

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

+ WP(C) No.2046/2001

% Date of reserve: 13th August, 2008
Date of decision: 21st August, 2008

PREM NATH BALI

...PETITIONER
Through: Mr.K.C.Mittal,
Advocate

Versus

THE HIGH COURT OF DELHI AND ANR.

...RESPONDENTS
Through: Mr.Viraj Datar,
Advocate for R-1

Ms.Avnish Ahlawat,
Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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 |

MOOL CHAND GARG, J.

1. The petitioner while working as UDC and incharge of Copying Agency (Criminal) at Patiala House was served with a charge memo dated 10th July, 1990 on a complaint made by Ms.Brij Bala Goel, LDC in the Copying Agency. It was reported by her to officer incharge of Patiala House that she closed the application register for supplying certified copies at 1 p.m. on

22nd January, 1990. However, some applications which were not even entered in the register on that day were entered in CD2/Dak register subsequently. Certified copies were got prepared of those applications on the same date. She was also pressurised to deliver the copies on the same date at 2.30 p.m. However, when she refused to deliver the copy, the petitioner quarreled with her. The other allegation levelled against the petitioner was for using unwanted words in the office, which were uncalled for.

2. This complaint was forwarded to the learned District Judge and on that basis a preliminary enquiry was made. Thereafter, a departmental enquiry was also held against the petitioner. In this regard, the petitioner was served with memorandum dated 18th July, 1990, accompanied with the statement of articles of charges and other relevant documents. The articles of charges are as under:

“That, Sh. P. N. Bali while working as UDC (Incharge in the copying agency (Criminal) at Patiala House Courts, New Delhi) was found to be indulging in most undesirable & irregular activities pertaining to the copying agency and tempering with the judicial records.

That Sh. P. N. Bali has been inserting the entries in the register of receipt of the applications for certified copies, after the entries are closed for the day, without obtaining any permission. He misused his position by making interpolations.

That, Mr. P. N. Bali was noticed supplying certified copies to the parties without obtaining applications and in order to overcome the lacuna had after wards inserted few entries in the register and signed the same afterwards which tantamount to forgery.

That, for these illegal and unauthorized activities Sh. P. N. Bali pressurized the L.D.Cs working in the

Branch to prepare and deliver certified copies forthwith on the same day and when opposed, he threatened Mrs. Goel and other staff with dire consequences by implicating them in a false cases. He was also in the habit of using unwanted words in the Branch.

That Sh. P. N. Bali UDC was in the habit not to sit in the Branch more than an hour or so and used to litter about and was found present on his seat only when he had to oblige some one. Thus by doing so, he created an atmosphere of indiscipline, and irresponsibility and especially being an Incharge of the Branch.

That Sh. P.N. Bali thereby committed gross misconduct of which he is guilty.

Alongwith statement of articles of charges statement of imputation of misconduct in support of articles of charges were also sent to Mr. bali which reads as under:-

“ That, Smt. Brj Bala Goel, L. D.C. in the Copying Agency (Criminal) Patiala House Courts was assigned with the duty of receipt of applications, inquiry and delivery of certified copies. Ms. Usha Mehra, Addl. District Judge, Patiala House Courts while examining the register of receipt of applications in the Copying Agency found interpolations regarding entries dated 22.1.90 and Sh. P. N. Bali put his initials later on, which tentamounts to forgery.

On further examination of the register of the Copying Agency, the following additions and interpolations made by Sh. P. N. Bali were noticed.

<u>DATE</u>	<u>ADDITION</u>	<u>INTERPOLATION OF TOTAL</u>
10.1.90	4056	15 TO 16
11.1.90	2422, 2423, & 410	24 TO 27
15.1.90	2442	11 TO 12
16.1.90	2453	13 TO 14
18.1.90	2479, 2498 & 2499	12 TO 15

Smt. Brij Bala Goel on the particular occasion on 22.1.90 as usual closed the register of receipt of Copying Applications at 1.00 p.m. with 8 entries. Thereafter, she noticed an additional entry of application No. 2515 having been made in the register and changed Sl. No. from 8 to 9.

