

*

HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) No.11396/2005

%

Date of Decision: March 10, 2011

...Petitioner

Union of India

Through Mr.M.M.Sudan, Advocate

Versus

Mr. Lalit Kumar

.....Respondent

Through Ms. Meenu Mainee, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of Local papers may be allowed to see the judgment?
2. *To be referred to the reporter or not? Yes*
3. Whether the judgment should be reported in the Digest? Yes

VEENA BIRBAL, J.

*

1. By way of this petition under Article 227 of the Constitution of India, petitioner has challenged the impugned order dated 18th February, 2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') whereby the order of the petitioner dated 28th August, 2002 imposing upon the respondent punishment of withholding of

two increments for a period of two years with cumulative effect as well as the order dated 29th January, 2004 passed by the Reviewing Authority upholding the aforesaid punishment, has been set aside.

2. Briefly the facts relevant for disposal of the present petition are as under:-

The respondent was appointed as a Junior Engineer (Electrical) in the office of petitioner w.e.f 13th April, 1972 and was promoted as Executive Engineer (Electrical) w.e.f 10th November, 1988. On 6th July, 1996, a memorandum of articles of charge under Rule 14 of the CCS (CCA) Rules, 1965 was issued against him wherein it was alleged that the respondent had manipulated the figures in the supply order with the result of financial gain to the agency and that his negligence had resulted in over payment of Rs.1.03 lakhs to the agency while releasing the payment of 'part rate' after accepting the supply of L.T. panels. It was further alleged that respondent had accepted lesser frame size of alternator without obtaining prior approval of the competent authority regarding its technical acceptability and without getting approval of reduction in rates.

The charges were denied by the respondent vide reply dated 15th July, 1996. The Commissioner for Departmental Inquiries,

Central Vigilance Commission, New Delhi was appointed as an Inquiry Officer to inquire into the charges framed against the respondent. The Enquiry Officer after examination of witnesses submitted his report dated 26.5.1998 wherein Article I & III were partly proved and Article II was fully proved.

The report of the Enquiry Officer was served upon the respondent vide memo dated 2nd February, 1999. Respondent submitted his representation dated 15th April, 1999. Vide order dated 28th August, 2002, the Disciplinary Authority after taking into consideration the representation of the respondent and taking the advice of the UPSC imposed a penalty of withholding of two increments with cumulative effect upon respondent. Respondent filed an appeal dated 17.9.2002 which was treated as a revision petition. During the pendency of the said revision petition, respondent filed OA No.2361/2003 before the Tribunal on 24th September, 2003. The said OA was disposed of by the Tribunal with the direction to petitioner to dispose of the revision petition of the respondent. Thereafter revision petition was considered by the concerned Authority and the same was rejected vide order dated 29th January, 2004. Aggrieved with the aforesaid orders, respondent filed OA No.831/2004 before the Tribunal.

3. Ld. counsel for the respondent had submitted before the Tribunal that Rule 14(18) of the CCS (CCA) Rules, 1965, which is mandatory in nature was not complied with by the Enquiry Officer. Ld. counsel further contended that copy of the recommendations of CVC as well as advice of UPSC were not served upon the respondent before imposing the penalty and there is also delay in initiation of enquiry for the charges pertaining to the year 1987, a charge sheet was issued only in 1996 and the punishment was imposed in 2002. It was therefore prayed that enquiry was liable to be vitiated on aforesaid grounds.

4. On the other hand, the stand of the petitioner before the Tribunal was that Rule 14(18) of CCS (CCA) Rules, 1965 was complied with. On 5th May, 1998, respondent's general examination was done by the Enquiry Officer. Their further stand was that in the light of Rules 17 and 32 of the CCS (CCA) Rules, 1965, it was not mandatory to serve a copy of the advice of the UPSC as well as recommendations of CVC to the respondent before imposing penalty order. As regards delay in serving charge sheet, the stand of the petitioner was that delay was not material as there were financial irregularities and respondent had failed to show any prejudice being caused to him on the ground of alleged delay.

