

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

+ **W.P.(C) No.7863/2010 & CM No.20300/2010**

% **Date of Decision: 27.05.2011**

Union of India & Anr. Petitioners

Through Mr. Rajesh Katyal, Advocate.

Versus

Sh.D.R.Banerjee Respondent

Through Sh. O.P.Gehlaut, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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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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1. The petitioners, Union of India through the Registrar General of India and Dr. C.S. Arora, Director (EDP), have challenged the order dated 8th October, 2010 passed by the Central Administrative Tribunal, Principal Bench in O.A No.1774/2009 titled as 'Sh.D.R.Banerjee v. Union of India & Anr.' allowing the original application of the respondent and setting aside the order dated 26th May, 2009 passed by

the disciplinary authority imposing the punishment of reduction to the lower grade of Assistant Director for a minimum period of 5 years on the respondent, until he is found fit by the competent authority. The disciplinary authority was, however, permitted to pass a fresh order after considering the representations of the respondent and the issues raised therein and the respondent was also granted consequential benefits on setting aside the order of punishment dated 26th May, 2009. Further direction were also given for restoring the respondent to his grade and reimbursing the amount deducted from his salary as a consequence of the reduction to the lower grade with a simple interest at 6% per annum.

2. Brief facts to comprehend the controversies are that the respondent belongs to the Scheduled Castes category. He was appointed as Assistant Director (Group A) of Census Operations (Technical) on a regular basis in the scale of Rs.2200-4000 in the Directorate of Census Operations under the Registrar General of India, by the President pursuant to his selection by the UPSC by order dated 7th March, 1995. Later on, the respondent was promoted as a Deputy Director in the higher pre revised scale of Rs.3000-4500/- (revised Rs.10,000-15,200/-).

3. The respondent was issued a chargesheet vide memo dated 30th May, 2006 imputing that he had misappropriated Government funds in organizing Data Dissemination Workshop, purchase of briefcase and in setting up Census Book Stall at Maghy Mela during 2004-05 and 2005-06. Allegation of submitting bogus T.A. bills for the journey performed by him during the period of 2004-05 and 2005-06 was also made against him. He was also charged with incurring expenses and passing bills for payment by exercising financial powers beyond his delegated powers and without the approval of the competent authority and also submitting a fake report regarding the conduct of a Hindi workshop during 2005 and thus misguiding his superior officers.

4. The respondent had averred that he had his education in Hindi medium and he has little knowledge of English as he did not study English even at the higher secondary stage and that he had studied English only upto the middle school. The respondent further contended that because of his incapacity to understand English, he always wrote letters, replies and notings on file in Hindi and when he received the chargesheet memo on 16th April, 2007 he even wrote to the department on 19th April, 2007 requesting for its Hindi Translation which was never supplied to him. His request to conduct the inquiry proceedings in Hindi and to write the orders in Hindi were also not accepted and consequently he was not able to fully understand the various

proceedings during the inquiry and his signatures were taken without making him understand the contents thereof. The respondent also averred that he was not allowed to produce any defense witness or to have the assistance of any other Government servant to defend him properly during the proceedings on the ground that the inquiry was to be completed within the stipulated time laid down by the higher authorities. The respondent categorically contended that mere supply of a copy of documents to him, did not establish the genuineness of those documents nor did the IO ever ask him at any stage whether he accepts the genuineness of the documents supplied to him or not. The respondent also categorically averred that at no stage did he admit the charges 3 and 4 nor did he make any admission orally or in writing, rather he always denied them. Since the entire proceedings conducted by the Inquiry Officer were in English, he was unable to understand the same and, therefore, was incapable to ascertain if the statements recorded were correct or not.

5. During the inquiry proceedings conducted by petitioner No.2, three witnesses were examined out of which 2 were cross examined by the respondent/charged officer. The respondent did not submit his defense brief, and he was neither examined under Rule 14(18) of CCS (CCA) Rules, 1965 nor was the evidence, alleged admissions and material against the charged officer/respondent put to him.

