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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) NO. 864/2017**

Reserved on : 3rd February, 2017
Date of decision: 28th March, 2017

BAL KISHAN Petitioner
Through Mr. L.B. Rai & Mr. Mohit Kumar
Sharma, Advocate.

versus

UNION OF INDIA Respondent
Through Mr. Rakesh Kumar, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.:

The petitioner-Bal Kishan impugns the order dated 9th December, 2015 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) dismissing OA No. 1660/2014. The petitioner has also challenged the order dated 2nd December, 2016, which dismisses the Review Application No. 136/2016 filed pursuant to liberty granted by this Court in Writ Petition (C) No. 2065/2016.

2. The petitioner's primary challenge is to the penalty of reduction of pay by one stage in the time-scale of pay for a period of two years, with the stipulation that he would not earn increments during this period of reduction and on expiry of the said period, the reduction would have the effect of

postponing of increments of pay.

3. The contentions of the petitioner are as under:

(i) There was violation of the principles of natural justice as the respondents had failed to furnish the advice dated 21st May, 2012 given by the Central Vigilance Commission (CVC, for short) and the advice dated 1st July, 2013 of the Union Public Service Commission's ('UPSC'). Reliance is placed on the decision of the Supreme Court in Civil Appeal No. 5341/2006, ***Union of India and Others versus S.K. Kapoor***, decided on 16th March, 2011 and the circular of the CVC dated 28th September, 2000 which stipulates second stage advice provided by the CVC may be made available to the delinquent employee along with the Inquiry Officer's report so as to enable the employee to make adequate representation.

(ii) The limited scope and ambit of the order of remand dated 11th October, 2011 passed by the Tribunal in Original Application No. 4002/2010 in the first round of litigation, has been ignored and violated.

(iii) As per the circular of the CVC dated 26th February, 2001 in cases of technical violation in furnishing details of assets/transactions, a liberal view should be taken and harsh punishments should not be imposed. Punishment of either censure or warning should be issued. In the present case, the punishment actually imposed on the petitioner is a major penalty. Plea of disproportionality of punishment is raised.

(iv) The petitioner was tried and has been acquitted of the criminal charge of acquisition of disproportionate assets. The punishment

imposed in the disciplinary proceedings, therefore, cannot be sustained.

4. The aforesaid OA No. 1660/2014 is the second round of litigation. The petitioner, as is apparent from the above narration, had earlier filed OA No. 4002/2010, which was disposed of vide order dated 11th October, 2011 quashing the penalty order dated 4th August, 2010. The contention raised by the petitioner was that the charges proved related to non-intimation of purchase/acquisition of properties and, therefore, the only punishment which could be imposed was warning or censure in terms of the circular dated 26th February, 2001 issued by the CVC. The Tribunal observed that whether or not the said circular or instructions would be applicable had not been considered and examined by the Disciplinary Authority in the order dated 4th August, 2010. The reason why the said instructions/circular would not apply could not be ascertained. The exact reasoning and the observations of the Tribunal in the order dated 11th October, 2011, read as under:-

“4. Having heard the applicant who appears in person and the learned counsel representing the respondents, we are of the view that the only plea raised by the applicant as noted above has merit. It is not a case where the observations made by the enquiry officer based upon instructions dated 22nd February, 2001 (sic. 26th February, 2001), that it was a case of technical lapse only, might have been disagreed by the disciplinary authority. It is not a case either where the instructions aforesaid may not be applicable. No such observation/finding has been given by the disciplinary authority at all in the impugned order dated 4th August, 2010. During the course of arguments it could not be urged that the said instructions would not be applicable and that the disciplinary authority was free to inflict any punishment upon the applicant. Once, punishment for technical lapses, as the one

for which the applicant was tried and held guilty, is provided in the very instructions, any deviation therefrom is likely to result into different orders passed against persons similarly situate, thus arming the concerned authorities with powers which may result into total discrimination. Further, if the instructions may govern the quantum of punishment, any deviation therefrom must be supported by reasons, which are totally lacking in the present case. It is rather strange in the present case that when, at the most, it would be a case of minor punishment, if at all, the respondents would not adhere to the instructions of 2001, and a major penalty came to be inflicted upon the applicant.

5. For the reasons mentioned above, we, by allowing the present Original Application, quash the order dated 4th August, 2010, with direction to the disciplinary authority to inflict the punishment only as envisaged in instructions dated 22nd February, 2001 (sic. 26th February, 2001), and if penalty other than that has to be inflicted upon the applicant, to give reasons why there has to be deviation from the said instructions, and as to how and in what manner the applicant would deserve a severer punishment. Let the exercise as ordained above be done as expeditiously as possible, and preferably within a period of six weeks from the date of receipt of this order. There shall, however, be no order as to costs.”

