

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

Judgment reserved on August 05, 2015
Judgment delivered on September 22, 2015

+ **W.P.(C) 12871/2009 & CM 17987/2014**

PRADEEP SINGH AHLUWALIA Petitioner

Through: Petitioner in person

versus

SECRETARY, MINISTRY OF TOURISM AND ANR.

..... Respondent

Through: Mr. Prashanto Chandra Sen,
Adv. with Ms. Anushruti &
Ms. Ankita Saikla, Adv. for
R-2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present petition has been filed by the petitioner inter-alia seeking the following reliefs:-

*“(a) pass an order to quash the order dated 18.09.2006 (Annexure-A) of compulsory retirement by issuing a writ of certiorari;
(b) pass an order, direction of reinstatement of the petitioner through a writ of mandamus with all consequential benefit and effects etc. including his seniority promotions etc.;”*

2. The above reveals that, the challenge is limited to order dated September 18, 2006. I note, that against the said order, the petitioner had filed an appeal before the Appellate Authority on October 16, 2006,

which culminated in an order dated May 30, 2007. Accordingly, this Court would also consider the legality of the said order as well.

The Facts:-

3. Some of the relevant facts are, the petitioner while working in the respondent No.2 organisation, was issued two charge sheets dated February 14, 2003 and March 7, 2003. The subject-matter of this petition is the charge sheet dated March 7, 2003 and the consequential proceedings, which culminated in the Enquiry Report dated May 21, 2004, Disciplinary Authority's order dated September 18, 2006 and the Appellate Authority's order dated May 22, 2007. Two Articles of Charge were framed against the petitioner vide memorandum dated March 7, 2003. It was the case of the petitioner that the said memorandum was never served on him. The Enquiry Officer held ex-parte proceedings against the petitioner and held both the Articles of Charge as proved. The petitioner was given the copy of the enquiry report vide letter dated June 2, 2004/June 21, 2004, to which the petitioner submitted the reply vide his letter dated July 5, 2004. The Disciplinary Authority, upon consideration, imposed a penalty of compulsory retirement on the petitioner. As stated above, the petitioner exercised the remedy available to him under the Rules by filing an appeal on October 16, 2006. It is

noted that the Appellate Authority i.e the Board of the respondent No.2 organisation gave personal hearing to the petitioner and rejected the appeal vide order dated May 30, 2007.

4. Mr. Pradeep Singh Ahluwalia, who appeared in person, has primarily challenged the impugned orders on various grounds including that the penalty of compulsory retirement is hit by Article 311(2) of the Constitution, arbitrary and based on extraneous consideration and denying the opportunity of being heard and of making representation at enquiry stage, more particularly in view of his request to supply supporting documents. In this regard, he has referred to Annexure-H of the documents, which is primarily a reply dated July 5, 2004 on the Enquiry Officer's report wherein he sought certain documents. According to him, the order dated September 18, 2006 is illegal and not maintainable since the penalty of compulsory retirement is based on ex-parte order. The competent authority should have given an opportunity to reply against the proposed penalty before passing such an order, which is an essential element for imposing major penalty. He would also state, that the order of the Disciplinary Authority is without reasons, for passing such a speaking order is an essential element of administration of justice, moreso, when the authority is performing quasi-judicial function.

He also imputes malice against Mr. Rajiv Talwar, the M.D & CEO at the relevant time, as according to the petitioner, he made a complaint to the GM, DTDC for misbehaviour and ill-treatment of the petitioner by Mr. Talwar and as such, Mr. Talwar had no jurisdiction to pass an order for enquiry against the petitioner. He also states, that the charge sheet dated March 7, 2003 has not been served upon the petitioner till date. No information has been communicated to the petitioner for initiating proceedings, appointment of Enquiry Officer etc. He also challenges the proceedings held by the Enquiry Officer being in violation of the principles of natural justice. It is his submission, that even the charges, which have been framed against him, are unsustainable. He states, that charge No.1 of coming late to the office did not warrant a major penalty. Further, the charge No.1 became subject-matter of the charge sheet three years after the date of occurrence, which would amply prove that the same was at the behest of Mr. Rajiv Talwar. On charge No.2 as well, it is his submission that the same is unsustainable. According to him, the allegations that while posted in Noida and on closure of Noida office in February 2001, petitioner was surrendered to Chief Manager, Tourism vide note dated February 20, 2001 and was directed to report to Personal Division on March 1, 2001, but did not report to the place of posting.

