

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

% *Date of Decision: 19th July, 2010*

+ **W.P.(C) NO.11273/2009**

UOI Petitioner

Through: Mr.H.K.Gangwani, Advocate

versus

BALJIT SINGH SONDHI Respondent

Through: Mr.K.C.Mittal, Advocate

Mr.Rahul Goyal, Advocate

W.P.(C) NO.11918/2009

UOI Petitioner

Through: Mr.H.K.Gangwani, Advocate

versus

BALJIT SINGH SONDHI Respondent

Through: Mr.K.C.Mittal, Advocate

Mr.Rahul Goyal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. This common order shall dispose the aforesaid two writ petitions arising out of the common order dated 12th February 2009 passed by the Central Administrative Tribunal,

Principal bench in OA Nos.2092/2007 and 520/2008.

2. The learned Tribunal, allowing the OAs, set aside the order passed by the Disciplinary Authority against the applicant i.e. respondent; quashed the inquiry report and the order of disagreement, and ordered to ensue the consequents in law pursuant to such quashing be bestowed upon the applicant/respondent within a period of two months; which required the petitioners to open the sealed cover relating to the DPC held in September 2006 for promotion of the respondent and grant benefits as per the recommendation of the DPC.

3. The respondent when working as Additional Commissioner of Income Tax, Range 10, Kolkata was issued a charge sheet imputing him of misconduct during the period June 1995 to June 1996 with four articles of charge against him, of which the enquiry officer exonerated him of two charges and held that the remaining two were partially proved.

4. The Disciplinary Authority, disagreeing with the findings of the Enquiry Officer penned a note discussing the evidence and returning conclusive and positive findings and holding in express words that all the charges stood fully proved and thereafter proceeded to issue a notice to the respondent enclosing therewith the finding of the Disciplinary Authority, but styling the same as a note of disagreement, calling upon the respondent to file a response.

5. The Tribunal has accordingly held that for all intents and purposes it is a case of the Disciplinary Authority passing an order holding the respondent guilty and then complying with the letter of the law by calling upon him to give a response.

6. The Tribunal has quashed as afore-noted.

7. It is urged by learned counsel for the petitioners that there is no taint found with the report of the Inquiry Officer and hence the Tribunal could not have quashed the inquiry report. Counsel urges that at best the Tribunal could have remanded the matter directing the Disciplinary Authority to withdraw the existing note of disagreement, which learned counsel concedes is not a tentative view but has finally concluded the matter, with further direction that the Disciplinary Authority should pen a tentative note of disagreement and then issue a fresh show cause notice and serve the same upon the respondent and pass a fresh order.

8. We agree with learned counsel that the Tribunal could not have quashed the inquiry report. But, it appears to be an oversight on the part of the Tribunal to do so. A reading of the impugned orders shows that the Tribunal has simply considered the issue arising out of the language of the note of disagreement, which actually for all intents and purpose is a final order recording positive findings disagreeing with the report of the inquiry officer and to this extent the observations in the impugned decision i.e. that the inquiry report is quashed, are set aside.

9. Same thing happened earlier on and was commented upon in the decision reported as (1999) 7 SCC 739 Yoginath D. Badge Vs State of Maharashtra & Anr. There also the Disciplinary Authority returned findings of a positive nature disagreeing with the Inquiry Report and then called upon the charged officer to respond.

10. It was urged before the Supreme Court that the Disciplinary Authority could be called upon to re-decide the matter. The contention urged was noted in para 36 of the decision which reads as under:-

“36. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the respondent, has contended that the disciplinary proceedings come to an end either when the delinquent is exonerated of the charges or when punishment is inflicted upon him on charges being proved. Since in the instant case, the Disciplinary Committee had given an opportunity of hearing to the appellant before finally recommending to the State Government to dismiss him from service, the principles of natural justice were fully complied with and that too at a stage earlier than the stage when the curtain was finally brought down on the proceedings. He contended that not only the findings recorded by the Enquiry Officer but the reasons for which the Disciplinary Committee had not agreed with those findings, were communicated to the appellant to whom a notice was also issued to show-cause why he be not dismissed from service. He further contended that the appellant submitted a reply in which he attacked the reasons for which the Disciplinary Committee had decided to disagree with the findings of the Enquiry Officer and, therefore, in the given circumstances of this case, it cannot be said that there was failure or denial of opportunity at any stage.”

11. The contention has been repelled in para 37 of the said decision where it has been held as under:-

“37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned Counsel is that a final decision with regard to the charges leveled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank

(supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.”

12. With the decision of the Supreme Court reported as (1998) 7 SCC 84 PNB Vs. Kunj Behari Misra, law got settled that if the Disciplinary Authority does not agree with the findings of the Inquiry Officer, a tentative opinion has to be formed by the Disciplinary Authority and has to be supplied to the charged officer for his response.

13. In Yoginath D.Bagde's case (supra) it was held that where the Disciplinary Authority does not form a tentative opinion but records a conclusive finding that the report of the Inquiry Officer is wrong, it would be a formality to thereafter issue a notice to the charged employee requiring him to respond to the notice concerned.

14. In Yoginath D.Bagde's case (supra), noting the aforesaid taint the order of the Disciplinary Authority was quashed without the matter being remanded.

15. On the facts of the instant case, the decision of the Tribunal cannot be faulted with as it is in conformity with the law declared in Yoginath D.Bagde's case.

16. Thus, the writ petitions are dismissed, noting that the inevitable conclusion has to be that there are no disciplinary proceedings pending and none have resulted in a penalty being imposed and thus the sealed cover has to be

opened and findings given effect to.

17. The writ petitions are dismissed in limine.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

JULY 19, 2010
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