5. The aforesaid observations and directions of the Tribunal had left the issue open and had not foreclosed the discretion and right of the authorities to pass an appropriate order. The Tribunal had highlighted the need that the Disciplinary Authority should apply his mind to the instructions/circular dated 26th February, 2001 and thereafter decide on the quantum of punishment. In case, they wanted to deviate from the circular/instructions dated 26th February, 2001, reasons had to be recorded.

6. The Disciplinary Authority upon reconsideration and after due

deliberation passed a detailed order dated 7th August, 2013. This order observed that the petitioner was charge-sheeted under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide memorandum dated 3rd January, 2006 on the following articles of charge:-

“Article:

That Shri Bal Kishan while functioning as public servant in different capacities and at different places during the period 1987-2002 in the DOT/BSNL committed gross misconduct in as much as he while working as above purchased/acquired huge movable as well as immovable assets in the name of himself and his family members.

That Shri Bal Kishan while working as public servant was duty bound to intimate the deptt./BSNL about purchase/acquisition of the said assets/properties as per the provisions of rule 18(3) of the CCS (Conduct) Rules, 1964.

By his aforesaid acts, the said Shri Bal Kishan failed to maintain absolute integrity, devotion to duty and committed grave misconduct and acted in a manner unbecoming of a Government servant thereby violating the provisions of Rule 3(1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964.”

The petitioner had contested the charge-sheet/memorandum dated 3rd January, 2006 and an Inquiry Officer was appointed. The Inquiry Officer in the report dated 25th August, 2008 held that the charge regarding non-intimation of acquisition/purchase of movable and immovable assets in the name of the petitioner and his family members stood proved. The CVC had submitted their advice dated 21st October, 2008 for imposition of major penalty on the petitioner. A copy of the inquiry report along with the CVC advice was furnished to the petitioner to enable him to make a

representation. The petitioner had made representation dated 26th November, 2008. Similarly the UPSC had tendered their advice vide letter dated 7th July, 2010 opining, inter alia, that the articles of charge regarding non-intimation of acquisition of immovable property, except the purchase of a scooter and 3 Bighas and 18 Biswas of agricultural land in village Pal, Tehsil and District Jodhpur stood established against the petitioner. The UPSC observed that the ends of justice would be met if the proposed penalty was imposed. The Disciplinary Authority considering the records of the case, findings recorded in the inquiry report and the advice of the CVC and UPSC concluded that major penalty should be imposed on the petitioner and the order dated 4th August, 2010 was passed. This order dated 4th August, 2010 was quashed by the Tribunal on the question of proportionality of punishment by the order dated 11th October, 2011. After making the aforesaid narration, the Disciplinary Authority went on to examine the question of quantum of punishment in terms of the order of the Tribunal dated 11th October, 2011. The Disciplinary Authority, in its order dated 7th August, 2013, recorded the following reasons for holding that the punishment of censure or warning would not be sufficient in the facts of the present case, and to award the punishment imposed:-

“ 10. AND WHEREAS, the case has been considered in its entirety and the representations of the CO dated 29.04.2006, 01.07.2008, 26.11.2008, 08.02.2013 and 23.02.2013, advice of CVC and advice of UPSC examined. The core issue to be determined is whether the acts of omission and commission on part of the CO amount to mere technical lapse covered by CVC's guidelines dated 26.02.2001 or they are of a more grave nature warranting a more severe punishment than what is envisaged vide CVC's guidelines. Following observations are made in this regard:

- (i) In the inquiry, it was established that the charge of not intimating transactions the prescribed authority as per requirements of rule 18 of CCS (Conduct) Rules, 1964 is proved. It is noticed that there were transactions in movable as well as immovable assets in which violation of rule 18 was established in the inquiry. The CO, in his representation dated 26.11.2008, stated that he had mentioned purchase of 3 bigha and 18 biswa of agricultural land in the property return. This view appears to have been accepted by the UPSC. However, it is noticed that in terms of rule 18 prior intimation of transaction in immovable property is required to be given to the prescribed authority, which was not done. Therefore, the violation established in this respect in the inquiry holds good. A perusal of the inquiry report shows that there was non-intimation of the gift of the scooter to the CO by his parents-in-law also.
- (ii) The charge-sheet mentioned amassment of huge assets worth Rs. 33,46,601 disproportionate to known legal sources of income by the CO. This amount was later amended to Rs. 11,53,467 and reflected by the inquiry officer in his report dated 25.08.2008. The CO, vide representations dated 01.07.2008 and 26.11.2008, protested against corrigendum amending the charge. It is noted that the inquiry officer did not return any specific finding on disproportionate assets in his report while holding that the CO had committed grave misconduct.
- (iii) The inquiry officer concluded that the violation of rule 18 was in the category of 'technical lapse' covered by CVC's guidelines dated 26.02.2001. It is, however, noticed that the violation took place for as many as 7 transaction of movable and immovable property. One of them was purchase of agricultural land, three were purchases of different plots in Jodhpur, one related to gift of scooter, and the remaining two were private loans of sizeable amounts taken by the CO. None of these transactions can be termed as routine or insignificant. Transactions of such nature are undertaken, if at all, only occasionally by the Government servant. A consistent failure in not reporting these significant transactions in violation of