The petitioner kept signing absentee statement in order to receive salary from March 16, 2001 to February 15, 2002. The absentee statement was sent to Manager, Salary directly without getting counter-signed or verified by Controlling Officer despite the fact, he was not reporting to duty. According to the petitioner, when he was posted to Noida office, on February 13, 2001, he suffered a heart attack and admitted to the Escorts Hospital on the authorisation letter issued by the Personal Division of the Corporation. The petitioner remained in hospital from February 16, 2001 to February 24, 2001 with the direction for re-admission after one week. It is clear that the respondent No.2 Corporation was in the knowledge of admission of the petitioner in the hospital. He would state, that there was no intention on the part of the petitioner to cheat the Corporation. He states, there was no animus, which was also not proved by the respondent No.2. Even otherwise, the respondent No.2 could have detected at the earliest when the petitioner first submitted absentee statement for the salary but the respondent No.2 did not do so but did it after knowing of heart attack and after a year of submission of absentee report to the Manager, Salary Division who is the financial authority. He also placed reliance on the medical certificate issued by the Escorts Hospital. According to him, there was non-

application of mind on the part of the Appellate Authority as well. The penalty of compulsory retirement is a camouflage act of dismissal by authority on the ground of misconduct. He reiterated his submission on denial of principles of natural justice. I note, that the petitioner has also filed an additional affidavit in the petition, wherein, he had stated that the finding by the Enquiry Officer is based on wrong and false material by PW 5 Mr. M.S. Sridhar with regard to transfer of the petitioner to Catering Division, which according to the petitioner is vide office order dated March 13, 2002. He also alleged bias against the Enquiry Officer Mr. K.B. Sharma who had ignored the prior report of Mr. V.K. Jatav, Deputy Manager, Information Office. He also alleged tampering of the absentee statements prepared by the petitioner as In-charge of Noida Information Office before the same were put to the competent authority. He relied upon the following judgments in support of his contention:-

- 1. 2012 (6) SLR 126 [A.P.]; Meghala Giri vs. U.O.I & ors.;**
- 2. 2012 (6) SLR 604 [M.P.]; Dal Chand Ahirwar vs. State of M.P.;**
- 3. 1995(1) SLR 239 [S.C] Transport Commissioner Madras vs. Radha Krishna;**
- 4. 1970 (3) S.C.C. 548 Surath Chander Sarkar vs. State of W.B.;**
- 5. 1986 SLR M.P. High Court 42; Mahesh Kumar vs. State of M.P.;**
- 6. 2012 (5) SLR 393 (Allahabad); Dr. Raeev Kumar Upadhayay vs. State of U.P.;**