This addition did not bear initials of anyone. The entry was not made by Smt. Brij Bala and she was forced by Sh. P. N. Bali to hand over the certified copies pertaining to the application No. 2515 which was got prepared by him on the same day, to the party concerned at 2.30 p.m. Smt. Brij Bala had also reported that Sh. P. N. Bali was in the habit of using unwanted words in the Branch.”

The petitioner was also supplied with a list of documents which included the letter of the then Incharge, Patiala House, the copy of the complete extract of the receipt register of the copying agency (criminal), Palitala House/Dak Register and the attendance register of the copying agency as well as the report about his late coming along with the memorandum.

3. The enquiry was initially marked to Ms. Kanwal Inder, Additional District Judge and later on was also marked to two other judges. However, finally, the enquiry was concluded by Shri S.N.Dhingra, District Judge (now Justice S.N. Dhingra). The record shows that there was a delay in completion of enquiry for which the petitioner himself was to be blamed squarely. As per the enquiry report given, all the charges including the charge of interpolation of the entries in the registers maintained in the copying agency were proved against the petitioner.

4. During the pendency of the enquiry the petitioner was put under suspension with effect from 6th February, 1990. However taking into consideration the delay in conducting the enquiry and the date of suspension of the petitioner, the said suspension was revoked by an order 1st March, 1999 passed by the then District Judge. The said order reads as under:

“WHEREAS Shri P. N. Bali, UDC of this office was placed under suspension on 6.2.1990 in contemplation of the initiation of the disciplinary proceedings against him.

Whereas Shri. P. N. Bali submitted a representation for revocation of suspension order and on considering the same, the undersigned is of the view that

the said order of suspension shall be revoked since this official is under suspension since 6.2.90 and the disciplinary proceedings against him may take some more time to be completed.

*Now, therefore, the undersigned in exercise of the powers conferred by Clause (c) of sub-rule (5) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 hereby revoke the said order of suspension with immediate effect. **However, the decision whether the period of suspension is to be counted as a period spent on duty, and on payment of salary and other allowances/other benefits to him for the period he remained under suspension, will be taken after the conclusion of the disciplinary proceedings pending against him. It is clarified that this order will be without prejudice to the disciplinary proceedings pending against him.***

5. The petitioner made a detailed representation before the disciplinary authority challenging the findings given by the enquiry officer. However, vide order passed by the then District Judge on 28th October, 1999, penalty of compulsory retirement from Government service was imposed upon the petitioner with immediate effect. It was also ordered that the petitioner will not be entitled to any amount more than the allowances already received by him for the period for which he remained under suspension.

6. This order was challenged by the petitioner in appeal before this Court. The said appeal was decided by Justice A.K.Sikri on its administrative side vide detailed order dated 21st August, 2000, whereby the appeal filed by the petitioner was dismissed on all counts.

7. It is against the aforesaid order that the petitioner has filed the present writ petition. At the time of hearing, the petitioner primarily assailed the findings returned by the enquiry officer and the subsequent orders, inter alia, by alleging:-

(i) that the findings of the enquiry officer that the charges against the petitioner stands proved is without any evidence, as CD2 register, which is the register maintained for recording receipt of the applications for certified copies, was not at all produced by the respondents during departmental enquiry and as such, the charge of interpolation of entries is not sustainable.

(ii) that the order passed by the District Judge dated 28th October, 1999 not granting any other allowance to the petitioner for the period intervening his date of suspension and the date when the suspension revoked is illegal being contrary to Section 54-B of FRSR.

8. The said provision as contained in FR 54(B) for the sake of reference is reproduced hereunder:

"F.R. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or that date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension

dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule(8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule(3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) Incases other than those falling under sub-rules (2) &(3) the Government servant shall, subject to the provisions of sub-rules(8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall not exceed sixty days from the date on which the notice has been served: as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule(3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule(5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note._ The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of _

(a) Extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) Leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under sub-rule(2), sub-rule(3) or sub-rule(5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule(3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

Learned counsel for the petitioner submitted, that as per sub-para (5) of the aforesaid Rule, the issue with regard to pay and allowances payable to the appellant for the suspension

period ought to have been decided by the disciplinary authority after issuing a notice to the petitioner which was not done. Hence, the order dated 28th October, 1999 is illegal. It is further contended, that the order depriving the petitioner of any other allowance during the period of suspension was illegal because neither the notice as it is required to be given to the petitioner before passing such an order was given to the petitioner, nor was the petitioner heard on that aspect of the matter.

