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

+ **Date of Decision: 31.01.2013**

% **W.P.(C) No.7748/2010**

S.K.TAQI

..... Petitioner

Through: Mr. M.Y. Khan, Advocate

versus

THE CEMENT CORPORATION OF INDIA

..... Respondent

Through: Mr. Arun Birbal, Advocate

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the industrial award passed by the Labour Court dated 31.03.2010 in ID No.2323/95, whereby the Labour Court X has answered the following reference made by the appropriate government against the petitioner/workman:

“Whether the dismissal of services of Shri S.K. Taqi is illegal and/or unjustified, and if so, to what directions are necessary in this regard?”

2. The petitioner also assails the order dated 07.11.2009 passed by the Labour Court in the course of the proceedings before it, whereby the Labour Court has ruled that the departmental enquiry conducted against the petitioner by the respondent is fair and proper.

3. The admitted position is that the petitioner was in the employment of the respondent Cement Corporation of India Limited (CCIL) since 1971. At the relevant time, he was serving as the Chief Sales Supervisor. He was also associated with the activities of the Cement Corporation Employees Union (Regd.). In February 1986, the petitioner applied for a Housing Building Advance (HBA) loan for construction of his house at his native place Jais, U.P. As per the relevant rules of the respondent, a loan of Rs.90,000/- was sanctioned in favour of the petitioner, payable in three installments of Rs.27,000/-, Rs.36,000/- and Rs.27,000/-. The loan was repayable by way of deduction from the petitioners salary in equated monthly installment of Rs.680/-, starting 18 months after the payment of the first installment.

4. The petitioner was released the first installment of Rs.27,000/- on 28.02.1986. Before the release of the second installment, the petitioner provided to the respondent a certificate certifying the raising of construction by the petitioner to show the utilization of the first installment of the HBA loan for the purpose for which it was taken. On the basis of the said certification, the second installment of Rs.36,000/- was also released to the petitioner.

5. It appears that the respondent conducted an on the spot verification of the construction site on 4/5.09.1989, which revealed that no construction of

any sort, or even excavation work, had been carried out on the plot of land in question. Consequently, the respondent vide memorandum dated 26.03.1990 issued a charge sheet to the petitioner alleging furnishing of false certificate and making false declaration about having spent a sum of Rs.27,000/- on the construction of his house without, in fact, carrying out any such construction work. The petitioner was alleged to have exhibited lack of integrity and conduct unbecoming of an employee of the respondent corporation.

6. Since the petitioner denied the charges leveled against him, enquiry proceedings were initiated by the respondent. One Sh. Sheo Raj Singh, IPS (Retd.) was appointed as the enquiry officer. The enquiry officer made his report dated 11.06.1990 holding that the petitioner had submitted a false certificate of utilization of the amount of Rs.27,000/- (first installment of HBA) for construction of house upto plinth level; that the petitioner, based on the false certificate of utilization of amount of first installment, drew the second installment of Rs.36,000/- of HBA; that the petitioner in violation of the rules of the respondent misused the fund sanctioned for the purpose of construction of house – which were duly drawn by him, and; that the petitioner did not construct anything on the plot of land for which he had taken the loan, within the period of 18 months, as stipulated in the HBA sanction order. All the three charges leveled against him were held to have been conclusively established.

7. The disciplinary authority of the respondent, on the basis of the enquiry report – which was accepted by him, passed an order of punishment dated 12.06.1990 imposing the penalty of dismissal from service upon the

petitioner. The petitioner preferred a departmental appeal against the said order of dismissal, which was also dismissed by the appellate authority, namely, Sh. N.E. Mishra, Director (Marketing) on 13.08.1990. The said dismissal of the petitioner led to the raising of the industrial dispute by him, which the Labour Court has adjudicated upon by the impugned award.