7. (1994) 2 SCC 416; *Dr. Ramesh Chander Tayagi vs. U.O.I & ors*;
8. A.I.R 1998 SC 2722; *U.O.I & Ors. vs. Dinanath Shantaram Karekar*;
9. 1967 SLR (S.C) 759, *Trilok Nath vs. U.O.I & ors*;
10. (1973) 1 SCC 656, *Ghanshayam Das Shrivastava vs. State of M.P*;
11. 2012 (6) 229; (Guahati); *Ashrfilal Singh vs. State of Meghalaya & ors*;
12. (1991) 1 SCC 588; *U.O.I & ors vs. Mohd. Ramzan Khan*;
13. 1983 (2) SLR 473; *R.S. Sehgal vs. Dir. Gen. P. & T and ors*;
14. (1976) 4 SCC 745; *State of M.P. vs. S.M. Nizzamuddin Ali*;
15. 2012 (7) SLR 320 (Delhi); *Pratap Singh vs. Northern Railway*;
16. 2012 (4) SLR 631 (CAL); *Ashim Kumar Sarkar vs. U.O.I & Ors*;
17. 2012 (5) SLR (Bom); *Bhoj Raj vs. Divisional Controller MRTS Nagpur*;
18. (2002) SLT 244 (S.C); *Amarnath Chowdhary vs. Brathwaite & Co. Ltd.*;
19. 133 (2006) DLT 348 (DB), *U.O.I vs. Keshva Nand*;

5. Mr. Prashanto Chandra Sen, learned counsel for the respondent, apart from reiterating the stand of the respondent No.2 in the counter-affidavit, would highlight, that there were two charge sheets issued to the petitioner vide memorandum dated February 14, 2003 and memorandum dated March 7, 2003. The petitioner refused to accept service of the charge sheets. The proceeding of the charge sheet dated February 14, 2003 was kept in abeyance as he was compulsorily retired pursuant to

the departmental enquiry initiated vide charge sheet dated March 07, 2003. He would also highlight that the petitioner had misbehaved and physically assaulted a staff on August 14, 1990 at a Coffee House at Laxmi Nagar where he was working as Shift In-charge. For the said misconduct, he was issued a charge sheet on July 18, 1991 and as a result thereof, a penalty of withholding of increments for two years without cumulative effect was imposed on him on October 6, 1997. According to him, a further charge sheet was issued vide memorandum dated August 3, 1994 for indulging into an act of insolent behaviour while also using un-parliamentary and abusive language against his Manager and Deputy Manager on August 2, 1993 at around 6.30 pm. As a result, a penalty of reduction to a lower stage in the time scale of pay for a period of two years was imposed. That apart, another charge sheet was issued under Rule 14 on January 11, 1994 for threatening a worker namely Late Mrs. Namrita Verma on November 19, 1993 with kidnapping her child and threatening to make frantic calls at odd hours at her residence and also threatened to narrate false and fabricated story to her husband and as a result of which, Late Mrs. Namrita Verma eventually committed suicide. It is a matter of record, in view of the aforesaid, a penalty of Censure was imposed on the petitioner vide order

dated March 22, 1996. That apart, he misbehaved with one Mrs. Neelam Sharma, ATC in furtherance thereof, was issued another charge sheet dated March 4, 1994. He also referred to charge sheet dated February 14, 2003. The enquiry could not be completed in the said charge sheet, as he was compulsorily retired by that time. Subsequently, having received various complaints against the petitioner's conduct, he was charge sheeted on March 7, 2003 for major penalty proceeding for various allegations like refusal to sign prescribed Performa for inspection of information office, not wearing the name plate and not reporting to duty on time and other acts, which were against the office procedure. He would highlight the fact that the petitioner had avoided receipt of the charge sheet as a result of which a public notice was issued in the newspaper on August 7, 2003 to enforce the delivery of the charge sheet. According to him, he refused the communication dated March 7, 2003, which was sent to him through registered AD and one sent through special messenger, which has been received back with the remarks "refused". Thus, the proceedings were conducted ex-parte. He would justify the ex-parte proceedings in the facts of this case. He states, that the petitioner was given a copy of the enquiry report, which was replied by him on July 5, 2004. Pursuant thereto a penalty of compulsory

