

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

Judgment Reserved on July 16, 2013
Judgment Delivered on August 19, 2013

+ **W.P.(C) 6572/2011**

GOVT OF NCT OF DELHI & ORS. Petitioners

Represented by: Ms.Ruchi Sindhwani, Advocate
with Ms.Megha Bharara,
Advocate

versus

R.S.GUPTA Respondent

Represented by: Mr.S.Rajappa, Advocate with
Dr.Puran Chand, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in the writ petition is to the order dated March 29, 2011 passed by the Central Administrative Tribunal in Original Application No.1822/1999, whereby the Tribunal had set aside the order dated March 24, 1998 imposing penalty of dismissal from service on the respondent and also the order of the Appellate Authority dated August 21, 1998 with the following directions:

- (i) *The impugned orders dated 24.3.1998 and 21.8.1998 are quashed and set aside;*
- (ii) *The matter is remitted to the Respondents for resuming the inquiry from the stage of giving copies of the*

relied upon documents to the applicant and providing him fresh opportunity for defending himself. The plea taken regarding the need for supply of the Hindi version of these documents, in the interest of justice, is also to be favourably considered by the respondents. While re-conducting the inquiry, the respondents would consider the need for a change in the Inquiry Officer, in case the applicant's averments of this official being a tainted one are found to be factually correct;

- (iii) The inquiry is to be completed within a period of four months from the date of receipt of a copy of this order. This would however, be subject to extension of full cooperation by the charged official;*
- (iv) As a result of setting aside of the penalty of dismissal, the applicant would be reinstated in service and his status quo at the point of initiation of the inquiry i.e. being under suspension, would be restored. For the intervening period, the applicant would be entitled to grant of subsistence allowance as per law. This is to be granted, along with a speaking order, within a period of two months from the date of receipt of a copy of this order.*

2. Some of the facts relevant to the issue are that the respondent was an employee of Department of Social Welfare, Govt. of NCT of Delhi and was at the relevant time working as an Assistant Teacher at the Government Lady Noyce School for Deaf, Delhi Gate.

3. The respondent was suspended vide officer order dated

August 12, 1994 pending disciplinary action. A charge memo dated July 28, 1995 was issued to the respondent for the listed acts of misconduct.

4. One Mr.P.N.Jha was appointed as an Inquiry Officer. Be noted here that the appointment of Mr.P.N.Jha was before the petitioner could file his reply to the charge-sheet. The respondent made allegations of bias against Mr.P.N.Jha. Accordingly the Disciplinary Authority appointed a new Inquiry Officer namely Mr.P.C.Mishra in place of Mr.P.N.Jha on May 09, 1997.

5. Vide a letter dated June 01, 1996 which was in Hindi the respondent made a request to the Disciplinary Authority that he may be furnished copy of the charge-sheet in Hindi. It appears that the said request of the respondent was not acceded to.

6. Pursuant to his appointment as Inquiry Officer, Mr.P.C.Mishra proceeded with the inquiry. The respondent initially appeared in the inquiry proceedings. Later he stopped appearing in the inquiry proceedings. This may be for the reason that he thought that the Inquiry Officer was biased.

7. The respondent made a representation to the Disciplinary Authority vide his letter dated June 13, 1997 where he raised issues primarily relating to the manner in which Mr.P.C.Mishra was conducting the inquiry. According to the respondent, Mr.P.C.Mishra was biased and had demanded ₹10,000/- from the respondent. The Disciplinary Authority did not pay any heed.

8. As noted above the respondent had attended the inquiry proceedings in the initial stages only. The respondent was proceeded ex-parte and the inquiry got concluded by Mr.P.C.Mishra by holding

the charges framed against the respondent as proved.

9. A copy of the Inquiry Officer's report dated July 07, 1997 was sent to the respondent along with Hindi translation. The respondent submitted his representation to the findings recorded by the Inquiry officer in his report. In the said representation, the respondent had reiterated his earlier plea, that he be given copy of the charge-sheet in Hindi; that the Inquiry Officer was biased etc.