8. During the course of the proceedings, the Industrial Adjudicator framed the first issue as to whether the petitioner was a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947. That issue was decided in favour of the petitioner. The second issue was whether the enquiry conducted by the respondent was fair and proper. This issue was decided in favour of the respondent by the impugned order dated 07.11.2009. Consequently, the Industrial Adjudicator proceeded to consider the aspect with regard to the quantum of punishment and whether the punishment imposed upon the petitioner by the respondent employer was, or was not, shockingly disproportionate. By the impugned award dated 31.03.2010, even this issue has been decided against the petitioner by holding that in view of the charges which were established against the petitioner, the punishment imposed upon him, i.e. dismissal from service, could not be said to be shockingly disproportionate.

9. The first set of submissions of learned counsel for the petitioner is with regard to the finding returned by the Industrial Adjudicator on issue no.2, i.e. with regard to the fairness and propriety of the departmental enquiry proceedings. Learned counsel for the petitioner submits that, on the basis of the same allegations, the CBI was also investigating the petitioners conduct. However, the CBI did not find any merit in the allegations against

the petitioner. In this regard, he has referred to a document titled “Result of enquiry/investigation in cases which are closed after enquiry or investigation” pertaining to the petitioner and one other officer prepared by Superintendant of Police, CBI/SPE Lucknow. The CBI had observed that the enquiry could not substantiate the charges beyond reasonable doubt against the accused. Learned counsel for the petitioner also draws the attention of the Court to the closure report filed by the CBI in the said case.

10. On the other hand, learned counsel for the respondent submits that the standard of proof required in criminal proceedings and in departmental proceedings is quite different. He submits that it is well settled that, even if the criminal proceedings against the delinquent fail, that does not *ipso facto* lead to departmental proceedings failing, and does not prevent the employer from undertaking departmental proceedings.

11. I find merit in the submission of learned counsel for the respondent. Merely because the CBI did not find the case strong enough to be taken to trial because the evidence collected by them during enquiry could not have substantiated the charges “*beyond reasonable doubt*”, it does not mean that the respondent could not have undertaken the departmental enquiry where the required standard of proof is based on “*preponderance of probability*”. Therefore, only because the petitioner may not have been proceeded against in a criminal court, is no reason to hold that the petitioner could not have been departmentally proceeded.

12. The next submission of learned counsel for the petitioner is that the enquiry officer appointed to conduct the enquiry was not an officer serving

with the respondent. He was an outsider, i.e. a retired IPS officer. In support of his submission, he has placed reliance on Rule 30 of the CCIL (Discipline & Appeal) Rules, which prescribes the procedure for imposing major penalties. The said rule, insofar it is relevant, reads as follows:

“On receipts of the written statement of the employee, or if no such statement is received within the time specified on the expiry of such period, an enquiry may be held by the Disciplinary Authority itself or by an Officer or Committee appointed for the purpose (hereinafter called the Inquiry Authority) by the Disciplinary Authority”.

(emphasis supplied)

13. This submission of the petitioner has been considered by the Industrial Adjudicator and rejected by him observing that the enquiry could be conducted by a “committee”. A committee can be a single member committee and, if the said expression is given a reasonable interpretation, it would mean any person appointed by the disciplinary authority to conduct the enquiry. There is nothing in the rule to suggest that the word ‘committee’ is restricted to mean an employee/officer of the respondent CCIL. He also observes that the appointment of an independent enquiry officer is a factor in favour of the petitioner inasmuch, as, the appointment of an inhouse officer could have involved the allegation of favouritism, bias or pressure by the higher ups.

