

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

Date of decision: August 06, 2013

+ **W.P.(C) 403/2002**

JAGDISH PRASAD Petitioner

Represented by: Ms.S.Janani, Advocate with
Mr.Sunando Raha, Advocate

versus

CHAIRMAN AIR OFFICER COMMANDING & ORS.

.... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this writ petition is to the order dated September 25, 2000 passed by the Central Administrative Tribunal in Transfer Application No.11/2000, whereby the Tribunal has dismissed the petition filed by the petitioner.

2. Some of the relevant facts, are that, the petitioner while working as Chowkidar under the respondent No.4 was issued a charge-sheet dated September 09, 1991 for certain alleged acts of misconduct. Primarily 3 Articles of Charges were framed against the petitioner. Suffice would it be to state, the following Articles of Charges have been proved against the petitioner.

Article No.1

“(i) On 07.02.91 while performing the duties of Chowkidar Shri Jagdish Prasad was found with an outside lady as reported by Shri A.K.Paul, Sgn. Ldr. Station Security Officer of Indian Air Force.

This Act of Shri Jagdish Prasad of bringing an outside lady to the Vidyalaya and allowing her to stay with him in an unauthorized way exhibits gross misconduct and reflects on his moral integrity. Thus tantamount to violation of Rule 3(1)(i) and 3 (i) (iii) of CCS (Conduct Rules) 1964 as extended to the employees of KVS).

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Article No.III

(iii) On 2.2.91 while performing the duties of Chowkidar, Shri Jagdish Prasad was wilfully absent from his duty from 1700 hours to 1900 hours as intimated by Shri Ram Kirti of ITBP when he visited the Vidyalaya to see his missing ward who had not reached her home after school hours.

Shri Jagdish Prasad by the said act has violated Rule 3(1)(iii) of CCS (Conduct) Rules 1964 as extended to the employees of KVS.

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2. Shri Jagdish Prasad while under suspension submitted false information to the Hon'ble High Court that the said Shri Jagdish Prasad was allotted Government accommodation in the Vidyalaya and he was residing in the quarter

allotted to him with his family.

Shri Jagdish Prasad also informed the Hon'ble Court that he had not drawn HPA from Vidyalaya due to allotment of staff quarter. Shri Jagdish Prasad by the said mis-statement has violated Rule 3 ibid.

3. *Shri Jagdish Prasad, at the time of appointment as Groupd 'D' Chowkidar in Kendriya Vidyalaya, AFS, Tughlakabad gave a declaration that he was a widower. Shri Jagdish Prasad never informed the Kendriya Vidyalaya about his subsequent re-marriage as required under service condition of his appointment letter.*
4. *Shri Jagdish Prasad, Group 'D' Chowkidar has given false information to the Hon'ble Court and the Rationing authority that he was having a wife named Nirmatiya Devi aged 29 years in 1989 and he also drew bogus ration in the name of the said woman. Shri Jagdish Prasad by the said act has defrauded the Government and violated the Rules 3(1)(iii) of CCS Conduct Rules, 1964.*

3. The Disciplinary Authority imposed a penalty of removal from service on the petitioner vide its order May 27, 1992.

4. The Appeal filed by him against the order of the Disciplinary Authority was also rejected by the Appellate Authority vide its order dated December 15, 1993. The petitioner had initially filed writ petition in this Court challenging his removal from service. The said writ petition was transferred to the Tribunal and numbered as Transfer Application No.11/2000 after the Kendriya Vidyalaya Sangthan was notified under the provisions of the Administrative Tribunal Act conferring jurisdiction on the

Tribunal of the Sangthan with respect to service matters.

5. The Tribunal vide its impugned order was of the view, (i) proper opportunity was given to the petitioner to defend his case; (ii) the Inquiry Officer has proved the charges against him; and (iii) the petition is devoid of merits.

6. It is contended by Ms.S.Janani, learned counsel for the petitioner that the Authorities below have not taken into consideration the stand of the petitioner with respect to the Articles of Charges framed against the petitioner. According to her, the following was the stand of the petitioner on the allegations so substantiated by the Inquiry Officer and has drawn our attention to page 70 of the paper book, which is a reply dated March 27, 1992 submitted by the petitioner to the written statement given on behalf of the department.

