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

+ **WP (C) No.6777/2016**

Date of Decision: 08th August, 2017

R.P.S. PANWAR Petitioner

Through: Mr.R.P.Kapoor, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms.Shiva Lakshmi, CGSC,
Mr.Sriram Krishna &
Mr.Ruchir Ranjan Rai,
Advocates for respondent Nos.1
and 2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner has preferred the present writ petition assailing the orders dated 3rd December, 2015 & 12th February, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, vide which both his original application being OA No.4140/2010 and review application being RA No.04 of 2016 have been dismissed.
2. The petitioner had preferred the said original application before the Tribunal to assail the order dated 24th September, 2010 whereby a

penalty of 10% cut in pension for three years had been imposed upon him. He had also challenged the charge memo issued to him, as also the consequential departmental proceedings taken against him which had led to the issuance of the penalty order dated 24th September, 2010. The facts of the case, as are necessary for adjudication of the present petition, are that the petitioner who had been appointed as Engineer (Supervisory) in the Department of Telecommunication, was upon his promotion to the post of General Manager (Telecom), posted to Moradabad, UP. He was thereafter transferred to Muzaffarnagar on 18th September, 2003 which is also in the state of UP. While posted as GMTD, Muzaffarnagar the petitioner was detained in custody by the CBI and was, therefore, immediately placed under deemed suspension as per Rule 10 of the CCS (CCA) Rules, 1965 which suspension continued from time to time. Upon reaching the age of superannuation on 30th April, 2006, he was allowed to retire.

3. Soon after his superannuation the petitioner was issued a memorandum of charges dated 5th October, 2006 wherein he was charged with violation of Rule 3(1)(i), (ii) & (iii) CCS (Conduct) Rules, 1964, inter alia, on the ground that he had failed to direct his

subordinate officers to complete the tender process, which resulted in extension of previous tender from 29th September, 2000 to 29th May, 2002 during which period, a sum of Rs.56,00,000/- was paid to the old contractor namely M/s Sirohi Detective & Security Agency as against the estimated costs of Rs.15,00,000/- of the previous tender. The charges levelled against the petitioner are reproduced hereinbelow for the sake of convenience:-

“ARTICLE:

That the said Shri RPS Panwar while posted and working as GMTD Moradabad during the period 19.4.1999 to 16.6.2002 committed following irregularities while approving and extending the tender of security guards which amount to misconduct:-

1. During the aforesaid period, tender of M/s Sirohi Detective and Security Agency (P) Ltd., Ghaziabad was extended from 29.9.2000 to 29.5.2002 despite receipt of instructions from corporate office to engage security guards through DGR sponsored agency and favoured M/s Sirohi Detective and Security Agency (P) Ltd., Ghaziabad for more than 1-1/2 years. The said Shri RPS Panwar failed to direct subordinate officers to complete the tender processing at the earliest.
2. Tender of security arrangement was valid up to 28.9.2000. Fresh tenders for security arrangements were invited after 7 months

from the expiry of previous tender and old contractor M/s Sirohi Detective and Security Agency (P) Ltd., Ghaziabad was allowed to perform security arrangement till new arrangements were made. The said Shri RPS Panwar failed to notice the non-processing of the case for fresh tender well in advance before expiry of period of earlier tender.

3. There were clear instructions to make security arrangement through DGR sponsored agencies, even then open tender in the name of watch and ward arrangement were invited vide NIT no.GMTD/MRD/Admn/Tender/Watch & Ward02-03 dated 6.03.2002.
4. Estimated cost of previous tender was Rs.15 lac whereas during extended period an amount of more than Rs.56 Lac has been paid to M/s Sirohi Detective Agency. The said Shri RPS Panwar failed to object while the bills were processed for the same through him.
5. Tenders were invited vide NIT no.GMTD/MRD/Admn.Tender/Watch & Ward.02-03 dated 26.03.2002 at AGM (Plg.) level. NIT and tender documents were neither vetted by IFA nor approved by Shri RPS Panwar the then GMTD Moradabad, even then the NIT and tender documents were released without the approval of Competent Authority. There was another irregularity in financial bid of tender as both the no. of guards required and type i.e. Gunman and Dandaman were mentioned, (While to receive the competitive rates it was essential to

mention these Data in financial documents of tender) rather equipped capacity of exchange and name of office were given. While contractor has nothing to do with equipped capacity of exchange or name of office. It appears that whole exercise was made to favour some particular firms. The said Shri RPS Panwar did not raise any objection whenever the file came to him for approval of tender opening committee (TOC), tender evaluation committee (TEC) and tender negotiation committee (TNC).

