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

+ **Date of Decision: 29.09.2015**

% **RSA 144/2014 and CM APPL. 9661/2014**

UNION OF INDIA & ORS

..... Appellants

Through: Mr. Ripu Daman Bhardwaj, CGSC  
and Mr. T.P. Singh, Advocate along  
with Mr. A.K. Singh, LO – CISF.

versus

HARPAL SINGH

..... Respondent

Through: Mr. H.S. Dahiya, Advocate.

**CORAM:**

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

**VIPIN SANGHI, J. (OPEN COURT)**

1. The present second appeal is directed against the judgment & decree dated 10.03.2014 passed by the learned ADJ (Central-07)/ Delhi in RCA No.68/2013, whereby the learned ADJ dismissed the first appeal preferred by the appellant/ defendant and affirmed the judgment and decree passed by the learned Senior Civil Judge-cum-Rent Controller (Central), Tis Hazari Courts, Delhi in Suit No.479/2006 filed by the respondent/ plaintiff to seek the relief of declaration.

2. The plaintiff was working as a Head Constable in the Central

Industrial Security Force (CISF) at the CISF Unit PTPS Panki, Kanpur. A charge memorandum was issued to him on 04.03.1999 alleging certain misconducts. The misconducts, in substance, were that on the occasion of Holi on 03.03.1999, the respondent/ plaintiff had consumed liquor in the Unit Line and when he was asked to go for medical check up to the hospital, he opposed the same and abused the Unit Officer/ Sub-Officer and attacked Sh.D.S. Yadav, AC/Fire, Insp/ Fire – T.K. Raghulal and Insp/ Exe – M.P. Singh by using fists, and kicking with his legs. Other charges were also related to the same incident. It appears that the said charge-sheet was preceded by a preliminary inquiry. The charge-sheet enlisted several documents as the relied upon documents, which included the *Roznamacha* (General Diary) dated 03.03.1999 bearing serial Nos.99, 97, 101, 104, 111, 113, 114, 115 and 116. It also included the doctor's investigation report, and the preliminary inquiry report pertaining to the plaintiff.

3. In the departmental inquiry that followed, the respondent/ plaintiff was held guilty of misconduct and, accordingly, he was punished by the disciplinary authority. He was awarded the punishment of dismissal from service. His departmental appeal was also rejected. Eventually, he preferred the present suit.

4. The grievance of the plaintiff was that the inquiry was vitiated on account of non-compliance of the principles of natural justice, since he had not been provided with the relied upon documents. The plaintiff relied upon the observation made by the appellate authority in his appellate order that the plaintiff had not been provided with the relied upon documents. The Trial Court decreed the suit by observing that the relied upon documents had

not been supplied to the plaintiff. Thus, the inquiry was vitiated on account of violation of the principles of natural justice.

5. The First Appellate Court has concurred with the said finding and dismissed the first appeal.

6. The submission of learned counsel for the appellant is that, firstly, the respondent/ plaintiff was indeed supplied the relied upon documents inasmuch, as, during the preliminary hearing in the inquiry proceedings itself, he was granted inspection by the Inquiry Officer. Learned counsel submits that in the preliminary hearing conducted on 11.03.1999, the respondent delinquent was offered inspection of the documents relating to the case and he had availed of the said opportunity. Question No. 5 put to him during the preliminary hearing was: “*Would you like to inspect any documents relating to the case?*” He answered by stating: “*Yes, I would like to read all the GD relating to the case/ charges*”. Learned counsel submits that the Inquiry Officer had thereafter noted that: “*The General Diary dated 03.03.1999 at serial Nos.99, 97, 101, 104, 111, 113, 114, 115 and 116 was inspected by the Head Constable/ Fire Harpal Singh*”. Learned counsel submits that thus, it cannot be said that the inquiry was vitiated on account of non-supply of relied upon documents. He further submits that the respondent/ plaintiff never raised the issue of non-supply of relied upon documents during the course of inquiry.

7. Learned counsel for the appellant has placed reliance on the judgment of the Supreme Court in ***Chandrama Tewari Vs. Union of India, Through General Managr, Eastern Railways***, (1988) 1 SCR 1102, wherein the

Supreme Court has held that it is not necessary that each and every document must be supplied to the delinquent government servant facing charges. Only material and relevant documents are necessary to be supplied to him. If a document, even though mentioned in the Memo of charges, is not relevant to the charges, or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges as proved against the government servant, no exception can be taken to the validity of the proceedings or the order passed on the ground of non- supply of the copy of the order.

8. He also placed reliance on ***Divisional Manager, Plantation Division, Andaman & Nicobar Islands Vs. Munnu Barrick and Others***, (2005) 2 SCC 237, wherein the Supreme Court has observed that the principles of natural justice cannot be a straight jacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regards compliance of the principles of natural justice, the Court may insist upon proof of prejudice - before setting aside the order impugned before it. It also referred to the judgment in ***Managing Director, ECIL Vs. B. Karunakar***, (1993) 4 SCC 727, wherein it has been held by the Supreme Court that the employee must show sufferance of prejudice by non-obtaining a copy of the inquiry report.

9. Reference was also made to ***Canara Bank Vs. Debasis Das***, (2003) 4 SCC 557, wherein the Supreme Court had observed that “*unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise and jurisdiction*”.

