HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-342-2016
Date of Decision: May 10, 2017

B.M.Verma .....Petitioner

Versus

Union of India and others ......Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No.
3. Whether Reporters of local papers may be allowed to see the judgment? Yes/No

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Present: Mr.P.K.Khindria, Advocate
for the petitioner.

Mr.Puneet Gupta, Advocate
for the respondents.

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SURYA KANT, J.

The petitioner seeks quashing of the order, dated 17.09.2015, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') whereby his Original Application in which he laid challenge to the orders passed in the disciplinary proceedings culminating into imposition of major penalty of reduction to a lower stage in the time scale of pay for a period of two years, has been dismissed.

[2] A brief reference to the facts may be made.

[3] The petitioner joined the Income Tax Department, Ministry of Finance, as a Lower Division Clerk on 01.03.1969. He earned various promotions, i.e. Inspector Income Tax on 19.09.1988 and thereafter as Income Tax Officer on 16.12.1997. The petitioner retired from service on attaining the age of superannuation on 31.12.2010.

[4] The Joint Commissioner of Income Tax, Ambala, nominated the petitioner as a member of the Inspection team on 03.12.1998 to conduct survey of a godown of an assessee located at Baldev Nagar Camp, Ambala where the wet skins of animals were stored. It appears that the authorities were not satisfied with the survey action, hence a second team was constituted in which again the petitioner was nominated as a member. Subsequently, it was alleged that in the first survey conducted by the team headed by Mewa Ram, ITO (in which petitioner was a member) "the stock taking exercise was done on estimate basis in an extremely hasty and casual manner", as a huge difference to the extent of 49,340 wet blue skins in different qualities and sizes was detected after the subsequent survey.

[5] Based upon the afore-stated allegation, the petitioner was served with charge-sheet dated 03.06.1999. As the reply was found to be unsatisfactory, the Commissioner of Income-tax (Appeals)-XIX, New Delhi who was appointed the Inquiry Officer held in his report dated 28.07.2006 that the charges against the petitioner were not proved.

[6] Agreeing with the enquiry report, the Chief Commissioner, Income-tax, Amritsar, vide memo dated 11/15.12.2006 (Annexure A-5) recommended to the Competent Authority that the disciplinary proceedings against the petitioner may be dropped. The matter was again considered by the successor Chief Commissioner of Income-tax, Amritsar, who also vide Memo dated 10.04.2008 (Annexure A-6) reiterated that the disciplinary proceedings against the petitioner need to be dropped. Though it is not clear from the record as to how and in what circumstances the matter was forwarded to the Central Vigilance Commission (for brevity, 'the CVC'), but

the CVC vide Memorandum dated 04.07.2008 in disagreement with the opinion of the departmental authorities advised "imposition of suitable major penalty against the petitioner".

[7] Based upon the opinion of CVC, the Disciplinary Authority served the petitioner with a show cause notice, dated 08.08.2008 (Annexure A-7) proposing to give an opportunity to him to explain as to why a major penalty, as enumerated in Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity,'the 1965 Rules') be not imposed on him. Relevant part of the notice issued by the Disciplinary Authority reads as follows:-

> "2) An enquiry was also conducted into the charges after following the procedure laid down in the CCS(CCA) Rules, 1965. After taking into account entire material on record, evidence available as well as after considering the fact that your plea of informing the discrepancies in preparing the stock inventory by the authorised officer late Mr.Mewa Ram, TRO, Panchkula is found to be an after-thought because this information was given by you only after the Range Jt.CIT decided for re-count of the stock inventory, it is observed that you (then ITO, Ward 2, Panchkula) failed to report on time the discrepancies in the stock tally prepared on 03.12.1998 to the Range, Jt. Commissioner of Income Tax and thus, as Joint-member of the survey team, it is established that you committed gross mis-conduct in using unfair means, not informing the Department about the discrepancy in the stock tally on time. Accordingly, in terms of Rule 15 of the CCS (CCA) Rules, 1965, I propose to impose a major penalty on you for such mis-conduct and behaviour which tantamount to dis-honesty, thus, unbecoming of a government officer.

> 3) Before any such order is passed, you are hereby given an opportunity to explain why a major penalty, as enumerated in Rule 11 of the CCS(CCA) Rules, 1965 may not be imposed upon you. You are requested to furnish your written reply within fifteen days of the receipt of this letter."

[8] The petitioner's reply to the show cause notice was turned down and consequently, the order dated 16.10.2008 (Annexure A-9) was passed whereby the pay of the petitioner was reduced by one stage, i.e. from Rs.25590/- to Rs.24840/- for a period of two years and two months w.e.f. 01.11.2008 to 31.12.2010. The punishment was imposed with cumulative effect and it was expressly recorded that it shall have an adverse affect to all future benefits including pensionary benefits. The petitioner filed appeal under Rule 23 of the 1965 Rules which was also turned down by the Appellate Authority vide order dated 14.03.2014 (Annexure A-16).

[9] The aggrieved petitioner approached the Tribunal which also dismissed his challenge concluding as follows:

> "12. In the present case, we cannot hold that there has been serious lapse in procedure nor the punishment awarded to the applicant is grossly disproportionate to the alleged misconduct of the government employee. Like wise the appeal has been rejected on credible grounds and a concurrence with the original order has been recorded."

[10] The disciplinary action against the petitioner was initiated under the provisions of the 1965 Rules. Rule 15 of the 1965 Rules, which has a direct bearing on the controversy reads as follows:-

> "15. Action on Enquiry report:

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(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 <u>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</u>, 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.

