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

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W.P.(C) 889/2017

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Reserved on: 1st February, 2017

Date of Decision: 31st May, 2017

NARENDER KUMAR SHARMA

..... Petitioner

Through: Mr. M.K. Bhardwaj & Mr. M.D.
Jangra, Advocates

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Harsh Ahuja for Ms. Monika
Arora, CGSC for UOI

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The petitioner in the present writ petition under Articles 226/227 of the Constitution impugns the order dated 30.10.2012 passed by the Central Administrative Tribunal ('Tribunal'), Principal Bench, New Delhi in the Original Application No. 586/2011 and the order dated 25.04.2016 in Review Application No. 132/2012.

2) The petitioner submits that he had applied for leave due to ill health of his father to defend his various court cases instituted against him by his wife on false and baseless allegations. He had submitted leave applications from time to time. However, by charge memo dated 08.01.2007, the respondents had initiated disciplinary action against the petitioner on account of unauthorised absence. Penalty of reduction to a lower stage in the pay scale of 4000-6000 was imposed vide order dated 02.03.2007. The petitioner was served with the second charge memo dated 30.06.2008 on the allegations of wilful absence. After receipt of the said charge memo, the petitioner filed an application for providing relevant documents. However, it is claimed that the documents were not supplied. Thereafter, the Inquiry Officer was appointed without application of mind. The Inquiry Officer who was required to hold an inquiry as per Rule 14 of CCS (CCA) Rules, 1965 did not follow any of the provisions as provided in classes (11) to (23) of Rule 14. It is further stated that the petitioner was not even served a notice for defending the allegations levied upon him nor was he allowed to inspect documents. The petitioner was provided with a copy of the inquiry report dated 31.03.2009. Aggrieved by the said report, the Petitioner approached the Inquiry Officer and requested that all the order sheets while

conducting inquiry under Rule 14 of CCS(CCA) Rules, 1965 ('Rules') be provided to him. However, documents were not supplied. Thereafter, by the order dated 09.07.2009, the disciplinary authority imposed upon the petitioner the extreme penalty of removal from service. The petitioner submitted an appeal dated 27.07.2009 to the Appellate Authority but the same was rejected vide order dated 13.10.2009.

3) The petitioner then filed OA No. 3203/2009 which was allowed by the Central Administrative Tribunal vide order dated 29.07.2010 with a direction to the Appellate Authority to decide the appeal afresh as per Rule 27 of CCS (CCA) Rules, 1965. The Appellate Authority has failed to decide the appeal as directed by the Tribunal, therefore, the petitioner filed a Contempt Petition for directions to pass an order strictly in compliance with the order of the Tribunal dated 29.07.2010. The Contempt Petition was closed by the Tribunal by taking note of order dated 31.12.2010 passed by the Appellate Authority.

4) The petitioner filed another O.A. No. 586/2011 before the Tribunal. A miscellaneous application was also filed on 23.08.2011 for production of records. Pleadings were completed. The Tribunal after hearing the parties, has dismissed the said O.A. vide order dated 30.10.2012. Thereafter, R.A.

No. 132/2013 filed by the petitioner was also dismissed by the Tribunal vide order dated 25.04.2016.

5) We have heard learned counsel for the parties and perused the record. The contention of the petitioner is that the disciplinary proceedings initiated against him are in violation of the well settled rules of justice under Rule 14 of Rules. The petitioner further states that the entire proceedings itself are liable to be quashed as the Inquiry Officer acted against the Rules. The Petitioner also states that he did not receive even a single notice by the Inquiry Officer except for the 1st notice which was issued for preliminary hearing. After receipt of the said notice the Petitioner had informed that he would not be available on the next date fixed, as he had to attend court hearing in the Tis Hazari Courts, Delhi. After receiving the said information, the Inquiry Officer had adjourned the hearing, but no further information was given to the petitioner.

6) The Tribunal while dismissing the O.A. No. 586/2011 vide order dated 30.10.2012 held that the petitioner had not taken any interest in participating in the inquiry against him in spite of having the required knowledge. The petitioner remained wilfully absent from duty for 248 days and accordingly he was punished by the disciplinary authority.

7) The record demonstrates that the Inquiry Officer had sent four letters to the petitioner vide registered post with AD and asked the petitioner to be present on 11.08.2008, 28.08.2008, 22.09.2008 and 02.12.2008. The aforesaid letters were sent to the petitioner at the address which was provided by him to the respondents. The aforesaid letters were returned with the report that no such person resides at the given address. The grievance of the petitioner was that he was not served with any such letters. If there was any change in the address, then it was the duty of the petitioner to inform the respondents. Thus, it is clearly proved that notices were sent by the inquiry officer. Repeated non delivery of letter/notices would indicate deliberate attempt to avoid service. This is unacceptable.

8) The petitioner was aware about the inquiry proceedings and the conduct of the petitioner shows that he was neither interested nor did he participate in the inquiry, and was negligent throughout. The record shows that the petitioner had attended duty between August, 2008 to December, 2008 for 16 days on different dates and he was informed by his Group Officer/Section about the inquiry before the date of hearing but he did not attend. The non appearance and non participation was intentional.

