

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

+ W.P. (C.) No.215/2009

% Date of Decision: 10.03.2011

Union of India & Anr. Petitioners

Through Mr.M.M.Sudan, Advocate.

Versus

D.S.Manchanda Respondent

Through Ms.Meenu Mainee, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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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, the Secretary, Ministry of Information and Broadcasting & Anr., have challenged the order dated 10th July, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1431 of 2006, titled as 'D. S. Manchanda v. Union of India & Ors.', allowing the respondent's application and setting aside the order dated 30th May, 2002 passed by the petitioners in pursuance of a major penalty proceedings under Rule 14 of the CCS(CCA) Rules, 1965 imposing a penalty in consultation with the UPSC of withholding

further increments till date of the respondent's retirement with a permanent impact on his retiral benefits of pension and gratuity.

2. Brief facts to comprehend the disputes between the parties are that the respondent joined the petitioners on deputation from the Army in the year 1985 as Superintending Engineer and he was absorbed in the year 1990. The respondent was promoted as Chief Engineer in the year 1995.

3. While working as a Chief Engineer, on 9th July, 1996 he was served with a memorandum of charge sheet alleging that he had accepted the lesser frame size alternator without obtaining prior approval of the competent authority. The charge sheet issued to the respondent on 9th July, 1996 was amended and a 3rd charge was also alleged against him on 28th July, 1998.

4. The respondent denied the charges made against him and demanded the supply of 77 documents, which according to him, were vital for the defense of the respondent. The respondent alleged that documents were not supplied to him. The Commissioner for Departmental Enquiries was appointed as the Enquiry Officer, who gave the enquiry report implicating the respondent.

5. On receipt of the copy of the enquiry report, the respondent submitted a representation. According to the respondent, the pleas and contentions raised by him were not considered appropriately by the Disciplinary Authority who passed an order of punishment imposing the penalty of withholding further increments which would have the effect of denying him the last increment prior to his retirement and which would have a permanent impact on his retiral benefits. The respondent also contended that the evidence against him was not put to him in compliance with Rule 14 (18) of CCS (CCA) Rules, 1965 though he had not appeared as his witness nor had examined any witnesses.

6. The respondent submitted a revision petition against the order of the Disciplinary Authority dated 30th October, 2002 however, the revision petition was also rejected by the order dated 22nd February, 2005 which decision was communicated to the respondent on 11th May, 2005.

7. Aggrieved by the punishment imposed upon the respondent, he filed an Original Application being OA No.1431 of 2006 before the Central Administrative Tribunal, Principal Bench, New Delhi, contending inter-alia, that the enquiry against him is vitiated as the relevant documents demanded by him were not given which included the preliminary enquiry report submitted by Sh.V.B.Gupta, which was relied on by the Disciplinary Authority. It was further contended that

although there was no evidence in support of charge No.3, however, it had been held that the said charge was also substantiated. The technical plea specifically raised by the respondent was that the evidence against him was not put to him in compliance of Rule 14(18) of the CCS(CCA) Rules, 1965 though he had not examined himself as defense witness and thus, the entire proceedings were vitiated. The respondent further contended that the pleas and contentions raised by him in his defense were not taken into consideration. Emphasis was also laid on the non-supply of the report of UPSC and the recommendations of the CVC at the first stage as well as the second stage, which were not made available to the respondent, and thus, the petitioners violated the principles of natural justice. The respondent categorically pleaded that the petitioners had introduced a fabricated document with a corrigendum to amended charge sheet, with the intention of proving the charges by hook or by crook. The respondent also raised the ground that similar charges were leveled against Sh.Lalit Kumar, Executive Engineer, who was working under the respondent however, the punishment awarded to him had already been quashed by the Tribunal.

8. The petitioners contested the OA filed by the respondent before the Central Administrative Tribunal, Principal Bench, New Delhi, contending inter-alia, that irregularities were committed by the respondent and in the work of "Supply and Erection of 2 x 500 KVA