6. The petitioner No.2, Inquiry Officer, submitted his report dated 13th September, 2007 holding that the question of Rs.9000/- towards purchasing 60 nos. of bamboos for erecting Census Stall and Rs.6000/- towards installation/hiring of P.A system at Jorethang Maghy Mela during 14th January, 2005 to 19th January, 2005 is not correct. It was also held that regarding the Data Dissemination Workshop held on 11th February, 2005 the inquiry has established that the ICAR Hall, Gangtok, was booked on payment of Rs.400/- only instead of Hotel Kasturi for which payment of Rs.3000/- was passed and, therefore, the bill of Rs. 3,000/- passed by the respondent was bogus. Similarly, for workshop held on 27th October, 2005, payment of Rs.400/- was made for the ICAR Hall and therefore the bill of Rs.5000/- for booking Hotel Tenzing was bogus. Regarding passing of bills for the purchase of 60 nos. of "Plastic Moulded Briefcases", it was held that in its place "cloth bags" were purchased, though during the inquiry it was allegedly admitted that the bag which was produced by the presenting officer was found neither to be a Plastic Moulded Briefcase nor a cloth bag, instead it appeared to be made of synthetic nylon fiber, as used for making soft luggage items. The inquiry officer assumed that the cost could not be more than Rs.200/- to Rs.250/- per piece. The falsification of other expenses mentioned in the statement of Articles with respect to charges 1 (a,b,c), it was held that they were not fully proved, however, the allegation of exercise of financial powers beyond delegated powers

without the approval of the Competent Authority was alleged to be proved, as it was allegedly admitted by the respondent himself. Regarding Article 2, the Inquiry Officer concluded that the respondent was guilty of fabricating the log book by allegedly including the entries for the journeys he never performed, however, the allegation of submitting fake TA Bills were not established as against the respondent. It was also held that since there was no document/solid evidence to prove the fakeness of the TA bills, therefore, the charge was not proved. The Inquiry Officer also noted that though the charge was not proved, however, respondent did allegedly confess that the log book was not original and was remade as the earlier one got lost, however, no police report was lodged by the respondent about the missing log book.

7. Regarding the 3rd Article of charge, the Inquiry Officer concluded that it had been allegedly accepted by the charged officer on 5th September, 2007 during the final hearing. Similarly for article 4 it was held that it had been allegedly accepted by charged officer on 15th June, 2007.

8. The Inquiry Officer ultimately held on the basis of documentary and oral evidence as under:-

“The charge of misappropriation of the Govt. funds is partially sustainable. The CO has also committed financial

irregularities, by not complying with the codal formalities required under the GFR.

While it is established that the CO did commit the guilt of creating a fabricated log book, including the entries for the journeys which he never performed by office vehicle; the charge of his submitted fake TA/DA claims during the period from 18.09.2004 to 09.07.2005 is not conclusively established.

The charge of incurring expenditure beyond the delegated powers without approval of the Competent Authority is confessed by CO.

The charge of CO having submitted fake report to the Office of the Registrar General, India and misguiding his superiors is also confessed by CO.”

9. After the copy of the inquiry report was given to the charged officer, the respondent submitted his representation dated 29th November, 2007 contending inter-alia that the inquiry had been conducted in post haste to meet some deadlines without observing the statutory rules or principles of natural justice, in as much as no opportunity or proper opportunity was given to him to put up his defence and examine his witnesses nor he was examined under rule 14 (18) of CCS(CCA) Rules, 1965. The respondent contended that the Inquiry Officer had merely reproduced the version of the presenting officer which is apparent from the inquiry report regarding the alleged admission that the codal formalities required under GFR were not followed. The respondent contended that the inquiry report is solely based on the Inquiry Officer's presumptions and that no such statement was either given by him nor had there been any admissions

on the part of the charged officer/respondent about committing the alleged irregularities of not following the codal formalities, fabricating the log book and submission of fake reports regarding not conducting Hindi workshop. Thus it was contended that the Inquiry Officer has recorded the findings not based on any evidence or admissions allegedly made by the respondent, but merely on the basis of his own presumptions.

10. The respondent also contended that the Inquiry Officer admitted four additional documents which were produced by the Presenting Officer, such as a sample of the cloths bag and others, which documents and samples were not part of the documents and materials relied on in support of the charges leveled against him. The Inquiry Officer, according to respondent could not widen the scope of inquiry nor could he permit the Presenting Officer to act as a Disciplinary Authority. The respondent contended that if further material had become available, including the additional documents, permission should have been taken from the Disciplinary Authority to amend the list of documents, which was the basis of the chargesheet, and thus the Inquiry Officer acted beyond the scope of his reference.

11. The respondent categorically contended that since he was not examined as his own witness nor was an opportunity given to him to

make his statement in defense, it was mandatory for the IO to put the evidence in the charges alleged against him and his alleged admission, in compliance with the statutory requirement of CCS (CCA) Rules 14(18), which was not done as a consequence of which the entire inquiry proceedings were vitiated.

