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

+ **Date of Decision: 18.05.2017**

% **W.P.(C) 868/2015 & C.M. No. 1523/2015**

UNION OF INDIA & ORS.

..... Petitioner

Through: Mr. Ruchir Mishra and Mr. Mukesh
Kumar Tiwari, Advocates

versus

SHIWA SHANKAR SINGH

..... Respondent

Through: Mr. A.K. Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

VIPIN SANGHI, J. (ORAL)

1. The petitioner/ Union of India assails the order dated 09.07.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in OA 44/2013. The said OA preferred by the respondent was allowed by the tribunal. It set aside the orders: dated 17.11.2011 – passed by the Disciplinary Authority imposing penalty upon the respondent; dated 20.12.2011 – passed by the Appellate Authority dismissing the departmental

appeal of the respondent, and; dated 21.12.2011 – granting approval of the competent authority to the imposition of penalty against the respondent. Consequential reliefs have also been granted to the respondent by the Tribunal.

2. The President, being the Disciplinary Authority, issued a memorandum dated 22.01.2007 proposing to hold a departmental inquiry against the respondent under Rule 14 of the CCS (CCA) Rules, 1965 ('Rules'). The substance of imputation of misconduct or misbehaviour, in respect whereof the inquiry was proposed to be held were as follows:

“(I) That Shri S.S. Singh while working as AGM(NP) in Bihar Telecom Circle committed grave irregularity by initiating proposal on 04.11.1991 to procure 40 M tower from M/s Kanhai Engineering Towers (Pvt.) Ltd. on the rate approved by DE M/W Project Patna though the Tower was centralized item and CGMT was not authorized to procure the same.

(II) That the said Shri S.S. Singh entered into an agreement with M/s KEP ltd for procurement of Tower without specific quantity and definite liability.

(III) That the said Shri S.S. Singh while working in Bihar Telecom Circle during 1991-92 and 1993-94 committed grave irregularities by not routing the proposal for procurement of Tower through IFA for financial concurrence and took several decisions having financial implications without financial concurrence of IFA.

(IV) That the said Shri S.S. Singh had proposed to modify the terms of payment in four parts though there was no such provision in the agreement which had put the department to loss of interest on that amount which had been paid in four parts before actual completion of the work.

(V) That the said Shri S.S. Singh had proposed for payment of 90% of contractor's bill bearing No. GMD/HZB/TS/93-94 dated 21.05.1993 for Rs.4,09,662/- pertaining to Hazaribagh 50M tower without actual receipt of the tower and furnished a certificate in this regard ignoring departmental rules as well as terms of contract and put the department to loss to the tune of Rs.4,09,662/- as the said tower is still unreceipted to the department.

Thus by his above acts, the said Shri S.S. Singh committed misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions of Rule 3 (1)(i), (ii) & (iii) of CCS (conduct), Rules 1964".

3. The respondent gave his written statement denying the charges and, consequently, regular departmental inquiry was held. The Inquiry Officer (IO) gave his report dated 27.01.2009, holding that articles of charge (I), (II) and (V) stand proved beyond reasonable doubt, while articles of charge (III) and (IV) were held as not proved. The Disciplinary Authority remitted the case to the IO on the ground that during the conduct of the inquiry, the respondent was not generally questioned by the IO on the circumstances appearing against him, and the evidences were not put to him as required by Rule 14(18) of the aforesaid Rules. Consequently, the IO complied with the directions of the Disciplinary Authority and submitted his second inquiry report dated 13.01.2010. On this occasion, the IO held that the articles (III) and (IV) stood partially proved, but articles (I), (II), and (V) were held as not proved.

4. We may at this stage itself observe that the record shows that on 06.03.2010, the Disciplinary Authority disagreed with the findings returned

by the IO and, in this regard, we have been shown the original record. We may also observe that the tribunal, in the impugned judgment, has proceeded on the basis that the Disciplinary Authority had not recorded his disagreement and had straightaway sent the matter to the CVC for second stage advice, and only because the CVC rendered the second stage advice proposing imposition of major penalty upon the respondent, the Disciplinary Authority further proceeded in the matter. However, since the record – as aforesaid, shows that the Disciplinary Authority disagreed with the inquiry report as per file noting dated 04.03.2010, i.e. prior to the matter being sent to the CVC, learned counsel for the respondent has conceded that so far as this aspect of the matter is concerned, the decision of the tribunal is not correct.