14. Learned counsel for the respondent supports the finding of the Industrial Adjudicator, and in support of his submission that it is not necessary under the rules to appoint a serving officer of the respondent CCIL as an enquiry officer, he places reliance on the decision in *Union of*

India & Ors. v. P.C. Ramakrishnayya, Civil Appeal No.6743/2010 decided on 18.08.2010. In this case, the enquiry officer was selected from a panel of retired officers approved by the Central Vigilance Commission. The Supreme Court, in its decision, observed as follows:

*“11. Coming back to the merits of the case, we must point out that the issue is no longer res integra. **The question of validity of appointment of a retired officer from a panel prepared for appointment of inquiry officers for holding departmental enquiry was examined in great detail in a recent decision of this Court in Union of India v. Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22]** . It may be clarified that the decision in Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] was rendered in a case under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the present case arises from Rule 14(2) of the CCS (CCA) Rules. But it needs to be pointed out that the provisions of Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 dealing with the appointment of inquiry officers are in pari materia with Rule 14(2) of the CCS (CCA) Rules. Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is as follows:*

“9. Procedure for imposing major penalties.—(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may

itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, a Board of Inquiry or other authority to inquire into the truth thereof.

(3) Where a Board of Inquiry is appointed under sub-rule (2) it shall consist of not less than two members, each, of whom shall be higher in rank than the railway servant against whom the inquiry is being held and none of whom shall be subordinate to the other member or members, as the case may be, of such Board.

Explanation.—Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (12) and in sub-rule (14) to sub-rule (25), to the inquiring authority shall be construed as a reference to the disciplinary authority.”

Rule 14(2) of the CCS Rules is reproduced hereinbelow:

“14. Procedure for imposing major penalties-

*(1)****

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a government servant, it may itself inquire into, or appoint under this rule, or under the provisions of the Public Servants(Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.”

12. It is, thus, to be seen that the only difference between Rule 14(2) of the CCS (CCA) Rules and Rule 9(3) of the

Railway Servants (Discipline and Appeal) Rules is that in the former the words “a Board of Inquiry or” are not there. But that is of no significance for the issue in hand.

13. In Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] this Court considered in great detail, the meaning of the word “authority” occurring in Rule 9(3) and came to find and hold that a retired officer could also be vested with the delegated authority of the disciplinary authority (see paras 26-62) to hold the inquiry. It may also be noted that in Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] , this Court also considered the decision in Ravi Malik v. National Film Development Corpn. Ltd. [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] and distinguished it by pointing out that it was in the context of Rule 23(b) of the Service Rules and Regulations, 1982 of National Film Development Corporation. In SCC para 45 of the judgment, the Court observed as follows: (Alok Kumar case [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] , SCC p. 367)

“45. Reliance placed by the respondents upon the judgment of this Court in Ravi Malik [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression ‘public servant’ appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that ‘public servant’ should be understood in its common parlance and a retired officer would not fall within the meaning of ‘public servant’, as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e.

‘other authority’ and ‘person/persons’. In other words, the absence of the words ‘public servant’ of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance.”

(emphasis supplied)

15. Reference has also been made to the decision of the Division Bench of this Court in **Satish Kumar Kukreja v. Additional Secretary (HE), Ministry of HRD & Ors.**, W.P.(C.) No.8878/2009 decided on 31.05.2010. The Division Bench in para 22 observed as follows:

“22. The plea on behalf of the petitioner that an inquiry officer for conduct of an inquiry cannot be a retired employee and has to be necessarily a serving employee cannot be sustained even on the ground that the disciplinary authority is entitled to take action against an erring enquiry officer but against a retired inquiry officer/inquiry authority, no such action can be initiated by such a disciplinary authority. This argument of the petitioner is without any basis and is based on the assumption of the petitioner. The rights and liabilities of retired officer acting as enquiry officer has been laid down by the memorandum of DOP&T under CCS (CCA) Rules, 1965. In the circumstances it cannot be said that no action can be taken against an erring enquiry officer who is a retired officer.”

16. The relevant rule in the present case is para materia with rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and rule 14(2) of the CCS (CCA) Rules insofar as the aspect of the appointment of the enquiry officer/enquiring authority is concerned.