Thus by his above acts, the said R.P.S. Panwar, 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.”

4. Since the charges were denied by the petitioner, a regular departmental enquiry was ordered and Shri A.K. Garg was appointed as the Enquiry Officer. Repeated notices were sent to the petitioner but he did not participate in the enquiry, and instead prayed for stay of the enquiry till conclusion of his criminal case. The petitioner’s request for stay of the enquiry was not acceded to by the Enquiry Officer due to his failure to appear in the enquiry. He was proceeded ex-parte. The Enquiry Officer, after considering the documents produced in the enquiry which, as noted hereinabove, the petitioner

willfully chose not to rebut, submitted his report dated 27th February, 2009, holding the petitioner guilty of all the charges.

5. The relevant findings of the Enquiry Officer read as under:-

“6.0 FINDINGS

Though sufficient opportunity was given to the CO to participate in inquiry, but CO on one or the other pretext did not join inquiry even once, meaning thereby that CO was not inclined to participate in the inquiry. Hence, it was conducted ex-parte.

My findings in respect of all charges mentioned in article of charge of charge sheet based on above analysis of evidence are as under:-

Para (1)	Proved.
Para (2)	Proved.
Para (3)	Proved.
Para (4)	Proved.
Para (5)	Proved.”

6. A copy of the Enquiry Officer's report was sent to the petitioner giving him an opportunity to submit a representation, if any. Upon receipt of his representation, the competent authority sought statutory advice from the Union Public Service Commission (UPSC). Vide its letter dated 16.08.2010 the UPSC tendered its advice which *inter alia* indicated that the charges proved against the applicant constituted grave misconduct and it therefore suggested the imposition of a penalty of withholding of 10% of monthly pension for a period of three years. The Disciplinary Authority accordingly imposed the penalty of 10% cut in monthly pension for three years on the

petitioner. Feeling aggrieved by the said penalty order, the Petitioner preferred O.A No.4140/2010 before the Tribunal.

7. Upon perusal of the record and consideration of submissions of both parties, the Tribunal came to a categorical conclusion that there was no infirmity in the enquiry proceedings and the Petitioner, having not participated in the enquiry, could not point fingers at the enquiry or the enquiry officer's actions. The Tribunal also noticed the fact, that the Petitioner had been given adequate opportunities by the enquiry officer. It was also of the view that the time taken to frame charges and finalize the case could by no means be termed as intentional inordinate delay, as sought to be contended by the petitioner.

8. The Tribunal, however, found that there was a procedural infirmity in the action of the Disciplinary Authority in as much as, the advice of the UPSC had not been given to the petitioner, before imposing the penalty order. The Tribunal, therefore, vide its order dated 24th November, 2011 set aside the penalty order on this limited ground, and remanded the matter back to the Disciplinary Authority to continue from the stage where the procedural infirmity had crept in. The relevant findings of the Tribunal read as under:-

“6. Admittedly, the applicant was detained in custody. On 18.09.2003 for a period exceeding forty eight hours for which he was placed under deemed suspension w.e.f. 18.09.2003 vide order dated 23.09.2003 (Page 150) and he continued under suspension till 30.04.2006 when he retired. Though, there was only article of charge but the same had four specific elements viz. (i) during the period 19.04.1999 to 16.06.2003 when the applicant was working as GMTD Moradabad tender of M/s Sirohi Detective and

