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

+ **W.P.(C) 8604/2015**

% **Judgment dated 8th September, 2015**

BHAWANI SHANKER TANK Petitioner

Through : Mr.R. Sathish, Adv.

versus

GOVT. OF NCT OF DELHI & ORS Respondents

Through : Mr.Gautam Narayan, ASC for
respondents.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL. 18686/2015

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

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3. The petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India seeking a direction to quash the Order dated 7.5.2015 passed by Central Administrative Tribunal (hereinafter referred to as the “CAT”) in O.A.No.1167/2013.
4. The present writ petition is taken up for final hearing and disposal with the consent of counsel for the parties, as learned counsel for the respondent has entered appearance on an advance copy.
5. Before the rival submissions of learned counsel for the parties can be

noticed, we deem it appropriate to refer to the facts, as stated by the petitioner in the present writ petition.

6. As per the petitioner, pursuant to an advertisement published by the respondents on 21.1.2002 in the daily, *The Hindustan Times*, for various posts in the Department of Health and Family Welfare, the petitioner applied for the post of 'Staff Nurse' in the OBC category. On being declared successful, the petitioner joined the post of Staff Nurse (Male) at Lok Nayak Hospital, Delhi, w.e.f. 24.3.2004. In the month of October, 2015, an anonymous complaint was made alleging that the petitioner had produced a fake caste certificate/document to secure the job as he did not belong to the OBC caste. An inquiry was conducted, pursuant to which a show cause notice dated 1.8.2007 was issued to the petitioner herein under Rule 14 CCS (CCA) Rules 1965. A charge sheet was issued on 14.1.2008 alleging that the petitioner had got the Government job on the basis of a fake OBC Certificate. After the Inquiry Officer submitted his report dated 14.7.2010, the disciplinary authority issued a Memorandum dated 19.8.2010 and finally by an order dated 16.11.2010 the disciplinary authority imposed the penalty of removal from service, which order was upheld by the appellate authority vide its order dated 22.5.2012. The OA filed by the petitioner was dismissed, which has led to the filing of the present writ petition.

7. Learned counsel for the petitioner submits that the respondents have failed to comply with the principles of natural justice. Counsel further submits that the Inquiry Officer had fully exonerated the petitioner by stating that *'there was no reason for the petitioner to seek a fake certificate'*. It is also contended by the counsel that since the report of the Inquiry Officer was in favour of the petitioner, in case the disciplinary authority differed, it was mandatory for the disciplinary authority to first record the reasons of disagreement and only thereafter issue a Memorandum to the petitioner whereas the Memorandum placed on record would show that no grounds for disagreement have been stated. Thus, the finding of the disciplinary authority and the appellate authority would be illegal and the same are liable to be quashed.
8. Another contention, sought to be urged by counsel for the petitioner before us, is that it has not been proved that the petitioner had produced a fake OBC certificate as the communication received from the office of SDM would show that the word 'not' has been added in ink and there are no initials over the addition. Moreover, the respondents have failed to lead complete evidence to show that the OBC certificate by itself was fake. It is also submitted that the word 'not', which has been added in ink, is in fact an interpolation of the document and no opportunity was granted to the petitioner to contest the same. Counsel further submits that in view of

the above irregularities, this Court would be entitled to go into issue as to whether the certificate submitted by the petitioner was in fact fake or not.

9. Learned counsel for the petitioner submits that in the case of *Union of India v. P. Gunasekaran*, reported at AIR 2015 SC 545, the Supreme Court of India has observed that the High Court, in exercise of its power under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- “a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

10. Reliance has further been placed upon by counsel for the petitioner in the case of *Ranjit Singh v. Union of India And Others*, reported at (2006) 4 SCC 153, in support of his submission that the principles of natural justice are required to be complied with by the disciplinary authority in the event he intends to differ with the findings of the enquiry officer. Paras 20 to 22 of the judgment read as under:

“20. In *Punjab National Bank v. Kunj Behari Misra*, 2 (1998) 7 SCC 84, this Court has clearly held that the principles of natural justice are required to be complied with by the disciplinary authority in the event he intends to differ with the findings of the enquiry officer observed : (SCC p. 97, para 19)

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the

disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

21. The said decision has been followed by this Court in *State Bank of India and Others v. K.P. Narayanan Kutty* [(2003) 2 SCC 447], wherein it was clearly held that in such an event the prejudice doctrine would not be applicable stating (SCC pp. 454-55, para 6)

"6. In para 19 of the judgment in *Punjab National Bank* case extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) [Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case] and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some

prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court."

