

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.08.2012

+ **W.P.(C) 5216/2012**

D.R. BANERJEE

... Petitioner

versus

**UNION OF INDIA THROUGH THE REGISTRAR OR GENERAL AND
CENSUS COMMISSIONER OF INDIA**

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr O.P. Gehlaut

For the Respondent : Mr Ravinder Agarwal, CGSC with Mr Amit Yadav

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

CM No.10655/2012 (exemption)

Allowed subject to all just exceptions.

W.P.(C) 5216/2012 & CM No.10654/2012 (stay)

1. This writ petition is directed against the order dated 18.04.2012 in O.A. No.3592/2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the Tribunal while quashing the order dated 19.09.2011 passed by the Disciplinary Authority has directed the

Disciplinary Authority to pass a fresh order within 15 days and if the Disciplinary Authority arrives at a conclusion that, after considering the representation of the petitioner, it is expedient in the interest of justice that a further enquiry be ordered in the matter, then it will pass an order immediately and the Inquiry Officer shall conclude the proceedings within a period of four months from the date when the Disciplinary Authority passes such fresh order.

2. The petitioner is aggrieved by the direction given by the Tribunal, enabling the Disciplinary Authority to pass an order directing a further enquiry. The learned counsel for the petitioner submitted that this order passed by the Tribunal on 18.04.2012 was in the second round before the Tribunal. Earlier, the Disciplinary Authority's order dated 26.05.2009 had been challenged by the petitioner in O.A. No.1774/2009. That has been disposed of by the Tribunal by an order dated 08.10.2010. The Tribunal had quashed and set aside the said order of the Disciplinary Authority. While doing so, the Tribunal further directed that the Disciplinary Authority may, however, pass a fresh order after considering the representation of the petitioner and answering the issues raised therein. It was further directed that the petitioner would be eligible for all the

consequential benefits following the setting aside order of the Disciplinary Authority by restoring him to the grade and by reimbursing the amount deducted from his salary as a consequence of reduction to a lower grade with simple interest @ 6% per annum.

3. Being aggrieved by the said order dated 08.10.2010 passed by the Central Administrative Tribunal in O.A. No.1774/2009, the respondent herein filed a writ petition before this Court being W.P.(C) 7863/2010. That writ petition was dismissed on 27.05.2011. While doing so, this Court had observed as under:-

“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 at least 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, 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.”

4. It was, therefore, clear that this Court had observed that the provisions of Rule 14 (18) of the CCS (CCA) Rules, 1965 had not been adhered to. Since the petitioner had raised this plea in his representation, the same was required to be considered by the Disciplinary Authority, before it could pass an order. Consequently, this Court did not interfere with the direction given by the Tribunal to the Disciplinary Authority to pass a fresh order after considering the representation of the petitioner.

5. On 19.09.2011 the Disciplinary Authority passed an order allegedly pursuant to the directions given by the Tribunal and this Court. However, on going through the order we find that there is no discussion with regard to the representation of the petitioner and the said order contains a mere narration of all the events right upto the passing of the order by this Court on 27.05.2011. The Disciplinary Authority’s order dated 19.09.2011 comprises of 13 paragraphs. The first 11 paragraphs deal with the history of the case upto the passing of the order by the High Court. It is only in

paragraphs 12 and 13 that there is a reference to the events subsequent thereto. Those two paragraphs read as under:-

“12. AND WHEREAS the case was referred to Ministry of Law to solicit its advice. Ministry of Law advised to conduct fresh inquiry in the case and to remove the lacunae as has been observed by the Hon’ble Court in the order.

13. NOW THEREFORE, The President :-

i) sets aside the penalty imposed on Shri D.R. Banerjee vide Order No.30/5/2006-Vig. Dated 26.05.2009.

ii) directs further that a fresh inquiry be held under the provisions of the CCS (CCA) Rules, 1965 against Shri D.R. Banerjee on the allegations leveled against him vide Memorandum No.30/5/2006-Vig. Dated 4.4.2007 to remove the lacunae observed by the Hon’ble Court.”

6. It is apparent from the above extract that the Disciplinary Authority did not at all consider the representation of the petitioner and merely passed an order directing a fresh enquiry based on the advice received by it from the Ministry of Law. According to us, this order did not comply with the direction given by the Tribunal confirmed by the High Court, requiring the Disciplinary Authority to consider the representation of the petitioner and to pass an order thereafter.

7. Being aggrieved by the order dated 19.09.2011, the petitioner filed the said O.A. No.2592/2011 wherein the Tribunal passed the impugned

order dated 18.04.2012. By virtue of the impugned order, though the Tribunal had quashed and set aside the order dated 19.09.2011 passed by the Disciplinary Authority, the Tribunal gave the following directions:-

“8. The impugned order dated 19.09.2011 is quashed. However, the respondent-disciplinary authority is directed to pass a fresh order in the matter within a period of fifteen days from the date of communication of the order. If the disciplinary authority arrives at a conclusion that after considering the representation of the applicant, it is expedient in the interest of justice that further enquiry be ordered in the matter, then he will pass an order immediately and the inquiry officer shall conclude the proceedings within a period of four months from the date when the disciplinary authority pass a fresh order on the representation of the applicant. No order as to costs.”

8. In other words, the Tribunal directed that instead of a fresh enquiry, the Disciplinary Authority could order a further enquiry, if the situation so warranted. Subsequent to the impugned order dated 18.04.2012 passed by the Tribunal, the Disciplinary Authority had passed a detailed order on 31.05.2012 wherein there appears to be a consideration of the representation filed by the petitioner. The said order dated 31.05.2012 was not the subject matter of challenge before the Tribunal because it was subsequent to the impugned order dated 18.04.2012. However, the learned counsel for the petitioner states that he has challenged this order in this writ

petition.

9. We feel that proper course to be followed in this case is that if the petitioner is aggrieved by the order dated 31.05.2012 he had to challenge the same before the Tribunal by way of an Original Application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the said Act). The learned counsel for the petitioner, however, submitted that if he would have done so, the observations and directions of the Tribunal contained in the order dated 18.04.2012 would come in his way. We understand the problem that faces the petitioner. From the narration of the facts and circumstances, it is clear that subsequent to the order passed by this Court on 27.05.2011, the Disciplinary Authority while passing the order dated 19.09.2011 had not considered the representation of the petitioner and as such the Disciplinary Authority's order dated 19.09.2011 ought to have been set aside on that ground alone. However, the Tribunal went into the question of whether the Disciplinary Authority could have directed a fresh enquiry or a further enquiry. It is in that context that the Tribunal indicated that in instead of a fresh enquiry, a further enquiry could be directed by the Disciplinary Authority, after it considered the representation of the petitioner. It is this observation of the Tribunal

which is coming in the way of the petitioner in challenging the Disciplinary Authority's order dated 31.05.2012. Therefore, we feel that it would be appropriate, if we direct that the observations of the Tribunal with regard to conduct of a further enquiry, given in the order dated 18.04.2012, will not come in the way of the petitioner in challenging the order dated 31.05.2012, in case he chooses to do so by moving a fresh application before the Tribunal. To make things clear, in case the petitioner challenges the order dated 31.05.2012 by a separate and fresh application, under Section 19 of the said Act, the Tribunal shall consider the same on merits and will not be bound or influenced by the view taken by it with regard to the aspect of directing fresh/further enquiry. In other words, the petitioner would be able to raise the contention before the Tribunal that the direction of further enquiry is not warranted in law.

10. With these observations and directions this writ petition stands disposed of. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

AUGUST 27, 2012/dn