

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 865 OF 2005

Shri B.M. Mittal ... Petitioner.
V/s.
Union of India and ors. ... Respondents.

Mr. S.P. Saxena a/w. Mr. A.S. Rao for the Petitioner.
Ms Neeta Masurkar a/w. Mr. Ashok Varma for Respondent No.1
Mrs Lata Patne and Mr. Vinod Joshi for Respondent No.3.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE OF RESERVING THE JUDGMENT : 7th September 2018.
DATE OF PRONOUNCING THE JUDGMENT : 26th September 2018.

JUDGMENT: (Per M.S. SONAK, J.)

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 30.9.2004 made by the Central Administrative Tribunal (CAT), Mumbai dismissing O.A. No. 612 of 2000 instituted by the petitioner in order to question the penalty of reduction by one stage from Rs.16700 to Rs.16,300 for a period of one year, with cumulative effect by his disciplinary authority. In addition to this, the petitioner had prayed for certain additional reliefs before the CAT, which were consequential to the main relief questioning the penalty imposed upon him.

3] The petitioner, an Executive Engineer, was served with a charge-sheet dated 09.09.1993 alleging the following:

“(i) That, he did not sign the justification statement and analysis of rates and submitted highly inflation market rate justification without verifying rates of labour and materials.

(ii) That, he recommended that the rates of Ms. Dewan Chand were unworkable, which were actually not unworkable.

(iii) That, he stated on his own that Mandi House, Phase -I, was a time bound project.”

4] Since the petitioner denied the charges, enquiry was held which culminated into the inquiry officer submitting a report holding the charges as proved against the petitioner. After taking into consideration the petitioner's representation against such inquiry report, the disciplinary authority by order dated 18.6.1999 imposed upon the petitioner, the penalty of reduction of his pay by one stage from Rs.16,700 to 16,300 in the time scale of Rs.14300-400-18300 for a period of one year with immediate effect and with further directions the petitioner will not earn increments of pay during such period and that on expiry of the period, the reduction will have the effect of postponing the future increment of pay.

5] The petitioner's review petition against above order was rejected on 9.11.2000. Aggrieved by such orders as well as denial of promotion in the meantime, the petitioner instituted O.A. No. 612 of 2000 before the CAT. By impugned judgment and order dated 30.9.2004, the CAT dismissed O.A. No. 612 of 2000. Hence, the present petition.

6] Mr. Saxena, the learned counsel for the petitioner, submits that the findings recorded by the inquiry officer suffered from perversity and the same could not have been made the basis for imposition of any penalty upon the petitioner. He submits that if the evidence before the inquiry officer is perused, it is quite clear that the witnesses had not deposed anything against the petitioner. The findings recorded by the inquiry officer are therefore, based upon no legal evidence and consequently suffered from perversity.

7] Mr. Saxena submits that there is no material on record to show that the Union Public Service Commission (UPSC) was ever consulted before the imposition of penalty upon the petitioner. Mr. Saxena submits that this is the mandatory requirement and since this was not followed, the penalty imposed is null and void.

8] Mr. Saxena submits that in the present case, there was no compliance whatsoever with the mandatory provisions in Rule 14(8) of the CCS (CCA) Rule 1965 (the said Rules). Upon conclusion of the recording evidence of the departmental witnesses, the inquiry officer failed to generally question the petitioner on the circumstances appearing against him in the evidence so as to enable the petitioner to explain any circumstances appearing in the evidence against him. Mr. Saxena submits that the provision in Rule 14(18) of the said Rules is a mandatory provision as held by the Apex Court in **Moni**

Shankar vs. Union of India and anr. (Appeal (Civil) No. 1729 of 2008 decided on 4.3.2008) and Ministry of Finance and anr vs. S.B. Ramesh - 1998 SCC (L&S) 865.

9] Finally, Mr. Saxena submits that the penalty imposed upon the petitioner is grossly disproportionate, as the same has the effect of reducing even the pensionary benefits which the petitioner would have otherwise been entitled to receive. He submits that the charges leveled against the petitioner were not at all serious and even assuming without in any manner admitting that such charges were indeed proved, the penalty imposed is not at all proportionate. He submits that the imposition of a disproportionate penalty itself amounts to violation of Article 14 of the Constitution of India.