22. In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the Disciplinary Authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the Appellant. Such findings were required to be over turned by the Disciplinary Authority. It is in that view of the matter, the power sought to be exercised by the Disciplinary Authority, although not as that of an appellate authority, but akin thereto. The inquiry report was in favour of the Appellant but the Disciplinary Authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in absence of any show cause filed by the Appellant, to analyse the materials on records afresh. It was all the more necessary because even the CBI, after a thorough investigation in the matter, did not find any case against the Appellant and thus, filed a closure report. It is, therefore, not a case where the Appellant was exonerated by a criminal court after a full fledged trial by giving benefit of doubt. It was also not a case where the Appellant could be held guilty in the disciplinary proceedings applying the standard of proof as preponderance of the probability as contrasted with the standard of proof in a criminal trial, i.e., proof beyond all reasonable doubt. When a final form was filed in favour of the Appellant, the CBI even did not find a prima facie case against him. The Disciplinary Authority in the aforementioned peculiar situation was obligated to apply his mind on the materials brought on record by the parties in the light of the findings arrived at by the Inquiry Officer. He should not have relied only on the reasons disclosed by him in his show cause notice which, it will bear repetition to state, was only tentative in nature. As the Appellate Authority in arriving at his finding, laid emphasis on the fact

that the Appellant has not filed any objection to the show cause notice; ordinarily, this Court would not have exercised its power of judicial review in such a matter, but the case in hands appears to be an exceptional one as the Appellant was exonerated by the Inquiry Officer. He filed a show cause but, albeit after some time the said cause was available with the Disciplinary Authority before he issued the order of dismissal. Even if he had prepared the order of dismissal, he could have considered the show cause as it did not leave his office by then. The expression "communication" in respect of an order of dismissal or removal from service would mean that the same is served upon the delinquent officer. [See State of Punjab vs. Amar Singh Harika, AIR 1966 SC 1313]

11. Reliance has also been placed upon by counsel for the petitioner in the case of *S.P. Malhotra v. Punjab National Bank And Others*, reported at (2013) 7 SCC 251, in support of his submission that in case the disciplinary authority disagrees with the findings recorded by the enquiry officer, he must record reasons for the disagreement and communicate the same to the delinquent seeking his explanation and after considering the same, the punishment could be awarded. Relevant paras of the judgment read as under:

“7. The appellant challenged the said orders of punishment by filing a Writ Petition No. 1201 of 1988 before the High Court of Punjab and Haryana at Chandigarh. The said writ petition was contested by the respondent Bank. The learned Single Judge allowed the said writ petition vide judgment and order dated 20.5.2011, holding that in case the Disciplinary Authority disagrees with the findings recorded by the Enquiry Officer, he must record

reasons for the dis-agreement and communicate the same to the delinquent seeking his explanation and after considering the same, the punishment could be passed. In the instant case, as such a course had not been resorted to, the punishment order stood vitiated.

14. *Kunj Behari Misra* itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In *Kunj Behari Misra* (supra), this court held as under:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

(Emphasis added)”

12. Learned counsel for the petitioner has also relied upon *CSHA University And Another v. B.D. Goyal*, reported at (2010) 15 SCC 776.

13. Attention of the Court is particularly drawn by the counsel for the petitioner to the concluding portion of the inquiry report to buttress his argument that the petitioner stands exonerated. Relevant paras of the inquiry report reads as under:

“3. However as stated in his brief, it is clear that the accused had a valid OBC Certificate from Kotpuli Tehsil (Rajasthan) which was got verified by the vigilance branch. Moreover the said caste is an OBC under the Govt of NCT, Deptt. Of Welfare of SC/ST/OBC/Ministries vide order No.F.28(93)/91-92/SC/ST/P25/4384 dated 20-01-95.

4. As the notification of the caste predated the appointment of the accused there is no reason for the accused to seek a fake certificate.

5. However, as said certificate is certainly not issued by SDM, Khanjawala, the source of the document must be ascertained (sic.) by the vigilance Branch in coordination with the O/O SDM Khanjawala and the accused Mr.Bhawani Shankar Tank.”

14. Learned counsel for the petitioner submits that the Inquiry Officer in his report has clearly stated that the petitioner was in fact an OBC and had a valid OBC certificate from Rajasthan and, thus, there was no reason for him to seek a fake certificate.

15. Learned counsel for the respondents submits that the respondents have fully complied with the principles of natural justice and there is no irregularity in the inquiry, which has been conducted. Counsel further

submits that an opportunity was given to the petitioner to lead defence evidence, however, despite opportunity having been granted, the petitioner failed to lead evidence.

16. Attention of the Court is drawn by counsel for the respondents to the communications received from the office of SDM, copies of which have been placed on record, to show that the certificate filed and relied upon by the petitioner had not been issued from the Office of the Sub-Divisional Magistrate, Saraswati Vihar, Kanjhawala, Delhi. The communications reads as under:

“Office : IO, CMO I/e Chest Clinic
Room No.5 (TB) Chest Clinic
Lok Nayak Hospital (JLN Marg, New Delhi-2)

Daily Order Sheet

Sick from SDM Office Kanjhawala, Mr.Praveen Bhardwaj (Patwari) was sick and cross-examined.

Mr.Bhardwaj came with the report from SDM Office, stating that the OBC certificate No.72057 has not been issued by the SDM Office, Kanjhawala, as earlier stated in the letter from SDM to LN Hospital.

Mr.Bhardwaj, came as a custodian of the report of the SDM office.”

“OFFICE OF THE SUB DIVISIONAL MAGISTRATE,
(SARASWATI VIHAR) DISTRICT, NORTH WEST,
MAJHAWALA, DELHI

No.SDM/SV/2004/615

DATED 24/4/

To

The (Admin)
Vig. Officer,
LNJP, Delhi.

