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

Date of Decision: 15.11.2019

+ W.P.(C) 11974/2019 & CM APPL. No. 49038/2019

UNION OF INDIA & ORS

..... Petitioners

Through : Mr. R.V. Sinha, Senior CGC  
with Mr.Amit Sinha,  
Government Pleader and  
Mr.Vaibhav Pratap Singh,  
Advocate.

versus

PRAVIN KUMAR

..... Respondent

Through : None.

**CORAM:**

**HON'BLE MR. JUSTICE G.S. SISTANI**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**G.S.SISTANI, J. (ORAL)**

1. The present petition is directed against order dated 10.01.2019 passed by the Central Administrative Tribunal ('Tribunal') in OA No. 2381/2018. At the relevant time the respondent was working as Executive Engineer in the Ministry of Defence. A charge memo was issued to him on 18.11.2004 on the ground that he had demanded and accepted illegal gratification of Rs. 5,000/- from one Umesh Salgaonkar, Partner of M/s S.K. Salgaonkar & Brothers, Vasco, Goa for recommending the extension of the time for completion of work of

construction of 24 deficient married accommodation for the Navy at NOFRA, Goa.

2. It may be noted that criminal proceedings were also initiated against the respondent, which resulted in acquittal of the respondent by the Criminal Court.

3. The Inquiry Officer submitted the report on 10.07.2017; which was examined by the Disciplinary Authority and the following observations were made :

*“I am directed to refer to the Inquiry Report dated 10.07.2017, forwarded therewith vide letter dated 29.07.2017 in the disciplinary proceedings against Shri Pravin Kumar. EE.*

*“2. On examination of Inquiry Report it has been observed that –*

*(i) the IO has arrived at the decision completely on the basis of judgment of Special Court of CBI in Goa at Mapusa, in Special Case No. 12/2013/T dated 10.09.2014, without following, Sub Rule 23 of Rule 14 of CCS (CCA) Rules, 1965 (Govt. of India Decision). As per the said rule the IO was expected to summon the witnesses, read out the statement of witnesses already recorded in CBI Court proceedings during oral inquiry and if it is admitted by them, the cross-examination of the witness could have commenced.*

*(ii) Further, General Examination as per the provisions made in the Sub Rule 18 of Rule 14 of CCS (CCA) Rules, 1965 has not been done.*

*3. In view of above, Disciplinary Authority has decided to remit the Inquiry to Inquiry Officer for completing the Inquiry as stipulated under CCS (CCA) Rules, 1965 and by obtaining deposition of the Witnesses.*

*4. Accordingly, the Inquiry Report along with connected documents is returned herewith.*

*5. This has the approval of Competent Authority.”*

4. Aggrieved by the fact that despite a finding of the Inquiry Officer in his favour, the Disciplinary Authority had remanded the matter back, without serving a copy of inquiry report upon the respondent led to the respondent filing the OA before the Tribunal.

5. The OA was allowed primarily on the ground that a copy of the inquiry report had not been supplied to the delinquent officer ; and also that the view of the Disciplinary Authority that witnesses should have been summoned by the Inquiry Officer has not found favour with the Tribunal. The Tribunal has also opined that witnesses were to be summoned by the Presenting Officer or the Department and not by the Inquiry Officer. It appears that the Tribunal also found the Disciplinary Authority's view that the Inquiry Officer could not have looked into the judgment of the Criminal Court at all to be amiss. The concluding part of the order of the Tribunal reads as under :

*“10. The Disciplinary Authority was of the view that the Inquiry Officer; a) cannot look into the judgement of the Criminal Court at all and b) was under obligation to summon witnesses. On both*

*counts, the view taken by the Disciplinary Authority is incorrect. He did not furnish the copy of the report of the Inquiry Officer to the applicant. An employee has every right to rely upon the findings recorded by the Criminal Court and the Inquiry Officer is under obligation to take this into account. Secondly, it is no part of the duty of the Inquiry Officer to summon witnesses. It is the Presenting Officer, or Department in general to name the witnesses and examine them in accordance with law.*

*11. For the foregoing reasons, we allow the OA setting aside the Order dated 19.04.2018. However, we do not interfere with the charge memo. The Disciplinary Authority is directed to take next step in the matter, in accordance with law, within two months from the date of receipt of a copy of this Order.”*

6. Mr. Sinha, learned counsel for the petitioner submits that the Tribunal has erred in taking the view that, there was any obligation to supply a copy of the inquiry report to the respondent. He submits that as per Rule 15 (1) of the CCS (CCA) Rules, 1965 supply of the copy of the report is not mandatory since the Disciplinary Authority had simply referred the matter back to the Inquiry Officer, to proceed and hold further inquiry in accordance with law as per provisions of Rule 14 of CCS (CCA) Rules.

7. Mr. Sinha further submits that in fact the Tribunal has reached a conclusion by placing reliance on Rule 15 (2) of the CCS (CCA) Rules, which is flawed since the stage for application of Rule 15(2) had not arisen and the matter was only at the stage of Rule 15(1) and

there was no question of supplying a copy of the inquiry report to the respondent.

8. Rule 15 of CCS (CCA) Rules is reproduced below :

*“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.*

*(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:*

*(i) 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; and*

*(ii) comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.*

*(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under clause (a) 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, on the advice of the Commission.*

*(4) The Disciplinary Authority shall consider the representation under subrule (2) and/or clause (b) of sub-rule (3), if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (5) and (6).*

*(5) 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.*

*(6) 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.”* (Emphasis Supplied)

9. We have heard learned counsel for the parties and considered their submissions.

10. In this case, though the charge memo was issued as far back as on 18.11.2004, the inquiry is yet to be completed. The Tribunal has set-aside the order of the Disciplinary Authority ; and remanded the matter back to the Disciplinary Authority by observing as under :

*“The Disciplinary Authority is directed to take next step in the matter, in accordance with law...”*

Mr. Sinha submits that interpretation of this line would in fact mean that the matter would stand remitted back to the Disciplinary Authority to then supply a copy of the report to the delinquent officer, which is not the correct position under Rule 15(1).

11. In our view there is very little difference between the order passed by the Disciplinary Authority and the order passed by the Tribunal. In case the matter is remanded back to the Disciplinary Authority, it will be open for the Disciplinary Authority to the

respondent to take a fresh view in the matter. The Disciplinary Authority will then have an option, either to submit a disagreement note; or to agree with the report of the Inquiry Officer; or remit the matter back to the Inquiry Officer for further inquiry; and depending on the view taken by it, the DA will apply the concerned provisions of Rule 15.

12. Having regard to the three options available, we feel that it is not necessary to issue notice in the matter, keeping in mind that the charge memo was issued in the year 2004 and yet there has been no finality in the matter even till date; and in these circumstances issuing notice in the writ petition would only prolong the matter further.

13. Accordingly, we dispose of the writ petition with a direction that the petitioner's case will stand remitted to the Disciplinary Authority, to consider the matter afresh and to decide it in terms of what is discussed above, in accordance with law.

14. The question raised by Mr. Sinha with regard to application of Rule 15 (1) of CCS (CCA) Rules is left open.

15. With the above observations, the writ petition and the application are disposed of.

**G.S.SISTANI, J**

**ANUP JAIRAM BHAMBHANI, J**

**NOVEMBER 15, 2019**

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