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

+ **W.P.(C) 9637/2015**

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Date of judgment: 9th October, 2015

UNION OF INDIA AND ANR.

..... Petitioners

Through: Mr. R. Mishra, Mr. Sanjiv Kumar Saxena
and Mr. Mukesh Kumar Tiwari, Advocates

Versus

S.S. SINGH

... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

CM APPL. Nos. 22895-96/2015

1. Exemption allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM APPL. Nos. 22897-98/2015

3. Allowed, applications stand disposed of.

W.P. (C) No.9637/2015

4. By way of the present petition, the petitioners challenges the correctness of the order dated 14.11.2014 passed by the Central Administrative Tribunal in O.A. No. 2616/2012, whereby the Tribunal allowed the O.A. of the respondent herein.
5. To appreciate the controversy in hand, it would be necessary to give a brief gist of the facts.

“2. A charge memorandum dated 07.06.2006 under Rule 14 of the CCS (CCA) Rules, 1965 was issued to the applicant which contains the following charge:

On the night intervening 18/19-3-2006 three passenger namely Balbir Singh S/o Sh. Gurdeep Singh, R/O Village Nawanpind, Distt. Jalandhar (PB), passport No.E-5806185, Sh. Milkitt Singh S/o Shankar Singh, R/O Viuullage Suchetgarh Kothe, Distt. Kapurthala (PB), passport No.F-4825241 and Sh. Gurmit Singh S/o Mehar Singh, R/O Village Toti, Distt. Kapurthala (PB), passport No.F-5675098 intended to go to Moscow by flight No.HY-424(Uzbekistan Airlines) and approached the counter No.3 manned by Sh. S.S.Singh, ACIO-II/G for immigration clearance. Clearing officer Sh. S.S.Singh, ACIO-II/G told them to wait and demanded 100 US \$ from each passenger for immigration clearance. The pax Balbir Singh paid 100 US \$ for their clearance to Sh. S.S.Singh.

Above act of Sh. S.S.Singh, ACIO-II/G thefore, violated the provision of rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

3. On denying the said charge by the applicant, the respondents conducted a detailed inquiry and the inquiry officer vide his inquiry report dated 26.03.2007 held that the charge was not proved.

4. The disciplinary authority, though the inquiry officer held that the charge levelled against the applicant was not proved, however, imposed the minor penalty of censure on the applicant vide Order dated 11.04.2007. The appeal preferred by the applicant was rejected by the appellate authority vide its order dated 29.11.2007. The revision petition of the applicant was also rejected by the revisional authority vide Order dated 15.03.2012.”

6. The learned counsel for the petitioners argued that the Central Administrative Tribunal erred in not appreciating the observations recorded by the Disciplinary authority that *“it has been established that the applicant made the complainants wait for a quite long period of time without plausible reasons”*, and thereafter the Disciplinary Authority based on such observations imposed the penalty of ‘censure’.
7. The learned counsel for the petitioners further argued that it may be noted from the Article of Charge framed against the respondent vide Memorandum dated 07.06.2006 that the respondent was also charged for demand of money from the passengers for the immigration clearance.
8. The learned counsel for the petitioners further argued that the respondent has not alleged any illegality or irregularity in the procedure and therefore interference by the learned Tribunal with the impugned orders were inappropriate.
9. The learned counsel for the petitioners argued that the Appellate Authority after considering the contention of the respondent rejected the appeal preferred by the respondent. The relevant extract of the order dated 29.11.2007 reads as under:-

“The penalty of ‘censure’ has been awarded to him on the ground of giving delayed immigration clearance to three passengers by making them to wait for longer period of time without any plausible reason. The fact that the said passengers were given delayed immigration clearance was not contested during cross examination of witnesses and so the point has been proved as an established fact from the records. When seen in the context of

overall facts from the records. When seen in the context of overall facts and circumstances of the case, it becomes amply clear that the motive of the charged officer was definitely not good, but for seizure of extortion money which has been reportedly returned by the charged officer by forcibly putting the US \$ 100 note into the pocket of the PAX, it would have been defiantly a case of major penalty. As the departmental proceedings are based on the principle of preponderance of probability, the disciplinary authority after carefully considering the case awarded him penalty of censure which is in accordance with the CCS (CCA) Rules. Thus there is no violation of principles of natural justice. Taking into consideration the facts and circumstances of the case, the undersigned does not find any reason to interfere with the penalty imposed on him by the disciplinary authority and the appeal of Shri S.S. Singh is accordingly rejected.”