5. Coming back to the factual narration, upon the matter being referred to the CVC for the second stage advice, the CVC on 06.05.2010 rendered its second stage advice. It observed that it had perused the inquiry report and the comments of the administrative authority thereon. It concurred with the recommendations of the CVO, DoT and advised imposition of suitable major penalty on the respondent.

6. The petitioner then issued a memorandum dated 11.06.2010 to the respondent communicating to him the fact that the findings of the IO in respect of articles of charge (I), (II) and (V) were proposed to be disagreed, while the findings returned in respect of articles of charge (III) and (IV) had been accepted by the Disciplinary Authority. The respondent was asked to make his representation. This step was taken in compliance of Rule 15(2) of the aforesaid Rules.

7. The respondent sent his reply to the said memorandum on 21.06.2010, followed by a further reply on 17.08.2010. From the response of the respondent, it emerged that irregular payment released by the respondent to the contractor - without ensuring supply of the equipment, had been adjusted from payments due to the contractor subsequently. Consequently, the Disciplinary Authority, once again, referred the matter to the CVC, since, in its opinion, an administrative warning to the respondent would suffice.

8. The CVC reconsidered the case in the light of the aforesaid tentative view of the Disciplinary Authority, and vide memorandum dated 23.12.2010, it stuck to its earlier advice calling for imposition of suitable major penalty on the respondent. In the course of its opinion, the CVC observed that payments were released by the respondent with malafide intent, since there was no provision for making advance payment to the contractor before supply of equipment under the agreement. Despite that being the position, the respondent had initiated orders for releasing 90% payment to the contractor even before physical supply of the equipment at site, stating non-availability of space for storage as the reason. Consequently, over Rs.4 lakhs was released to the contractor even though the contractor had not supplied the towers. The CVC was also of the opinion that the respondent had cited his superior Sh. Sinha – the then General Manager as a defence witness, but he was not produced in the inquiry, and his communication giving a clean chit to the respondent was of no avail since he had not faced the cross examination in the inquiry. Moreover, even if the stand of Sh. Sinha, the then General Manager were to be accepted - that he was responsible for directing release of payment, the

respondent could not wash his hands of his own responsibility to comply with the rules regarding release of payment.

9. Upon receipt of the aforesaid advice from the CVC, the Disciplinary Authority in compliance of Rule 15(4) sought consultation from the UPSC. The complete proforma with the sequence of events which had transpired in relation to the inquiry against the respondent was, accordingly, sent to the UPSC. The file notings and the proforma have been placed on record, which show that the view taken from the CVC at the second stage; the tentative view taken by the Disciplinary Authority after considering the response of the respondent, and; the view taken by the CVC upon the matter again being referred to it were all clearly set out and placed before the UPSC. In the proforma itself, in response to a query, whether the CVC's advice has been accepted by the Disciplinary Authority, the answer given by the department/ petitioner was that the Disciplinary Authority had accepted the CVC advice.

10. The UPSC rendered its advice on 05.10.2011, and observed in para 6 of the said advice as follows:

“6. In the light of their findings as discussed above, and after taking into account all other aspects relevant to the case, the Commission consider that 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 one year with further directions that he will earn increments during the period of such reduction and on expiry of such period, the reduction will not have the effect of postponing the future increments of his pay’ is imposed on the CO, Shri S.S. Singh. They advise accordingly”

11. Following the said advice, the Disciplinary Authority issued the impugned order dated 17.11.2011 imposing punishment upon the respondent as advised by the UPSC, i.e. *“reduction of pay by one stage in the time scale of pay for a period of one year with further directions that he will earn increments during the period of such reduction and on expiry of such period, the reduction will not have the effect of postponing the future increments of his pay”*.

12. In the aforesaid background, the respondent approached the Tribunal, which has passed the impugned order aforesaid. We have heard the submissions of learned counsels at length and perused the relevant record. While the submission of Mr. Mishra is that the Tribunal has returned erroneous findings without any basis, and upon a perfunctory examination of the record, the counsel for the respondent has defended the impugned order.

13. During the course of its decision, the tribunal has, firstly, observed that even though the Disciplinary Authority had proposed that only an administrative warning be issued to the respondent, the CVC *“again arbitrarily overruled the Disciplinary Authority and insisted that major penalty itself is to be imposed upon the applicant and again advised the respondent to do so vide their letter dated 23.12.2010”*.

