

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**Reserved on: 03.11.2023
Pronounced on: 21.12.2023**

WP (C) 1190/2023

1. Union Territory of Jammu & Kashmir through Commissioner/Secretary to Govt.
Food Civil Supplies and Consumer Affairs Department,
Civil Secretariat Jammu/Srinagar
2. Director,
Department of Food Civil Supplies and Consumer Affairs,
Jammu/Srinagar.
3. Additional Secretary,
Department of Food Civil Supplies and Consumer Affairs,
Jammu/Srinagar.

... Petitioners

Through: Mr. Hakim Aman Ali, DAG

V/s

Fayaz Ahmad Lone
S/o Sh. Ab. Rahi M. Lone
R/o Rudbug, Agar Kallan, Baramulla, Handwara,
Jammu and Kashmir.

... Respondent

Through: Mr. Sanchit Verma, Advocate

**CORAM: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

J U D G M E N T

Per Javed Iqbal J'

1. In the instant petition filed under Article 226 of the Constitution, the petitioners herein have sought a writ of certiorari for quashing judgment dated 25.1.2023 (for short impugned judgment) passed by the Central Administrative Tribunal, Srinagar Bench (for short the Tribunal), in case titled as "Fayaz Ahmad Lone versus UT of J&K and others".

2. The background facts under the cover of which the aforesaid relief is being prayed by the petitioners herein are that the respondent herein was working as a Store Keeper in the department of Consumer Affairs and Public Distribution (CAPD) since 2013 and while he was posted as such at Kulungam with effect from 17.9.2017, the Anti-Corruption Bureau (ACB) of Central Bureau of Investigation (CBI) registered an FIR no. RC1232017A0004 against various officials of CAPD and Food Corporation of India (FCI) wherein the respondent herein initially was though not implicated as an accused, yet upon completion of investigation, the respondent herein too was named as an accused.
3. And, on account of the filing of the aforesaid charge-sheet, the respondent herein came to be placed under suspension and a departmental enquiry was initiated against the respondent herein by the department and articles of charge and statement of imputation came to be served upon the respondent herein on 29.1.2020 seeking his explanation thereto, to which the respondent herein replied on 20.2.2020 and denied the allegations/charges, whereafter on completion of the said enquiry the respondent herein came to be served with a notice of proposed dismissal from service dated 5.11.2020 calling upon the respondent to show cause as to why major penalty of dismissal from service be not imposed upon him to which the respondent herein replied.
4. The said provisional notice of dismissal dated 5.11.2020 came to be challenged by the respondent herein before the Tribunal in OA no.

62/1104/2020 which, however, came to be disposed of as withdrawn by the counsel for the respondent herein on 25.11.2020 permitting the respondent herein to take up all the grounds taken in the O.A. in his defence against the provisional notice of dismissal dated 5.11.2020, whereafter the respondent herein came to be dismissed from service vide order dated 15.12.2020 (for short dismissal order) in terms of J&K Civil Services (Classification, Control and Appeal) Rules of 1956 (for short the CCA Rules) with the disqualification from seeking any future employment under the Government of Jammu and Kashmir.

5. The dismissal order dated 15.12.2020 came to be questioned by the respondent herein in OA./1294/2020 before the Tribunal *inter alia* on the grounds that the order suffers from malice and personal bias having been issued without appreciating the reply filed by the respondent herein and that the impugned order came to be issued without complying with the principles of natural justice as the respondent herein was neither allowed to cross-examine the witnesses produced by the petitioners herein nor the statements of witnesses were furnished to the respondent herein and that the dismissal order is based on the record which was never furnished to the respondent herein and that the dismissal order was issued without establishing that the respondent herein was involved in corrupt practices or had taken any illegal gratification and that the dismissal order has been severe in nature which has been issued against the respondent herein after rendering 18 years of services by

him and that the mandate of Rules 33 and 34 of the CCA Rules was not followed and that the articles of charge served upon the respondent herein is similar and identical to the allegations levelled in the charge sheet filed against the respondent herein by the ACB, as such, no disciplinary inquiry ought to have been conducted and that the dismissal order was never served upon the respondent herein.

6. The petitioners herein being respondents before the Tribunal have filed objections to the O.A. filed by the respondent herein, admitting therein that the respondent herein was working as Store Keeper with them as also the involvement of respondent herein in FIR *supra* relating to the misappropriation of food grains and that the respondent herein came to be placed under suspension on account of his involvement in the FIR and consequently a departmental enquiry was initiated which departmental enquiry was concluded following due course and the rules, wherein the enquiry officer did not examine any witness but relied upon documentary evidence which established miss-conduct committed by the respondent herein proving the same to have been committed by the respondent herein thus resulting the imposition of major penalty against the respondent herein and consequently in terms of order dated 15.12.2020 the respondent came to be dismissed from service.
7. The Tribunal after considering the matter consisting of the pleadings of the parties coupled with the material available thereon as also the record pertaining to the departmental enquiry initiated against the

respondent herein by the petitioners herein passed the impugned judgment whereby the dismissal order dated 15.12.2020 came to be quashed by the Tribunal directing the petitioners herein (being respondents before the Tribunal) to reinstate the respondent herein forthwith with all consequential benefit flowing therefrom except the back wages, which is challenged by the petitioners herein on the grounds urged in the petition.

Heard learned counsel for the parties and perused the record.

8. Having regard to the nature of issues involved in the instant petition, it would be advantageous and appropriate in the first instance to refer to Rules 33 and 34 of CCA Rules *supra* being admittedly applicable to the case of the respondent herein and indisputably having been invoked by the petitioners herein against the respondent herein before issuing the order of dismissal dated 15.12.2020.

