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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 24th September, 2018

+ W.P.(C) 10054/2018

SUBHASH CHAND Petitioner
Through: Mr.Kamal Kant Jha,
Mr.Krishna Kumar, Mr.P.
Mathur and Mr.Siddharth Jha,
Advs.

versus

STATE OF NCT DELHI & ORS Respondents
Through: Ms.Avnish Ahlawat, Standing
Counsel, GNCTD with
Ms.Palak Rohmetra, Adv. for
R1-3.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. This writ petition assails the memorandum dated 12th September, 2018, issued to the petitioner by the Secretary, Legislative Assembly, NCT of Delhi in his capacity as disciplinary authority of the petitioner. This memorandum reads thus:

“MEMORANDUM

WHEREAS Shri Subhash Chandra, Junior Assistant (Grade IV DASS) has been convicted on a criminal charge by the Hon'ble Court of Shri AS Yadav, Spl Judge on 06.07.2010 u/s 7 and 13(1)(d) punishable u/s 13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for a period of two years and a fine of ₹ 10,000/-,

And WHEREAS on a careful consideration of the inquiry report submitted by Shri LS Yadav, Inquiry Officer

under Rule 14 (copy of which was already provided to Shri Subhash Chandra) and the reply of Shri Subhash Chandra to the inquiry report, the undersigned has provisionally come to the conclusion that Shri Subhash Chandra is not a fit person to be retained in service and accordingly proposes to impose on him the penalty of dismissal from service’

NOW, THEREFORE, Shri Subhash Chandra is hereby given an opportunity of making representation on the penalty proposed above Any representation which he may wish to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Shri Subhash Chandra.

The receipt of this memorandum should be acknowledged.”

2. Ms. Avnish Ahlawat, Standing Counsel, GNCTD raises a preliminary objection that this writ petition would be maintainable before the Central Administrative Tribunal (hereinafter referred to as “the learned CAT”). Though the GNCTD, and officers under the GNCTD are normally subject to the jurisdiction of the learned Tribunal, I am not fully convinced that employees of the Legislative Assembly of the GNCTD would also have to move the learned Tribunal and would stand foreclosed from maintaining this writ petition before this Court. Ms. Avnish Ahlawat is not in possession of any notification specifically notifying the Legislative Assembly as amenable to the jurisdiction of the learned Tribunal.

3. Be that as it may, in view of the order that I am passing in this matter, it may not be necessary to enter into this dispute.

4. Briefly stated, disciplinary proceedings, initiated against the petitioner, resulted in an enquiry, cumulating in an enquiry report, dated 11th April, 2018, which opined that the charges against the petitioner stood proved. The copy of the said enquiry report was furnished to the petitioner, who submitted his response, thereto, on 4th May, 2018.

5. The petitioner was next visited with the impugned memorandum dated 12th September, 2018, which, as is apparent from a reading thereof the above, *provisionally* came to the conclusion that the petitioner was not a fit person to be retained in service and proposed to impose, on him, the penalty of dismissal from service.

6. Mr. Kamal Kant Jha, learned counsel for the petitioner submits that the impugned memorandum, dated 12th September, 2018, was completely misguided. He submits that the proceedings against his client were under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as “in the CCS (CCA) Rules”] and that, in the regime applicable to his client under the said Rules, the response of a charged officer, to the Inquiry Report, had, thereafter, to result in an order, of the disciplinary authority, under Rule 15(6). His submission is that the impugned memorandum, dated 12th September, 2018, was completely misguided, as such a memorandum was relatable to the proviso to Rule 19 of the CCS (CCA) Rules, which was not available for invocation where an enquiry had already taken place under Rules 14 and 15 thereof.

7. According to learned counsel, once disciplinary proceedings had been initiated against his client under Rule 14 of the CCS (CCA) Rules, and proceeded, via a departmental enquiry, to the submission of an Inquiry Report under Rule 15, the next step would be the passing of an order, by the disciplinary authority, under Rule 15(6). The proviso to Rule 19 of the CCS (CCA) Rules, according to him, stands altogether excluded in such cases. Basically, therefore, learned counsel seeks to pigeonhole Rules 14 and 15, on the one hand, and Rule 19, on the other, into two different compartments, completely insulated from each other.

8. I am unable to appreciate this submission which, according to me, does not find support in Rule 14, Rule 15 or Rule 19 of the CCS (CCA) Rules. Neither, I may point out, has learned counsel been able to disclose any provision which excludes the applicability of Rule 19 to cases where the enquiry proceeded via Rules 14 and 15 of the said Rules.