10] Ms Masurkar, learned counsel for the respondent No.1,, defends the impugned judgment and order and reiterates the contentions raised by and on behalf of the respondent No.1 before the CAT. She points out that the issue as regards any alleged non-consultation with the UPSC or even disproportionality of penalty was never even raised by the petitioner before the CAT. She submits that such issues cannot be permitted to be raised for the first time in the present petition. In any case, she submits that even both these contentions lack merit. She submits that the scope of interference with the findings recorded by the disciplinary authority is extremely limited and in the present case the

findings recorded by the inquiry officer were backed by legal evidence on record. For all these reasons, Ms Masurkar submits that the present petition may be dismissed.

11] The rival contentions now fall for our determination.

12] There is no merit in the contention that the findings on the fact recorded by the inquiry officer are vitiated by perversity. Apart from such a bald assertion, there was no attempt to in fact demonstrate that the findings of fact recorded by the inquiry officer were based upon no evidence on record or based upon misreading the evidence on record. There is no issue of exclusion of any relevant evidence or inclusion of any irrelevant or inadmissible evidence. The findings of fact recorded by the disciplinary authority cannot be lightly interfered with, particularly, in exercise of powers of judicial review.

13] As regards the first article of charge, the inquiry officer in his report at paragraphs 3.5 and 3.10 has observed thus:

"Therefore, deposition of SW-7, SW-9 and SW-11, who prepared and checked MRJ establish that MRJ is not based on authentic information/data and therefore, it cannot be said as genuine MRJ. Therefore, there is no strength in the contention of CO. CO did not adduce, any evidence to prove that he collected rates himself. Certificate given at Page 44 of Exhibit S-7 contains element of falsity as the same certificate cannot be attributed to all the three officers including CO who signed it: JE (C), SW-7 has denied verification of last three items (Exhibit S-28). Exhibit D – 13 and 9(a)

unambiguously stipules that EE shall prepare the justification statement. Use of word shall mean that EE will only be responsible for preparation of the justification statement on the basis of market rates of labour and material supplied by him. Therefore, justification statement (referred to as Market Rate Justification – MRJ) at Page 26 of Exhibit S-7 will have to be signed by the CO, which he has not done. Therefore, there is no strength in any of the contentions of CO as arguments of PO are supported by evidence on record.”

“Assessment of evidence above established that the CO who was required to sign justification statement and analysis of rates in Exhibit S-7 has not signed except Page 44 which is also false. It is also established that he did not/ did not get verified rates of labour and material as analysed above. Therefore, Article of Charge is held proved”.

14] The CAT, on the aforesaid basis, has quite correctly held that the findings recorded by the inquiry officer are based upon the evidence tendered before the inquiry officer in the course of inquiry proceedings. Both oral as well as the documentary evidence as is reflected above clearly establishes the charge as levelled against the petitioner.

15] As regards the second article of charge, the inquiry officer at paragraph 3.2.1 of the inquiry report has observed thus:

“Evidence on record establish that ASW, SW, SE(C), SSW-1 categorically declared that rates of the first lowest tenderer were workable. Even FO also did not say that rates were unworkable. CO himself was not of the firm view that rats were unworkable. Change in his stand on 03.01.1990 is not supported by evidence and it also not above board. Lowest tenderer was identified by a pre-

qualification committee out of 22 Applicants and this contractor completed Mandi House Phase -I, work satisfactorily. It is difficult to agree that such a firm will give unworkable rates. No negotiations were held to clarify low rates in respect of same items with the firm. Therefore, Article of Charge is held as proved."

16] Again, we are unable to fault the CAT when it says that there was sufficient material evidence before the inquiry officer to hold that even this article of charge stands proved against the petitioner. Besides, the disciplinary authority whilst imposing penalty upon the petitioner and while considering the petitioner's review petition, had analysed the material before the inquiry officer and concluded that there was sufficient evidence to sustain such charge. In such circumstances, there is really no merit in the petitioner's contention that the findings on this charge are vitiated by perversity.