(2A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall

> be taken into consideration before making any order imposing any penalty on the Government servant.
>
> (4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:
>
> Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

[emphasis applied]

[11] It may be seen from its plain reading that the Sub Rule (2) mandates that the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by it or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority <u>together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge</u> to the Government servant who shall be required to submit his written representation or submission to the Disciplinary Authority. Sub Rule (2A) obligates the Disciplinary Authority to consider the representation, if any, submitted by the Government servant and record its findings before

proceeding further in the matter. Thereafter, the Disciplinary Authority shall form its opinion under Sub-Rule(3) regarding imposition of punishment to the Government servant and under Sub Rule (4) it can impose one of the punishments as enumerated in Rule 11 of the 1965 Rules.

[12] The solitary question which falls for consideration in these proceedings is whether the procedure mandated under Sub Rule (2) of Rule 15 has been followed in the instant case? If not, what are the consequences?

[13] It may be mentioned at this stage that the respondents were directed to produce the records of the enquiry but learned counsel for Union of India, on the basis of written instructions, dated 08.05.2017, states that the original records are not traceable though photo-copies of the original noting-sheet and some documents are available which may be considered as true and authentic. We have no reason to doubt the genuineness of the photocopies of the record produced on behalf of the respondents and have perused the same to see whether Sub Rule (2) of Rule 15 was complied with or not.

[14] It emerges out from the admitted facts that in the instant case, the Inquiring Authority was other than the Disciplinary Authority. It is also not in dispute that the Inquiring Authority exonerated the petitioner as the charges were not proved against him. It is also on record that the departmental authorities had decided to drop the proceedings, but CVC intervened and found that it was a fit case for imposition of a major penalty. The Stage was, thus, set to proceed further and follow Sub Rule (2) of Rule 15, which mandates that in case the Disciplinary Authority wants to disagree

with the findings rendered by the Inquiring Authority, it is obligatory on it to give its 'tentative reasons for disagreement' and communicate such reasons to the Government servant to enable him to submit his representation against those reasons. The photo-copies of the record including noting on the file produced on behalf of the respondents unambiguously suggest that at no stage the Disciplinary Authority recorded its reasons for disagreement and obviously never ever came an occasion to communicate such 'reasons of disagreement' to the petitioner. The fact that there is no separate note of disagreement recorded by the Disciplinary Authority is not disputed on behalf of the respondents as well.

[15] Further, the show cause notice dated 08.08.2008 (Annexure A-7), relevant extracts of which have been reproduced in para 7 of this order, also did not contain even a single reason of disagreement on behalf of the Disciplinary Authority. The said show cause notice does not at all discuss the findings returned by the Enquiry Officer and as to why the Disciplinary Authority differed with those reasons. In fact the show cause notice is a mere repetition of the accusations attributed to the petitioner in the charge-sheet. The observations made by the Disciplinary Authority that “it is established that you committed gross mis-conduct in using unfair means by not informing the Department about the discrepancy in the stock tally on time”, is nothing but reproduction of the statement of allegations. It is reiterated at the cost of repetition that no such finding was recorded by the Inquiry Officer. Similarly, the Disciplinary Authority also recorded no such finding against the petitioner except that it mechanically reproduced the allegations from the charge-sheet while issuing the show cause notice dated

08.08.2008, apparently to comply with the CVC opinion.

[16] In a such like case where the Inquiring Authority had exonerated the delinquent, it was imperative upon the Disciplinary Authority to give its own reasons of disagreement as to why the Government servant is liable to be held guilty of the charges. Unless such reasons are communicated to the charged employee, he cannot submit any effective defence, for he does not know as to what is stocked in the mind of Disciplinary Authority to hold him guilty of the charges. Such a recourse is not only mandated under the Rules, it is also fundamental to the principles of natural justice and fair play. It would, in a way, amounts to condenming the petitioner unheard.

[17] It may be true that the Disciplinary Authority as well as the Appellate Authority have passed reasoned orders but those reasons have been taken straight out of the charge-sheet only and are not supported by any fact finding process under the Rules. Learned Tribunal also proceeded on the premise as if the enquiry proceedings were conducted in accordance with the procedure contemplated under the 1965 Rules and that the "confidence of the employer/employee is of paramount consideration." It was not a case where the principle of 'loss of confidence' could be invoked. It is a case where the Disciplinary proceedings were initiated under the 1965 Rules and the same ought to have been taken to a logical conclusion in accordance with the procedure prescribed under these Rules. Any deviation therefrom especially when it results into denial of fair opportunity to defend himself to an employee, will have serious repercussions on the fate of the enquiry proceedings.

[18] We are thus of the considered view that the learned Tribunal fell in error in holding that the proceedings have been conducted in accordance with the prescribed procedure.

[19] In the light of the above discussion, the writ petition is allowed. The order passed by the Tribunal dated 17.09.2015 is set aside. Similarly the orders passed by the Appellate Authority as well as the Disciplinary Authority as also the disciplinary proceedings from the stage of issuance of the show cause notice dated 08.08.2008 and subsequent thereto are quashed. There shall, however, be liberty to the Disciplinary Authority to record the reasons of its disagreement, if so advised; communicate such reasons to the petitioner within the prescribed period and thereafter take a decision on consideration of petitioner's reply, if any, as to whether or not he is guilty of charges leveled against him. Since the respondent has retired from service meanwhile, it is directed that the Disciplinary Authority shall take a conscious decision within a period of three months from the date of receipt of a certified copy of this order as to whether or not to proceed against him. The petitioner shall be entitled to all consequential benefits including arrears of pay and pension, if the Disciplinary Authority decides not to proceed against him or if he is finally exonerated by the Competent Authority.

(SURYA KANT)
JUDGE

May 10, 2017 **(SUDIP AHLUWALIA)**
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1. **Whether speaking/reasoned ?** **Yes/No**
2. **Whether reportable ?** **Yes/No**