14. A perusal of the advice of the CVC contained in its letter dated 23.12.2010 – by which it once again proposed imposition of major penalty upon the respondent, can by no stretch of reasoning be termed as ‘arbitrary’. The same is a well reasoned advice. We have already given the gist of the said advice in para 8 above. The said order dated 23.12.2010 analyses the

misconduct of the respondent, and fixes his guilt. It appears that while making the aforesaid observation, the tribunal did not, with any seriousness, examine the letter of the CVC dated 23.12.2010, since its content have neither been referred to nor dealt with in the impugned order. We, therefore, cannot agree with the finding returned by the Tribunal that the CVC “arbitrarily” issued the advice letter dated 23.12.2010.

15. The tribunal goes on to observe that the Disciplinary Authority again “abdicated” its power to take a decision on what punishment should be awarded to the respondent, and that it left it to the UPSC to decide the quantum of punishment by referring the matter to the UPSC.

16. On this aspect, the submission of Mr. Mishra is that the Disciplinary Authority while acting under Rule 15(2A) has only to record “*its findings before proceeding further in the matter as specified in*”, inter alia, sub rule (4). The obligation to record “findings” under Rule 15(2A) does not carry with it an obligation to record the “punishment” which is proposed to inflict upon the delinquent.

17. On the other hand, the submission of counsel for the respondent is that under Rule 15(2A) read with Rule 15(4), it was obligatory on the part of the Disciplinary Authority to record its findings, and to also record the punishment that it proposes to impose, and only thereafter the consultation with the UPSC could be undertaken.

18. At this stage, Rule 15 of the Rules may be extracted:

“15. *Action on inquiry 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 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, 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 supplied)

19. In the present case, as noticed herein above in para 9, after the advice of the CVC had been received on 23.12.2010, the note was prepared for consultation with the UPSC and in the said note itself, in response to the query at Sl. No.13, the petitioner had stated that it had accepted the advice of the CVC i.e. to impose a major penalty upon the respondent.

20. Sub rule (2A) of Rule 15 merely requires the Disciplinary Authority to "record its findings". Recording of 'findings' relates to the findings of guilt or innocence in respect of one or the other articles of charge. The punishment which may be proposed to be inflicted upon the government servant cannot be termed as "findings". Pertinently, after the two replies/representations had been received on 21.06.2010 and 17.08.2010 (to the memorandum dated 11.06.2010), the case was again put up for re-consideration by the CVC on its advise to impose major penalty upon the

respondent. The file notings along with the proforma have been placed on record from pages 286 to 292. The proforma at Sl. No.13 reads as follows:

13.	<i>Whether CVC were consulted for second stage advice and their advice in brief.</i>	<i>Yes, CVC advised imposition of major penalty</i>	<i>P.101/Cor</i>
	<i>Whether CVC's advice has been accepted by Disciplinary Authority</i>	<i>Disc/ Authority accepted CVC advice.</i>	

(emphasis supplied)

21. Sl. No.24 of this proforma reads as follows:

24.	<i>Decision point on which MoC&IT approval is solicited</i>	<i>Approval of Hon'ble MOC&IT is solicited for sending the case to CVC for reconsideration of their advice.</i>	
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22. The same was approved by the competent authority, namely the Minister of Communication and Information Technology (MOC&IT) apparently on 06.09.2010. Thus, the finding of guilt of the respondent in respect of the articles of charge levelled against the respondent had been arrived at, and it is for this reason that the matter was once again referred to the CVC since, tentatively, the disciplinary authority was of the view that even though the respondent was found guilty of misconduct alleged against him, his misconduct did not call for imposition of major penalty. However,

as noticed hereinabove, the CVC reiterated its earlier view with regard to imposition of a major penalty upon the respondent by its advice dated 23.12.2010. The CVC gave its reasons for reiterating its advice that major penalty be imposed upon the respondent.

23. It is not in dispute that in the present case, compliance of the proviso to Rule 15(4) was essential and, consequently, before a final decision was taken by the Disciplinary Authority with regard to imposition of punishment upon the respondent, it was essential for the petitioner to consult the UPSC, which it did. The file notings and the proforma - which was approved by the Competent Authority, to seek the consultation of the UPSC on the quantum of punishment has been placed on record from pages 300 to 304. A perusal of the said office note also shows that the disciplinary authority did find the respondent guilty of misconduct. After recording the proceedings from stage to stage, the office note refers to a fresh representation dated 23.03.2011 submitted by the respondent. The para-wise response on the said representation reads as follows:

<i>Para No.</i>	<i>Representation of the CO</i>	<i>Comments of Department</i>
<i>b)</i>	<i>It has been contended by the CO that Shri V.P. Sinha should have been summoned as State Witness and not as Defence Witness.</i>	<i>The contention of the CO is not tenable. Shri Sinha, summoned as Defence Witness, never appeared before the I.O. Moreover, in order to verify the assertions of the CO, body presence of Shri Sinha was required. Shri Sinha was not a State Witness in</i>

		<i>the original charge sheet.</i>
<i>a)</i>	<i>It has been stated by the CO that the proposal for initiation of payment of 90% cost of the Tower (Rs.4.09 Lakhs) was made as per the oral directions of the then GM which was subsequently approved in the file and the department has already recovered the advance payment, he shall not be held responsible for the same.</i>	<i>As per the agreement, the payment was to be released after fabrication, supply and erection of towers. No provision for advance payment existed in the Agreement. Moreover, goods were not delivered still 90% of the payment was made to the supplier which was subsequently adjusted by the Department in 1999.</i>
<i>c) to g)</i>	<i>Certain issues of purchase policies including the authorities responsible for seeking the approval of the IFA have been highlighted by the CO</i>	<i>CVC has already deliberated on these issues. Hence, no comments from the Department are required.</i>

24. The said file noting reads as follows in para 7:

“7. In view of the foregoing, it is proposed to refer the case to UPSC seeking their advice on the quantum of penalty in this case. As directed a revised draft to UPSC is also submitted for approval. President being the Disciplinary Authority in the case, file is submitted to Hon’ble MOC&IT for referring the case to UPSC. Details of the case in the prescribed proforma are as follows:- ”

25. In the following proforma, the entry at Sl. No.13 reads as follows:

<i>13.</i>	<i>Whether CVC were consulted for second stage advice and their</i>	<i>Yes, CVC advised imposition of</i>
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	<i>advice in brief.</i>	<i>major penalty.</i>
	<i>Whether CVC's advice has been accepted by Disciplinary Authority</i>	<i>Disc/ Authority accepted CVC advice.</i>

26. At Sl. No.24 of the proforma, the same reads:

24.	<i>Decision point on which MoC&IT approval is solicited</i>	<i>Approval of Hon'ble MOC&IT is solicited for referring the matter to UPSC for deciding the quantum of penalty against the CO.</i>	X
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27. The Competent Authority, namely the Ministry of Communication and Information Technology (MOC&IT), it appears, approved the same on 25.04.2011. The contentions/ defences of the respondent raised even in his last representation dated 24.03.2011 were duly considered and rejected. Moreover, the entries in the proforma also show that the competent authority accepted the advice of the CVC to impose a major penalty upon the respondent. Thus, it is amply clear to us that before proceeding to operate sub-Rule (4) of Rule 15, there was compliance of sub-Rule (2A) of Rule 15 by the disciplinary authority, since he had recorded his finding of guilt of the respondent.

28. Mr. Mishra has also brought to our attention the Office Memorandum (OM) dated 12.01.2010 bearing No.39034/1/2009- Estt. (B) issued by the DoPT, Ministry of Personnel, Public Grievances and Commission, Govt. of

India. The said OM, insofar as it is relevant, read as follows:

“OFFICE MEMORANDUM

Subject: Departmental proceedings against Government servants - Procedure for consultation with the Union Public Service Commission.

.....

The undersigned is directed to make a reference to this Department's O.M 39021/4/81-Estt(B) dated 29th May, 1982 which inter alia provided that while forwarding a disciplinary case for consultation with the Union Public Service Commission, the Disciplinary Authority should not express any opinion regarding the penalty to be imposed on the officer. UPSC has brought to the notice of this Department that of late, in many cases the Disciplinary Authorities (DAs) while referring the disciplinary case to the Commission for advice proposed the quantum of penalty. The values of independence, impartiality and integrity are the basic determinants of the Constitutional conception of the UPSC. The Commission's function is purely advisory. The consultation prescribed by the Constitutional provision is only to afford proper assistance to the Government in assessing the guilt or otherwise of delinquent officer as well as the suitability of penalty to be imposed. It has also been made clear in this Department's OM No 39023/02/2006-Estt(B) dated 5.12.2006 that in cases where the DAs want to differ with the advice given by the Commission, the case may be referred back to the Commission for reconsideration if the opinion of the DA is based on a new fact/evidence having a bearing on the case which became available after the recommendation of the Commission was received or it became available earlier but the Commission could not be informed of the same before it made its recommendations.