5. As regards the contention of petitioner about mandatory compliance of Rule 14(18) of the CCS (CCA) Rules, the Tribunal vide impugned order dated 18th February, 2005 had held that as per the import of the said rule, it was obligatory upon the enquiring authority to generally question respondent on the circumstances appearing in the evidence against him. The Tribunal had held that there were three articles of charge levelled against the respondent. The enquiry officer had not questioned the respondent on the circumstances which had come in the evidence against him. Relying on the judgment in Ministry of Finance Vs. S.B.Ramesh 1998 (3) SCC 227 and the decision of the Tribunal in Charanjit Singh Khurana Vs. Union of India in OA 1826/1998, which was upheld by this court and the Apex Court, the Tribunal held that there was non-compliance of Rule 14(18) of the CCS (CCA) Rules as such the enquiry was illegal.

About non supply of copy of advice of the UPSC and recommendations of CVC, the Tribunal had held that by non supply of advice of UPSC and recommendations of CVC to respondent was in violation of principles of natural justice and enquiry was vitiated on that ground also.

On aforesaid two counts, the Tribunal had held that punishment was not sustainable and did not adjudicate upon rest

of the grounds raised before it and quashed the impugned order of inflicting punishment of withholding of two increments with cumulative effect as well as the order passed by the Reviewing Authority.

6. Aggrieved with the aforesaid order, the present petition is filed.

7. Learned counsel appearing on behalf of the petitioner has contended that the order of the Tribunal is not based on correct legal principles and is liable to be quashed. It is contended that the copies of advice of the UPSC and recommendations of CVC were supplied to the respondent along with the order of punishment and the same is sufficient compliance as per Rule 32 of CCS (CCA) Rules. Regarding non-compliance of Rule 14(18) of CCS (CCA) Rules, of putting the evidence against the charged officer in the eventuality of charged officer not offering himself as a witness, the petitioners contended that the respondent was examined generally by the enquiry officer on 5.5.1998 as such the findings of the Tribunal are liable to be set aside.

8. Learned counsel for the respondent has contended that non supply of advice of UPSC & recommendations of CVC before the final order was passed had deprived the respondent of making effective representation, as such the Tribunal has rightly vitiated

the enquiry proceedings. It is contended that the Disciplinary Authority while inflicting punishment of withholding of two increments with cumulative effect could not rely on material which was neither supplied nor shown to the respondent, as such the same could not be countenanced. It is further contended that even the enquiry officer has not questioned the respondent on the circumstances appearing against him in the evidence for the purpose of enabling the respondent to explain the same. It is contended that only the contents of charge sheet had been put to the respondent without any reference to the evidence and circumstances appearing against the respondent.

9. We have heard learned counsel for both the parties.

10. Counsel for the petitioner has contended that the copies of the advice of the UPSC and the recommendations of CVC were furnished to the respondent along with the punishment order. The said fact is not denied by the learned counsel for the respondent. According to learned counsel for the petitioner, the same is sufficient compliance of Rule 32 of the CCS (CCA) Rules.

11. The question as to whether copy of advice tendered by the UPSC is to be furnished before imposition of penalty has been dealt with by the Apex Court in **Union of India & anr Vs. T.V.Patel (2007) 4 SCC 785**. In the said case, the Disciplinary

Authority had sought the advice of UPSC and after considering the same, had imposed a penalty. A copy of the said advice was sent along with the final order of penalty. The Tribunal in the said case had set aside the order of the Disciplinary Authority imposing the penalty on the ground that copy of UPSC advice was not made available to the applicant therein, as such quashed the penalty imposed upon him. Thereafter the said order was challenged before the High Court. The High Court affirmed the order of the Tribunal. Against the said order, a special leave petition was filed before the Supreme Court wherein leave was granted. Relying on its early decision in **State of U.P Vs Manbodhan Lal Srivastava AIR 1957 SC 912**, the Supreme Court has held as under:-

“17. As already noticed, Rule 32 of the Rules deals with the supply of a copy of Commission’s advice. Rule read as it is, is mandatory in character. The Rule contemplates that whenever a Commission is consulted, as provided under the Rules, a copy of the advice of the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance shall be furnished to the government servant along with a copy of the order passed in the case, by the authority making the order. Reading of the Rule would show that it contemplates two situations, if a copy of advice is tendered by the Commission, the same shall be furnished to the government servant along with a copy of the order passed in the case, by the authority making the order. Reading of the Rule would show that it contemplates two situations, the same shall be furnished to the govt.servant along with copy of the

order passed in the case by the authority making the order. The second situation is that if a copy of the advice tendered by the Commission has not been accepted, a copy of which along with a brief statement of the reasons for such non-acceptance shall also be furnished to the government servant along with a copy of the order passed in the case, by the authority making the order. In our view, the language employed in Rule 32, namely, “along with a copy of the order passed in the case, by the authority making the order” would mean the final order passed by the authority imposing penalty on the delinquent government servant.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

25. In view of the settled law by the Constitution Bench of this Court in *Srivastava* we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.”