12. According to the respondent the inquiry report is based on no evidence as none of the documents relied upon in support of the articles of charges were either proved by any of the departmental witnesses nor were the alleged documents referred to in the statement or identified by any of the witnesses and these documents had been presumed to have been proved by the IO without any evidence. Commenting on the observation of the Inquiry Officer that the documents have not been disproved, the respondent contended that it was for the department to prove the documents relied upon by them and the respondent/charged officer was not required to disprove them. It was also emphasized that there was no admission on the part of the charged officer regarding any of the documents and of the facts and any charges made against him.

13. The respondent categorically represented that no witnesses were stated and that no evidence was produced to prove as to what were the powers to sanction a particular expenditure and how he had overstepped and crossed his limits. Regarding the log book being fake, it

was contended that the driver was the essential witness who could have established whether the log book was fake or fabricated or whether the entries made were false and were made at his instance, however, he wasn't examined. Almost all the inferences drawn by the IO are in the circumstances based on his own assumptions without any evidence on record.

14. The respondent refuted the allegation of purchase of various materials, their quality and quantity, on the ground that they were purchased by the lower staff, including the two witnesses and the other persons who had purchased the bag, who had unfortunately died. The respondent contended that he did not accompany them nor was it possible for him to accompany them for such purchases and he was dependent upon the lower staff, who had purchased them. In the circumstances it was contended by the respondent that neither the charge of submitting fabricated bills by the respondent could be made out, nor was there any evidence that the lower staff inflated the bills or fabricated the bills at his instance. The respondent categorically pointed out that there was no specific finding in regard to any item as to how much of it was considered to be bogus and how much was held to be genuine. The respondent thus contended that the entire inquiry proceedings were based on no evidence and was an outcome of

assumptions drawn by the Inquiry Officer at the instance of the Presenting Officer.

15. According to the respondent, dropping of Mrs. Shobhana Sinha, Sh.H.S.P.Gupta and Mr.M.K.Dorji as witnesses by the petitioners was intentional as they feared that they might not be able to sustain the charges against the respondent as during the preliminary inquiry Smt.Shobhana Sinha had stated that after drawing an advance of Rs.20,000/- she gave that money to Sh.T.Gazmer(SW6) as he was the local person conversant with making local arrangement and he had also given receipts to her for the purchases made and the job done. Similar allegations were made by the respondent against Sh.H.S.P.Gupta and Sh.M.K.Dorji and it was contended that the employees who themselves indulged in misdeeds and whose statement were contradicted could not be relied upon to return any alleged finding of guilt against the respondent.

16. The CVC by order dated 20th February, 2008 concurred with the inquiry report and sought imposition of suitable major penalty upon the respondent and also the recovery of misappropriated amounts from him. The UPSC in its recommendation had recommended a penalty of reduction by three stages in the time scale of pay of Rs.10,000-325-15,200/- for a period of three years and that no increment would be

earned by the respondent during this period. However, the Disciplinary Authority disagreed with the recommendation of the UPSC and referred the case to DOPT. The respondent also pointed out that the UPSC in its comments had observed and held that the charge of inflated bills in respect of bamboos and P.A system could not be proved simply on the basis of statement of witness namely Sh.T.Gazmer, as that witness himself had processed the bills without raising any objection.

17. The Disciplinary Authority, however, by order dated 26th May, 2009 imposed the penalty of reduction to lower grade of Assistant Director for a minimum period of 5 years until the respondent is found fit again by the competent authority.

18. Aggrieved by the penalty imposed on the respondent, he filed an original application, being O.A No.1774/2009, seeking quashing of the order dated 26th May, 2009 and 1st June, 2009 along with the inquiry proceedings and granting of consequential benefits.

19. The original application filed by the respondent was contested by the petitioners and a reply was filed giving a brief history of the facts and circumstances. The petitioners contended that financial irregularities and administrative malpractices had been inquired into depth in accordance with the laid down procedure and also as per the

statutory rules. Regarding the reasons reliance was placed on the report of the inquiry officer and of the orders of the Disciplinary Authority.

20. The Tribunal considered the pleas and contentions of the parties and categorically noted that though the Disciplinary Authority noted that the respondent had denied any admissions made by him in respect of any of the charges alleged against him, which were also categorically denied by the respondent in his reply to the report of the inquiry officer, however, most of the pleas and contentions raised by the charged officer/respondent had not been dealt with by the Disciplinary Authority. The observation of the Tribunal in para 4 and 5 of its order dated 8th October, 2010 are as under:-

4. A perusal of the order of the disciplinary authority would reveal that it was indeed so. The disciplinary authority has gone to the extent of observing in paragraph 7 of his order that:

“7. And whereas Shri D.R. Banerjee in his reply dated 17.10.2007 did not offer any comments on the Report. However, he again denied the charges levelled against him.”

