

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

+ **W.P. (C.) No.11810/2009**

% **Date of Decision: 16.02.2010**

Union of India Petitioner
Through Mr.H.K.Gangwani, Advocate.

Versus

Tej Ram Respondent
Through Mr.Manjeet Singh Reen, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The respondent who was working as a Superintendent, Land and Development office was served upon a major penalty chargesheet under Rule 14 of CCS (CCA) Rules, 1965 for alleged irregularity in a case which resulted into imposition of a penalty of 5% cut in his pension for a period of 10 years which was assailed by him by filing an Original Application being O.A No.2247/2008 titled Tej Ram v. Union of India which was allowed by the Central Administrative Tribunal, Principal Bench by order dated 29th May, 2009 which is challenged by the

petitioner, Union of India through the Secretary, Ministry of Urban Development in the present writ petition.

The Tribunal while quashing the order of punishment noted that the finding of the enquiry officer that the respondent had verbally informed to Deputy, Land and Development officer about non availability and non contactability of the Government counsel, Ms.Sudha Srivastava, who had to be changed later on which had resulted into not furnishing the relevant brief to her, had not been considered. The Tribunal also noted that the enquiry officer assessed the contributory negligence not to be less than 10% in relation to entire negligence without any yardstick and basis. The disciplinary authority also imposed the punishment without recording the finding of either 'grave misconduct' or 'grave negligence'. It was also considered that the advice of UPSC is also without any reasons about the grave misconduct when the enquiry officer has not doubted the intimation sent by the respondent to Land and Building Department himself and through his assistant Shri Dal Chand. In the circumstances it was held that the condition precedent under Rule 9 (2) of CCS (Pension) Rules, 1972 was not met and therefore relying on State of Bihar Vs Mohd Idris Ansari, AIR 1995 SC 1853 and Dr. Dudh Nath Pandey Vs State of Jharkhand & ors, 2008 (2) SCT 517 it has been held that the order passed is without jurisdiction and cannot be sustained in law.

The Central Administrative Tribunal, Principal Bench has set aside the order imposing punishment also on the ground that though the enquiry officer did not return a finding of gross misconduct, as the 10% of contributory negligence was inferred without any basis. The disciplinary authority, however, differed with the finding of the enquiry officer and considered the case to be of gross misconduct. Even for the alleged inference of gross misconduct, no reasons have been given by the disciplinary authority nor before reaching the inference of gross misconduct, the disagreement note was noted and communicated to the respondent nor he was given a reasonable opportunity to represent against the alleged disagreement and thus resulting into denial of the principles of natural justice.

The Tribunal also noted that the order dated 18th October, 2007 is not a speaking order and is based on the advice of the UPSC and the copy of the advice of the UPSC was also not furnished to the respondent. Though it has been established that the respondent had communicated about the development of the case and the fact that the Government counsel had not intimated about the state of the case and the next date of hearing and she was not contactable and had also instructed his subordinate Dal Chand, the lapse on the part of the Government counsel who ultimately had to be changed and another counsel was engaged, cannot be imputed to the respondent. It has been

held that in the circumstances it is apparent that the inference of misconduct is not made out either by the enquiry officer or by the disciplinary authority except stating that the respondent is liable for the misconduct.

The Tribunal has also noted that despite its direction to produce the record to show that the copy of the advice given by UPSC was given to the respondent, record was not produced and consequently the plea of the respondent that the copy of the advice was not given to him, had been accepted and was deemed to be correct. Referring to Rule 17 and 32 of the Rules which mandates furnishing of advice of the UPSC to the retiree along with the copy of the order imposing penalty, it has been inferred that the acts of the petitioners are in violation of provisions of Rules 17 & 32 of the rules and reliance has also been placed on Union of India v. T.V.Patel, 2007 (6) Scale 9 and consequently the order was held to be vitiated. The other reasons noted by the Tribunal are that from the order dated 18th October, 2007 it is apparent that except highlighting factual matrix no reasons have been given nor recorded which make the order illegal.

It cannot be disputed that the reason is the foundation, explanation, consideration, rationale or a ground for an action. It is the statement of a fact employed as an argument to justify or condemn

some fact. It can also be termed as a fact or circumstance forming a ground or motive leading or sufficient to lead a person to reject or adopt some course or action or belief. In the circumstances, merely saying that the respondent has contributory negligence will be sufficient to hold that the reason has been given by the disciplinary authority and the enquiry officer.

The Oxford English Dictionary defines 'reason' as a cause, explanation or justification or as a good or obvious cause to do something or as logic or a premise of an argument in support of a belief. The Black's Law Dictionary on the other hand defines 'reason' as a faculty of mind by which it distinguishes truth from falsehood, good from evil and which enables the proposer to deduce inferences from facts or from propositions. Webster's Dictionary also defines 'reason' as the cause that makes a phenomena intelligible. The Tribunal considering the enquiry report and the order of the disciplinary authority and relying on Rule 9 (1) of the Pension Rules has held that without the finding of either grave misconduct or grave negligence, the punishment imposed of reduction of pension of 5% could not be awarded. From perusal of enquiry report it cannot be inferred that there is a finding of grave misconduct or grave negligence recorded against the respondent.

The learned counsel for the petitioner after referring to the enquiry report and the order of disciplinary authority is unable to show as to how the finding of grave misconduct has been arrived at especially in view of the finding of the enquiry officer that the intimation was sent by the respondent to land and development department himself and through his assistant Dal Chand. If the intimation had been sent to the land and development department and through the assistant Sh.Dal Chand and the counsel could not be contacted as she was not available who had also not intimated the department about the case and on account of lapses on the part of the counsel, she had even been changed by the Department, then for what reasons it had been inferred that there was contributory negligence on the part of the respondent and how the contributory negligence could be termed grave misconduct has not been explained.

The learned counsel for the petitioner is unable to show as to how in such circumstances, it is a case of a 'grave misconduct' which is the basis of penalty of reduction in pension after the retirement of the respondent. The learned counsel for the petitioner has also contended that the disciplinary authority has to give detailed reasons only if it had differs from the enquiry report. The enquiry officer has not held that the charge of 'grave misconduct' against the respondent had been made out.

The enquiry officer had inferred that there was contributory negligence of the respondent to the extent of about 10%. How this contributory negligence was assessed to be 10% has not been disclosed. What is the yardstick to assess the contributory negligence to be not less than 10% or more than 10% has been explained or reasons given. No rule has been relied on or the basis of such assessment has been disclosed. In view of such a report of the enquiry officer, if the disciplinary authority considered it to be a case of 'grave misconduct' then obviously the disciplinary authority is differing or disagreeing with the findings of the enquiry officer. If that be so then the disciplinary authority not only had to record the reason for disagreement to make it a case of grave misconduct but the disciplinary authority also had to intimate the reasons for disagreement to the delinquent official, respondent and had to consider his representation. Denial of right to representation in the facts and circumstances will be denial of principles of natural justice and consequently in our opinion also the Central Administrative Tribunal, Principal Bench was justified in quashing the order of punishment imposed upon the respondent.

In the circumstances there is no such illegality or irregularity in the order of the tribunal dated 29th May, 2009 which will require any interference by this Court in exercise of its jurisdiction under Article

226 of the Constitution of India and, therefore, the writ petition is dismissed.

ANIL KUMAR, J.

FEBRUARY 16, 2010
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MOOL CHAND GARG, J.