2. It is reiterated to all Ministries and Departments that as

already provided in the above OM dated 29/5/1982, the Disciplinary Authorities while referring the disciplinary cases to the UPSC for advice, should not propose to the Commission the quantum of penalty”. (emphasis supplied)

29. The purport of the aforesaid office memorandum is that while forwarding the case to the Commission for its consultation, the Disciplinary Authority should not express any opinion regarding the penalty to be imposed upon the officer concerned. Thus, the aforesaid OM also clearly shows that sub rule (2A) of Rule 15 only envisages the recoding of ‘findings’ and not the punishment that may be proposed to be inflicted upon the government servant. The petitioner, while forwarding the case of the respondent to the UPSC acted in compliance of the said OM dated 12.01.2010, which is a reiteration of the earlier OM dated 29.05.1982.

30. Counsel for the respondent has argued that the OM dated 12.01.2010 itself is in contravention of Rule 15(2A) and Rule 15(4) of the aforesaid Rules. He submits that the OM dated 29.05.1982 bearing No.39021/ 4/81-Estt (B) stands overruled upon the making of the Rules under Article 309 of the Constitution of India. He submits that Sub-Rule (2A) was inserted in Rule 15 only in the year 2000 and, therefore, the interpretation of Rule 15(2A) cannot be governed on the foundation of the OM dated 29.05.1982.

31. We cannot agree with this submission of the respondent. This is for the reason that on a plain reading of Rule 15(2A), as we have already observed, the Government is only obliged to record the “findings”, and not to propose the punishment to be inflicted on the government servant. In any event, DoPT has issued the OM on 12.01.2010 i.e. well after the insertion of

sub rule (2A) of Rule 15. In the present case, the consultation with the commission took place after the issuance of the OM dated 12.01.2010. Therefore, when the matter was referred to the UPSC for its consultation, the petitioner was not expected to indicate the punishment which it proposed to inflict upon the respondent.

32. The findings returned by the tribunal that the petitioner had abdicated its duty and authority by, firstly, agreeing with the advice of the CVC that major penalty should be imposed upon the respondent, and again by accepting the consultation provided by the UPSC with regard to imposition of punishment - without itself proposing the punishment is, in our view, completely erroneous. The Disciplinary Authority, at one stage, formed a tentative view that administrative warning may be issued to the respondent. Obviously, the question of issuance of an administrative warning would also have arisen only upon the respondent being found guilty of misconduct. However, for good and cogent reasons recorded by the CVC, it reiterated its advice that major penalty be imposed upon the respondent. The petitioner then forwarded the case to the UPSC for its consultation and, consciously, in response to query at Sl. No.13 of the proforma, stated that it had accepted the advice of the CVC. The latest representation of the respondent dated 23.03.2011 was also rejected point by point.

33. The submission of the respondent is that, in response to the query at Sl No.18 of the proforma (by which the matter was sent to the UPSC), which inter alia states "*Whether CVC's advice has been accepted by Disciplinary Authority*", the petitioner had answered "NA.". According to the respondent, it means that the petitioner disagreed with the advice of the

CVC. We cannot agree with this submission of the respondent. Since at Sl No.13 of the same proforma, the agreement of the Disciplinary Authority with the advice of the CVC had been expressly recorded, there is no question of - the use of the words “NA” in response to the query at Sl. No.18 of the proforma, being understood as expression of disagreement by the disciplinary authority with the advice of the CVC. The use of the expression “NA” in response to the query at Sl. No.18 has to be viewed in the light of the response to the query at Sl. No.13, and it only goes to show that since the same query as raised at Sl. No.18 had already been answered while dealing with the query at Sl. No.13 of the proforma, there was no purpose in repeating the same words again and again. We have already taken note of para 7 of the note/ proforma sent to the UPSC by the Competent Authority which shows that the Disciplinary Authority was also of the view that the respondent was guilty of misconduct, and that he had to be penalised.

34. The aforesaid clearly shows that reference was made to the UPSC for their consultation to seek their advice on the quantum of penalty which, obviously, presupposes the fact that the Disciplinary Authority had agreed to impose punishment upon the respondent, and not to let him off by a mere administrative warning, as the respondent would like it to be. Once the view of the UPSC was received, it was for the Disciplinary Authority to finally accept or reject the advice/ consultation of the UPSC. Only because the Disciplinary Authority accepted the same, it does not tantamount to abdication of his authority by the Disciplinary Authority to the UPSC.

35. For the aforesaid reasons, we are of the view that the impugned order is completely laconic and cannot be sustained. The same is, accordingly, set

aside. The writ petition is allowed. The parties are left to bear their respective costs.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 18, 2017

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