It is surprising that the disciplinary authority should give such short shrift to the points raised in his representation by the Applicant. The Applicant has challenged the assertion of the inquiry authority that the charged officer had admitted that the codal formalities were not followed fully and that he had pleaded guilty to charge number IV. It was also denied that that he ever admitted correctness of charge number III, as recorded by the inquiry authority. It was stated that there was no statement of the Applicant admitting these charges. It was also stated that the inquiry authority had suo motu introduced additional

documents/materials in the ambit of inquiry, which were not part of the documents/material listed in the appendix to the Memorandum of Charge. The procedure prescribed in Rule 14 (18) of CCS (CCA) Rules 1965 was not followed in as much as the inquiry authority did not question the charged officer generally in regard to the evidence against him. Several questions have been raised about the inferences drawn by the inquiry officer allegedly without any evidence. All these issues are extremely serious and have been just ignored by observing that the charged officer did not offer any comments on the report of the inquiry officer. All we can say is that the disciplinary authority has been very negligent and too casual in disregarding the substantive issues raised by the Applicant in his reply to the report of the inquiry officer.

5. We are not going into several other arguments raised on behalf of the Applicant. The Respondent has not been able to answer how the order of the disciplinary authority could be justified in the light of what has been discussed above. We are not going into the merits of the case also.

21. The order of the Tribunal has been impugned by the petitioners contending, inter-alia, that the representation dated 29th November, 2007 made by the respondent was not a representation in view of representation dated 17th October, 2007 and only the representation dated 17th October, 2007 could be considered as the law did not permit the respondent to make repeated representations beyond the statutory period of 15 days. It was also contended that the Tribunal has erred in concluding that the procedure prescribed under Rule 14(18) of the CCS (CCA) Rules, 1965 was not followed as the opportunity was given to the respondent to give his defence statement and defence witnesses but he failed to avail the same. According to the petitioners, in the proceeding on 15th June, 2007 the respondent was specifically asked whether he

had to produce any witness to which the respondent declined, and thus not examining him under Rule 14(18) of the CCS (CCA) Rules, 1965, the respondent was not prejudiced. According to the petitioners it was incumbent upon the respondent to make a proper representation for consideration by the petitioners and in absence of any representation it was not open to the respondent to raise all the pleas and contentions.

22. This Court has heard the learned counsel for the parties in detail and have also perused the detailed record which was before the Tribunal, copies of which were produced before this Court. The Tribunal has categorically noted that the Disciplinary Authority had not considered the pleas and contentions raised by the respondent in his detailed representation dated 29th November, 2007 and have given short shrift to the points raised in the representation. The petitioners in the grounds raised in the writ petition have rather contended that the representation dated 29th November, 2007 could not be considered as it is not a representation in the eyes of law as the representation dated 17th October, 2007 had already been made.

23. Perusal of the alleged representation dated 17th October, 2007 made by the respondent rather reveals that at the first instance after the copy of the inquiry report was given to him, he denied the findings of articles 1 to 4 and contended that he is innocent and is being

implicated without any evidence or admission on his part. He has further contended that he is ready for investigation by any investigating agency or Court and he rather sought revocation of his suspension order. Perusal of the record also reveals that all the letters or notings made by him are in Hindi on 17th October, 2007, 27th October, 2007 and 22nd October, 2007. The respondent had rather sought 25 days time to submit his detailed reply and pursuant thereto the detailed representation had been made on 29th November, 2007. The contentions raised by the respondent in his detailed representation are detailed hereinabove. The respondent by his communication dated 29th April, 2008 had categorically asserted in reply to letter dated 7th April, 2008 of the Disciplinary Authority forwarding the CVC letter dated 20th February, 2008 that his representation dated 29th November, 2007 had not been forwarded to CVC and has not been considered neither by the Disciplinary Authority nor by the CVC. In reply to the said letter dated 29th April, 2008 on behalf of the respondent it was never communicated to him that his representation dated 29th November, 2007 against the inquiry officer's report could not be considered for the reasons now canvassed in the grounds in the writ petition. In any case it is apparent that on 17th October, 2007 the respondent had denied the charges made against him, especially that he had made an admission on the basis of which it could be held that the charges were made out against him and he had also sought thereafter on 22nd October, 2010 to give

him 25 days time to make a proper representation. From the records it is apparent that the request was never declined and in the circumstances there were no grounds not to consider the representation dated 29th November, 2007 raising relevant lacunas in the Inquiry Officer's report which have been noted by the Tribunal and consequently it has been held that without considering the representation the order passed by the Disciplinary Authority cannot be sustained and has set aside the said order with liberty to pass a fresh order after considering the representation of the respondent and dealing and answering all the issues raised thereon.