17. Even otherwise one has to keep in mind that the enquiry officer is

appointed by the disciplinary authority only to conduct a fact finding exercise and to give his report to the disciplinary authority with which the said authority may, or may not, agree. The enquiry is required to be conducted in accordance with the rules and principles of natural justice. Unless there is any specific or obvious bar, or prescription in the relevant discipline rules applicable to the delinquent, which either restricts the choice of the enquiry officer or lays down a particular qualification that he must possess, there is no reason to restrict the choice of the enquiry officer by the disciplinary authority. Consequently, this submission of the petitioner is also rejected.

18. The submission of learned counsel for the petitioner that the enquiry officer in this case was appointed as he was close to the Chairman of the respondent corporation and, therefore, had a bias against the petitioner is unfounded. The petitioner has not even attempted to establish the same before the Labour Court. Even before this Court, apart from the mere oral submission made by the counsel, no material has been relied upon by the petitioner. Such a plea would have, therefore, to be rejected outrightly.

19. The next submission of learned counsel for the petitioner is that the respondent did not produce the original documents during the course of enquiry to establish the charge against the petitioner. This aspect was also raised before the Industrial Adjudicator and rejected by him and, in my view, rightly so. The Industrial Adjudicator has examined the effect of non production of the original documents/record. He has observed that the petitioner had admitted the vital facts, viz. that he had obtained the HBA from the respondent for an amount of Rs.90,000/-, to be paid in three

installments of Rs.27,000/-, Rs.36,000/- and Rs.27,000/-; the petitioner had availed of two installments; the second installment was received after giving a certificate dated 20.06.1986 of Sh. S.P. Tripathi, Asst. Engineer certifying the completion of construction work upto the plinth level and incurring an expenditure of Rs.27,250/-. The Labour Court observes that the respondent had produced Sh. S.K. Chauhan as a witness, who had visited the petitioners native place at Jais, U.P. and investigated the matter and found no construction on the spot. The petitioner had been given an opportunity to cross examine him. Pertinently, the petitioner did not cross examine the said witness. The petitioner had failed to produce any evidence to show the utilization of the two installments of the HBA given to him. He had not produced any evidence to show that he had raised any construction over the plot.

20. Before the enquiry officer, the petitioner had taken a defence only in his written arguments that he had raised construction by utilizing the HBA taken by him not only upto the plinth level, but upto the roof level, but the same was washed away by an unprecedented rain and flash flood in September 1996, eroding major part of the foundation of his house. He also stated in his affidavit before the enquiry officer that he had informed the management of these developments in writing by three letters dated 19.09.1986, 15.04.1987 and 18.09.1989 sent to the respondent.

21. Learned counsel for the respondent has drawn the attention of the Court to the cross examination of the petitioner before the Labour Court on this aspect on 07.10.2005. He stated that he was posted at the corporate office of respondent corporation at New Delhi from 1986 to 1989. He stated

that the Deputy Manager (Administration) of the respondent used to sit in the corporate office at Nehru Place. He was also posted in the Nehru Place corporate office. Even though his office and that of the Deputy Manager (Administration) were both at Nehru Place, he claimed to have issued these communications by UPC and did not deliver them either by hand or by registered post. He admits that he did not receive any reply. He denied the suggestions given to him that the UPC receipts are forged. He could not read the name of the post office on any of the UPC receipts.

22. The Industrial Adjudicator noticed that if that was the position, the petitioner would have taken the said defence in his reply to show cause notice and to the charge sheet, but no such plea was raised by him. Even in the statement of claim filed by the petitioner before the Labour Court, the petitioner had not taken the defence that he had raised the construction which was demolished by floods and rain.

23. In the light of the aforesaid, the stand of the respondent that these communications relied upon by the petitioner had never been sent and the same was also an afterthought appears to be plausible. The Industrial Adjudicator has observed that the original UPC receipts had not been produced by the petitioner. Therefore, the case of the petitioner that he had informed the respondent authorities of the collapse of the house contemporaneously cannot be accepted and has rightly been rejected by the Industrial Adjudicator. As aforesaid, no document such as bills for purchase of raw materials, receipts of construction material or payments made to labour/contractor were produced to establish the raising of construction on the plot.