retirement was passed by the Disciplinary Authority. He justifies the order of the Disciplinary Authority. He states, that the Appellate Authority has given a reasonable opportunity of hearing him in person before rejecting his appeal. In sum and substance, it is his case that reasonable opportunity was given to the petitioner to defend himself. Unfortunately, he did not avail the opportunity by presenting himself before the Enquiry Officer. That apart, it is his submission that the charges framed against the petitioner stand proved conclusively and the scope of judicial review being very limited, this Court would not like to interfere with the impugned orders. He relied upon the judgment of the Supreme Court in the case reported as **2008 (11) SCC 502 Board of Directors, Himachal Pradesh Transport Corporation and another vs. K.C. Rahi** to contend that the petitioner cannot have any grievance on being proceeded ex-parte by the Enquiry Officer when the petitioner himself was aware of the pendency of the proceedings. He has also drawn my attention to the judgments referred to in the counter-affidavit, more specifically Writ Petition No.11961/2005 decided on November 28, 2005 in the case of **V.K. Sabharwal vs. N.P.T.I. and ors** to contend that the refusal amounts to receipt.

6. I may, only note here that during the course of the submissions,

the learned counsel for the respondent No.2 has filed a compilation of documents, which has been taken on record. The petitioner was also given a copy of the same and it is noted that both the parties have exclusively referred to the documents in the compilation as well.

7. Having heard the petitioner and the learned counsel for the respondent, the first and foremost question, which needs to be decided, is whether the Enquiry Officer was justified in proceeding ex-parte against the petitioner. In that regard, the following facts have been noted by me from the record. There is no dispute that the petitioner was suspended pending departmental proceedings. The charge sheet dated March 7, 2003 was sent to his residential address immediately thereafter. From page 16 of the compilation, it is noted that the postal authorities have made a remark, that the house owner has refused to take the delivery of the letter and addressee is not found. It appears, again an attempt was made on April 3, 2003 when the postal authorities have made an endorsement that he had gone to the given address on two occasions but has not found anyone. On April 23, 2003 also a similar endorsement was made by the postal authorities. On August 7, 2003 a paper publication was given, wherein it was noted that in June 2003 Mr. Pradeep Singh Ahluwalia, Shift, In-charge was asked to receive a

confidential envelope containing the charge sheet by the staff of the Salary Division but he refused to accept the same. By the said publication, he was given a last opportunity to receive the charge sheet within a period of one week from the date of publication of the notice and calling upon him to file reply to the notice, failing which it would be presumed, he has nothing to say in the matter. On September 26, 2003, the Enquiry Officer and the Presenting Officer were appointed by the Disciplinary Authority. The Enquiry Officer vide his letter dated November 6, 2003 issued notice of preliminary hearing to the petitioner calling upon him to appear before him on November 14, 2003 at 3 pm. The endorsement dated November 12, 2003 on the envelope as noted from page 30 of the compilation shows “refused”. It is noted that a fresh notice was issued by the Enquiry Officer calling upon the petitioner to appear before him on December 5, 2003 at 3 pm. On the said date, the petitioner appeared before the Enquiry Officer, when he submitted a letter dated December 5, 2003, which was taken on record by the Enquiry Officer. In the said letter, the petitioner has expressed his shock to receive the notice from the Enquiry Officer. It was his stand that he has not received any show-cause notice. He had challenged the authority of the Enquiry Officer to conduct an enquiry and the Enquiry Officer

without authority cannot ask him to appear before him. On the said date, the Enquiry Officer adjourned the hearing to December 18, 2003 calling upon the Presenting Officer to ensure that the charge sheet as well as orders concerning appointment of the Enquiry Officer and the Presenting Officer, be given to the petitioner. It is noted that the said order sheet was signed by the petitioner. On December 18, 2003, the Enquiry Officer had passed the following order:-

“Shri Rakesh Batra, Presenting Officer wanted to give a photocopy of the charge sheet alongwith the office order appointing Shri Rakesh Batra, as Presenting Officer and Shri K.B. Sharma as Inquiry Officer to Shri Pradeep Singh Ahluwalia, Charged Official during the inquiry proceedings.