33.(1) Without prejudice to provisions of the Public Servants Inquiries Act, 1977, no order (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) of dismissal, removal, or reduction in rank 1[which includes reduction to a lower post and/or lower timescale, - and/or to a lower stage in time-scale] but excludes the reversion to a lower post of a person who is holding a higher post temporarily shall be passed on a person who is a member of a Civil service, or holds a Civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded and adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to

state whether he desires to be heard in person. If he so desires, or if the authority concerned so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard, as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish; provided that the officer conducting the inquiry may for sufficient reason to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

(2) The rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him, or where in the interest of the security of the State, it is considered not expedient to give to that person an opportunity of showing cause against the action proposed to be taken against him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to the person charged.

(3) This shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, or to dismiss, remove or reduce in rank a temporary government servant, for any specific fault or on account of his unsuitability for the service.

(4) The competent authority may inquire into the charges itself or if it considers it necessary so to do, it may appoint an inquiry officer for the purpose.]

34. after the inquiry against a government servant has been completed, and after the authority competent to impose penalty has arrived at provisional conclusions in regard to the penalty to be imposed, the government servant charged shall, if the penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under rule 33 excluding the recommendations, if any, in regard to punishment, made by the officer conducting the inquiry and asked the show cause by a particular date with affords him reasonable time, why the proposed penalty should not be imposed on him.

What emanates from the aforesaid Rule 33 is that the same provide for **two opportunities** before disciplinary action by way of dismissal, removal or reduction in rank is taken against a delinquent officer. The **first opportunity** comprises of framing of charges and its service upon the delinquent officer, the consideration of the written statements of the defence filed by him and ordering of oral enquiry, if necessary, and finally holding of enquiry into these charges. It also emerges from the Rule 33 *supra* that these steps are required to be taken by the disciplinary authority itself which cannot delegate taking of such steps to any other authority much less an authority subordinate to it. The **second opportunity** commences after the enquiry has been completed and the disciplinary authority has considered the enquiry report and comes to a provisional conclusion about the guilt of the delinquent officer and the penalty which would meet the requirements of the case. If the proposed penalty is major in nature then the disciplinary authority is required to issue a second notice to the delinquent officer calling upon him to show cause against the same. The issuance of the second notice is contemplated by Rule 34 *supra* and has to be accompanied with the report of the enquiry.

9. It also is significant to note here that, in law, the object of holding of a disciplinary enquiry is to enable the disciplinary authority to hold the investigation into the charges framed against the delinquent officer so that the disciplinary authority can in due course consider the evidence adduced and decide whether the said charges are

proved or not. The enquiry officer in the matter of holding of a disciplinary enquiry against a delinquent officer acts as a delegatee of the disciplinary authority and the evidence recorded by such an enquiry officer is intended merely to supply appropriate material for the consideration of the disciplinary authority. The report of enquiry is tentative in nature and may or may not be accepted by the disciplinary authority as under the Rules *supra* it is the disciplinary authority alone which has to reach to the conclusion as to whether or not a delinquent is guilty and the disciplinary authority in the matter places its conclusion on the basis of its assessment of evidence taking into account the report of enquiry, reasoning articulated by the inquiry officer and the recommendations, if any, made by such enquiry officer.

10. Reverting back to the case in hand, perusal of the record produced by the counsel for the respondents before this court manifestly demonstrate that the Tribunal has rightly appreciated the same and correctly drawn the conclusions thereof in particular *qua* the inquiry officer who while holding the inquiry has failed to comply with the mandate of Rules 33 and 34 of the CCA Rules and also in the process has violated the principles of natural justice and fair play in the matter.

Further, perusal of the record, in particular the impugned order of dismissal, would also tend to show that even the disciplinary authority has failed to consider the matter in its true and correct perspective, be it the compliance of Rule 33 or the mandate of Rule

34 of the CCA Rules, in that, in law, there must exist reasonable basis for the disciplinary authority to proceed against delinquent officer as suspicion has no role in such a matter. A closer examination of the record tends to show that both the inquiry officer as well as the disciplinary authority seemingly have got influenced in the matter by the registration of the FIR against the respondent herein under the provisions of Prevention of Corruption Act and the material/evidence collected in the said FIR during the course of investigation and have instead without proving the allegations against the respondent herein in the disciplinary proceedings initiated against him on the basis of evidence relied upon in the said inquiry, having instead chosen to shift burden of proof upon the respondent herein to prove his innocence without first establishing and proving the charges drawn and framed against the respondent herein in the enquiry. A reference in this regard to the judgment of the Apex Court passed in case titled as **“United Bank of India v. Biswanath Bhattacharjee reported in 2021 LiveLaw (SC) 109”** becomes imperative, wherein the Apex Court at para 17 has held as under:

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced

by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.”

11. Though having regard to the aforesaid position the matter could have been remitted back to the disciplinary authority for conducting of the disciplinary inquiry against the respondent herein in the matter, particularly on account of complete departure made by the inquiry officer, and the disciplinary authority in the matter of inquiry against the respondent herein, however, considering the fact that a considerable period of time has elapsed since the date of initiation of enquiry, it may not be in the interest of justice to direct the petitioners to re-hold the inquiry from the stage the petitioners have faltered in the matter. Our this view is supported by the law laid down by the Apex Court in case titled as **Allahabad Bank and others v. Krishna Narayan Tewari** reported in AIR 2017 SC 330.

12. Viewed thus, for the aforesaid reasons detailed out hereinabove, we are not inclined to interfere with the impugned judgment dated 25.1.2023 passed by the Tribunal. Resultantly, the writ petition fails and is accordingly **dismissed**.

13. Record produced by counsel for the petitioners be returned back.

(JAVED IQBAL WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

Srinagar
21-12-2023
N Ahmad

Whether the order is speaking: Yes

Whether the order is reportable: Yes