9. Learned counsel appearing for the respondents has, however, opposed the submissions made by Shri K.C.Mittal, Advocate for the petitioner. Shri Viraj Dattar Counsel appearing for respondent No.1 has taken us through the enquiry report, the order passed by the District Judge as well as the order passed by the learned Single Judge of this Court. It has been contended, that the charges framed against the petitioner including interpolation made in the register regarding the receipt of the application of the certified copy/the Dak Register were based on documents of which the copies were supplied to the petitioner along with the memorandum of the charge. All those charges stood proved by the evidence brought on record by the respondents. It was thus contended, that there is no infirmity in either of the orders assailed by the petitioner. It has also been contended, that for the delay of nine years in completion of the proceedings, the petitioner himself has to be blamed.

10. Ms. Avnish Ahlawat, learned counsel appearing for Respondent No.2 submitted, that since it was not a case of reinstatement of the petitioner either under any order of the court or on his exoneration of charges otherwise there were no occasions to allow pay and allowance payable to the petitioner for the period of suspension after hearing the petitioner in addition to what has been paid because, the case of the petitioner was not covered under 54-B of FRSR but was covered under FR 54. As such, the order of the learned District Judge dated 28.10.1999 restricting the pay and allowance for the period of suspension to the extent of the amounts already paid was fully justified and legal.

11. It was submitted that as per FR 54(6) it was for the Disciplinary Authority to review the order dated 1.3.1999 suo moto and even as per FR 54(B) (5), the petitioner was not entitled to the whole of the pay/allowances for the suspension period taking into consideration his own conduct throughout the departmental proceedings.

12. We have heard learned counsel for the parties and have perused the records.

13. As far as the merits of the case are concerned, even though while sitting in the writ jurisdiction this court is not required to re-appreciate the evidence which came on record during the departmental proceedings, just to satisfy ourselves, we have scanned through the records. It may be observed, that the evidence led by the respondents in this case comprises of the

statement made by Smt. Brij Bala Goel who was working as LDC in the copying agency who also made the complaint dated 23.1.1990. In her deposition she fully substantiated the allegations made by her and withstood the lengthy cross-examination. She also explained the process as to how the record was kept in the copying agency and explained the manipulation made therein by the petitioner. In this regard, the enquiry officer after going through the relevant registers observed:

“These original registers show that whenever a application was received by the window clerk, the entry of the application used to be made in CD 2 register giving details of the application and all the application used to be collected at the time of closing the window the entries of these application used to be made in Dak Register in reverse order and total number of application used to be inscribed at the bottom of the column. The entire pages of the register show that on each page same practice was followed and if on a date the application been received from 2001 to 2020 the entry in the Dak Register would start from 2020 down word to 2001. This seems to be done by the window clerk because she was pilling up application giving serial number one after another and at the end of the closing hour she used to write these serial numbers in the dak register from last application. The register shows that there was no overwriting, cutting, manipulations upto 8.1.90 but from 9.1.90 onwards there have been cutting manipulations and overwriting on various dates. On 9.1.90 also two entries of application No., 2392 and 2391 which should have been at the top are found at the bottom showing that these two applications were manipulated after closing of the window. The window clerk had put the figure 12 at the bottom of the column which was scored off and figure of 14 was written in the words initiated by Mr. P.N. Bali. Mr. P.N. Bali deliberately, either himself or in collusion with Partap and Vijay Kumar get these two application inserted on 9.1.90. Similarly on 10.1.90 on application No. 405.S has been inserted later on and total figure has been changed from 15 to 16 and initialled by Mr. Bali. Application No. 2422, 2423 and 410 S have been similarly inserted after closing of the window on 11.1.90. Window clerk had given total figure of 24 which was changed to 27. The same is the story of

