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

% Date of Decision: 2nd December, 2009

+ **W.P.(C) 5078/2004**

PRABHAT SINGH CHARAK Petitioner
Through: Ms.Rekha Palli, Advocate

versus

UOI & ANR. Respondent
Through: Ms.Jyoti Singh, Advocate and
Mr.Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the parties.
2. On 26.7.1996, a charge memo was issued and served upon the petitioner alleging 3 charges as under:-

"ARTICLE-I

Shri P.S.Charak while posted and functioning as Dy.Commandant in 68 BN CRPF at Jalandhar during March, 1994 committed serious misconduct in that he failed to comply with the lawful orders issued by the Offg. Commandant 68 BN CRPF on 07.03.1994 directing him to proceed on operational duty as Dett. Commander, Tinsukia (Assam) to take over charge

from Shri Gurmit Singh, Dy.Commandant who was proceeding on superannuation w.e.f. 31.3.1994 and thereby tried to avoid operation duties in Assam.

Thus the said Shri P.S.Charak failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt.Servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri P.S.Charak while posted and functioning in the aforesaid Bn. and in the aforesaid area during April, 1994 committed serious misconduct in that he failed to comply in time the lawful orders issued by the Offg.Commandant 68 BN CRPF on 13.4.1994 directing him to appear before the Chief Medical Officer, Base Hospital-I, CRPF, New Delhi for second medical opinion. Thus the said Shri P.S.Charak failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt.Servant and thereby violated provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

That the said Shri P.S.Charak while posted and functioning in the aforesaid Bn. and during the aforesaid period committed a serious misconduct in that he having been detailed by his Offg. Commandant for operational duty, absented himself from duty w.e.f. 12.3.1994 to 7.1.1995 (for 302 days) without sanction of leave by the competent authority, to avoid proceeding to Tinsukia (Assam) for operation duties. Thus, the said Shri P.S.Charak, failed to maintain absolute devotion to duties and acted in a manner unbecoming of a Govt. Servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964."

3. Inquiry officer was nominated by the disciplinary authority who submitted a report on 28.8.1997. The petitioner

was exonerated by the inquiry officer.

4. With respect to the evidence led relatable to Article-I of the charge, finding returned is as under:-

“After going through the documents prosecution witness and the medical documents produced by Shri P.S.Charak and his statement, it is very clear that Shri P.S.Charak, DC could not proceed to Dett/68 Assam only because of his continuous ill health. The prosecution could not establish or produced any solid evidence which could prove that Shri P.S.Charak was not well. Even prosecution witness were aware and stated in their statement that Shri P.S.Charak was ill. Once it is established from medical documents and statement of PWs that Shri P.S.Charak was ill then the question of proceeding to Dett with hypertension and Asthma is a very remote proposition. Though in face value of it Shri P.S.Charak failed to comply the lawful order to proceed to Dett. but in reality he was not in position to proceed to Dett to obey the order, because of ill health and hence it cannot be taken as disobedience of lawful orders but it happened due to mere compulsion.”

5. With respect to Article-II of the charge, after discussing the evidence, the finding returned is as under:-

“After going through it pro and cons it is evident that Shri P.S.Charak was having high BP and acute Bronchial Asthma. It is known fact that high BP and also acute Bronchial Asthma can put any patient into real trouble at any time and in journey. And hence not going for second medical opinion at Delhi 17.7.94 till he was confident to travel is justifiable.”

6. Pertaining to Article-III of the charge the finding returned is as under:-

“Contention of Comdt. 68 Bn., CRPF that Shri P.S.Charak has not applied for leave with proper medical certificate has stands no place because in all application Shri P.S.Charak had mentioned that,

medical certificate will be submitted when he joins for the duty. Commandant 68 Bn., should have taken this and given him a chance. Secondly, suspecting officer's credibility and also credibility to CMO, Civil Hospital, Jalandhar without properly verifying the facts is also not speaks good about the Commandant. Whole Unit HQ was also situated there at Jalandhar. Unit Comdt. Had all the chances to verify the facts from CMO Civil Hospital and second medical opinion could have by sending officer to a medical board in Jalandhar itself instead of asking officer to travel to Delhi. Even the CMO, BH-I, CRPF, New Delhi declared that Shri P.S.Charak, DC was suffering from Asthma in those days. Thirdly, when Shri P.S.Charak, DC joined for the duty and he submitted the application for leave regularization, Commandant 68 Bn., CRPF should have gone for the verification of all the medical certificates produced by Shri P.S.Charak, DC but he failed. However, it was proved from all the medical documents/OPD slips produced by Shri P.S.Charak, DC from time to time. Shri P.S.Charak was really ill and he was advised by the doctors from time to time for the rest and Shri P.S.Charak applied for leave time to time comdt. 68 Bn. Though Comdt. 68 Bn., did not sanction the leave and at the same time it was proved that Shri P.S.Charak, DC could not be blamed for not attending the office on or for his absence. His absence was not willful but forced due to his illness."