the requirements of rule 18 is a matter of serious concern. The transactions for jointly owned Plot No. 44, Bhiarav Colony, Pali Road, Jodhpur, which were substantial but paid in cash, were not disclosed at all to the prescribed authority in the Department. In his defence statement dated 29.04.2006, the CO admitted to two outstanding personal loans of Rs. 4.50 lakh and Rs. 1.50 lakh payable to private persons. It is notable that this outstanding liability was as of 2002 and its magnitude has to be appreciated in comparison with CO's total pay and allowances of Rs. 6.76 lakh during the period from January 1995 to October 2002.

- (iv) In his representation dated 23.02.2013, the CO asked for expediting the disciplinary proceedings citing his acquittal in the criminal trial on identical charges and that complaint against him was made by his brother-in-law with *mala fide* intention. In this regard it is observed that the criminal proceedings and the disciplinary proceedings proceed on different footings with different standards of proof and separate charges. Therefore, acquittal in the criminal case (against which an appeal has been preferred by the CBI in Hon'ble High Court of Rajasthan as intimated vide letter No . DP/JDH/2013/No/ 2155/RC JDH 2002A0020/CBI dated 05.06.2013) cannot determine the outcome of disciplinary proceedings.
- (v) Viewed in totality, the conduct of the CO in repeatedly violating the provisions of rule 18 in several transactions involving purchase of immovable property and personal loans from private individuals and the magnitude of such transactions compared to the pay and allowances of the CO during the relevant period leaves little room for consideration of the conduct of the CO as mere technical lapse. On the contrary, the conduct of the CO has been unusually and gravely deficient for a Government servant and goes beyond the guidelines of CVC dated 26.02.2001.

11. NOW THEREFORE, after careful consideration of all the records of the case such as the findings of the Inquiry Officer, submissions made by Shri Bal Kishan, the re-considered advice of CVC, the President, the competent Disciplinary Authority hereby

imposes on Shri Bal Kishan the penalty of “reduction of pay by one stage in the time-scale of pay for a period of two years, with further direction that Shri Bal Kishan will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay.”

12. The receipt of this Order shall be acknowledged by Shri Bal Kishan, Director.

By order and in the name of the President.

Encl: UPSC’s letter No. 3/8/2012-S.I dated 01/07/2013

Sd.
(S.M.D. Chawla)
Under Secretary to the Government of India ”

7. The aforesaid quotation from the order dated 7th August, 2013 can be divided into three parts; one is the pre-fix and the other the suffix, which both refer to the opinion or advice of the CVC and the UPSC. Albeit, the core and the reasoning portion of the aforesaid quotation refers to consideration; whether the misconduct was a mere technical lapse covered by the CVC guidelines dated 26th February, 2001 or the misconduct was of graver nature and character wanting a severe punishment. The reasoning justifying the punishment is to be found substantially in sub-paras (iii), (iv) and (v). The said reasoning has no connect or connection with the UPSC’s or CVC’s second advice whatsoever. The reasoning is the opinion formed by the Disciplinary Authority in terms of the order of remand dated 11th October, 2011. Pertinently, the only issue, which was referred for re-examination and fresh decision, related to the discretion of the Disciplinary Authority to inflict punishment and whether any deviation as to the quantum

of punishment from the ones stipulated in the instructions dated 26th February, 2001 was justified. The Disciplinary Authority was not to re-examine or examine afresh the question whether the articles of charge were established. In these circumstances and in fact we are rather surprised and perplexed why and for what reason the Disciplinary Authority sought the second or re-advice from the CVC and the UPSC. It is also surprising why the Disciplinary Authority did not forward the CVC's letter dated 21st May, 2012 and the UPSC's advice dated 1st July, 2013 to the petitioner before passing the penalty order dated 7th August, 2013. This was contrary to the procedure which had been followed earlier when penalty order dated 4th August, 2010 was passed. We, therefore, record our displeasure on these aspects as this has given the petitioner the opportunity to raise legal and technical pleas which, if accepted, could result in setting aside/quashing the order dated 7th August, 2013. Any such challenge would have easily been avoided by noticing the procedure which had been followed earlier.