15.1.90 where application No. 2442 which should have figured at the top of the column is figuring at the bottom by way of insertion the total number has been changed from 11 to 12. Same has been done on 16.1.90 where application No. 2453 should figure at the top of the Column but actually figure at the bottom by way of insertion and total number has been changed from 13 to 14 and initialed by Mr. Bali. Even the change in number from 13 to 14 has been done by Mr. Bali. The same manipulation appears in date 18.1.90 and 22.1.90. The plea taken by Mr. P.N. Bali that he was not closing the register is falsified from the fact that entries in the Dak Register used to be made in reverse order and at the end of the column total number of application is used to be written and all the entries in reverse/order and total number is in the hand of Mrs. Brij Bala Goel except those entries which have been inserted or interpolated and out of order whenever the total number has been scored or change or over written. The date of preparation of copy is also given in CD 2 Register. A perusal of the register shows that normally no copy was ready on the same date whether urgent or ordinary. Even urgent copying application were made ready after 2-3 days while ordinary copies have been made ready after a week or month. The complaint made by Mrs. Brij Bala Goel was that on 22.1.90 application no. 2515 was illegally received by Mr. P.N.Bali and he pressed her to deliver the copy on the same day and when she refused he abused her and used filthy language. Register dated 22.1.90 shows that Brij Bala on that date received 8 applications and written figure 8 under the column. The application started from 2514 downward to 2509. The application No. 2515 was inserted after S. No. 2509 and Mr. Bali scored of figure 8 and wrote figure 9 in words in his own hand in the black pen and initialed them. CD 2 register shows that this application No. 2515 was made ready on 22.1.90 itself. The contention of Brij Bala Goel that she was pressurized to deliver the copy on the same day therefore finds support from the record. Vijay Kumar was copyist, who was to prepare the copy. Obviously he was under influence of Mr. Bali and used to make entries at the instance of Mr. Bali. He appeared as a witness, his statement that Mrs. Brij Bala Goel tell him to make entry in CD 2 Register has been falsified from the record. It is therefore, clear that Vijay Kumar at the instance of Mr. P.N. Bali prepared the copy. Mr. P.N. Bali did pressurize Mrs. Brij Bala Goel to deliver the copy and a exchange of words did make place. There is no reasons to disbelieve that statement of Mrs. Brij Bala Goel that Mr. P.N. Bali abused her in most filthy manner”.

14. Thus it is apparent, that the defence evidence produced on behalf of the petitioner was only an afterthought and therefore was rightly rejected by the enquiry officer.

15. The matter also came up for consideration before the Single Judge of this Court who decided the appeal on its administrative side as the Appellate Authority vide a detailed order dated 21.8.2000. The said Authority scrutinized the evidence which came on record and also dealt with all the submissions of the appellant i.e. the petitioner but did not find any merit in his submissions. Some of the observations made by the Appellate Authority can be taken note of:-

i) Although the appellant alleged that the departmental enquiry could not be concluded in accordance with CSS (CCA) Rule 1965 but the perusal of the enquiry report it is seen that it is the appellant who alone is to be blamed for delaying the enquiry. Besides making transfer application against the enquiry officer, the defence assistance of the appellant did not appear on several hearing resulting in unnecessary adjournments of the enquiry. Despite having cross-examined the witness he kept on asking for further cross-examination of the witnesses again and again and took several adjournments for inspections of the record etc.

ii) The procedural infraction which the appellant pointed out were without any basis in as much as, during the course of enquiry, firstly, the departmental evidence was recorded in support of the charges and thereafter the appellant was given an opportunity to lead defence evidence. The appellant himself admitted, that the departmental representative did not cross-examine

him. Merely because enquiry officer put certain questions would not amount to interfering with Rule 14(18) of the rules and therefore there was nothing to show that any prejudice was caused to him during the course of enquiry.

iii) There was also no truth in the submission made by the appellant that his written submissions were not considered by the enquiry officer as the report of the enquiry officer shows that the enquiry officer arrived at the findings after perusing the entire material on records. Similarly, disciplinary authority also took into consideration the enquiry report including representation dated 02.6.1999.

iv) As far as applicability of FR 54 and 54-B is concerned, the appellate authority rightly observed that there is no discretion as per those rules to pay full pay and allowance when the period of suspension is treated as non-duty, particularly, when the delay caused in the completion of enquiry is attributable to the conduct of the petitioner himself.