7. The disciplinary authority to whom the report of inquiry was submitted did not agree with the findings returned by the inquiry officer and accordingly proceeded to issue a show-cause notice to the petitioner and in the said show-cause notice recorded the note of disagreement.

8. The show-cause notice dated 1.12.1997 containing the note of disagreement is most unhappily worded, in that, the disciplinary authority has discussed the evidence and returned positive findings of guilt against the petitioner.

9. The opening paragraph of the note of disagreement contained in the show-cause notice reads as under:-

“A departmental inquiry was conducted against you by Shri N.G.Subramania, Commandant. The report of the Inquiry Officer is enclosed. The Disciplinary Authority does not agree with the findings of the Inquiry Officer and holds the Article of Charge I, II and III as proved beyond any doubt due to the following reasons/facts”

10. Thereafter, discussing the evidence pertaining to Article-I of the charge, Article-II of the charge and Article-III of the charge, at the stage of conclusion pertaining to each charge, finding returned is in the following words: *From the above it is fully established that Article of Charge-I stands proved, Article of Charge-II stands proved and Article of Charge-III stands proved.*

11. In the decision reported as AIR 1999 SC 3734 Yoginath D. Bagde vs. State of Maharashtra & Anr., pertaining to a similarly worded note of disagreement by the disciplinary authority vis-à-vis the finding of the inquiry officer, the Supreme Court held that where would be the occasion for the delinquent employee to respond if the disciplinary authority has already made up its mind and concluded upon the issue. The Supreme Court frowned upon a note of disagreement which concluded the issue by recording positive findings against the delinquent employee.

12. The decision highlights the importance of recording

prima facie and tentative findings if the disciplinary authority disagrees with the findings returned by the inquiry officer so that the mind of the disciplinary authority is open to consider the version given by the delinquent employee in response to the show-cause notice issued.

13. For the afore-noted reasons the show-cause notice containing the note of disagreement requires to be quashed.

14. Something more needs to be penned.

15. Responding to the show-cause notice containing the note of disagreement the petitioner submitted a response on 29.1.1998. The same was considered and rejected vide order dated 4.2.1999.

16. The order in question spanning 3½ pages narrates the preamble facts pertaining to the initiation of the departmental inquiry and thereafter lists the 3 Articles of Charge in the first two pages thereof.

17. In the third page a mere narration is recorded that a full-fledged departmental inquiry was held and report of inquiry officer was received to which penning a note of disagreement on 1.12.1997 the delinquent employee was required to furnish a response and that a response has been received have been noted.

18. In para 5, the issue has been disposed of in the

following words:-

“5. The President has considered the report of the Inquiry Officer, representation of the charged officer dated 29.1.98 and other relevant records of the case and also consulted the UPSC. After the said consideration the President has come to the conclusion that the articles of charge framed against Shri P.S.Charak, DC are proved and has accepted the advice of UPSC.”

19. Suffice would it be to state that not a word has been spoken by the disciplinary authority with reference to the response of the petitioner to the note of disagreement furnished to him under the show-cause notice dated 1.12.1997.

20. In the decision reported as 2006 (4) SCALE Ranjit Singh vs. UOI & Ors., the Supreme Court highlighted the importance of dealing with a response submitted by the charged officer to a show-cause notice post receipt of a report of inquiry.

21. In a nutshell, the decision brings out that to be called a speaking and a reasoned order, the same must show that the authority concerned has come to grips with the issues raised in the response by the charged officer and with reference to the evidence on record proceeds to consider the same and records an application of mind while reaching the conclusion.

22. This is our second reason for allowing the writ petition and quash the order dated 4.2.1999.

23. We note that the petitioner has submitted a memorial to the President of India which has likewise been disposed of by a non-speaking and unreasoned order dated 17.9.2003.

24. The said order is also quashed on account of being an unreasoned order.

25. In a nutshell, the note of disagreement and show cause dated 1.12.1997 and the orders dated 4.2.1999 and 17.9.2003 are quashed.

26. Since derailment had taken place at the stage of recording of note of disagreement, we put back the train at the correct track at said place i.e. we permit the respondents to proceed ahead in accordance with law. Needless to state, this would mean that whosoever is the disciplinary authority as of today would proceed to reconsider the report of the inquiry and if the said officer agrees with the report that would be the end of the matter, failing which, if the officer opines not to agree with the report of the inquiry officer, would issue a fresh show-cause notice and while so doing would keep into account the present decision and the decision of the Supreme Court in Yoginath's case (supra). The response of the petitioner, in said

eventuality, would be considered and fresh orders would be passed. We further direct the disciplinary authority of the petitioner to pass appropriate orders for the period reckoned with effect from the date penalty of dismissal from service was inflicted upon the petitioner till further orders are passed.

27. The writ petition stands allowed as aforesaid.

28. Needless to state, if an adverse order is passed against the petitioner all remedies available at law can be availed by the petitioner for the simple reason a fresh cause of action would accrue in favour of the petitioner.

29. No costs.

30. DASTI.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

December 02, 2009
Dharmender