9) The previous conduct of the petitioner shows that vide order dated 02.03.2007, he was punished for absenting himself from Government duty without prior information/sanction of leave for 128 days during June, 2006 to December, 2006 and was awarded “Reduction to the lower stage from 4,600/- per month to 4,500/- per month in the time scale of pay of Rs.4000-100-6000 for a period of one year without cumulative effect”.

10) As mentioned above, a charge memo dated 30.06.2008 under Rule 14 of the Rules was issued to the petitioner for unauthorised absence. It is evident from the record that the petitioner did not respond to the memorandum of charge sheet No. PF/4471/LC dated 30.06.2008 and an inquiry was initiated against him. The inquiry report was sent to the petitioner on 31.03.2009 which was received by him on 25.04.2009 but he had failed to avail the opportunity to file a representation against the inquiry report. Thus, the petitioner had neither responded to the charge memo or the inquiry report.

11) Thereafter, the petitioner submitted an appeal against the punishment order. The Appellate Authority rejected the same on 13.10.2009.

12) The petitioner had filed an OA No. 3203/2009 which was partially allowed vide order dated 29.07.2010, holding that the Tribunal cannot support a person who is a habitual absentee whatsoever may be the justification and one who has not come forth in the inquiry. However, the plea of the applicant that he was not afforded an opportunity to be defended reasonably in the inquiry needs to be taken into consideration. The tribunal without quashing the inquiry report as well as the order passed by the disciplinary authority, remanded the case to the appellate authority to examine the contentions raised by the applicant in the backdrop of Rule 27 and thereafter to pass a reasoned order. Resultantly, the OA was allowed to the extent of quashing the appellate order. The matter was remitted to the appellate authority to comply with the above directions by passing a speaking order within a period of three months.

13) The Appellate Authority re-examined the records and passed a fresh order dated 31.12.2010. For better appreciation of the facts, the relevant portion of the order is reproduced below:-

“14. And Whereas, in compliance of the directions of this Hon’ble Tribunal, the undersigned has looked into all relevant records afresh to examine the contentions raised by Shri Narinder Kumar Sharma and after examination

of the records relating to the case; including the contentions raised by him in his appeal dated 27.07.2009 as noted above and relevant rules, including Rule 27 of CCS (CCA) Rules, 1965, and instruction on the subject and it is found as under:-

- (a) From the records, the contention of Shri Narinder Kumar Sharma of undue harassment or ignoring his service record is misconceived inasmuch as, as noted above, even prior to the present charge memo and/or penalty, he has acted similarly on previous occasion as well and suffered penalty therefor. Besides, Shri Narinder Kumar Sharma has failed to substantiate his contention of undue harassment by any authority.
- (b) The contention of Sh. Narinder Kumar Sharma with regard to his being subjected to harassment when he started making request for grant of leave has not been substantiated by him. Moreover, an receipt of the memorandum of charge sheet No.PF/4471/LC dated 13th June 2008 issued by the Disciplinary Authority, he has himself failed to make any representation and therefore his contention of not being afforded reasonable opportunity of defence is found to be

misconceived. It is found from the relevant records that once Shri Narinder Kumar Sharma failed to make any representation to the charge memo dated 13.6.2008 received by him on 21.6.2008, the disciplinary authority has decided to enquire into the articles Of charge by appointing the inquiry officer and presenting officer vide 'order dated 19.7.2008' and a copy of the same was sent to' him. Subsequently, he was further advised vide Letter dated 23.7.2008 on behalf of the disciplinary authority to attend the inquiry as and when so ordered by the inquiry officer and in case of any unforeseen circumstances, finding it difficult to attend, to inform the inquiry officer of his' inability well in advance. This indicates opportunity afforded by the disciplinary authority to Shri Narinder Kumar Sharma to defend in the matter further.

- (c) The contention of Shri Narinder Kumar Sharma as raised in para 13(c) above is also found contrary to relevant records inasmuch as the inquiry officer has not issued one notice to him to appear in inquiry but in fact four notices

dated 26th July, 2008, 11th August, 2008, 9th Sept., 2008 and 17th November, 2008 requiring Shri Narinder Kumar Sharma to appear before him on 11th August, 2008, 28th August, 2008, 22nd September, 2008 and 2nd December, 2008 were issued by the inquiry officer by Registered AD post. It is further found that in the notices dated 9.9.2008 and 17.11.2008, under reference, clearly Stipulate that in case of default, the matter will be proceeded ex-parte. The records do not indicate any appearance of. Shri Narinder Kumar Sharma or his' request for granting more time before the Inquiry Officer and therefore his contention to this effect is found without any substance. The records further reveal that the notices were sent vide Registered A.D. at. his residential address as provided by Shri Narinder Kumar Sharma in his official records. 'From the contention of- Shri Narinder Kumar Sharma read with the relevant records, it is found that receipt/knowledge of one notice from inquiry officer has been admitted by him whereas two other notices sent vide Registered A.D. post were received back by the inquiry officer undelivered with postal. remarks "no such

person" and one with postal remarks as "left without address".