Shri Pradeep Singh Ahluwalia, Charged Official, refused to accept the photocopies of the charge sheet and orders appointing Shri Rakesh Batra as Presenting Officer and Shri K.B. Sharma as Inquiry Officer and wanted the procedure to be followed to deliver these documents to Shri Pradeep Singh Ahluwalia, Charged Official. Presenting Officer is directed to take up the issue with the Disciplinary Authority.

The next hearing will be held in the office of the Inquiry Officer at 3.00 p.m on 9.1.2004. Shri Pradeep Singh Ahluwalia, Charged Official refused to sign the order sheet.

8. From the above, it is noted that the Enquiry Officer has stated that the petitioner had refused to accept the photocopies of the charge sheet, orders of appointment of the Enquiry Officer and Presenting Officer. That apart, I note, the petitioner had not even put his signature on the

order sheet. The petitioner has contested the order sheet dated December 18, 2003 by stating that the said order sheet was not given to him for signing. Be that as it may, the Enquiry Officer fixed the next date of hearing as January 9, 2004 with a direction to the Manager, Vigilance to ensure that the required documents are delivered to the petitioner. The Enquiry Officer passed the following order:-

*“Present:- Shri Rakesh Batra, Presenting Officer
Present:- Mrs. Rita Prabhakar, AG-I (Vigilance)*

Mrs. Rita Prabhakar, AG-I (Vigilance) was deputed by the management to deliver the charge sheet to Shri Pradeep Singh Ahluwalia, Charged Official. Shri Pradeep Singh Ahluwalia, Charged Official did not turn up for the inquiry proceedings. Vigilance Division may take necessary action to deliver the copies of the charge sheet to Shri Pradeep “Singh Ahluwalia, Charged Official.”

9. It is noted from above, that AG-I, Vigilance of the Corporation was deputed to deliver the charge sheet to the petitioner but the petitioner did not turn up in the enquiry proceedings. Again Manager, Vigilance was called upon by the Enquiry Officer to take necessary action for delivery of the charge sheet to the petitioner by adjourning the matter to January 22, 2004. It appears that the charge sheet was sent to the petitioner by the respondent No.2 Corporation vide its letter dated January 17, 2004 on the new address given by the petitioner to the authorities on December 5, 2003. On the said envelope, postal

authorities have made an endorsement “despite efforts the addressee not available on the given address”. On January 22, 2004, identical proceedings took place when an officer of the Corporation i.e AG-I, Vigilance was deputed to deliver the charge sheet to the petitioner who did not turn up for the hearing on that date. The next date of hearing was fixed as February 3, 2004 with a specific direction to the Manager, Vigilance to take necessary action to deliver the charge sheet to the petitioner. It appears that the charge sheet was sent to the petitioner at the given address on January 29, 2004 but the same returned back with an endorsement dated February 7, 2004, translation of which reads “the addressee did not like to receive and returned”. In other words, the petitioner refused to accept it. The envelope was re-directed back. On February 3, 2004, identical proceedings took place and a similar order of January 22, 2004 for hearing on February 12, 2004 was passed. The petitioner refused to take the delivery on February 6, 2004. On February 12, 2004, last opportunity was granted to the petitioner to appear on February 27, 2004 failing which it was directed ex-parte proceedings shall be held. A communication was sent on February 13, 2004 which was duly received by the petitioner. On February 27, 2004, the petitioner did not turn up in the proceedings despite service, when the

Enquiry Officer decided to fix the date of hearing as March 11 and 12, 2004 to record the evidence of the management witnesses. This order was sent to the petitioner on March 3, 2004 itself. It is noted from the postal envelope that the postal authorities had gone to the address of the petitioner on 4th March, 5th March, 6th March, 8th March and 9th March. As per the endorsement dated March 10, 2004, it was mentioned that “addressee despite being informed is not found”. On March 11, 2004 and March 18, 2004 the evidence of the management witnesses was recorded on which date, the Enquiry Officer had called upon the Presenting Officer to submit the prosecution brief by March 25, 2004. The aforesaid facts reveal that having appeared before the Enquiry Officer on December 5, 2003 and refused the communication from the respondents on February 7, 2004 and having received the communication dated February 13, 2004, for hearing on February 27, 2004, it is apparent, that he had knowledge of the proceedings being held against him and intentionally been avoiding the service and appearance before the Enquiry Officer. The plea that no communication has been received in that regard and the Enquiry Officer had no authority to conduct the departmental enquiry is not tenable. A curious employee would be keen to know the charges, which have been framed against him