8. Nevertheless, we shall now consider and deal with the contention of the petitioner relating to the CVC letter dated 21st May, 2012 and the UPSC's advice vide letter dated 1st July, 2013 and whether failure to furnish the said letters before the order dated 7th August, 2013 was passed, would vitiate the said order.

9. Before we elaborate further on our reasoning why the order dated 7th August, 2013 passed by the Disciplinary Authority is not vitiated, we would like to reproduce the CVC's letter dated 21st May, 2012 and the UPSC's advice dated 1st July, 2013. The CVC's letter dated 21st May, 2012 reads:-

“a) The failure to intimate transactions could arise out of a desire to suppress transactions generated out of illicit earnings or out of

mistake/ignorance etc. Cases of the former type are not likely to be many since such acquisitions would not, normally, be in the name of the public servant and they would be brought to light during an investigation.

b) The latter possibility implies that the acquisition has been financed out of an acceptable source of income rendering it a case of non-compliance with the specific provision of the Conduct Rules etc. without reflecting on the integrity of the public servant.

c) Those cases wherein assets disproportionate to known sources of income have been uncovered would cease to be a mere technical lapse since the issue becomes one of lack of integrity.

d) Visiting harsh punishments on mere technical lapses would not meet the ends of justice since the public servant's integrity is not in question and failure to intimate cannot be equated with possession of disproportionate assets.

e) If not related to assets, disproportionate known sources of income, failure to intimate should be treated as a technical lapse. Such lapses should ordinarily attract only a censure/administrative warning.

f) In the instant case under consideration, assets disproportionate to known sources of income were uncovered and hence the case would cease to be a mere technical lapse. Therefore, the CVC in its re-considered 2nd stage would reiterate its earlier advice of imposition of suitable major penalty on Shri Bal Kishan.”

10. The UPSC's letter dated 1st July, 2013 reads:-

“(i) The article of charge, except the purchase of scooter and 3 bigha and 18 biswa agriculture land at Village Pal, Jodhpur stands established against the CO for non-intimation of movable and immovable property. The details of the charges need to be viewed in a holistic manner and not in isolation. In the instant case, the CO has failed to intimate the prescribed authority in respect of five transactions undertaken by him in different periods of time. The repeated non-intimation of acquisition of series of immovable properties and financial transactions by the CO shows that the proven repeated misconduct are serious in nature. Further, the misconduct of the CO came to the knowledge only

through the CBI investigation. Had there not been the CBI investigation, the misconduct of the CO would not have come to light. Hence, the misconducts of the CO have not been viewed as isolated incident that may be treated as a mere technical lapse which would attract a mild punishment as envisaged in CVC's circular dated 26.02.2001.

(ii) The CVC, themselves, in their specific and latest second stage advice have, however, categorically stated that in the instant case under consideration, assets disproportionate to known sources of income were uncovered and hence the case would cease to be a mere technical lapse. Thus, the CVC in their reconsidered 2nd stage advice have reiterated their earlier advice of imposition of suitable major penalty on the CO.

(iii) In the light of the observations and findings as discussed above and after taking into account all other aspects relevant to the case, the ends of justice would be met in this case if the penalty of "reduction of pay by one stage in the time-scale of pay for a period of two years, with further direction that the CO will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay" is imposed on the CO."

11. It is an accepted and admitted case that this is not the first advice or opinion given by the CVC or the UPSC. The CVC, earlier vide opinion dated 21st October, 2008, had advised imposition of suitable major penalty. The second letter dated 21st May, 2012 quoted above does not reflect a new consideration and opinion. It merely reiterates their earlier advice of imposition of a suitable major penalty. The UPSC's earlier advice dated 7th July, 2010 was a detailed one and had referred to each and every specific property, which was not disclosed. Copy of the said advice is available on record and was duly furnished and was available with the petitioner. This advice in paragraph 4, taking into consideration all relevant aspects, states

that ends of justice would be met if penalty of reduction of pay by one stage in the time-scale of pay for a period of two years, with a further direction that the officer would not earn increments during that period and on expiry reduction would have effect of postponing future increments was suggested. This advice dated 7th July, 2010 was furnished to the petitioner. The second letter dated 1st July, 2013 did not say anything new but was a mere reiteration that the misconduct should not be viewed as an isolated incident that might be treated as a mere technical incident, but should rather attract major penalty. Reference was made to the advice given by the CVC for suitable major penalty.

