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

Date of Decision:- 21.05.2019

+ **W.P.(C) 3132/2019 & CM No.14313/2019 (for stay)**

GOVT. OF NCT OF DELHI Petitioner
Through Ms.Avnish Ahlawat, Adv. with
Mr.N.K. Singh, Adv. &
Ms.Shakshi Sahirwal, Adv.

Versus

DR. SANDEEP MIGLANI Respondent
Through Mr.Nilansh Gaur, Adv. with
Mr.Shanker Raju, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The petitioner/Govt. of NCT of Delhi, has preferred the present writ petition to assail the order dated 02.11.2018, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "Tribunal") in O.A. No.3249/2015. The Tribunal has allowed the aforesaid Original Application (OA) preferred by the respondent and held that the review undertaken by the Lieutenant Governor, Delhi to proceed with the departmental proceedings against the respondents, was untenable in law. Accordingly, the Tribunal has quashed the order dated 09.12.2014 and the charge memorandum dated 28.06.2012 issued to the respondent.

2. Vide our order dated 12.04.2019 passed in these proceedings, the petitioner was directed to file an affidavit along with copies of the relevant notings and correspondence on the file of the petitioner. The said affidavit, alongwith the notings, have been placed on record by the petitioner.

3. We have heard learned counsels at length and perused the record. Ms. Ahlawat, learned counsel for the petitioner has sought to advance her submissions by placing reliance on the departmental record, including the note sheets, correspondence and orders, filed along with the affidavit dated 02.05.2019. She has submitted that the petitioner was entitled to reopen and restart the inquiry against the respondent, since the order dated 28.02.2013 passed by the Lt. Governor dropping the enquiry was, in fact, not an order as it was not communicated to the respondent, and the same had been passed before obtaining the second stage advice of the CVC. We have considered these submissions of the petitioner.

4. The case of the respondent was that he was appointed as Medical Officer in the year 1994 and was, thereafter, promoted as Chief Medical Officer (S&P). In the past few years, on several occasions, he had made efforts to eliminate corruption and illegality in the medical department of Govt. of NCT of Delhi ('GNCTD').

5. The substance of the charge against him was that, in the year 2005-06 while the respondent was functioning as a Member of the Committee for opening and evaluating of tenders (TEC) for award of contract for sanitation services in thirteen hospitals under the GNCTD, he had committed gross misconduct. While evaluating the tenders, he made recommendation to the competent authority in violation of the terms and conditions, by

incorporating a new condition of obtaining manpower deployment plan from those bidders whose technical bids had been shortlisted. The other allegation was that on account of the recommendations made by the respondent as part of the TEC, the bid of L-1 was ignored and, resultantly, the petitioner had incurred extra expenditure.

6. Before issuing the charge memorandum dated 28.06.2012 to the respondent, the first stage advice was obtained from the CVC. To the charge sheet issued to him, the respondent submitted his detailed explanation, wherein he stated that the evaluation of tenders was made in a transparent manner and the purpose of incorporating the additional stipulation was to ensure that the relevant provisions of the labour laws in relation to minimum wages are complied with, and selection is made in a transparent manner. The issues raised by the respondent as a Member of the TEC arose as, apparently, the L-1 & L-2 bidders quoted rates which were below the minimum wage prevalent at the relevant time. The respondent, as a Member of the TEC, was of the view that the tender could not be awarded to either of them, since doing so would tantamount to breach of the law prescribing minimum wages and, as the principal employer, it was the obligation of the Government to ensure compliance with the minimum wage requirement. The respondent also opined that the rates quoted by the L-3 tenderer were lower than the rates on which contract had been awarded in other Government hospitals. At the same time, the said rates did not fall foul of the minimum wage requirement.

7. The explanation furnished by the respondent was forwarded to the Disciplinary Authority i.e. the Lieutenant Governor. The Lieutenant Governor after considering the charge memorandum issued to the

respondent, and his response thereto, recorded the following order on the file:-

“1. I have considered the facts and record of the case.