24. The Industrial Adjudicator also takes cognizance of the fact that in a calamity such as heavy rain and floods which results in loss of life and property, the government and public institutions provide compensatory aid to the victims. However, the petitioner had not provided any document to show that any such compensation was ever claimed by him, or granted by the authorities after verification of his claim in this regard.

25. From the above, it appears that the finding returned by the Industrial Adjudicator that no prejudice was suffered by the petitioner on account of non production of the original document is unimpeachable.

26. Learned counsel for the petitioner submits that the petitioner had produced in the enquiry proceedings an urdu document which showed that the petitioner had lost his six relatives in the heavy rain and flood which led to the collapse of the house constructed by him and even eroded the foundation. This document records that there was a flood (sahlab) which created a whirlpool (bhanwar), due to which these precious lives were lost.

27. Learned counsel for the respondent submits that the Urdu document produced by the petitioner, in fact, did not support his case of the collapse of the house constructed by him even beyond plinth level in rain and flood and the demise of six persons of his family in the said incident. Learned counsel for the respondent has read before the Court the Hindi transliteration of the Urdu document placed in the enquiry proceedings, and has also brought to the court an English translation of the same. He further submits that even this document was never produced by the petitioner either in response to the show cause notice, or in response to the charge sheet, and

was produced for the first time with his affidavit before the enquiry officer. If there had been any truth in the story set up by the petitioner, the same would have been placed before the enquiry officer at the first instance. He submits that the said story is an afterthought of the petitioner. He submits that the petitioner has also accepted the correctness of the hindi transliteration of the urdu document. In this regard, reference is drawn to the cross examination of the petitioner conducted before the Labour Court on 24.10.2005.

28. The stand of the petitioner that his house had collapsed in rain and flood leading to death of six persons was not taken by him before the respondent authority either in response to the show cause notice, or in response to the charge sheet. It was taken for the first time in the affidavit filed by the petitioner. A perusal of the Hindi transliteration of the said Urdu document as well as the English translation thereof shows that it does not connect the alleged incident of demise of the petitioners relatives to the collapse of the house. In fact, a perusal of the Hindi transliteration and the English translation shows that there is no mention of any house collapse in rain or flood. The said incident, according to the Hindi transliteration and English translation, allegedly happened on 13.09.1986 while the relatives are stated to be returning after taking part in procession of martyrs of Karbala at Prashadipur to their own land at Kasba Nasirabad, Distt. Raibareli on the road. The document states that one young man fell down and in an attempt to save each other, seven persons became victims of flood and vortex (bhanwar). Dead bodies were found one after the other. The incident reported in the urdu document, therefore, does not even appear to

have taken place (if at all), in the petitioners so called house stated to have been constructed by using the HBA. The said relatives are not even stated to have died in a wall collapse of the petitioner's house. There is nothing to connect the said alleged unfortunate incident with either the petitioner or his alleged house. The submission of the petitioner founded upon the said Urdu document was, therefore, rightly rejected.

29. Learned counsel for the petitioner has also submitted that the enquiry proceedings were concluded on one day. This submission is clearly contrary to the record. Mr. Birbal has shown to the Court the proceeding sheets of various proceedings conducted by the enquiry officer which are found at pages 109, 115, 126, 128, 131, 150 and 153 of the lower court record. The first proceeding was held on 17.04.1990 and thereafter they were also held on 25.04.1990, 04.05.1990, 10.05.1990, 01.06.1990. In the proceedings held on 01.06.1990, the petitioner walked out of the proceedings and the enquiry officer decided to proceed ex-parte against him. The enquiry was thereafter held on 04.06.1990 and 07.06.1990. Therefore, there is no merit in the aforesaid submission of the petitioner.

30. Learned counsel for the petitioner next submits that the Industrial Adjudicator has committed a patent error in the impugned order dated 07.11.2009 by observing that the petitioner had not preferred a departmental appeal against the order imposing penalty dated 12.06.1990. To this, learned counsel for the respondent has pointed out that the Industrial Adjudicator has corrected this error while dealing with the review vide order dated 23.01.2010. In any event, the said typographical error in the order dated 07.11.2009 does not impinge on its validity.