Security Agency (P) Ltd. Ghaziabad was extended from 29.09.2000 to 29.05.2002 by him despite receipt of instruction to engage security guards through DGR sponsored agency; (ii) during the said period the fresh tenders for security arrangement were invited after 7 months and old contractor was allowed to perform till new arrangements were made; (iii) despite instructions to make security arrangement through DGR sponsored agencies, he invited open tender; and (iv) the estimated cost of previous tender was Rs.15 lakh whereas during the extended period an amount more than Rs.56 lakh were paid to M/s Sirohi Detective Agency (P) Ltd. and the applicant failed to object while the bills were processed through him. For these four elements of charge he was proceeded against on the ground that he failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant. Despite repeated intimation to the applicant about the hearing in the inquiry he did not attend the same. IA held all four elements as proved. It is noticed that the prescribed procedure was followed by the IA. The applicant was supplied the authenticated photocopy of relied on documents. The non participation in the inquiry nobody other than himself can be blamed. Now he can't point fingers at the inquiry or even the IA's action. We notice he has been given adequate opportunities by the IA. The time taken to frame charges and finalise the case, in our opinion, is normal period and no intentional inordinate delay has been caused. On scrutiny of the pleadings, we notice that the displeasure in another case was conveyed by the Government for similar misconduct but the period in that case was rather short i.e. for about 3 months (July to September, 2003) at Muzaffarnagar, whereas in the instant case the period was more than 1 1/2 years at Moradabad. In the present case financial loss to the Government due to the applicant's misconduct has been identified whereas in

the other case, no such identification of loss has been shown. We are of the considered view that similarity cannot be drawn between the two sets of misconduct on the basis of the magnitude and period of misconduct.

7. However, we notice that the competent authority has committed legal and procedural infirmity while imposing the punishment without supplying the UPSC advice/report to the applicant and denying him the opportunity to represent and defend himself against the UPSC advice. In this context, we place our reliance on the latest judgment of Hon'ble Supreme Court in Union of India & Others versus S.K. Kapoor 2011 STPL (Web) 277 SC. The pertinent paragraphs of the judgment read thus:-

“10.

8. Considering the totality of facts and circumstances of the case and guided by the law laid by Hon'ble Apex Court in S.K. Kapoor's case (supra), we are of the considered opinion that the penalty order dated 24.09.2010 is not legally sustainable. Therefore, we quash and set aside the impugned punishment order dated 24.09.2010 and remand the case back to the Disciplinary Authority to continue from the stage where the legal and procedural infirmity has crept in and decide the disciplinary case as expeditiously as possible and in any case within a period of 12 weeks from the date of receipt of a certified copy of this order.

9. Aggrieved by the order of the Tribunal, the Respondents preferred a writ petition being WP(C) 6157/2012 which was decided vide a common order dated 15th July, 2013 passed in a batch of writ petitions involving common questions of law. This Court, after considering the effect of the various judgments relating to the effect of

non-supply of the copy of the UPSC's advice before imposing the penalty, allowed the writ petitions filed by the Respondent. While setting aside the order passed by the Tribunal, the Court, however, found that some other contentions had also been raised by the Petitioner in his OA before the Tribunal and, therefore, restored the petitioner's OA for adjudication of other contentions urged by him.

10. Accordingly, the matter was remanded back to the Tribunal. The Tribunal once again considered all the contentions raised by the Petitioner and finding no merit therein, dismissed the OA by holding as under:

“45. In conclusion we hold that the applicant has not acted correctly in staying away from the enquiry proceedings. We have already stated that had the applicant appeared before the enquiry officer and joined the enquiry proceedings by stating his grounds, it might have been that the enquiry officer could have taken different view. However, the applicant had shot himself in the foot by not attending the enquiry for which he himself is to blame. Moreover, the charges are so grave in nature, that they are covered within the ambit of ‘grave misconduct’. Hence, we find that the applicant has failed to establish his case given limited scope of judicial intervention in such matters, and the impugned penalty of 10% cut in pension appears to be justified and fair.”

11. The Petitioner thereafter preferred a Review Application before the Tribunal which was also dismissed. Aggrieved by the dismissal of both his OA and Review Application, the Petitioner has approach this Court.