10. The Disciplinary Authority passed an order dated March 24, 1998, imposing a penalty of dismissal from service on the respondent. The appeal against the order of the Disciplinary Authority met a similar fate inasmuch as the Appellate Authority rejected the appeal vide its order dated August 21, 1998.

11. The aforesaid orders were challenged by the respondent before the Tribunal by filing Original Application No.1822/1999. In the Original Application, the primary issue raised by the respondent was of bias of the Inquiry Officer which resulted in denial of reasonable opportunity to him to defend himself in the inquiry. The Tribunal did not agree with the contention of the respondent and dismissed the Original Application vide its order dated March 30, 2001.

12. A Review Application No.204/2001 was filed by the respondent, which was summarily dismissed by the Tribunal through circulation.

13. The respondent approached this Court by way of a Writ Petition No.11764/2004. The writ petition was taken up for hearing on September 13, 2010. This Court was of the view that when the respondent had highlighted certain facts against the Inquiry Officer, the same required consideration. In other words, this Court was of the view

that the Tribunal could not have summarily rejected the Review Application. It restored the Review Application No.204/2001 with a direction to the Tribunal to hear the same in Court on merits.

14. That pursuant thereto the Tribunal heard the Original Application No.1822/1999 on merits, which resulted in passing of the impugned order dated March 29, 2011.

15. It is the contention of the learned counsel for the petitioner that the charges framed against the respondent are of very serious nature. According to her, the respondent was in the habit of making allegations against every Inquiry Officer. She points out that the first Inquiry Officer namely P.N.Jha was replaced by a new Inquiry Officer namely Mr.P.C.Mishra only because of the allegation of bias made by the respondent. She would further submit that the Inquiry Officer Mr.P.C.Mishra was not at all biased and he conducted the inquiry as per the rules and procedure governing the inquiry. The intention of the respondent was to delay the proceedings. In fact, in furtherance of the said designs, the respondent being an Assistant Teacher and well versed in English language, started demanding the charge-sheet be given in Hindi. Such a request could not be acceded to. She submits that no leniency must be shown to the respondent.

16. On the other hand, Mr.S.Rajappa, learned counsel for the respondent would support the impugned order dated March 29, 2011. He states that the Tribunal, by setting aside the order of the Disciplinary Authority and Appellate Authority has remanded the matter back to the Inquiry Officer to conduct the inquiry afresh by giving the documents to the respondent in Hindi. This Court must dismiss the writ petition.

17. Before we deal with the rival submissions of the parties,

suffice would it be to state that the Tribunal allowed the Original Application primarily on the ground that the respondent was denied reasonable opportunity to defend himself.

18. The issue which arises for our consideration is whether there has been denial of reasonable opportunity to the respondent to defend himself in the inquiry proceedings. The 3 aspects, which according to the respondent vitiated the proceedings are: (i) the charge-sheet has not been given in Hindi, (ii) the Inquiry Officer having been arrested by the CBI for accepting bribe, (iii) the Inquiry Officer was biased as he had demanded an amount of ₹10,000/- from him.

19. In so far as the first aspect is concerned, we are of the view that the respondent being an Assistant Teacher was well versed in English language. This we say so because from the perusal of the various representations made by him, he had used certain words like 'mala fide', 'suspension', 'PTO'. Generally a person who is not aware of English would not mention these words as they are not used in normal course. If an employee understands the charges, he can defend himself. In other words, he will be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the charges are based. It is seen from his various representations that the respondent nowhere states that he does not know how to read and write English. Rather in his representation dated June 01, 1996, which is translated in English, he states '*your charge-sheet is false, wrong, and baseless and is suffered from mala fideness*'. He further states '*all the notices given to me till date are false, wrong and baseless. None of the charge is accepted by me*'. If a person is not conversant with the English, he could not have commented on the merit