diesel generator sets for 2 x 100 KV MW AIR Transmitter at Srinagar” during the period of 1987-1991. This was denied by the respondent and he wanted to be heard in person. Subsequently Sh.Omkarmal Kedia, Commissioner of Departmental Inquiries, Central Vigilance Commission was appointed as the enquiry authority by order dated 28th October, 1997. He submitted his report dated 26th May, 1998 holding that the Article Nos.1 & 3 of the charges were partly proved against the respondent and article No.2 was not proved. The copy of the enquiry report was given to the respondent who had submitted his representation dated 21st April, 1999. The Disciplinary Authority after examining the representation of the respondent and other relevant documents had held that the Article Nos.1 & 3 were partly proved and Article No.2 was not proved. Thereafter the matter was referred to the UPSC who tendered advice dated 1st March, 2002. After considering the advice of UPSC, all the relevant documents and the facts and circumstances, the Disciplinary Authority imposed the penalty of withholding further increments against the respondent. The petitioners further asserted that a copy of the UPSC advice had been provided to the respondent along with the final order passed against him in accordance with the provisions under the CCS(CCA) Rules, 1965. Regarding the CVC recommendation, the petitioners contended that in the year 1999 there was no provision for supply of copy of the CVC advice to the charged officer along with the enquiry report as the provision for supply of a copy of the CVC advice to the charged officer

came into force only on 28th September, 2000 vide CVC Instruction dated 28th September, 2000, which was to take effect prospectively. The respondent categorically contended that as per the CCS(CCA) Rules, there is no provision for supply of UPSC advice to the charged officer prior to issue of final order in the disciplinary proceedings. The petitioners also contended that copies of the documents as demanded by the respondent were supplied to him which is reflected from the order sheet dated 2nd April, 1998. Regarding the preliminary enquiry, the petitioners contended that the preliminary enquiry made by the police after investigation are usually confidential and are made only for the satisfaction of the competent authority. Since the report of Sh.V.B.Gupta was only the preliminary report and as it was not cited as documents in respect of charges, the respondent is not entitled for the same.

9. Regarding non-compliance of Rule 14(18) of the CCS(CCA) Rules, of putting the evidence against the charged officer in the eventuality of the charged officer not offering himself as a witness, the petitioners contended that the respondent was examined generally on 6th April, 1998. Relying on the order dated 6th April, 1998 before the enquiry officer, it was contended that as the respondent (charged officer) did not offer himself as a witness, he was, therefore, examined by the enquiry officer and thereafter, the defense case was closed. The charged officer was also given an opportunity to submit his written brief. The

petitioner, however, did not put the circumstances which came in evidence against the charged officer in compliance of Rule 14(18) of CCS(CCA) Rule.

10. The Tribunal after considering the pleas and contentions of the parties had held that it was the onerous duty of the enquiry officer to have put to the respondent the circumstances which came in evidence against him for his effective reply thus, there was a clear violation of Rule 14(18) of the Rules which had prejudiced the applicant and which would vitiate the enquiry. The reliance was also placed by the Tribunal on the case of Tarlok Singh who was charged similarly as respondent & on 'Ministry of Finance v. S.B.Ramesh', JT 1998 (1) 319 laying down the proposition that in compliance of Rule 14(18) of CCS(CCA) Rules 1965 on non examination of the delinquent as defense witness, the evidence brought against him during the course of the enquiry is a must and any omission would vitiate the enquiry and there would be prejudiced caused to the charged officer.

11. Regarding the recommendation of the CVC, the Tribunal held relying on 'State of Bank v. Union of India & Ors.' (1993) 1 SC 13 that it is obligatory on the authorities to supply a copy of the report of the CVC along with the enquiry report to enable the concerned delinquent to effectively defend the charges against him. Regarding preliminary report also, the Tribunal held that even if there is no demand for preliminary

enquiry report, yet copy of the report has to be necessarily served upon the charged officer and reliance was placed on 'Shatrughan Lal v. State of UP', JT 1998 (6) SC 55 & Kashinath Dikshita v. Union of India', 1986 (3) SCC (L&S) 229. The Tribunal also noted that the plea of the petitioners that the preliminary enquiry report was not relied on, cannot be sustained as one of the witnesses deposing in the enquiry had referred to the preliminary enquiry report and in such event non-supply of preliminary report has prejudiced the respondent. The Tribunal also did not approve of the penalty imposed on the respondent as it would have an impact upon his retiral benefits. The Tribunal further held that any penalty effecting any pensionary benefit post retirement is the prerogative of the President only under Rule 9 of CCS(CCA) Rules, 1972. In the circumstances, it was held that imposing penalty in such a manner which would affect the retiral benefits is not be inconsonance with law and thus, the Tribunal set aside the punishment imposed on the respondent.

12. We have heard the learned counsel for the parties in detail and have also perused the record of the Tribunal which has been produced along with the writ petition. The petitioners have challenged the order of the Tribunal primarily on the ground, contending inter-alia, that Rule 14(18) of CCS(CCA) Rules has been substantially complied with as a general examination of the respondent was effected by the Enquiry Officer, as is evident from the order dated 6th April, 1998.