31. I find merit in the submission of learned counsel for the respondent and in view of the fact that this error stood corrected by the subsequent order, there is no merit in the submission of learned counsel for the petitioner.

32. Learned counsel for the petitioner next contended that the charge sheet had been issued by the same officer who eventually decided the petitioners departmental appeal. He submits that the authority who had already made up his mind against the petitioner while issuing the charge sheet could not have decided the petitioners departmental appeal. In this regard, he has drawn the attention of the Court to the memorandum dated 15.02.1990 issued to the petitioner by Sh. M.E. Mishra, Senior Manager (Marketing) making the allegations against the petitioner of obtaining the HBA installments on false declaration and false certificates and of misusing the same. He has also tendered in Court the appellate order dated 13.08.1990 passed by the same officer Sh. M.E. Mishra.

33. Though on the face of it, the aforesaid submission appears to be attractive, on a perusal of the record and closure scrutiny, I find no merit in the same. The memorandum dated 15.02.1990 was issued by Sh. M.E. Mishra as Senior Manager (Marketing) of the respondent corporation. The same is not the charge sheet issued to the petitioner in the case in question. The charge sheet has been issued to the petitioner on 26.03.1990 by Sh. B. Sahay, Chief Manager (P&A). This memorandum contains the articles of charge, the statement of imputation of misconduct and misbehavior in support of the articles of charge, the list of witness and the list of documents, on the basis of which the management sought to establish the charge.

34. The memorandum dated 15.02.1990 issued by Sh. Mishra while functioning as Senior Manager (Marketing) was, firstly, not a charge sheet and, secondly, was not issued by him in his personal capacity. It is not that he had himself concluded that the petitioner was guilty of the charges leveled against him. This memorandum, in fact, called upon the petitioner to furnish his explanation which clearly shows that Sh. Mishra was functioning as Senior Manager (Marketing) did not draw any conclusions against the petitioner. The same was a ministerial act done by him in the course of discharge of his official duties.

35. On the other hand, the said officer Sh. Mishra while deciding the appeal on 13.08.1990 applied his mind to the appeal preferred by the petitioner and dismissed the same. This was a decision taken by Sh. Mishra in his official capacity while functioning as Director (Marketing). It, therefore, cannot be said that while deciding the petitioners appeal, Sh. Mishra, Director (Marketing) acted with any bias or premeditation against the petitioner. I do not find any merit in this submission of the petitioner.

36. Learned counsel for the petitioner next contended that the enquiry officer conducted the proceeding at his residence and not in the office premises of the respondent corporation. The basis for this submission is that in the notices/communications issued by the enquiry officer, he has mentioned his residential address. This submission was raised by the petitioner before the Industrial Adjudicator as well, and rejected by him in the following words:

“In the order sheet of 07.06.90 on page no.153 at point A to A1, the enquiry officer has given specific reason for giving his

residential address in the enquiry proceeding. In the order sheet of 07.06.1990 it is mentioned that:

“The proceedings all along against him have been held in Room No.301, Shakuntla Apartment, 59, Nehru Place, New Delhi. His allegation that I held the proceedings on 4th June 90 at my residence and he did not find me in the room in which the proceedings were always held in Nehru Place, is not correct. The proceedings were held on 04.06.90 in the same room i.e. 301, Shakuntla Apartment, 59, Nehru Place, New Delhi from 1000 hours to 1215 hours, during which period the oral arguments of the PO were also heard. The residential address of the Inquiry Authority was mentioned on the order sheet dated 04.06.90 to facilitate the CO to file his written arguments, if he so chose to, during the intervening period between 04.06.90 to 07.06.90.