12. We have already observed above that the order of remit was limited and confined to the question of quantum or proportionality of punishment keeping in mind the instructions of the CVC dated 26th February, 2001.

13. In this factual matrix and background, we do not think it will be appropriate and proper to hold that non-furnishing of the letters dated 21st May, 2012 and 1st July, 2013 written by the CVC and the UPSC would vitiate the order dated 7th August, 2013 and make it null and void. In the present context, non-furnishing did not cause or result in violation of principles of natural justice. We are conscious of the decisions of the Supreme Court requiring furnishing of a copy of the opinions, if it is relied upon to enable the delinquent employee to rebut the disciplinary action. In ***Union of India versus R.P. Singh***, (2014) 7 SCC 340 it has been held that when advice from UPSC has been utilised as a material against the charged officer, it should be supplied prior to action being taken. Reference can also be made to ***State Bank of India v. Bidyut Kumar Mitra***, (2011) 2 SCC 316, ***Oriental Bank of Commerce and Ors. v. S. S. Shokand and Anr.***, (2014) 5

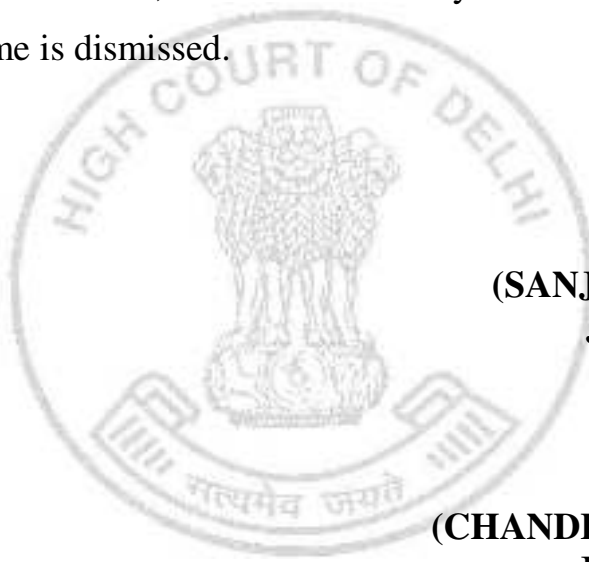
SCC 172 and *Union of India v. Alok Kumar*, (2010) 5 SCC 349. These decisions are distinguishable, for in the present case the advice given by the CVC dated 21st October, 2008 and the UPSC dated 7th July, 2010 were certainly furnished. What has not been furnished are the advice/letters reiterating the earlier opinions. Non-furnishing of the reiteration, in the present case, would not matter. Nothing new or different was stated in the re-statement. Opinion and advice known and informed to the petitioner earlier, when not communicated again, would not vitiate or nullify the speaking order. The reiterations/re-statements in this case were not new material and evidence.

14. On the question of quantum of punishment and whether there is violation of CVC's advice dated 26th February, 2001, we would observe that the aforesaid instruction/circular has been duly taken into consideration and for good and cogent reasons set out in the order dated 7th August, 2013, the punishment has been imposed. We do not think the reasons recorded in the quoted portion cannot be said to be illogical, arbitrary or not germane to the issue in question. We also do not find that the punishment as imposed is shockingly disproportionate so as to shock ones conscious. The facts as found, which cannot be challenged, show that it is not a case of one non-declaration lapse but non-declaration of seven transactions of movable and immovable property. The amounts involved were also substantial and cash payments were also involved in one transaction. The officer had taken personal loan totalling Rs.6 though his salary between the period from January 1995 to October 2002 was Rs.6.76 lacs only. It was not one fact but several facets which were taken into consideration.

15. The fourth argument is only to be noticed to be rejected, for

departmental proceedings are different and cannot be equated to criminal prosecution. The standard of proof and the mode and manner of proving a charge in criminal prosecution cannot be likened and is not similar to the procedure in the departmental proceedings. The contention of the petitioner that punishment could not have been imposed in disciplinary proceedings in light of acquittal in the criminal prosecution in the case of disproportionate assets does not hold water and cannot succeed. Even the nature of the charge was not identical.

16. In these circumstances, we do not find any merit in the present writ petition and the same is dismissed.



(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

MARCH 28th, 2017
VKR/ssn