rather than avoiding to receive the charge sheet or appearance. I may only point out here, the petitioner was on December 5, 2003 aware of the next date of hearing being December 18, 2003. He could have himself made efforts to receive the charge sheet from the authorities. He could have also appeared before the Enquiry Officer on December 18, 2003 and receive the copy of the charge sheet, which has not been deliberately done by him. The plea, that he should be served the charge sheet as per normal administrative process, is an attempt to avoid the receipt of the charge sheet/delay the proceedings. The petitioner was rightly proceeded ex-parte by the Enquiry Officer. I am of the view, even the paper publication on August 7, 2003 was a sufficient compliance of principles of natural justice. It was only as a safe measure, the respondents were taking steps to ensure, the petitioner receives the charge sheet. I note, the judgment relied upon by Mr. Sen in the case of *Board of Directors, Himachal Pradesh Transport Corporation and another* (supra), wherein, the Supreme Court was considering a case of a Inspector in the petitioner Corporation, who was charge sheeted and notice in that regard was sent to him followed by publication in the newspaper. However, the employee did not participate in the enquiry proceedings. The enquiry was proceeded ex-parte. The Enquiry Officer

submitted his report dated May 22, 1990 and found him guilty. The State Administrative Tribunal has dismissed the petition. The stand of the employee was that the order of termination passed without hearing him is in violation of principles of natural justice. The Tribunal repelled the contention after examining the enquiry report and documents holding that the respondent was served with a notice by publication in the Tribune. The Tribunal also held that from the representation dated August 9, 1993 and October 19, 1993, it was clear that the employee was well aware of the departmental enquiry which was initiated against him. However, he intentionally avoided service of notice and did not participate in the enquiry proceedings and therefore he would be estopped from raising a question of non-compliance of principles of natural justice. The Writ Petition filed before the Division Bench of the High Court was allowed solely on the ground that no proper service was effected. The Supreme Court in para 7 and 8 has held as under:-

“7. The principles of natural justice cannot be put in a straight jacket formula. Its application depends upon the facts and circumstances of each case. To sustain a complaint of non-compliance of the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance of principle of natural justice.

8. In the instant case we have been taken through various documents and also from representation

dated 19.10.1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance of principle of natural justice. In the representation submitted by him on 19.10.1993 the subject itself reads "DEPARTMENTAL ENQUIRES". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is of no excuse much less by a person who is a law graduate himself.

10. The judgment of the Supreme Court is applicable to the facts of the case.

11. The reliance placed by the petitioner on the cases of ***Mahesh Kumar*** (supra), ***Dr. Raeeiv Kumar Upadhyay*** (supra), ***Dr. Ramesh Chander Tayagi*** (supra), ***Trilok Nath*** (supra), are distinguishable on the facts, moreso, in view of what I have noted above and keeping in view the position of law laid down in the case of ***Board of Directors, Himachal Pradesh Transport Corporation and another*** (supra).