In spite of repeated advice and also the established practice, the Charged Officer has not been sending copies of his communications addressed to the Inquiring Authority, to the Presenting Officer. To overcome the difficulty of the Presenting Officer, the undersigned had been getting photocopies made of the Charged Officer’s communications and delivering these to the P.O. A copy of his letter dated 07.06.90 along with annexures also has been given to the P.O. accordingly”.

In view of explanation mentioned above in the order sheet itself and in view of the fact that the workman had in fact not joined the enquiry proceedings, no bias can be attributed nor it can be proved that the proceeding were conducted at the residence of the enquiry officer more so when the workman has chosen not to appear before the enquiry officer on these dates”.

37. From the above, it is clear that the enquiry proceedings were

conducted in the office of the respondent corporation and not at the residence of the enquiry officer. Since he was a retired IPS officer, he may have furnished his address in the communications and also permitted the filing of documents, inter alia, at his residence, but that does not lead to the conclusion that the enquiry proceedings were conducted by him at his residence. In any event, the conduct of the enquiry proceedings at one or the other venue, by itself, would not vitiate the enquiry unless it could be shown by the delinquent that he was, in any manner, prejudiced due to the conduct of the enquiry at one or the other venue. This has not been urged, much less shown, by the petitioner.

38. Learned counsel for the petitioner has then contended that after the furnishing of the enquiry report, the petitioner was not provided a copy of the same and no second show cause notice was issued to him before the imposition of penalty of dismissal by the disciplinary authority.

39. In this case, as pointed out by learned counsel for the respondent, the punishment was imposed upon the petitioner vide order dated 12.06.1990 which happened to be before the date of the decision of the Supreme Court in *Union of India v. Mohd. Ramzan Khan*, 1991 (1) SCC 588. The decision whereby it became obligatory for the disciplinary authority to furnish the enquiry report to the delinquent/employee (in cases where the enquiry has been conducted by an enquiry officer other than the disciplinary authority) before the imposition of penalty and to grant an opportunity to the delinquent to represent against the enquiry report before the punishment is imposed, was cast by the said decision. The said judgment itself prescribed that the law laid down by the Supreme Court was prospective in operation,

i.e. applicable to the orders of punishment passed after 20.11.1990.

40. The petitioners case having been decided by the disciplinary authority prior to 20.11.1990, i.e. on 12.06.1990, was not covered by the decision in **Mohd. Ramzan Khan** (supra). This aspect has repeatedly been considered by various courts including the Supreme Court in **Managing Director, ECIL v. B. Karunakar**, 1993 (6) JT (SC) 1, and also in **Commandant, Central Industrial Security Force & Ors. v. Bhopal Singh**, AIR 1994 SC 573. The Supreme Court in **Bhopal Singh** (supra) has observed as follows:

“4. Mohd. Ramzan Khan case [From the Judgment and Order dated March 12, 1992 of the Calcutta High Court in F.M.A.T. No. 2488 of 1991] has since been considered by a Constitution Bench of this Court in Managing Director, ECIL, Hyderabad v. B. Karunakar [(1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704] (Civil Appeal No. 3056 of 1991 with connected cases) decided on October 1, 1993. The Bench formulated seven questions for consideration. Question Nos. VI & VII are as under:

“(vi) From what date the law requiring furnishing of the report, should come into operation?”

(vii) Since the decision in Mohd. Ramzan Khan case [From the Judgment and Order dated March 12, 1992 of the Calcutta High Court in F.M.A.T. No. 2488 of 1991] has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after November 20, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to November 20, 1990?”

5. *The relevant findings of the Bench are reproduced as under: (SCC p. 764, para 43)*

“It will, therefore, have to be held that notwithstanding the decision of the Gujarat High Court in N.N. Prajapati case [Union of India v. N.N. Prajapati, (1985) 2 GLR 1406] and of the Central Administrative Tribunal in Premnath K. Sharma case [Premnath K. Sharma v. Union of India, (1988) 6 ATC 904 : (1988) 3 SLJ (CAT) 449] and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan Khan case [From the Judgment and Order dated March 12, 1992 of the Calcutta High Court in F.M.A.T. No. 2488 of 1991] was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan case [From the Judgment and Order dated March 12, 1992 of the Calcutta High Court in F.M.A.T. No. 2488 of 1991] . This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K.

