

**Ladda(PS).*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10810 of 2013

S.K. Viridi

..Petitioner.

Vs

Union of India & Ors

..Respondents.

Mr. R.R.Shetty i/by Mr P.P. George for the Petitioner.

Mrs N.V.Masurkar a/with Mr A.A.George for Respondent No.1.

CORAM : ANOOP V. MOHTA AND
A.S.GADKARI, JJ.

DATE : 6th December, 2016

ORAL JUDGMENT :- (PER : ANOOP V. MOHTA, J)

- 1) Rule. Rule returnable forthwith. Heard finally by consent of parties.
- 2) The relevant paragraph 10 in the impugned order dated 9 July, 2013 reads as under :

“He also challenges the impugned order as violative of principles of natural justice as no disagreement note was served on him by Disciplinary Authority before imposing the penalty, to inform him why the Disciplinary Authority would disagree with the report of the Inquiry Officer. Learned Counsel for respondents point out that the first stage advise of the CVC was forwarded to the applicant on 4/1/2006. The Disciplinary Authority has also mentioned in the order that the applicant had submitted a representation dated 5/3/2009 raising therein several arguments contesting

the observations of the CVC made in their O.M. Dated 7/3/2007 which was examined. This shows that between the report of the Enquiry Officer dated 27/11/2006 and the order of the Disciplinary Authority dated 27/5/2011, the applicant had an occasion to peruse the observations of the CVC dated 7/3/2007 and make his representation in regard to the enquiry.”

3) On hearing the learned counsel for the parties in the present case, in view of the submissions so raised and in view of the specific submission that the learned Tribunal in spite of the issue raised, whether the Disciplinary Authority, if proposed to over turn the order passed by the Enquiry Officer and/or decision taken, then, opportunity should be given to the delinquent or not? In the present case, admittedly, no such opportunity was given to the petitioner though the Enquiry Officer after considering the material placed on record did not award any punishment. The Disciplinary Authority, however, without giving any opportunity imposed the penalty in question by observing that the charge is devoid of any substance. Therefore, the petitioner filed O.A. No. 597 of 2011 which was heard finally and the case of the petitioner on this reason also was rejected. The learned counsel appearing for the petitioner has pointed out the judgment of the Supreme Court in the case of Punjab National Bank & Ors Vs. Kunj Behari Misra reported in 1998 Supreme Court Cases (L & S) 1783 and specifically paragraphs 6 and 17 which are reproduced herein below :

“6. These appeals by special leave came up for hearing before a bench of two judges of this Court. While the appellants placed reliance on the decision in *State Bank of India, Bhopal Vs. S. S. Koshal* [1994 Suppl. (2) SCC 468], the counsel for the respondents placed reliance on two other Two-Judge Bench decision of this Court in *Institute of Chartered Accountants of India Vs. L. K. Ratna and Ors.* [(1986) 4 SCC 537] and *Ram Kishan Vs. Union of India and Ors.* [(1995) 6 SCC 157]. Both the sides also referred to the Constitution Bench decision of this Court in *managing Director ECIL, Hyderabad and Ors. Vs. B. Karunakar and Ors.* [(1993) 4 SCC 727] and each of them sought to place reliance on them. In view of the apparent conflict in the decisions in the first three cases by order dated 30th October, 1996 the case was referred to be heard by a large Bench. We, therefore, propose to deal with the point in issue and resolve the apparent conflict.

17. ...These observations are clearly in tune with the observations in *Bimal Kumar Pandit's case* (supra) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per *Karunakar's case* (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry 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 inquiring 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 inquiry 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 findings of the disciplinary authority.”

4) After considering the submissions advanced by the learned counsel appearing for the petitioner and the respondents, we are convinced that this is a case where in view of the above observations and in view of the admitted position on record and basically keeping in mind the position of law, the learned Tribunal ought to have considered the case of the petitioner so reproduced. Thus, in the impugned order all these reasons are mentioned and there appears no further discussion on this issue as it goes to the root of the matter and basically contention so raised by the petitioner who is already retired. Therefore, in view of above position of law as well as on facts we, are inclined to interfere with the impugned order dated 9th July, 2013. We request to the learned Members to deal with the submissions so raised keeping in mind paragraph 17 so reproduced above as the ratio so laid down by the Supreme Court binds every one.

5) In view of the above, the impugned order is quashed and set aside. Original Application is restored. The learned Tribunal to decide the matter afresh in accordance with law. No costs. Rule is made absolute accordingly.

(A.S. GADKARI, J.)

(ANOOP V. MOHTA,J)