12. Before us, the counsel for the Petitioner while reiterating his submissions made before the Tribunal, has contended that the enquiry proceedings were vitiated as neither any witness had been examined to prove the case of the Department, nor the provision of Rule 14(18) CCS (Conduct Rule) were followed. He contends that once both the prosecution witnesses were dropped, there was no evidence against the Petitioner, and even otherwise, without recording his statement under Rule 14(18), the Enquiry Officer could not hold him guilty. His further submission is that the Enquiry Officer had himself violated the same instructions dated 03.10.2001, and merely because the Petitioner had not appeared on some dates, the Enquiry Officer had erroneously closed his defence by presuming that there was no likelihood of his appearing in the Enquiry.

13. Per Contra, the counsel for the Respondents has, while supporting the impugned order, drawn our attention to the Daily Orders that were prepared during the course of the Departmental Enquiry. She has contended that the Petitioner did not attend any of the hearings in the departmental proceedings, despite being informed about the same and, therefore, he cannot complain that principles of

natural justice were not followed during the enquiry, or that the Enquiry proceedings were vitiated. She has further submitted that even though the advice of the UPSC was not given to the Petitioner before imposition of the penalty, but by placing reliance on DoPT'S O.M dated 14.07.2016 she has contended that as per the decision of the DoPT, cases where penalty had been imposed prior to 16.03.2011 need not be reopened on the ground of non-supply of UPSC's advice in advance. It is contended that no prejudice has been caused to the Petitioner by the non-supply of UPSC's advice to him in advance, as the same was supplied to him alongwith the Penalty Order & all his representations have been carefully considered by the Respondents, who found no merit in the same.

14. We have carefully considered the submissions of counsel for both the parties and with their assistance perused the record.

15. It becomes evident from the record, that the Petitioner was repeatedly informed about the enquiry proceedings with a direction to appear before the Enquiry Officer. He, however, chose not to appear before the Enquiry Officer, for reasons best known to him. In such circumstances, where the delinquent employee refuses to participate in

the enquiry, the Enquiry Officer has no other option except to proceed ex parte and give his findings on basis of the unrebutted evidence led before him. In the present case, reliance had been placed by the Respondent/Employer on a number of documents, which were admittedly not controverted by the Petitioner and the Enquiry Officer was fully justified in arriving at his findings on basis of those uncontroverted documents.

16. We are also of the view, that once the Petitioner chose not to participate in the enquiry, there was no occasion for the Enquiry Officer to examine him or record his statement in accordance with Rule 14(18) of the CCS (Conduct) Rules. Having given our thoughtful consideration and upon perusal of the record, we find no infirmity in the proceedings of the enquiry.

17. It is noteworthy that the Tribunal has on both occasions, initially as also after remand, found, and in our view rightly, that the Enquiry Officer had followed the prescribed procedure and had given enough opportunities to the Petitioner. He, however, did not attend the enquiry and for his non participation in the enquiry, nobody other than he himself could be blamed.

18. We have also considered the charges against the Petitioner which stand proved and find that the same are grave in nature. We are of the view that charges against the Petitioner have been rightly held to fall within the ambit of 'grave misconduct' by the Tribunal. The penalty of 10% cut in monthly pension for 3 years is commensurate with the grave misconduct of which the Petitioner was held guilty. We also find merit in the submission of the Respondent that since the penalty was imposed on the Petitioner much prior to 16.03.2011, there was no requirement to re-open the case of the Petitioner on the ground of non-supply of a copy of the UPSC's advice in advance. Even otherwise, we find that this Court had, while remanding back the matter to the Tribunal vide its judgment dated 15.07.2013, decided this issue in favour of the Respondents and had restored the OA for adjudication only in respect of other contentions urged therein. The issue of the penalty order being liable to be set aside on the ground of non supply of advice of the UPSC before imposing the penalty order, thus, stood finally decided by this Court on 15.07.2013 and was, therefore, rightly not re-examined by the Tribunal while passing the impugned order.

19. We find no infirmity in the order of the Tribunal. There is no merit in the present Writ Petition and the same is dismissed without any order as to costs.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

AUGUST 08, 2017/aa-f