Vashisht case [R.K. Vashisht v. Union of India, 1993 Supp (1) SCC 431 : 1993 SCC (L&S) 153 : (1993) 23 ATC 444(II)] .”

6. *In view of the authoritative pronouncement by this Court in B. Karunakar case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the impugned judgment of the High Court has to be set aside.*

7. *Mr A.P. Mohanty, learned counsel for the respondent, contended that apart from the point dealt with by the High Court, there were several other points raised in the writ petition before the High Court. According to him, since the High Court allowed the writ petition on the short ground of non-supply of the copy of the enquiry report, it did not go into other points. On December 9, 1992 we adjourned the hearing to enable Mr Mohanty to place on record of this Court copy of the writ petition filed by the respondent before the High Court to find out as to what other points were raised by him before the High Court. He has done so. We have carefully gone through the copy of the writ petition. In paras 21 and 22 of the writ petition it has been vaguely stated that the petitioner was not permitted to inspect the documents which were necessary for preparation of the written statement, was denied the right to inspect the documents, was not permitted to cross-examine the prosecution witness effectively and his prayer for de novo inquiry was wrongly rejected. These are bald allegations in the writ petition without any factual details. No arguable point can be culled out. No useful purpose will be served in sending the case back to the High Court for further hearing”.*

41. In view of the aforesaid decision, no error can be found in the disciplinary authority not furnishing a copy of the enquiry report to the petitioner, or granting him an opportunity to represent against the same before imposing the penalty of dismissal vide order dated 12.06.1990. This

argument of the petitioner is, therefore, rejected.

42. Learned counsel for the petitioner then made his submission on the aspect of disproportionality of punishment imposed upon the petitioner. He submits that such a harsh punishment has been imposed upon the petitioner because he was a union leader and a whistle blower. The respondent wanted him out of the way somehow or the other. He submits that the loan obtained by the petitioner was duly secured by creation of a mortgage in favour of the respondent. He further submits that the loan already stands recovered. If there was a breach of the terms of the loan, the respondent was entitled to recover the same with interest. The breach of the terms and conditions of the loan could not result in the petitioner being dealt with so severely as to his being dismissed from service.

43. Learned counsel for the respondent has countered the submission of the petitioner by submitting that the monies had to be recovered from the petitioner by instituting a civil suit and obtaining a decree therefrom. It is not that the petitioner voluntarily returned the two installments of HBA taken by him. He submits that the petitioner's misconduct was serious, as he submitted a false certificate and a false declaration, knowing them to be false, and he had misused the HBA.

44. The submission that the penalty imposed upon the petitioner was disproportionate to the misconduct has also been dealt with by the Industrial Adjudicator in detail. The petitioner had placed reliance in the case of **A.L. Kalra v. The Project and Equipment Corporation of India Limited**, AIR 1984 SC 1361, which he has also relied upon before this Court. However, I

find that the reasoning of the Industrial Adjudicator to be completely proper and acceptable after rejecting the said reliance. Firstly, in the present case, the concerned rules provided that if the advances are utilized for purposes other than for which they were provided, the same may be not only be recalled in lumpsum, but that would also render the employee concerned liable to disciplinary action. Even more importantly, the petitioner has been found guilty of furnishing false certificate and false declaration about his having spent the first installment of the HBA and of his raising construction at the site. The petitioner knowingly committed these misconducts. It is this misconduct of furnishing knowingly false certificates and making knowingly false declaration which is vent serious and, in my view, justifies the imposition of the penalty of dismissal from service.

45. No other submission has been urged by the petitioner.

46. I, therefore, find absolutely no merit in this petition and dismiss the same, leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

JANUARY 31, 2013

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