10. We have heard the learned counsel for the petitioners. The question which arises in the present writ petition is whether the imposition of the penalty of censure on the respondent was appropriate? To consider the question in hand, it is important to go through the impugned order passed by the learned Tribunal and law laid down by the Hon'ble Apex Court in this regard. The relevant para 9 and 10 of the impugned order is reproduced as under:

“9. Admittedly, the inquiry officer held that the charge levelled against the applicant vide charge memorandum dated 07.06.2006 is not proved. Further, the disciplinary authority vide the disciplinary order dated 11.04.2007 specifically agreed with the said findings of the inquiry officer.

However, by observing that it has been established that the applicant made the complainants to wait for a quite long period of time without plausible reason imposed the penalty of censure. The said observation was neither part of the charge levelled against the applicant and that no finding was given by any authority to that effect. Even the perusal of Annexure R1 on which the respondents placed reliance to state that the applicant has admitted that he made the complainants (passengers) to wait for undue long period, is found to be incorrect. On the other hand, in the said Annexure R1, the applicant has denied the charge levelled against him was totally baseless and false.

10. In any event, no employee can be punished for a charge which was not levelled against him at any point of time and without providing him any opportunity to defend himself on the said charge. In the present case, it is admitted that the applicant was imposed with the minor penalty of censure on an allegation which was not forms part of the charge memorandum in pursuance of which an inquiry was conducted, wherein it was held that the charge levelled against him is not proved.”

11. The law in this regard is already well settled by the Hon’ble Apex Court in ***State of Punjab v. Bakhtawar Singh : AIR 1972 SC 2083*** wherein the Hon’ble Apex Court observed as under:

“It may be noted that Shri Bakhtawar Singh was not charged with having not discharged his duties impartially. Non of the charges levelled against him of not discharging his duties impartially. Hence the Minister was not justified in taking into consideration a charge in respect

of which the member was not given any opportunity to explain his position...”

12. In ***Punjab National Bank and Ors. v. Kunj Behari Mishra: (1998) 7 SCC 84***, relying upon the earlier decisions passed in ***State of Assam v. Bimal Kumar Pandit: AIR 1963 SC 1612***; ***Institute of Chartered Accountants of India v. L.K. Ratna and Ors.: (1986) 4 SCC 537*** as also the Constitution Bench decision in ***Managing Director, ECU, Hyderabad and Ors. v. B. Karunakar and Ors.: (1993) 4 SCC 727*** and the decision in ***Ram Kishan v. Union of India: (1995) 6 SCC 157***, it was held that: (SCC p. 96, para 17)

“...It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned

unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.”

13. The Court further observed as under : (SCC p. 96, para 18)

“...When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed...”

14. The said decision was also followed by the Hon'ble Apex Court in ***Yoginath D. Bagde v. State of Maharashtra & Anr.: (1999) 7 SCC 739***, wherein it has been held as under:-

“33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges leveled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings.

The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

15. On perusal of facts and circumstances of the present case as well as the law laid down by the Hon'ble Apex Court in this regard, we are of the considered view that it is a settled proposition of law that an employee cannot be punished for a charge which is not levelled against him. The action of an employer of punishing an employee in respect of the charge which is not levelled against him results in breach of the principles of natural justice and it has the effect of rendering the order passed by the employer a nullity. It is an elementary rule of natural justice that a man whose civil rights are going to be affected by an action of a public authority must know the reasons on which the action is being taken against him and must have an opportunity to represent his case. In the present case, the Memorandum dated 07.06.2006 under Rule 14 of CCS (CCA) Rules, 1965 was issued to the respondent for demanding US \$ 100 from each of the passengers for immigration clearance but the same could not be proved before the Inquiry Officer. Moreover, the Inquiry Officer in his inquiry report dated 26.03.2007 concluded that US \$ 100 were not recovered from the respondent nor any evidence surfaced against the respondent for the charge imposed on him

despite which the Disciplinary Authority vide order dated 11.04.2007 agreed with the findings of the Inquiry Officer, imposed the penalty of ‘censure’ on the respondent without any explanation and application of mind. The only complaint against the respondent was that he made the passengers to wait for quite a long period of time without plausible reason. Therefore, the act of imposition of penalty of ‘censure’ without affording an opportunity to the respondent to make representation is illegal and arbitrary. Hence, the Disciplinary Authority and the Appellate Authority erred in imposing the penalty of ‘censure’ on respondent and such order of punishment cannot be sustained.

16. Resultantly, we find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.

17. **CM APPL. No. 22894/2015 (Stay)**

In view of the order passed in the writ petition, the present application is also dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 9, 2015

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