2. The Charged Officer, Dr.Sandeep Miglani the then CMO (S&P), DHS, GNCTD in his defence has averred that the Committee had recommended M/S Good Year for award of contract because their bid amount met the criteria of minimum wages. Because, even though the Terms and Condition of the in the NT lays the onus of paying minimum wages to the workers deployed for sanitation services on to the service provider, as per Labour Laws, the Government being the principal employer is liable to be held accountable for any violation. Charged Officer also cited the notice issued by Labour Commissioner for the violations committed by then existing contractor in respect of minimum wages, in support of his argument. The Charged Officer also averred that the Government will be able to ensure compliance of paying minimum wages only when the Contractor is being paid at least at the rate of minimum wages for each worker deployed. Also the Committee had deliberated other options like recommending for retendering with modified condition or engaging the contractor who was providing sanitation services at other Government Hospitals, at the approved rate but the rates quoted by M/S Good Year were found to be the lowest as compared to all other hospitals of Delhi Government. Therefore, in larger public interest, the Committee had unanimously held that recommending M/S Good Year for consideration and acceptance of competent authority for award of contract as the best option.

3. I am inclined to accept the averment of the Charged Officer. It may be argued that the Committee had given a recommendation that was not strictly within its preview. However, it was evidently the need to ensure payment of minimum wages to the labourers engaged by the contractor, which is possible only if the contractor is charging the same from the Government. Therefore, the recommendation of the committee to award the contract to M/S Good Year is to be seen in this light. Besides, there is no allegation or evidence of malafides against the Charged Officer.

4. Keeping in view the totality of the facts and circumstances, I order that the charges framed against the Charged Officer, Dr.Sandeep Miglani, in this case be dropped and this Disciplinary Proceedings closed.

The charged officer Dr. Sandeep Miglani, CMO-NFSG, Delhi Government Dispensary, Prashant Vihar, be also appropriately informed.” (emphasis supplied)

8. After the said view of the Lieutenant Governor was recorded in the file on 28.02.2013, the Directorate of Vigilance, GNCTD on 19.03.2013 communicated the said order of the Disciplinary Authority to the CVC. On 12.06.2013, the CVC issued an Office Memorandum to GNCTD which, inter alia, stated:

“3. Further, Commission in disagreement with the recommendation of DA, would advise imposition of major penalty upon Dr.Sandeep Miglani for his recommendation for awarding tender to L-3 bidder in violation of existing guidelines.

4. Action taken in pursuance of Commission’s advice may be intimated in due course. The GNCTD case files are returned herewith.”

9. Here itself, we may observe that the CVC while expressing its disagreement with the recommendations of the Disciplinary Authority and communicating its advice for *“imposition of major penalty upon Dr.Sandeep Miglani for his recommendation for awarding tender to L-3 bidder in violation of the existing guidelines”*, did not give any reasons for its disagreement with the recommendations of the Disciplinary Authority. On the one hand, the order dated 28.02.2013 of the Lieutenant Governor reflected upon the reasons for ordering the dropping of the charges against the respondent and, on the other hand, the OM dated 12.06.2013 issued by the CVC, merely conveyed the disagreement of the Commission without stating as to why the view of the Disciplinary Authority was being disagreed with, and on what basis the CVC advised imposition of major penalty upon the respondent. The only reason that can be deciphered from the order

passed by the CVC was that the respondent had recommended the awarding of the tender to the L-3 bidder in violation of the existing norms. In the disagreement note, it is not stated that the existing norms did not permit the bypassing of the L-1 and/or L-2 bidders under any circumstances; or that the justification given by the respondent was not acceptable for any reason. There is nothing to be found in the Office Memorandum dated 12.06.2013 to show that the reasons given by the Lieutenant Governor in the order dated 28.02.2013, were not found to be good, either in law, or in the facts of the case.