13. The petitioners also contended that provision for supply of the copy of the CVC second stage came into force only with CVC Instruction dated 28th September, 2000 and since the enquiry was conducted in the year 1999, the respondent was therefore, not entitled for a copy of the CVC report. Regarding the preliminary enquiry report, it was contended that it is not mandatory to supply the copy of the report of the preliminary enquiry. In the circumstances, it was contended that there has been no violation of any of the rules, nor principles of natural justice had been violated and the order of the Tribunal setting aside the punishment imposed upon the respondent is liable to be set aside.

14. The learned counsel for the petitioners, Mr.Sudan has relied on (2010) 5 SCC349, 'Union of India & Ors. V. Alok Kumar' to contend that where the rule is merely directory, the element of de facto prejudice needs to be pleaded and shown. The learned counsel also contended that failure to supply the copy of the CVC report at the second stage advice would not vitiate the enquiry. According to him in the present case, it has not been shown by the respondent as to what prejudice has been caused to him on account of non-supply of the CVC recommendations and thus, enquiry report would not be vitiated.

15. In Alok Kumar (Supra), the Supreme Court had considered whether it is the duty of the Disciplinary authority to furnish the report

of CVC and whether supply of CVC report arises out of a statutory rule or in consonance with the principles of natural justice and whether non-supply of such a report would cause any prejudice to the officer concerned. In the facts and circumstances of the case, it was held that there was nothing on record to show that CVC recommendations had actually been taken into consideration and that the same had affected the mind of the Disciplinary authority while considering the defense of the delinquent officer and imposing punishment upon him. The Supreme Court had held that unless such reports/recommendations were actually considered and had some prejudicial effect to the interest of the delinquent officer, it would not be necessary for the Court to interfere with the departmental enquiry. In Alok Kumar (Supra), the Supreme Court therefore, did not vitiate the enquiry proceeding on the ground that a copy of the CVC second stage recommendations/reports though were not provided to the charged officer, however, it was not taken into consideration by the Disciplinary Authority. Paras 78 & 79 at page 376 are as under:-

“78. No rule has been brought to our notice where it is a mandatory requirement for the disciplinary authority to consult the vigilance officer and take the said report into consideration before passing any order. If that was the position, the matter would have been different.

79. In the present case, firstly, no such rule has been brought to our notice and secondly, **there is nothing on record to show that the alleged notes of the CVC were actually taken into consideration and the same effected or tainted the findings or mind of the authority while passing the orders of punishment.** Thus, in our view, the

findings of the Tribunal cannot be sustained in law. Unless the Rules so require, advice of the CVC is not binding. The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. In absence of any specific rule, that seeking advice and implementing thereof is mandatory, it will not be just and proper to presume that there is prejudice to the concerned officer. Even in the cases where the action is taken without consulting the Vigilance Commission, it necessarily will not vitiate the order of removal passed after inquiry by the departmental authority. Reference in this regard can also be made to the judgment of this Court in the cases of State of A.P. and Anr. v. Dr. Rahimuddin Kamal: 1997 (3) SCC 505 and Deokinandan Prasad v. State of Bihar: 1971 (2) SCC 330.”

16. Though the Tribunal has held relying on D.C.Aggarwal’s case (supra) that non-supply of CVC recommendations has deprived the respondent of a reasonable opportunity to show cause against the enquiry report which ultimately affected the substantial rights of the respondent to effectively defend himself. However, the learned counsel for the respondent is unable to show as to how the CVC recommendations were taken into consideration by the Disciplinary authority, and how the case of the respondent has been prejudiced. It was incumbent upon the Tribunal to have considered whether there were any such CVC Notes or recommendations which had a direct bearing on the enquiry in question and whether such recommendations or Notes were actually taken into considerations by the Disciplinary authority while passing the impugned order and whether the respondent had suffered de facto prejudice as a result of non-furnishing of advice. In absence of these factors, the order of the Disciplinary

authority imposing penalty on the respondent cannot be faulted, nor can the order of the Tribunal to this effect be sustained on this ground that the copy of notes/recommendation of CVC were not provided to the respondent.

