

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

+ **W.P.(C) 2040/2010**

% **Date of Decision: 25.03.2010**

RAJESHWAR SINGH Petitioner
Through: Mrs. Rekha Palli with Mrs. Amrita
Prakash, Advocates

versus

UOI AND ORS Respondent
Through: Mr. R.V. Sinha with Ms. Saroj
Bidawat, Advocates

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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

GITA MITTAL, J.

1. This writ petition raises a short question for consideration. The petitioner joined Central Industrial Security Force (CISF for brevity) on 01st August, 2007. A departmental enquiry was initiated on issuance of a charge sheet dated 29th October, 2007 under Rule 36 of the CIFS Rules. An enquiry report dated 27th July, 2009 was submitted concluding that neither of the two charges has been proved. The

disciplinary authority thereafter passed the order dated 15/17th September, 2009 exonerating the petitioner.

2. Thereafter, the Inspector General of the CISF exercised suo moto powers of revision in terms of Rule 54 of the CISF and issued the notice dated 12th March, 2010. The petitioner has placed copy of the enquiry report dated 27th July, 2009, the order of the disciplinary authority dated 15/17th September, 2009 as well as the notice dated 12th March, 2010 before us. A fundamental challenge has been raised to the effect that while issuing the notice to show cause, the Inspector General has predetermined the entire matter and communicated his opinion that the charges against the petitioner, for which the disciplinary proceedings were held, stand conclusively proved. The petitioner was thereby given opportunity only to show cause against the proposed penalty.

3. It is submitted by Ms. Rekha Palli, learned counsel for the petitioner that this action of the Inspector General was in the teeth of the principles laid down by the Supreme Court in ***Punjab National Bank v. Kunj Behari Misra (1998) 7 SCC 84***, ***Yoginath D. Bagde v. State of Maharashtra AIR 1999 SC 3734*** and ***Lav Nigam v. Chairman, MD, ITI Ltd. & Anr., 2007 (5) SLR.***

4. The manner in which the disciplinary authority shall proceed in the event of disagreement with the findings and recommendations of an enquiry officer, are extremely well settled. All doubts on this issue were authoritatively settled by the Supreme Court in the pronouncement reported at (1998) 7 SCC 84 ***Punjab National Bank***

v. Kunj Behari Misra, wherein the Court stated as follows:

“18. Under Regulation 6, the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. **It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in *Karunakar's case* (supra).** (Emphasis supplied)

19. The result of the aforesaid discussion would be that **the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.** The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. **The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”** (Emphasis supplied)

5. On the same question in ***Yoginath D. Bagde*** (supra), it was held as follows:-

“28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a

finding that the charges were not established, there would arise no difficulty. **Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.** (Emphasis supplied)

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34. Along with the show-cause notice, a copy of the findings recorded by the enquiry officer

as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant **but it was immaterial as he was required to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.**" (Emphasis supplied)

6. Our attention is also drawn to the pronouncement of the apex court in **Lav Nigam** (supra). In **Lav Nigam** (supra), these principles were reiterated by the apex court. In this case, no notice was given to the delinquent before the disciplinary authority recorded its final conclusion differing with the findings of the enquiry officer. A show cause notice was given merely for the proposed punishment of removal from service. The Supreme Court held as follows:

"13. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside."

7. Thus, a show cause notice similar to the one in the present case had been issued by the disciplinary authority which was quashed. In

view of the clear enunciation of law by the apex court, we have taken up the writ petition for consideration on this narrow fundamental issue at this stage itself.

8. It is submitted by Mr. R.V. Sinha, learned counsel for the respondent, who appears on advance notice that even though, on facts, the discussion by the Inspector General of Police in the notice dated 12th March, 2010 is unassailable, however, there can be no dispute with regard to the principles laid down by the apex court in the aforenoticed judgments.

9. In view of the above well settled principles, the show cause notice dated 12th March, 2010 has to be held to be illegal. The respondents were bound to communicate to the petitioner the tentative reasons for disagreement and to call for the petitioners response therein. The Inspector General was required to issue a notice to show cause to the petitioner setting out the tentative submissions and points on which there was difference of opinion with the findings of the fact of the enquiry officer and the disciplinary authority, before recording final conclusions. The petitioner was entitled to make a representation against the same. The Inspector General was required to consider the petitioner's response to the same before taking final view in the matter.

10. As a consequence of the above, the notice dated 12th March, 2010 is hereby set aside and quashed. The matter shall stand remanded to the Inspector General who shall consider the enquiry report and the order of the Disciplinary Authority afresh, and shall proceed thereafter in accordance with law.

11. We make it clear that we have not expressed any opinion on the merits of the petitioner's contentions.

Dasti to parties.

GITA MITTAL, J

VIPIN SANGHI, J

MARCH 25, 2010

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