12. In view of the fact that the petitioner was rightly proceeded ex parte, the petitioner would be precluded from complaining violation of principles of natural justice and the ultimate penalty imposed on him. Such is the ratio of the judgment of the Supreme Court in the case

reported as **(2013) 2 SCC 740 State Bank of India and ors vs. Narendrar Kumar Pandey**, wherein the Supreme Court was considering a case of a person who was charge sheeted while functioning as Deputy Manager of the Bank on February 15, 1995. Twelve charges were framed against him. He was given 15 days time to submit statement of defence. He submitted his reply. He sought permission from the bank for inspection of the relevant document. The Enquiry Officer, appointed by the Disciplinary Authority issued notice dated May 11, 1996 to the charged official informing him the date of hearing on June 11, 1996. Between June 11, 1996 and November 7, 1997, the Enquiry Officer conducted the enquiry on 17 dates and many a times, the enquiry was adjourned on the request of the charged official. He chose to remain absent on as many as seven dates of hearing. The Enquiry Officer, however continued with the proceeding and concluded it ex-parte against the charged official. The Disciplinary Authority imposed the penalty of dismissal from service. The Supreme Court after referring to its judgment reported as **(1994) 2 SCC 615 Bank of India VS. Apurba Kumar Saha**, wherein, the Supreme Court has held as under:-

“A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and honesty,

cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the bank employer had resulted in violation of principles of natural justice of fair hearing.”

And also referring to its judgment reported as ***AIR 1957 82 Lakshmi Devi Sugar Mills Vs. Pt. Ram Sarup***, wherein the Supreme Court has justified the dismissal of the respondent therein and has held as under:-

“Where a workman intentionally refuses to participate in the inquiry, cannot complaint that the dismissal is against the principles of natural justice. Once the inquiry proceeded ex-parte, it is not necessary for the Inquiring Authority to again ask the charged officer to state his defence orally or in writing. We cannot appreciate the conduct of the charged officer in this case, who did not appear before the Inquiring Authority and offered any explanation to the charges levelled against him but approached the High Court stating that the principles of natural justice had been violated.”

13. But the aforesaid is not the conclusion, even if the Enquiry Officer, set the charged officer, ex parte, the Enquiry Officer is still required to prove the charges against the petitioner based on well established principles of preponderance of probability. I have examined the merit of the charges. I have also seen the report of the Enquiry Officer wherein, the Enquiry Officer has held both the charges proved on the basis of the statements made by the witnesses. Insofar as charge

No.1 is concerned, the Enquiry Officer relied upon the submissions of Mr. Ratan Singh, PW 1 and Mr. Brij Mohan, PW 2 and confirmation of inspection proforma dated March 31, 2000 regarding inspection of Information Counter of both the witnesses. The said witnesses in their deposition have stated as under:-

“Statement of Sh. Rattan Singh, PW-1

Sh. Rattan Singh, PW-1 has confirmed the proforma of the Enforcement Division vide which New Delhi Information Counter was inspected by him and Sh. Brij Mohan, AG-I from 6.55 am onwards on 31.3.2000. Sh. Rattan Singh, PW-1 has confirmed that Sh. Pardeep Singh Ahluwalia, CO refused to sign the inspection proforma.

Statement of Sh. Brij Mohan, PW-II

Sh. Brij Mohan, PW-II has confirmed the proforma of the Enforcement Division vide which New Delhi Information Counter was inspected by him alongwith Sh. Rattan Singh, Dy. Manager from 6.55 am on 31.3.2000. Sh. Brij Mohan, PW-II has confirmed that Sh. Pardeep Singh Ahluwalia, CO refused to sign the inspection proforma.”

14. Insofar as the charge No.2 is concerned, the Enquiry Officer relied upon the testimony of PW 3 Sh.Piyush Aggarwal, PW 4 Jagat Singh, PW 5 M.S. Sridhar, PW 6 Ajay Kumar, PW 7 B.L.Indora and PW 8 Mrs. Asha Ahluwalia to hold that the charges stand proved. The witnesses deposed that the petitioner was transferred from Tourism Division (Noida Information Counter) to the Catering Division on March 1, 2001.