24. The learned counsel for the petitioner is unable to point out as to how the order of the Tribunal in the facts and circumstances suffers from such illegality or perversity which shall entitle the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioners are liable to consider the representation made by the respondent dated 29th November, 2007 against the inquiry report as the same raises very relevant pleas and contentions including that he had not been examined under Rule 14 sub Rule 18 of CCS (CCA) Rules, 1965. The learned counsel for the petitioners have not been able to dispute that the respondent had not been examined in compliance of Rule 14(18) of CCS (CCA) Rules, 1965

though he had not examined himself as witness nor any witnesses were examined by him.

25. This is no more *res integra* that the said rule had been enacted with a view that whatever evidence comes in the enquiry, explanation may be sought to rebut the circumstances, which would be in consonance with the principle of reasonable opportunity and *audi alteram partem* as inbuilt in the principles of natural justice. From the record the learned counsel for the petitioners has not been able to show that there are such admissions on the part of the respondent on the basis of which it could be held by the Inquiry Officer that the charges against the respondent had been proved. In the circumstances, it was incumbent upon the petitioners to put to the respondents the evidence and admissions which were against him in compliance with Rule 14(18) of CCS (CCA) Rules, 1965. The respondent had categorically raised this plea in his representation dated 29th November, 2007 as under:-

“4. When a C.O does not wasn't to examine himself as his own witness and has also not offered a defence statement, it is mandatorily necessary for the I.O to seek clarifications from him in regard to the evidence that has come against him. This was not done and the CO was thus deprived of the opportunity to clarify/explain what the I.O considered to be against him in evidence.

5. None of the documents relied upon in this case was proved by any of the departmental witnesses, nor were these referred to or identified by anyone. Their authenticity was simply presumed by the I.O. Onus of proving the case and documents lay on the department and they have failed

to do so. The question of disproving a document arises only after it is proved by one who relies upon it.”

26. In the circumstances, the petitioners ought to have dealt with such categorical pleas and contentions raised by the respondent. Regarding the mandatory compliance of Rule 14(18) of CCS (CCA) Rules, 1965, the Supreme Court in *Ministry of Finance v. S.B.Ramesh*, JT 1998 (1) 319 had held that even in a case where the Inquiry Officer had set the charged officer ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the charged officer to participate in the enquiry and thereafter or even if the Enquiry Authority did not choose to give the charged officer an opportunity to cross-examine the witness examined in support of the charge, he should have atleast given an opportunity to the charged officer to appear and then proceeded to question him under Sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The Supreme Court had held that omission to do this would be construed to be a serious error committed by the Enquiry Authority. It was further held that if the charged officer has examined himself as a witness then it would not be obligatory to examine the charged officer under Rule 14(18) of CCS(CCA) Rules, however, in the absence of any defense statement by the charged official, it was mandatory on the part of the enquiry officer to examine him under Rule 14(18), the non-compliance of which would vitiate the enquiry proceedings. In the circumstances, the petitioners

ought to have considered the representation of the respondent dated 29th November, 2007 and should have considered all the pleas and contentions raised by him, including the plea about his non examination, by putting to him all the evidence which allegedly established his guilt and the alleged admissions made by him.

27. The Tribunal has noted this and in the circumstances has set aside the order passed by the Disciplinary Authority, which did not consider the pleas and contentions of the respondent. In the circumstances, the learned counsel for the petitioners have not been able to show any such cogent grounds which are sufficient for us to exercise our jurisdiction under Article 226 and to set aside the order dated 8th October, 2010 passed by the Central Administrative Tribunal, Principal Bench setting aside the order of punishment imposed by the Disciplinary Authority, however, permitting the Disciplinary Authority to pass a fresh order after considering the representations of the respondent. The learned counsel for the petitioners is unable to show any cogent grounds as to why the representations and the pleas and contentions raised in the representations should not have been considered by the petitioners, including the plea that the enquiry proceedings were vitiated on account of non examining of the respondent under rule 14 (18) of CCS(CCA) Rules, 1965. The petitioners are liable to deal with and consider all the pleas and contentions before

inferring the guilt against the respondent and imposing any punishment in the facts and circumstances. In the totality of the facts and circumstances, this Court does not find any illegality or unsustainability or perversity in the order of the Tribunal setting aside the order of punishment and giving liberty to pass a fresh order after considering all the pleas and contentions raised by the respondents in the facts and circumstances, to interfere with the order of the Tribunal. In the facts and circumstances, the writ petition is without any merit and is liable to be dismissed. The writ petition is, therefore, dismissed. Parties are, however, left to bear their own cost.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

MAY 27, 2011.

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