17] As regards the third article of charge, the inquiry officer in paragraphs 3.2.4, 3.2.5 and 3.2.6 has returned the findings of fact. In fact, the letters addressed by the petitioner bear out that the petitioner did create an impression that the project was time bound, with a view to deviate from well established procedures in the execution of the project of such a nature. Apart from the inquiry officer, the disciplinary authority has also analysed the material on record and concluded that there was sufficient evidence to sustain the third article of charge as well.

18] In the aforesaid circumstances, we are unable to accept the petitioner's contention that the findings of fact recorded by the inquiry officer and accepted by the disciplinary authority are vitiated by perversity. Neither the CAT nor this Court can be expected to venture into reappreciation of the evidence or to act as a second Court of first appeal as held by the Apex Court in ***Union of India and vs. P. Gunasekaran - AIR 2015 SCC 545***. In fact, the Apex Court has held that under Article 226/227 of the Constitution of India, the High Court shall not reappreciate the evidence; interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law; go into inadequacy of the evidence; go into the reliability of the evidence; interfere, if there be some legal evidence on which findings can be based.

19] Applying such principles, we see no merit in the Mr. S.P. Saxena's first contention in support of this petition.

20] The contention as regards non-consultation with the UPSC was never raised by the petitioner before the CAT. At this point of time, therefore, it would be appropriate to permit the petitioner to raise such an issue. If such issue were to be raised before the CAT or in the review petition instituted by the petitioner, no sooner penalty was imposed upon him, the respondents would be in a position to offer an appropriate response. There is again the issue of whether such consultation is mandatory and the effect of non-consultation, particularly

when no rules have been brought to our notice in this regard. Accordingly, there is no case made out to interfere with the penalty imposed on the ground now sought to be raised by the petitioner.

21] Rule 14(18) of the said Rules *inter alia* provides that the inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing against him. In the present case, if the inquiry proceedings are perused, it is clear that the petitioner was afforded and has in fact availed the reasonable opportunity in his defence. The petitioner has taken part in the inquiry proceedings in which the department witnesses were cross-examined. From reply filed by the petitioner to the chargesheet, it is apparent that the petitioner understood the charges against him and filed a response to the same. The petitioner's representation to the report dated 10.2.1998 in response to the inquiry report is detailed and runs into 30 pages. The petitioner, in his response, has analyzed and responded practically to each paragraph of the inquiry report. The petitioner has discussed the evidence in great details. Significantly, in this lengthy representation there is no complaint about any breach of Rule 14(18) of the said Rules or for that matter any prejudice on account of non-compliance with the same.

22] After the disciplinary authority vide order dated 18.6.1999 imposed penalty upon the petitioner, the petitioner instituted revision/review petition on 28.6.1999. In this review petition/revision as well, the petitioner raised several grounds but significantly, there was no complaint about non-compliance with the provisions of Rule 14(18) of the said Rules or any consequent prejudice.

23] In *S.B. Ramesh (supra)*, the Division Bench of the Apex Court has not itself discussed and held that the provisions of Rule 14(18) of the said Rules are mandatory in nature. The Apex Court only refused to interfere with the findings recorded by the Tribunal, particularly in absence of full materials, which the appellants despite opportunities failed to produce before it. In *Moni Shankar (supra)*, again, the Division Bench of the Apex Court, at paragraph 25 has observed that the High Court committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. This observation was in the context of the facts referred to in paragraphs 17 and 18 of the judgment. In paragraph 17, it was recorded that the delinquent employee had stated that he could neither read nor write any English language and despite this position, certain documents in English language were held as proved against the delinquent employee. In paragraph 18, the Apex Court has in fact quoted the questions posed by the inquiry officer to the delinquent employee. From the reading of the decision in *Moni Shankar (supra)* in its entirety, it is quite evident that interference with

the penalty imposed, *inter alia*, on the ground of non-compliance with the provisions in Rule 9(21) of the said Rules was basically because prejudice was writ large on account of such non-compliance. The position in the present case is by no means comparable. The petitioner in the present case was an Executive Engineer and has made out no case that he suffered any prejudice on account of any non-compliance with the provisions of Rule 14(18) of the said Rules.

