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

+ W.P.(C) 19690/2005

RAJPAL SINGH

..... Petitioner

Through: Mr. Ankur Chibber, Advocate

versus

UOI & ORS.

..... Respondents

Through: Ms. Barkha Babbar &
Ms. Dipanjali Tyagi, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
09.03.2016

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1. The petitioner has sought a writ of certiorari, for quashing the order dated 6th December, 2001 passed by the respondent, CRPF whereunder it was held that the charges framed against him under Article – I and II, for failing to join his duties without any valid permission/sanction of any kind of leave and for failing to join his duties upon being relieved on 12th June, 1999 on transfer and continuing to remain absent, were fully proved and accepting the advice of the UPSC, the penalty of compulsory retirement with 30% cut in pension on a permanent basis under Rule 40 of CCS (Pension) Rules, 1972 was imposed upon him. Further, the petitioner's unauthorized absence from duty w.e.f. 13th June, 1999, till 1st June, 2000 (*for 355 days*) was treated as *dies non*.

2. On 23rd February, 2016, a twofold argument had been raised by learned counsel for the petitioner and recorded as below:-

“2. A twofold argument has been raised by learned counsel for the petitioner to assail the impugned order which is that after conducting the departmental Inquiry that had culminated in a report dated 8th May, 2001, the Inquiry Officer had held that Article-I of the charge levelled against the petitioner was partially proved and Article-II was not proved. However, the Disciplinary Authority did not concur with the Inquiry Officer and issued a Disagreement Note dated 25th April, 2001, calling up the petitioner to respond.

3. It is the stand of the petitioner that the said Disagreement Note was not tentative, but conclusive in nature and the petitioner did not respond thereto as it would have been an empty formality. In support of this submission, learned counsel for the petitioner relies on a decision of the Supreme Court in the case of Punjab National Bank and Others v. Kunj Behari Mishra reported as (1998) 7 SCC 84._

4. The second argument advanced by learned counsel for the petitioner is that it had transpired later on that the Disciplinary Authority had approached the UPSC for obtaining its advice, which was duly conveyed vide letter dated 29th October, 2001, wherein it was recommended that the charges established against the petitioner were grave in nature and ends of justice would be met if penalty of compulsory retirement is imposed upon him with 30% cut in his pension on a permanent basis. He states that it was

the very same punishment which had ultimately been imposed upon him by the Competent Authority, without furnishing a copy of the said report to the petitioner before it was acted upon, thus, violating the principles of natural justice. To fortify his submission, learned counsel relies on the decision in the case of Union of India & ors. Vs. S.K. Kapoor reported as (2011) 4 SCC 589 and reiterated in a subsequent decision of the Supreme Court in the case of Union of India and Others v. R.P. Singh reported as (2014) 7 SCC 340.”

3. Ms. Barkha Babbar, learned counsel for the respondents, had sought time to examine the plea taken by the other side and the case was adjourned for today. Today, learned counsel questions the right of the petitioner to advance the second argument noted above on the ground that the petitioner had failed to take any such plea in his representation submitted to the disciplinary authority and nor had such a plea been taken in the grounds raised in the writ petition to assail the impugned order.

4. As for the first plea taken by learned counsel for the petitioner, it is an undisputed position that after the departmental inquiry was conducted and the report dated 8th May, 2001 was submitted by the Inquiry Officer, wherein it was held that the charge in Article-I was partially proved and the charge in Article II was not proved, the disciplinary authority had disagreed with the recommendations and findings of the Inquiry Officer and had proceeded to issue a Disagreement Note dated 25th April, 2010 (*Annexure P-6*), calling upon the petitioner to respond. However, on a bare perusal of the said Disagreement Note, it emerges clearly that the

same is conclusive in nature and in such circumstances, the petitioner is justified in stating that he did not respond thereto, as it would have been an empty formality. Mr. Ankur Chibber, counsel for the petitioner cites the following judgments to demonstrate the procedure required to be followed by the disciplinary authority when disagreeing with the inquiry report:-

- i. (1998) 7 SCC 84 Punjab National Bank and Others Vs. Kunj Behari Mishra
- ii. (1999) 7 SCC 739 Yoginath D. Bagde Vs. State of Maharashtra and Another
- iii. Judgment dated 26th March, 2010, in W.P.(C) 745/2009 Rishipal Singh Vs. Union of India & ors.
- iv. Judgment dated 8th February, 2011, in W.P.(C) 7760/2003 R.K. Chauhan Vs. UOI & ors.