10. On the other hand, learned counsel for the respondent/ plaintiff submits that the inspection was granted only in respect of the General Diary entries, and not in respect of the other relied upon documents, namely the doctor's investigation report and the preliminary inquiry report. The statement of witnesses recorded in the said preliminary inquiry were also not provided to the plaintiff. The said documents were neither provided to the respondent, nor their inspection was provided.

11. Learned counsel submits that at the appellate stage, the very first plea raised by the respondent delinquent was with regard to the non-supply of the relied upon documents. The appellate authority in his appellate order dated 29.09.1999 acknowledged the fact that *“as per records, it appears correct that the disciplinary authority did not provide the relied upon documents along with the memo of charge based on which allegations were made. But the appellant neither disclosed this fact before submitting reply to the memo of charges nor demanded for the same at any time”*. Learned counsel submits that when such a serious infirmity was brought to the notice of the appellate authority, and the respondent pleaded grave prejudice and breach of principles of natural justice, the appellate authority should have remitted the case back to the disciplinary authority for holding the inquiry after providing copies of the said relied upon documents. However, that was not done.

12. Learned counsel for the respondent also placed reliance on ***Chandrama Tewari*** (supra) and the judgment in ***State of U.P. Vs. Shatrughan Lal & Another***, (1998) 6 SCC 651, wherein the Supreme Court held that where the statements of preliminary inquiry were not supplied to

the delinquent, the inference was correctly drawn that effective opportunity of hearing was not given to the delinquent, and that the employer had failed to establish that the non-supply of copy of the statements recorded during the preliminary hearing did not cause any prejudice to the delinquent. Thus, it is submitted that it was for the department to show that the delinquent was not prejudiced, and not for the delinquent to establish the prejudice.

13. Having heard learned counsel and perused the judgment of the Trial Court, the First Appellate Court as well as the original inquiry file produced before this Court by the appellant, I am of the view that there is no infirmity in the impugned judgments and decrees passed by the First Appellate Court and the Trial Court, and no substantial question of law arises for consideration in the present second appeal. The two Courts below have returned consistent findings of fact with regard to non-supply of relied upon documents to the respondent/ plaintiff, as well as with regard to vitiation of the inquiry proceedings on account of breach of principles of natural justice. The appellant has not been able to show that the impugned judgments and decrees suffer from any perversity, or that there has been a misdirection of approach of the Courts below in the matter of appreciation of evidence or the law.

14. A perusal of the original record - produced by the appellant, itself shows that the respondent was, in fact, not provided with the relied upon documents. He had been provided - during the preliminary hearing, with inspection of only General Diary entries, as aforesaid. The preliminary inquiry report, and the statements recorded in the said proceeding, were not supplied to the respondent. Even the doctor's investigation report relied

upon was not provided to him. No doubt, the delinquent did not raise the issue of non-supply of the said relied upon documents either at the stage of furnishing his reply to the charge-sheet, or during the course of inquiry proceedings. He also did not raise the said aspect while replying to the show-cause notice issued by the disciplinary authority after furnishing of the inquiry report. However, he did raise the said aspect before the appellate authority, and the appellate authority acknowledged the fact that he had not been supplied with the relied upon documents. However, the appellate authority rejected the submission of the respondent/ plaintiff by observing that the said issue could not be raised at the appellate stage.

15. The Supreme Court in *Shatrughan Lal* (supra) has observed that the burden of proof that the charged employee was not prejudiced on account of non-supply of statement recorded during preliminary inquiry, is on the Department and not on the employee. Thus, it was for the appellant to establish that non-supply of the preliminary inquiry report and the statements recorded at that stage, and the doctor's investigation report, did not vitiate the inquiry. This is also evident from the observations made by the Supreme Court in *Chandrama Tewari* (supra). The Supreme Court observed that it is not necessary that each and every document must be supplied to the delinquent government servant facing charges; instead, only material and relevant documents are necessary to be supplied to him. Therefore, it was for the appellant to establish that the non-supply of the doctor's report and the preliminary inquiry report did not vitiate the inquiry on account of prejudice being caused to the respondent delinquent. The Supreme Court in *Chandrama Tewari* (supra), *inter alia*, observed as

follows:

*“It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges proved against the officer, the enquiry would be vitiated for the violation of principles of natural justice.”*

16. The observations made by the Supreme Court in ***Munnu Barrick*** (supra) and ***Canara Bank*** (supra) relied upon by the appellant, do not advance its case. The principles laid down by the Supreme Court in the aforesaid decisions have to be applied in the facts of each case. It cannot be said the respondent/plaintiff did not suffer prejudice – despite not being supplied the preliminary inquiry report, and the doctors investigation report since the allegation was with regard to consumption of alcohol and violence, insubordination and misbehavior following the instructions to the respondent to get himself medically examined.

17. In the present case, as noticed above, the delinquent had raised the issue of non-supply of the relied upon documents at the departmental appellate stage itself. Therefore, it cannot be said that the said issue was not raised at an earlier individual stage. Therefore, I find absolutely no infirmity in the impugned judgments and decrees.

18. This appeal is, accordingly, dismissed.

**VIPIN SANGHI, J**

**SEPTEMBER 29, 2015**

*B.S. Rohella*