24] Besides, it appears that the Apex Court's decision in ***Sunil Kumar Banerjee vs. State of West Bengal - AIR 1980 SC 1170*** delivered by the Bench of Three Judges at a much prior point of time, was not placed before the Division Benches which decided *S.B. Ramesh (supra)* and *Moni Shankar (supra)*. In fact, the precise issue as to whether a provision *pari materia* to Rule 14(18) of the said Rules is to be construed as directory or mandatory directly arose before the Three Judges Bench of the Apex Court in *Sunil Kumar Banerjee (supra)*. In the said case, the Apex Court was concerned with Rule 8(19) of the All India Services (Discipline and Appeal) Rule 1955, which reads thus :

“The enquiring authority may, after the member of the services closes his case and shall if the member of the services has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him.”

25] In the present case, Rule 14(18) of the said Rules with which we are concerned reads thus:

“(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.”

26] From comparison of the two rules, it is apparent that they are virtually identical and therefore, the interpretation put on Rule 8(19) of the All India Services (Discipline and Appeal) Rules, 1955 by the Apex Court in *Sunil Kumar Banerjee (supra)* will squarely apply to interpretation of Rule 14(18) of the said Rules. CCS (CCA) Rules.

27] In *Sunil Kumar Banerjee (supra)*, the Apex Court, after noting that the appellant was not questioned by the inquiry officer under Rule 8(19) of the All India Services (Discipline and Appeal) Rules, 1955, went on to observe as follows:

*“It may be noticed straightaway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1974. It is now well established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide K.C.Mathew v. the State of Travancore-Cochin, (1955) 2 SCP 1057:(AIR 1956 SC 241), Bibhuti Bhushan Das Gupta v. State of West Bengal, (1969) 2 SCR 104: (AIR 1969 SC 381). **We are similarly of the view that failure to comply with the requirements of rule 8(19) of the 1969 rules does not vitiate the enquiry***

unless the delinquent officer is able to establish prejudice. In this case the learned single judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stage. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegation in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry officer to question him in accordance with rule 8(19)."

(emphasis supplied)

28] The aforesaid is a complete answer to Mr. Saxena's contention based upon non-compliance with the provisions of Rule 14(18) of the said Rules. In the present case as well, the petitioner has failed to demonstrate any prejudice whatsoever on account of any alleged non-compliance with the provisions of Rule 14(18) of the said Rules. Therefore, following the decision of the Three Judges Bench of the Apex Court in *Sunil Kumar Banerjee (supra)*, the contention based upon Rule 14(18) of the said Rules has to be rejected.

29] In ***K.L. Tripathi vs. State Bank of India and ors. - (1984) 1 SCC 43***, the Apex Court has held that there is no such thing as mere technical infringement of natural justice. In ***State Bank of Patiala vs. S.K. Sharma - (1996) 3 SCC 364***, the Apex Court has made a distinction between cases involving 'no opportunity' and 'no adequate opportunity'. In the later cases, it

is held that any allegation of violation of natural justice must be examined on the touch stone of prejudice. Therefore, unless real prejudice is demonstrated, there is no question of interference based merely on some allegation of technical breach of the principles of natural justice.

30] The Constitution Bench of the Apex Court in ***Managing Director, ECIL vs. B. Karunakar -1993 4 SCC 727*** has held that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of denial to him of the report, has to be considered on facts and circumstances of each case. Where therefore, even after furnish of the inquiry report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and get all consequential benefits. This would amount to rewarding dishonest and the guilty and thus to stretching the concept of the natural justice to illogical and exasperating limits. This amounts to an unnatural expansion of natural justice which in itself antithetical to justice.

31] Applying the aforesaid principles to the facts and circumstances of the present case, Mr. Saxena's contention based upon non-compliance with the provisions of Rule 14(18) of

the said Rules will have to be rejected.

32] The issue of dis-proportionality of the penalty was never raised by the petitioner either in his review petition/revision or before the CAT. In any case, looking to the charges held as proved against the petitioner, it cannot be said that the penalty imposed upon the petitioner is in any manner disproportionate. Accordingly, we see no good ground to interfere with the penalty imposed on the ground of dis-proportionality.

33] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order. This petition is therefore, dismissed. Rule is discharged. There shall however, be no order as to costs.

(M. S. SONAK, J.)

(A.S.OKA, J.)

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