1. *That the alleged charge is wrong and denied. It is wrong that on 07.2.1991 I was found in the premises with the lady at all. Your attention is drawn on para 61 (PW-3) where Mr. Paul has admitted the fact that he had not seen any lady personally. It is only his staff has informed about the same. However, whereabouts of lady specific time and name of informer is not even mentioned, which goes to prove that prosecution has failed to prove miserably and beyond doubt their case and the prosecution has failed to produce the person who had actually seen Jagdish Prasad with the lady. It is mentioned that copy of the letter of Shri Paul is also not supplied to me and I reserve my right to submit further regarding allegation.*

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(2)(i) *That the contents of the para are wrong and*

denied. It is denied and wrong to say that I was not careful during my duties. PW-2 Mrs. Jeevan Kaur has stated that she had just informed the Principal. The letter and information is not related to Jagdish Prasad at all. It is important to note that she got all things later on also she had informed the Principal verbally. According to PW-2, the day the incident took place I did not have any Chowkidar with me.

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- (3) *That the contents of the para are wrong and denied. It is denied that I was not found in the premises on the duty. Story has been fabricated just to harass me.*

The letter on which the prosecution has relied has not been supplied to me. I reserve my right to file detailed reply after I get the aforesaid letter. It is not disclosed that which PW-1 was present in the premises of the Schoo. Incidents relates to 5.30 p.m and the school closed at 4 p.m. It is also not clear whether Ram Tirath does know otherwise or not so as to recognize who was Chowkidar. The prosecution has failed to produce Ram Tirath as witness who happens to be most substantial witness for the prosecution.

4. *XXXXXXXXXXXXX*

It is wrong and denied that I maliciously submitted any false statement anywhere or before Hon'ble High Court. Hence I have not committed any office in any manner whatsoever.

7. She would further submit that the Inquiry Officer's conclusion holding the charges proved against the petitioner is in a very perfunctory

manner without recording any finding on each of the charge so proved. According to her, even the Disciplinary Authority and the Appellate Authority orders are non speaking and does not disclose/answer the pleas taken by the petitioner in his reply to the written statement.

8. She would submit that the Disciplinary Authority has not supplied to the petitioner a copy of the Inquiry Officer's report enabling the petitioner to submit his representation on the findings of the Inquiry Officer. According to her the very fact that the Inquiry Officer's report was not given to the petitioner, the prejudice is writ large as ultimately the petitioner has been removed from the service. She relies upon the judgments of the Supreme Court reported as (2010) 13 SCC 494 Punjab National Bank & Ors. vs. K.K.Verma, (2009) 2 SCC 681.

9. We have considered the aforesaid submissions made on behalf of the petitioner and are of the view that the Inquiry Officer in his report except making a bald reference to the oral evidence and the exhibit number does not give any finding on each Article of Charge proved against the petitioner. The Inquiry Officer is required to give reasons as to how he has arrived at a particular finding. Such reasons must co-relate to the documentary evidence and the oral evidence led during the inquiry. Regrettably, the Tribunal has not seen the case from this perspective. It is held by the Supreme Court in the case reported as AIR 1964 SC 719 Ms.Khardah & Co. Ltd. vs. The Workmen.

“Take the present case where, after the enquiry was held, the Manager who held the enquiry has not recorded any findings, and so, we do not know what reasons weighed in his mind and how he appreciated the evidence led before him. The learned Solicitor-

General contends that there was hardly any need to record any findings or to make a formal report in the present case, because the Manager who held the enquiry was himself competent to dismiss the employee. We are not impressed by this argument. The whole object of holding an enquiry is to enable the enquiry officer to decide upon the merits of the dispute before him, and so, it would be idle to contend that once evidence is recorded, all that the employer is expected to do is to pass an order of dismissal which impliedly indicates that the employer accepted the view that the charges framed against the employee had been proved. One of the tests which the Industrial Tribunal is entitled to apply in dealing with industrial disputes of this character is whether the conclusion of the enquiry officer was perverse or whether there was any basic error in the approach adopted by him. Now, such an enquiry would be impossible in the present case because we do not know how the enquiry officer approached the question and what conclusions he reached before he decided to dismiss jadav. In our opinion, therefore, the failure of the Manager to record any findings after holding the enquiry constitutes a serious infirmity in the enquiry itself. The learned Solicitor-General suggested that we might consider the evidence ourselves and decide whether the dismissal of jadav is justified or not. We are not prepared to adopt such a course. If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report ; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions. Unless such a course is adopted, it would be difficult for the

Industrial Tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse. Indeed, if the argument urged before us by the learned Solicitor-General is accepted, it is likely to impair substantially the value of such domestic enquiries. As we have already observed, we must insist on a proper enquiry being held, and that means that nothing should happen in the enquiry either when it is held or after it is concluded and before the order of dismissal is passed, which would expose the enquiry to the criticism that it was undertaken as an empty formality. Therefore, we are satisfied that the Industrial Tribunal was right in not attaching any importance to the enquiry held by the Manager in dealing with the merits of the dispute itself on the evidence adduced before it.”