The petitioner never reported to the Catering Division. All the absentee statements were signed by the petitioner. The petitioner has not contested these statements in his representation to the Enquiry Officer's report, in fact, the petitioner has not commented on the merit of the charges at all. The Disciplinary Authority was justified to accept the conclusion of the Enquiry Officer by imposing penalty. But in his appeal dated October 16, 2006 on charge No.2, the petitioner has stated as under:-

“On 13th February 2001, the appellant suffered a heart attack and subsequently was admitted to Escorts Heart Institute on official request for check up and treatment on 15th February 2001 and remained under treatment there till 25th February 2001. At the time of discharge he was advised readmission after 6 days with an advice of not exerting and avoiding stress and strains. Therefore, I avoided all physical labour and stress and strains and movements, except a restricted movement to office at Noida and back. Since the appellant was posted at Noida he remained (sic.) there till 12th March 2002.

As far closing of NOIDA Information Office is concerned it was done by the then C.M.D. Sh. Kherwal during his visit to Noida Information Office with the then Chief Manager Tourism Sh. Susheel Saxena and the appellant was also present there as Incharge of the Noida Information Office.

I am not aware of any such decision in writing by any of the authority of the Corporation from April 2000 to March 2002 during which period I remained Incharge of the Noida Information Office and discharged my duties, of Note dated 20.02.2001 and office order dated 01.03.2001 as the same were not served to me, in which I am allegedly

transferred to Catering Division of DTTDC.

It is for your kind information that it is during this period the appellant was in the Hospital under treatment from 16.02.2001.

Now as regard signing the absentee statement for the period of 16.02.2001 to 15.02.2002, since I was in continuation as Incharge of Information Office at Noida. I kept exercising the powers and privileges till I was transferred in the Catering Division of the Corporation vide office order No.F-7/162/83/DTTDC/Part file/1259 dated 01.03.2002. Therefore, I was authorized to sign the absentee statements from 16.02.2001 to 15.02.2002. The practice that I followed in the past since 1992 onwards of sending the absentee and other documents to various authorities without getting them countersigned or verified by my controlling officer, in following the customary practice”.

15. The above stand of the petitioner, wherein the petitioner has categorically made an averment that the transfer order dated March 1, 2001 was not served on him transferring him to catering division and after his recovery from treatment, he continued to work as In-charge, Noida Information Office and continued to send the absentee statements till February 15, 2002, is relevant. The same may have bearing on the findings of the Enquiry Officer on the merit of Charge 2, which may have also bearing on the penalty. The Appellate Authority has not given any conclusion on this particular stand taken by the petitioner, in the appeal.

16. This Court is of the view that the Appellate Authority need to re-

consider the appeal filed by the petitioner afresh. Accordingly, without disturbing the order of the Disciplinary Authority dated September 18, 2006, the order of the Appellate Authority dated May 22, 2007 is set aside, remanding the matter to the Appellate Authority for a fresh consideration of the appeal. The writ petition is allowed to the aforesaid extent. The Appellate Authority shall consider the appeal afresh and after giving a personal hearing to the petitioner, pass appropriate orders within a period of three months from the receipt of copy of this order.

17. Insofar as the other grounds urged by learned counsel for the petitioner like malice of the Rajiv Talwar, the then M.D & CEO of the respondent No.2 Organisation, in the absence of he being a party in person in these proceedings, the allegations would be untenable and cannot be considered. That apart, he has not been given any show-cause notice on the aspect of penalty is concerned, the same is well settled by the Supreme Court from the judgment of the Constitution Bench in the case of *E.C.I.L.* (supra) wherein, the Supreme Court has held, in view of 42nd amendment to the Constitution, such a show-cause notice on penalty is not required to be given. Insofar as the plea that the order of the Disciplinary Authority is not a speaking one, the same is liable to be rejected in view of the settled position of law that if the Disciplinary

Authority is agreeing with the finding of the Enquiry Officer, the order need not be a speaking one.

Writ petition is disposed of on the above terms.

CM 17987/2014

18. In view of the order passed in the writ petition, the present application is dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 22, 2015

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