In the above case, the Supreme Court had set aside the orders of the High Court as well as the Tribunal and remanded the matter back to the Tribunal for dealing with other grounds raised before it on merits.

12. In view of the above legal position, the finding of the Tribunal to the extent of non-serving of copies of advice of UPSC and recommendations of CVC to the respondent, is not sustainable in the eye of law. Accordingly the same is set aside.

13. As regards the contention of compliance of Rule 14(18) of the CCS (CCA) Rules, the following examination of respondent under Rule 14(18) of the CCS (CCA) Rules has been done:-

“General Examination of Shri Lalit Kumar, EE(E), AIR

Q1. The charge-sheet says that you tried to manipulate the figures in the test report to cover up your acceptance of alternator of lesser from size. What do you have to say about it?

A. I have not tried to manipulate the figures in test report. It was a human error. This has been verified by SE(E) in 1990.

Q 2. Do you have anything else to say?

A. I have performed my duty with devotion keeping in view interest of work as well as terms and conditions of agreement. I deny all the charges.”

It is admitted case that respondent did not examine himself as a witness. As the respondent had not examined himself as a witness, it was incumbent upon the enquiry officer to question the officer facing the charge on the evidence appearing against him in compliance of Rule 14(18) of CCS (CCA) Rules. The said rule had been enacted with a view that whatever evidence comes in the enquiry, explanation may be sought to rebut the circumstances for the purpose of enabling him to explain the same.

14. Perusal of record shows that evidence of five witnesses of department had been examined. The Enquiry Officer had not put any question to the respondent in respect of evidence against him

in the enquiry proceedings. Only contents of charge sheet has been put to him. The finding of the Tribunal is as under:-

“14. Now it has to be examined whether Rule 14(18) is complied with or not? The only question as put to applicant is that as a referral to the charge sheet where applicant has been alleged to have manipulated the figures in the test report, but this is not the true import of Rule 14(18). It appears that the contents of the charge sheet have been put to applicant without any reference to the evidence and circumstances appearing against applicant during the course of disciplinary proceedings.

15. Rule 14(18) clearly provides that it is obligatory upon the enquiring authority to question the delinquent official on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances as there is no reference to the evidence brought on record or circumstances appearing against applicant the general examination which has taken place on 5.5.98 is not the valid compliance of Rule 14(18) *ibid* and the stand taken by the respondents is misconceived.”

The Apex Court in Ministry of Finance Vs. S.B.Ramesh (*supra*) has upheld the finding of the Tribunal wherein the enquiry has been held to be illegal for want of non compliance of Rule 14(18) of the CCS (CCA) Rules, 1965.

Learned counsel for the petitioner has not cited any judgment contrary to what has been stated above.

15. In view of the above discussion, the finding of the Tribunal that the enquiry officer has not questioned the respondent in the manner of Rule 14(18) of the CCS (CCA) Rules, 1965 on the evidence appearing against him is upheld.

In view of above discussion, the order of the Tribunal vitiating the enquiry proceedings on account of non compliance of Rule 14(18) of CCS (CCA) Rules, 1965 by not putting the evidence adduced before the Enquiry Officer in support of the three articles of charge to the charge officer vitiates the enquiry proceedings, cannot be termed to be illegal or unsustainable so as to require any interference by this court in exercise of its jurisdiction under Article 226 of the Constitution of India.

In the facts and circumstances of the case, the order of the Tribunal setting aside the punishment awarded to respondent, does not require any interference and the writ petition, is therefore, dismissed. The parties are, however, left to bear their own costs.

VEENA BIRBAL, J.

ANIL KUMAR, J.

March 10, 2011
ssb