9. For ready reference, Rules 14, 15 and 19 of the CCS (CCA) Rules, 1965 are reproduced under:

“14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint

under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

EXPLANATION - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or

misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
 - (ii) a copy of the written statement of the defence, if any, submitted by the Government servant;
 - (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);
 - (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant;
- and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

Note: The Government servant shall not take the assistance of any other Government servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring

authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence:

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

NOTE: If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

NOTE- The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the

same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule(12) every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of

such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE: New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(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.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clause (i) to (iv) of rule 11 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 11), has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

EXPLANATION: If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include :-

- (a) the report prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the Government servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

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:

19. Special procedure in certain cases

Notwithstanding anything contained in rule 14 to rule 18:

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause(i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.”

10. In my view, the submission of learned counsel for the petitioner proceeds on a fundamental misconception of the procedure for departmental enquiries as contemplated by the CCS (CCA) Rules.

11. Rule 14 of the CCS (CCA) Rules, which applies in a case where major penalty is proposed, contemplates issuance of a charge sheet and disciplinary proceedings following thereupon.

12. Rule 15 comes into play after an Inquiry Report has been submitted under Rule 14. Once such an enquiry report has been submitted, a copy thereof is required to be forwarded to the charged officials and his response invited thereon.

13. Rule 15(6) empowers the disciplinary authority, consequent to submission of such response, to consider the same and pass an order regarding punishment to be imposed on the charged official.

14. Rule 19 is a special dispensation, which kicks into place where the punishment, to be imposed on the charged official, falls within one or other of the categories specified in clauses (i) to (iii) thereof. It is not as though, in such cases, the provisions of Rules 14 and 15 of CCS (CCA) Rules are completely jettisoned.

15. No doubt, clauses (ii) and (iii) of Rule 19 envision situations in which an enquiry is not held; no such reference is, however, to be found in clause (i) of the said rule, which squarely applies in the present case. There is no dispute about the fact that the allegations against the petitioner, for which he was charged in the disciplinary proceedings, have led to his conviction. Learned counsel submits that the appeal against the said conviction is pending, and sentence stands suspended. Even so, once the penalty, proposed to be imposed on the allegedly delinquent officer was based on conduct which had led to his conviction, Rule 19 would kick in, and, under the proviso thereto, the officer could be afforded an opportunity of representing against the penalty proposed to be imposed, before actual imposition of the penalty.

16. This is precisely what the disciplinary authority has done, via the impugned memorandum dated 12.09.2018.

17. As such, the submission, of learned counsel, that the impugned memorandum dated 12.09.2018, is misconceived, has, in my view, no legs to stand on.

18. Learned counsel for the petitioner has also sought to urge various submissions regarding what he perceives to be the illegality in the manner in which the enquiry was conducted in the present case. This submission, in my view cannot be countenanced by this court at this stage, where the petitioner has been afforded an opportunity to represent his case before the disciplinary authority. Though the disciplinary authority, in the impugned memorandum dated 12.09.2018, does arrive at a conclusion that the petitioner is not fit to be retained in service, the said, conclusion is specifically qualified by the “provisional” prefix. There is no reason for this court to believe that the disciplinary authority would not dispassionately consider the petitioner’s representations against the inquiry report.

19. In the interests of justice, however, the petitioner is granted a further opportunity of one week, to submit a further representation, to the disciplinary authority, raising any other grounds which he may chooses to raise, challenging the Inquiry Report dated 11th April, 2018. In case such a representation is made, the disciplinary authority is directed to take the said representation also into consideration, apart from any earlier representation which has been made by the petitioner, against the said inquiry report, before taking a final view, either regarding the culpability of the petitioner, or regarding any

punishment which the disciplinary authority may choose to impose on him. The disciplinary authority would address himself to all objections of the petitioner, including the objection regarding the jurisdiction of the enquiry authority to proceed with the inquiry or to submit his inquiry report, in view of the notifications dated 02nd June, 2017 issued by the DoPT, on which the petitioner's counsel placed on reliance. Mr. Kamal Kant Jha submits that, though no allusion to the said notification is to be found in his earlier representation against the inquiry report, he would be including detailed submissions, on this aspect, in the representation which he now proposes to make. All such submissions, if made, would be taken into consideration by the disciplinary authority, uninfluenced by the earlier provisional conclusions, to which the impugned memorandum dated 12th September, 2018 refers.

20. With these observations, the present writ petition is disposed of, with no orders as to costs.

21. Dasti.

C.HARI SHANKAR, J.

SEPTEMBER 24, 2018
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