerary at the Complainant’s behest, Respondent can not be held responsible for the delay in sanction of travel advance. Besides the change of travel plans was on account of the judgment of Trial Court and not the alleged delay in sanction of advance as per Complainant’s own showing.

(6) Regarding the allegation of delay in sanction of reimbursement of medical expenses, the complainant states that the reimbursement of amount spent by him on treatment at the Maulana Azad Dental Institute was declined. Respondent states that the items of Dental treatment were not on the approved

list of Delhi Health Scheme. As such the delay was due to bonafide query being raised in relation thereto. However, the Respondent as Head of Department

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allowed the same as a special and exceptional case, within its discretion. The Complainant thus can not have a grievance in this regard.

(7) The last grievance is delay in sanctioning of GPF advance of Rs. 10 lakhs for purchase of property E- 92, Anand Nikten, Moti Bagh. The said property had figured in the list of Benami properties allegedly held by Complainant in the case relating to possession of assets disproportionate to the known sources of income. The substance of the allegation by the Complainant is that the respondent unjustifiably and malafidely delayed releasing the advance amount. He raised queries which are described as “mischievous and unwarranted”. The queries raised by the respondent were :-

- a. Whether the complainant had taken permission/given prior intimation to the Competent Authority for purchase of property as required under Rule 16 of the AIS (Conduct) Rules 1968.
- b. Whether the property was in the list of Benami properties forming part of the charge sheet against the petitioner in case of disproportionate assets.

c. Whether any Rent Deed of the property in favour of the petitioner and his wife as joint tenant existed.

Additionally, the complainant was asked to submit the application in proper format.

(8) It may be noted that while permission for acquiring moveable property may not be required under Rule 16 of AIS (Conduct) Rules 1964, the fact remains that it is to be done with previous knowledge of the Government.

In the instant case, intimation regarding the same was given on 5.11.2007

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after application for GPF advance had already been made. The Complainant in the present instance has been convicted by the Court of the Special Judge for possession of assets disproportionate to his known sources of income and sentenced to 3 years rigorous imprisonment. The said judgement has been challenged by the Complainant in the High Court and sentence is stated to have been stayed although the copy of the stay order has not yet been made available. It is also seen from the judgment delivered, that E-92, Anand Nikten, Moti Bagh, the property which the complainant wished to buy and for which the Permanent Advance was sought, was in the list of Benami Properties allegedly acquired by the Complainant and had been part of the

charge sheet. Although, as per the finding of the Special Judge, it was held that it could not be proved by prosecution to be a Benami property belonging to the Complainant. In these circumstances, the best case that can be urged on behalf of the Complainant is that once the Trial Court held the property not to be a Benami one, queries with regard to the Rent Deed or other evidences of execution of tenancy/lease of said property in favour of the Respondent, were not warranted.

(9) Having considered and perused the pleadings filed, as also the evidence in terms of supporting documents and written submissions and having heard the Counsel for the Respondent, what needs to be considered at the threshold, while evaluating the complaint is whether there was any substance in the allegation of malafides by the Complainant against the Respondent. It is not disputed before us that there is no history of any past acrimony between the Complainant and Respondent. Rather it is a complainant's own case that

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from June to December 2006, they functioned very well without any problem. The Complaint is bereft of any specific particulars of malafides against the Respondent except the averment raising the apprehension that the

Respondent may have acted against the Complainant in view of the stand taken by the Respondent with regard to entitlement of Camp Office Facilities not being extended to Judges/Officers who retired and were re-employed, such as the Respondent.

(10) It is seen on perusal of the record that the claim with regard to medical reimbursement and LTC advance were not sanctioned in March 2007 and November-December 2006 while the communications with regard to Camp Office Facilities was sometime in May 2007. As such the same could not have had any impact as far as the above two allegations are concerned. Even otherwise the said apprehension of its own and in the absence of other cogent material can hardly be made the basis to allege malafides.

(11) Let us examine whether the queries raised were frivolous, unwarranted and are a fall out of the malice allegedly nurtured by Respondent against the Complainant.

It is true that the Chief Secretary, upon consideration of the same matter came to the conclusion that the advance should be released and infact was so released. Apart from question of malafides, we are concerned in

determining whether raising of these queries as discussed in Para 6 by the respondent would amount to misuse of official position. In my view, the very basis or the foundation for alleging malafides in this case is missing.

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Besides, in the circumstances enumerated, these queries can neither be described as frivolous nor unwarranted. It can not be lost sight of the fact that the Complainant stands convicted for possession of assets disproportionate to the known sources of income. The Complainant's appeal has no doubt been admitted and sentence reportedly suspended. It is not clear whether conviction has been stayed or not. In these circumstances, actions of the Respondent in enquiring whether the property for purchase of which advance was sought, fell within the list of Benami properties, can not be said to be a wholly irrelevant query. The said property is found to be one in the list of Benami Properties, as per the charge sheet, but not so finally found by trial court, as prosecution failed to prove its case in respect thereto.

Similar is the position with regard to execution of the Tenancy Deed and the queries relating thereto. The factum of existence of tenancy/rent deed is a most crucial factor in price of prime property being lowered. The matter had been taken in appeal by Complainant who got reprieve of

sentence. The Head of Department in these circumstances, can not be accused of malafides or misuse of power, in seeking clarifications from CBI especially in the absence of any particulars of malafides having been disclosed or established.

There is a merit in the submissions of the Ld. Counsel of the Respondent that raising of the queries was a bonafide exercise to remove doubts. May be that the respondent acted with utmost caution, but an erroneous exercise of discretion can not termed be as a malafide exercise or misuse of power and discretion.

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In view of the above discussion, the complaint has no merit and the same is rejected. We may also note that the grievances with regard to these three issues in practical terms did not survive even at the time of the filing of the complaint. The relief/benefits in regard thereto having already been given.

**Lokayukta
Justice Manmohan Sarin**

Dated : 12.12.2008