5. The above decisions have reiterated the legal position that in the event the disciplinary authority, while penning the note of disagreement, prejudices the issue by returning a conclusive opinion, which would establish the petitioner's guilt instead of giving a tentative reason for disagreement, it would amount to prejudging the issue. In such circumstances, it would not be possible to remedy the situation by directing that a post decisional hearing be granted. In similar circumstances that had arisen in the case of Yoginath D. Bagde (supra), the Supreme Court had taken note of the stand of the employer, which was as follows:-

"36. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the respondent, has contended that the disciplinary

proceedings come to an end either when the delinquent is exonerated of the charges or when punishment is inflicted upon him on charges being proved. Since in the instant case, the Disciplinary Committee had given an opportunity of hearing to the appellant before finally recommending to the State Government to dismiss him from service, the principles of natural justice were fully complied with and that too at a stage earlier than the stage when the curtain was finally brought down on the proceedings. He contended that not only the findings recorded by the Enquiry Officer but the reasons for which the Disciplinary Committee had not agreed with those findings, were communicated to the appellant to whom a notice was also issued to show-cause why he be not dismissed from service. He further contended that the appellant submitted a reply in which he attacked the reasons for which the Disciplinary Committee had decided to disagree with the findings of the Enquiry Officer and, therefore, in the given circumstances of this case, it cannot be said that there was failure or denial of opportunity at any stage.”

6. The contention of the employer was however turned down in Paragraph No.37 of the aforesaid decision, which is reproduced herein below:-

“37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the

learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.” (emphasis added)

7. In the instant case, a glance at the Disagreement Note dated 25th April, 2001, reveals that the disciplinary authority had arrived at a conclusive finding to the effect that the statement of the witnesses and the evidence adduced during the course of inquiry amply prove the charges levelled against the petitioner and therefore held that both, Article-I & II

of the charges framed against him, were fully proved. In the light of the aforesaid categorical observations, by no stretch of imagination can it be said that the disciplinary authority had taken a tentative view while penning the Disagreement Note. Instead, it is quite evident that a final decision had been taken by the disciplinary authority, that both the charges levelled against the petitioner were fully established and only after recording the said decision, was a notice issued to the petitioner requiring him to show cause against the punishment proposed to be inflicted upon him. The said show-cause notice would have to be treated as an eyewash for the reason that the disciplinary authority had already made up its mind against the petitioner. In such circumstances, we have no option but to hold that the findings returned by the disciplinary authority were final in nature and the procedure laid down in the case of Kunj Behari Mishra (Supra) and Yoginath D. Bagde (Supra) was thrown to the winds. This itself would be sufficient to vitiate the impugned order dated 6th December, 2011 and as a result, the impugned order compulsorily retiring the petitioner ought to be quashed and set aside.

8. Having made the above observations, in ordinary circumstances, the matter ought to be remanded back to the respondents for reconsideration from the point where the Inquiry Officer's report dated 8th May, 2001 was submitted to the disciplinary authority. However, we have been informed by counsel for the respondent that by now, the respondents have weeded out the records of case. In these circumstances, no useful purpose shall be served by remanding the case back to the respondent for a fresh consideration and decision.

9. We shall therefore proceed to examine the proportionality of the punishment inflicted on the petitioner, which as per learned counsel for the petitioner, is excessive. The facts of the case reveal that the period for which the petitioner had remained absent from duty was between 13th June, 1999 to 1st June, 2000. The charge sheet was issued to the petitioner on 7th March, 2000 and after the departmental inquiry proceedings were conducted, the Inquiry Officer had submitted a Report on 8th May, 2001. The petitioner had superannuated on the post of a Deputy Commandant in March, 2002. Three months before the date of the petitioner's superannuation, came to be passed the impugned order dated 6th December, 2001, whereunder the penalty of compulsory retirement along with 30% cut in pension on a permanent basis was imposed. As on date, the 30% cut in the petitioner's pension has remained in place for a period spanning over fourteen years.

10. Learned counsel for the petitioner submits that the petitioner had served for a period of thirty four years with an unblemished service record and in this period, no penalty had been inflicted upon him. By now the petitioner is at an advanced age of seventy years. He was the sole bread winner and had three daughters to settle in life by arranging their marriages, which itself is an explanation that was offered by him in the course of the inquiry proceedings to explain his prolonged absence from duty. Learned counsel states that in all these years, the petitioner has been suffering from indifferent health and there is no other male member in the family to extend him and his family, any monetary support. After his retirement, the petitioner and his family is entirely dependent on his pared down pension which remains the sole source of

his income. It is thus submitted that the impugned order whereunder 30% cut in the petitioner's pension has been imposed on a permanent basis, be considered sympathetically and set aside, as it is grossly disproportionate to the misconduct alleged against him.

11. Having regard to the facts and circumstances of the case noted above and keeping in mind the fact that the petitioner has been suffering 30% cut in his pension w.e.f. the date of passing of the impugned order, i.e. 6th December, 2001 till date, which accounts for almost fourteen years by now, we are of the opinion that ends of justice would be met if the penalty of compulsory retirement imposed upon the petitioner is maintained and the punishment of 30% cut in his pension on a permanent basis is reduced to 30% cut in pension for a period of fifteen years, ending on 5th December, 2016. Thereafter, the petitioner shall be entitled to grant of full pension w.e.f. 6th December, 2016.

12. With the aforesaid observations, the petition is disposed of, with no orders as to costs.

HIMA KOHLI, J

SUNIL GAUR, J

MARCH 09, 2016

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