16. Even on merits, the Appellate Authority agreed with the findings returned by the disciplinary authority as well as the enquiry officer in respect of all the charges, including the main charge of interpolation of the entries by addition of entries in the register. It was observed:-

“It is a common case that such entries have been made and the interpolation is done. Even otherwise this has been amply proved from the record. The addition of entries by interpolation which is proved is summarized by the Inquiry Officer in the following manner:-

DATE	ADDITION	INTERPOLATION OF TOTAL
10.1.90	4056	15 TO 16
11.1.90	2422, 2423,& 410	24 TO 27
15.1.90	2442	11 TO 12
16.1.90	2453	13 TO 14
18.1.90	2479, 2498 & 2499	12 TO 15

In fact even the appellant during the course of arguments did not seriously challenge this interpolation. His main contention was that nothing is proved from the record that he is responsible for such interpolation. However, I do not agree with this submission of the appellant, inasmuch as, all these interpolation are initialed by the appellant. This, coupled with the fact that it is the appellant who was interested in preparation of certified copies in respect of these entries and even force his subordinate staff to prepare the certified copies on the same date shows interest of Mr. Bali. I also agree with the detailed reasoning given by the Inquiry Officer as well as disciplinary authority on this and other aspects. I may particularly refer to the following observations of the disciplinary authority from his order:

“The charged official in his written arguments has taken a plea that the entries in the register were not proved to be in his hand but the deposition of PW-1 Ms. Brij Bala Goel to the effect that he forced to make her delivery of the copies prepared against the said application would to show that the entry in the register must have been made by him. Further, in view of the fact that the charged-official was functioning as Incharge of the copying agency, he himself was responsible for entries made in the register after the closure of the same. The testimony of the defence witnesses produced by the charges official have said nothing of relevance to dis-believe the case of the department. Further, the charge that Sh. Bali pressurized the official working in the branch to prepare and deliver copy of the same day and when opposed to do so, the charged official threatened Mr. Brij Bala and other staff with dire consequences and that he was in the habit of using unparliamentary language in the Branch, have been proved from the testimony of PW-1 Smt. Brij Bala Goel”.

The charges against appellant were of the serious nature, particularly that of interpolation of the entries of applications received in the concerned branch applying for certified copies. Maintenance of purity in the administration of justice is paramount.

Employees working in courts also play important role. If employees indulge in such practices as the appellant has done, it would have adverse effect on the credibility of the institution. Therefore, keeping in view of the gravity of charges against the appellant, the punishment of compulsory retirement was rightly imposed. In fact on the imposition of such a penalty, the petitioner has still been able to get his terminal dues and pension. Therefore, no interference in the order of disciplinary authority is called for”.

17. Thus, the record of the departmental proceeding as well as that of appellate authority makes it clear that there is no legal infirmity in the entire process leading to the proof of charges levelled against the petitioner or in respect of the punishment awarded to him. The record shows that full opportunity had been granted to the petitioner to lead his defence and all legal formalities had been complied with.

18. So far as the arguments raised by the petitioner regarding non-compliance of provisions of FR 54-B is concerned, we find that the case of the petitioner is covered only by sub-para (6) of FR 54-B, which is reproduced as under:

*(6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed **on its own motion** after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule(3) or sub-rule (5), as the case may be.*

19. From a reading of the aforesaid provision along with sub-para (1) of FR 54-B we find that the order passed by the learned District

Judge/Disciplinary Authority holding that the petitioner was not entitled to anything else except for the allowances already paid to him was fully justified keeping in view the delay caused to the departmental enquiry by the petitioner himself for a period of more than nine years. Hence, even this argument raised by learned counsel for the petitioner has no legs to stand.

20. In view of the aforesaid, we find no reason to interfere either with the sentence awarded to the petitioner or with the pay and allowance made admissible to him for the period of suspension. The writ petition is thus dismissed leaving the parties to bear their own cost.

MOOL CHAND GARG, J.

August 21, 2008
dc/rk

SANJAY KISHAN KAUL, J.