17. The learned counsel for the petitioner has also relied on (2007) 4 SCC 785, 'Union of India & Ors. v. T.V.Patel' holding that where the Disciplinary authority sought advice of the UPSC before imposition of penalty on the delinquent officer, it was not necessary for the Disciplinary authority to make available the copy of the advice tendered by the UPSC to the delinquent officer so as to enable him to make effective representation to the punishment proposed, on the ground that the provisions of Article 320 (3)(c) of the Constitution of India are not mandatory and it does not confer any right on the public servant, so that the absence of consultation or any irregularity in consultation process or in furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent Government servant a cause of action in a Court of law. In this case the Disciplinary authority had sought advice of the UPSC which was tendered. After the Disciplinary authority passed the order, a copy of the advice tendered by the UPSC was also sent along with the copy of the final order imposing the penalty on the delinquent officer. In the circumstances, the question to be determined by the Supreme Court was whether a copy of advice

tendered by the UPSC is to be furnished along with the order of penalty or before passing an order imposing final penalty. Referring to Rule 32 in Part-IX of CCS Rules, it was held that the rule contemplating “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 the penalty on the delinquent government servant. Consequently, relying on the judgment of the Constitution Bench in AIR 1957 SC 192, *State of U.P. v. Manbodhan Lal Srivastava*, it was held 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 in furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent Government servant a cause of action in a Court of law. Para 25 at page 793 of *T.V.Patel (Supra)* is as under:-

“25. In view of the law settled by the Constitution Bench of this Court in the case of *Srivastava (supra)* 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 the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.”

18. The next contention on behalf of the petitioner is about the non-compliance of the Rule 14(18) of CCS(CCA) Rules. According to the petitioners, Rule 14(18) was substantially complied with. Perusal of the

record, however, reveals that it is an admitted case that the respondent did not examine himself as a witness. Since the respondent had not examined himself as witness, it was incumbent upon the enquiry officer to put evidence adduced against the respondent during the enquiry to 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, which would be in consonance with the principle of reasonable opportunity and audi alteram partem as inbuilt in the principles of natural justice. On perusal of the record, the order dated 6th April 1998 is categorical in stating that the respondent had neither examined any defense witnesses nor had he offered himself as a witness. Thereafter the respondent was generally examined by the Inquiry Officer, however whether or not the circumstances that came in evidence against the respondent was put to him has not been shown. In similar matters involving the same purchases, the charged officers were only put the charges which were framed against the charged officer. In the circumstances, in absence of any thing it is to be inferred that the evidence which was recorded during the enquiry was not put to the respondent in compliance with rule 14 (18) of CCS (CCA) Rules, 1965.

19. Perusal of Rule 14(18) clearly reveals that it is obligatory upon the enquiry authority to question the delinquent officer on the circumstances appearing against him in the evidence, for the purpose of

enabling him to explain any circumstance. As there is no reference to the evidence brought on record or circumstances appearing against the applicant, hence the general examination, a copy of which has also not been produced despite ample opportunity to the petitioner, it is apparent there was not a valid compliance of Rule 14(18) of the CCS(CCA) Rules 1965.

20. Provisions analogous to Rule 14(18) of CCS(CCA) Rule exist in Rule 19 (21) of Railway Servant (Discipline & Appeal) Rules, 1958. In the matter of Moni Shankar V. Union of India, 2008 (1) AJW 479, an enquiry proceeding was conducted in which the following questions were put to the Charged Officer: “please state if you plead guilty?” ; “Do you wish to submit your oral or written arguments? ; “Are you satisfied with the enquiry proceeding” and “Can I conclude the enquiry?”, were held to be not in compliance of Rule 9(21) of Railway Servant (Discipline & Appeal) Rules, 1958 as such type of questions did not reveal the evidence adduced in support of charges against the charged officer.

21. In Ministry of Finance v. S.B.Ramesh, (1998) 3 SCC 227 the Supreme Court had held the Rule 14 (18) of CCS (CCA) Rules, 1985 to be mandatory. The Apex Court had upheld the decision of the Tribunal holding that the order of the Disciplinary Authority was based on no

evidence and that the findings were perverse, on the reasoning that even if the Enquiry Officer had set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry thereafter. Or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have been given an opportunity to the applicant to appear and then proceeded to question him under Sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this was construed to be a serious error committed by the Enquiry Authority. This also cannot be disputed that if the charged officer has examined himself as a witness then it will 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), and the non-compliance of which will vitiate the enquiry proceedings.

22. Consequently, the order of the Tribunal quashing the enquiry proceeding 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 charged officer vitiates the enquiry proceeding, cannot be termed to be illegal or un-

sustainable so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

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

ANIL KUMAR, J.

MARCH 10, 2011

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VEENA BIRBAL, J.