10. It is further noted that the Appellate Authority has rejected the appeal without any reasons. The stand of the petitioner can be seen from his reply to the written statement filed by the department. Hence, we agree with the submissions of the learned counsel for the petitioner that the Appellate Authority in a mechanical manner has accepted the appeal. We are of the view that at least the Appellate Authority was required to pass a detailed order which would show the application of mind on its part. It would also show, what were the relevant aspects which weighed with it in rejecting the appeal. Had the Appellate Authority passed a speaking order, it would not have enabled the learned counsel for the petitioner to urge the point of arbitrariness. The Supreme Court in the case reported as (2009) 4 SCC 240 Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney & Ors. has held as under.

“In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case(supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

The view we are taking was also taken by this Court in Divisional Forest Officer vs. Madhusudan Rao, JT 2008 (2) SC 253 (vide para 19), and in Madhya Pradesh Industries Ltd. vs. Union of India, AIR 1966 SC 671, Siemens Engineering & Manufacturing Co. Ltd. vs. Union of India, AIR 1976 SC 1785 (vide para 6), etc.

In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

No doubt, in S.N.Mukherjee's case (supra), it has been observed (vide para 36) that:

The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.”

11. Surely in the absence of a speaking order, a prejudice is caused to an employee as he is not aware as what are the factors which weighed with the Authorities concerned while rejecting the appeal.

12. In so far as the point raised by the learned counsel for the petitioner that the Disciplinary Authority should have given the copy of the Inquiry Officer's report before inflicting the punishment is concerned, the same is well settled by the judgment of the Constitution Bench in the case reported as (1993) 4 SCC 727 ECIL vs. B.Karunakar, wherein the Supreme Court after referring to its earlier judgment in the case reported as (1991) 1 SCC 588 Union of India vs. Mohd.Ramzan Khan has held as under:

“.... It is for the first time in Mohd. Ramzan Khan case that this Court laid down the law. That decision made the law laid down there prospective in operation i.e. applicable to the orders of punishment passed after 20-11-1990. The law laid down was not applicable to the

orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the enquiry officer's report to the employees. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee."

13. In the case in hand, the punishment order was imposed on May 27, 1992 which date falls after November 20, 1990. The inquiry report was required to be given in his case. Merely because an inquiry report has not been given to the petitioner, would not entail that the petitioner is entitled to the relief. The petitioner must show that a prejudice has been caused to him because of non furnishing of the Inquiry Officer's report. No such pleading has been made in this writ petition as to how non furnishing of the report has caused prejudice to him. In the absence of the same we are not in agreement with the learned counsel for the petitioner that the order(s) removing him from service need to be set aside.

14. We have seen the judgment relied upon by the learned counsel for the petitioner.

15. In K.K.Verma's case (supra) the Supreme Court was concerned with an issue where the rules of the organization itself stipulated that an Inquiry Officer's report shall be given to the employee concerned before the order of penalty is passed. The Supreme Court after relying upon the Constitution Bench Judgment in B.Karunkar's case (supra), wherein exception has been carved out inasmuch as where the service rules with regard to the disciplinary proceedings itself make it obligatory to supply a copy of the

report to the employee, has held that the respondent K.K.Verma was denied the opportunity to represent, before the finding of guilt was arrived at and thereby he was certainly prejudiced.

16. In the case in hand the learned counsel for the petitioner has not placed the service rules which contemplate the Disciplinary Authority to furnish to an employee, in this case the petitioner, copy of the inquiry report before inflicting any penalty on him.

17. On facts the case relied upon by learned counsel for the petitioner is distinguishable and as such would not be applicable.

18. In any case in terms of our finding in para Nos.9 to 11 we are of the view that the Inquiry Officer's report is liable to be set aside so also the consequent order(s) of the Disciplinary Authority dated May 27, 1992 and of the Appellate Authority December 15, 1993.

19. That in normal course when a Court set asides the order of penalty for certain technical reasons i.e. for non compliance of the procedure/principles of natural justice, generally the matter is remanded to the authorities concerned for taking further action from the stage when the illegality has crept in. In the present case we see that the charge sheet was issued in the year 1991 and the order of the Disciplinary Authority is dated May 27, 1992. 21 years have gone by. It is too late in the day for us to remand the matter to the Inquiry Officer calling upon him to submit a fresh inquiry report after giving reasons by discussing the evidence, oral/documentary.

20. Hence, we are of the view in the given facts of the case, it is not a case where a matter must be remanded back to the Inquiry Officer calling upon him to do what we have stated in the earlier paragraph. We bring the

curtains down on the litigation by directing the reinstatement of the petitioner in the service by awarding him 50% of wages which he would have drawn had he been in service with all consequential benefits.

21. We allow the writ petition and set aside the order of the Tribunal.

22. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 06, 2013
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