Sub : Verification of OBC/Domicile/SC Certificate

Sir,

With reference to your letter No.F.2(64) Vig. /LNH/2005/370 dated 2/1/06 regarding verification of OBC/Domicile/SC Certificate, it is certified that the OBC/Domicile/SC certificate in respect of the following have not been issued from this office:

Sr.No.	Name
1.	Bhawani Shanker Tank S/o Ram Kishan Tank H.No.67, Main Kanjhawala (Illegible) Kalar, Delhi No.72057 dt. 16.2.2002

Yours faithfully
Sd/-

B.S. Thakur
Sub Divisional SDM (SV)
(Saraswati Vihar)
Manjhawala, Delhi.”

17. Counsel for the respondent has further submitted that Patwari had appeared as a witness and a similar statement was made by him and, thus, to say that evidence was not led by the respondent to show that the OBC

certificate was fake is without any force.

18. Learned counsel for the respondents further submits that merely because the petitioner belongs to OBC caste from Rajasthan, the said OBC certificate cannot be relied upon by the petitioner, as the petitioner had to satisfy Clause 5 of the advertisement dated 21.1.2002, as per which “*SC and OBC candidates must furnish the category certificate issued by the competent authority of the Government of NCT of Delhi*”. Counsel further submits that since the petitioner was not an OBC from Delhi, a forged certificate was filed and, thus, necessary punishment was awarded to him. Counsel also contends that the judgment, sought to be relied upon by the counsel for the petitioner in the case of ***S.P. Malhotra*** (supra) and ***CSHA University and CSHA University And Another*** (supra), are not applicable to the facts of the present case, as the disciplinary authority did not differ/disagrees with the findings of the Inquiry Officer, which is evident upon the observations made by the Inquiry Officer in Clause 5 of the inquiry report, extracted hereinabove. It is further contended that a categorical finding has been given by the disciplinary authority that the said certificate is not issued by the SDM, Kanjhawala, which was the issue at hand and, thus, there was no necessity for the disciplinary authority to give reasons for his differing with the inquiry report.

19. We have heard learned counsel for the parties and also considered their

rival submissions. It is not in dispute that the petitioner had applied for the post of Staff Nurse (Male) as an OBC candidate pursuant to the advertisement dated 21.1.2002. The advertisement had made it abundantly clear that along with the application, an OBC certificate was to be furnished from the competent authority of the Government of NCT of Delhi. Relevant portion of the advertisement dated 21.1.2002 reads as under:

“5. SC and OBC candidates must furnish the category certificate issued by the competent authority of the Govt. of NCT of Delhi.”

20. The petitioner understood the requirement and thus, furnished an OBC certificate from Delhi, which would show that the petitioner was very much aware that one of the requirements for applying to the post of Staff Nurse was to file an OBC certificate from the competent authority i.e. Government of NCT of Delhi and not the OBC certificate from Rajasthan.
21. In our view, the CAT has rightly considered and held that merely because the petitioner belongs to Other Backward Caste from Rajasthan and had an OBC certificate from Rajasthan, it would not make the petitioner eligible for employment in Delhi in terms of the advertisement dated 21.1.2002.
22. The next issue, which arises for our consideration, is as to whether the disciplinary authority should have recorded reasons for its disagreement in terms of Rule 15(2) of CCS (CCA) Rules, 1965? To answer this, it

would be useful to reproduce Rule 15(2):

“15. Action on inquiry report

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

23. There is no quarrel to the proposition, sought to be urged by the counsel for the petitioner. The short question, which would thus arise, is as to whether the disciplinary authority had disagreed with the report of the Inquiry Officer.
24. A perusal of Para 5 of the report of the inquiry officer, which has been reproduced in para 13 above hereinabove, would show that a categorical finding has been returned by the Inquiry Officer that the OBC Certificate, relied upon by the petitioner, was not issued by the SDM, Kanjhawala. It is only if the disciplinary authority disagreed with this finding, Rule 15(2) would require that the disciplinary authority to record reasons for disagreement. In fact the disciplinary authority has agreed with this finding of the Inquiry Officer, proceeded ahead with the matter and thereafter issued a Memorandum to the petitioner giving an opportunity to

the petitioner to make a representation. Since, there was no disagreement, the judgment sought to be relied upon, would have no bearing to the facts of the present case.

25. As far as the observations made by the Supreme Court in the case of *Union of India* (supra) is concerned, we find that neither there is violation of natural justice for conducting the proceedings nor the authorities had disabled themselves in reaching a fair conclusion by considerations, which are extraneous to the evidence and merits on record, as nothing has been placed either before us or before the Tribunal.

26. We find that the conclusions reached by the Inquiry Officer and the disciplinary authority are not arbitrary or capricious that no reasonable person could have ever arrived at such a conclusion. In the teeth of the categorical finding that the OBC certificate is a fake document, which is also based on the testimony of SDM, we find no grounds to interfere in the matter. This petition is without any merit and the same is accordingly dismissed. No costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 08, 2015

msr