- (d) The contention of Shri Narinder Kumar Sharma as raised in para 13(d) above is also found bereft of any merit inasmuch as even during the hearing period from 11th August, 2008 to 2nd Dec., 2008, the applicant was found always absent from duty without prior permission/sanction of leave and he had attended the duty only 16 days during the above period on different dates and he has been informed through his group officer/section for the same before the date of hearing but he did not participate in any inquiry proceeding. Once he has failed and neglected to give any valid reason for not preferring any representation before the disciplinary authority, on receipt of the charge memo and further in spite of being aware of the inquiry proceedings, failing to avail the opportunity for his defence, the contention of receiving the inquiry report all of a sudden on 31.3.2009 or being shocked of the same is found without any merit.
- (e) A copy of the inquiry report was forwarded to the applicant to give the individual reasonable

opportunities so as, to make representation or submission in regard to the findings of the inquiry within 15 days of receipt of the inquiry report. The inquiry report was received by the applicant on 25th April, 2009 but he did not submit any representation against the charge. It is further found that in spite of getting opportunity of explanation and defence, the said Shri Sharma had himself neglected and failed to avail such opportunity and in this background his contention of violation of principle of natural justice or Rule 14 of CCS(CCA) Rules, 1965 is found to be bereft of any merit.

- (f) The contention Shri Narinder Kumar Sharma has raised in para 13(f) above is found to be contrary to the records inasmuch as in spite of various opportunities granted to Shri Narinder Kumar Sharma, he has failed and neglected to participate in the proceedings :and even after receipt of the inquiry report, he has failed and neglected to make any submission before the disciplinary authority. Besides, he had been punished by the Disciplinary Authority earlier also for similar charges, but he did not improve himself and again absented himself from duty

for 248 days during Jan., 2007 to Mar., 2008 without prior permission/sanction of Leave. Thus the contentions of Shri Narinder Kumar Sharma are not found of any merit.

- (g) The salary of the applicant was deducted as per the Hon'ble Court's directions/attachment warrant, received from time to time for the maintenance allowance to his wife granted by the Hon'ble Court. Moreover, such contention of Shri Narinder Kumar Sharma is irrelevant in the facts and circumstances of the case in hand.
 - (h) Disciplinary Authority gave reasonable opportunities to Shri Narinder Kumar Sharma so as to make representation or submission of reply in his defence, but he neither submitted reply nor made any representation in his defence. From the above facts it is clear that Shri Narinder Kumar Sharma has himself failed and neglected the opportunities afforded to him. Besides, Sh. Sharma also appears to be in incorrigible person so far the charges of unauthorized absence from duty are concerned.
15. AND WHEREAS, the undersigned, after going through all the documentary evidences, relevant rules and instructions on the subject, is of the opinion that the charges leveled against him in the charge memorandum dated 13.06.2008 have rightly been

found as proved by the disciplinary authority and taking note of the proved charges and gravity of misconduct and the punishment awarded to Shri Narinder Kumar Sharma is commensurate with the misconduct and no injustice has been done to him

16. Now therefore, I, the undersigned, the Appellate Authority, vested with powers under rules 27 (2) of CCS (CC&A) Rules, 1965 reject the appeal dated 27th July, 2009 preferred by Ex-T.No. 4471 VM (AFV) Shri Narinder Kumar Sharma of 505, Army Base Wksp., Delhi Cantt. and confirm the order No.PF/4471/LC dated 9th July, 2009 passed by the disciplinary authority.”

14) We do not find any ground to interfere with the findings and punishment awarded to the petitioner. The Appellate Authority as well as the Tribunal have taken into consideration all the relevant facts and the law. There is no ground to hold the inquiry vitiated. There is nothing on record to prove that the petitioner was victimised.

15) The petitioner himself had not taken any interest in participating in the inquiry held against him despite having the knowledge of the same. The duty of an employee is to do and perform his duty regularly and diligently. No institution can work and function efficiently when the employees take

prolonged and unauthorised leave. The adverse impact not only tarnishes the reputation of the organisation, is an act of grave indiscipline and encouraging other employees to absent themselves unauthorisedly. The petitioner himself has to be blamed for the orders passed against him. It is the petitioner who failed to avail all the opportunities, which were repeatedly given to him. The order of the Appellate Authority dated 31.12.2010 has taken into consideration all the points and contentions raised by the petitioner. The petitioner has failed to point out any error in the decision-making process.

16) We also do not find any ground against the punishment awarded to the petitioner. Interference is only required when the punishment is shockingly disproportionate or is such that no reasonable employer would ever impose in like circumstances. However, in the present case, the punishment we feel is commensurate with the gravity of the offence. Any sympathy would be maudlin in the present case.

17) In view of the aforesaid discussions and relevant documents on record and the order passed by the Tribunal, we do not find any infirmity in the impugned order dated 30.10.2012 passed in OA No. 586/2011. Hence, we do not find any merit and substance in the present writ.

18) The writ petition is accordingly dismissed, with no order as to costs.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

MAY 31, 2017
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