of the charge. It is also noted that the respondent has filed spate of litigations concerning the inquiry, Disciplinary Authority's order and Appellate Authority's order. The petitions are in English wherein he duly verified the contents of the same. Even the counter-affidavit to this writ petition is filed by him as respondent-in-person. It is assumed that he has prepared the affidavit himself. Certain additions have been made in the counter-affidavit by hand that too in English. The verification does not show that the contents of the affidavit have been explained to him. Meaning thereby he has read and understood the contents of the affidavit. A reasonable inference can be drawn that the demand of charge-sheet in Hindi is to delay the proceedings. We do not see that any prejudice has been caused to the respondent by giving him the charge-sheet in English.

20. In so far as the second aspect is concerned, the respondent, in none of his representations/appeal has ever raised the issue of Mr.P.C.Mishra, Inquiry Officer being booked by the CBI. It appears, for the first time this aspect was taken up by the respondent in the Review Application No.204/2001 filed by him before the Tribunal and in the Writ Petition No.11764/2004 filed in this Court. Even in the Original Application there is no mention about this fact. This shows at least during the inquiry proceedings, it was not the ground of the respondent that Mr.P.C.Mishra should not act as Inquiry Officer because of the fact he has been booked by the CBI. It is an objection which was taken as an afterthought and surely would not have had any bearing on the outcome of the inquiry.

21. The third aspect of Mr.P.C.Mishra was bias does not hold good. It is seen that the respondent was in a habit of making allegations

against every person associated with the inquiry. He made allegations of bias against the first Inquiry Officer, Mr.P.N.Jha. Mr.P.N.Jha was replaced by Mr.P.C.Mishra. Against him also allegations were made which are of very serious nature. There is no evidence placed on record to show that Mr.P.C.Mishra had demanded money from the respondent. In fact one of the charge against the respondent was that while functioning as Assistant Teacher he offered ₹100/- as illegal gratification to Mr.L.D.Trikha, Principal, G.L.N.S on October 08, 1991 which charge stand proved. The respondent had not even spared the Disciplinary Authority, making allegations against her also which is clear from the perusal of the appeal filed by him with the Secretary, Department of Social Welfare. It is noted here that the Appellate Authority had considered the allegations against Mr.P.C.Mishra and the Disciplinary Authority in the respondent's appeal dated April 29, 1998 and passed a detailed order. In his conclusion the Appellate Authority was of the view *'that the respondent did not cooperate with the earlier IO also and had made wild allegations against the former IO Mr.P.N.Jha. The appellant has been trying to prejudice the minds of the higher authorities by levelling allegations against the IO as well as the Disciplinary Authority without any basis'*.

22. The Appellate Authority has also *inter-alia* concluded that allegations of the respondent, that he was not associated with the inquiry as mis-leading and not based on facts. According to the Appellate Authority, the respondent appeared before the Inquiry Officer on July 24, 1996 and June 03, 1997 and on both these occasions he refused to sign the proceedings.

23. Regrettably, the Tribunal has not considered the case from the

above perspective. It had in para No.5 come to a finding that reasonable opportunity for defence has been denied to the respondent. Such a finding is perverse. No foundation of facts was laid down by the Tribunal before coming to such a finding. Facts become relevant when allegations of bias are made against the authorities.

24. We hold that there is no denial of reasonable opportunity to the respondent in defending himself. The allegations against the authorities have been made with a motive to delay the proceedings. It is also seen that even on merit the charges against the respondent stands proved by the Inquiry Officer. The charges are very serious in nature. In appeal the respondent except making allegations against the authorities does not say much on merit of the findings of the Inquiry Officer.

25. In view of the above, we allow the writ petition and set aside the order of the Tribunal dated March 29, 2011. Accordingly the Original Application No. 1822/1999 filed by the respondent stands dismissed.

26. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 19, 2013
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