10. The file notings show that upon receipt of the Office Memorandum dated 12.06.2013 from the CVC, the matter was processed by the petitioner. The file noting dated 08.07.2013 of the Secretary (Vigilance) observed that the Lieutenant Governor, Delhi, on 28.02.2013, had not made merely a recommendation, but had passed a detailed speaking and reasoned order dropping the charges and closing the disciplinary proceedings against the respondent. Though the order passed by the Lieutenant Governor, Delhi had not been formally communicated to the respondent, yet the same appears to have attained finality and culminated into the disciplinary proceedings against him being closed. It was also observed that the Lieutenant Governor had passed the said order dated 28.02.2013 at the stage of furnishing a detailed reply by the respondent and upon hearing him in person. The noting further records that this fact appeared to have escaped the attention of the CVC while tendering its second stage advice vide OM dated 12.06.2013.

11. Consequently, on 08.07.2013, in view of the aforesaid facts and, in the light of Rule 14(1) of the CCS (CCA) Rules, the Secretary (Vigilance), recommended as under:-

“xxx this case needs to be referred back to the Central Vigilance Commission for reconsideration of its 2nd stage advice dated 12.06.2013 (page 454/c).

470. The Chief Secretary may kindly like to place the above facts before the Hon’ble Lt. Governor, Delhi for his kind perusal and consideration being the competent authority.”

12. The file notings further show that the file was put up before the Lieutenant Governor of Delhi on 18.07.2013 and after his approval, the Directorate of Vigilance, Govt. of NCT of Delhi sent a communication dated 21.08.2013 to the CVC. In this communication, the petitioner-Directorate of Vigilance, *inter alia*, stated as follows:-

“In reference to the above said advice, the matter was placed before Hon’ble Lieutenant Governor, Delhi/Disciplinary Authority, wherein it has been decided to brought out the position that Hon’ble Lt. Governor, Delhi has passed the order dated 28.02.2013 at the stage of furnishing defence reply by Dr.Sandeep Miglani and after hearing him in person. The said order of Hon’ble Lt. Governor has not yet been formally communicated to the charged officer. This fact appears to have escaped while tendering the 2nd stage advice. Kind attention of CVC is also invited towards Hon’ble Lieutenant Governor, Delhi/Disciplinary Authority order dated 28.02.2013 and also to Rule 14 (1) of CCS (CCA) Rules, 1965 which makes the following reading:-

“No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held in the manner as provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under the Act.”

In view of the above rule position and the facts enumerated in the preceding paras, alongwith the reply of the officer, order of Hon’ble Lt. Governor, Delhi/Disciplinary Authority, tabular statement, bio-date of the officer, with entire case record as detailed below is once again referred back for reconsideration of its 2nd Stage advice.”
(emphasis supplied)

13. The CVC once again displayed the same attitude and, in response to the communication dated 21.08.2013, issued a cryptic Office Memorandum dated 09.09.2013, which, inter alia, reads as under:-

“2. After examining the reference received from GNCTD, the Commission has observed that there are no additional facts submitted by GNCTD, therefore, the Commission would reiterate its second stage advice for imposing suitable major penalty upon Dr.Sandeep Miglani, the then CMO (S&P.)”

3. Action taken in pursuance of Commission’s advice may be intimated in due course. GNCTD case files are returned herewith.”
(emphasis supplied)

14. Thus, the CVC did not consider it necessary to deal with the communication dated 21.08.2013 sent by the Directorate of Vigilance, GNCTD and, instead, vide another non-speaking/non-reasoned communication, reiterated its second stage advice for imposing suitable major penalty upon the respondent Dr.Sandeep Miglani, the then CMO (S&P).

15. It appears to us that the CVC, while dealing with the case of the respondent, was reeling under the impression that it was an authority above the law, and that it had no obligation in law to justify its decisions/opinion. The order passed by the Lieutenant Governor, dropping the proceedings against the respondent on 28.02.2013, which we have already extracted hereinabove, is a fairly reasoned order, but when the CVC issued its second stage advice expressing its disagreement with the decision of the Disciplinary Authority on 12.06.2013, it chose not to communicate any reasoning for its disagreement. Even when the Directorate of Vigilance, GNCTD, sent a further communication on 21.08.2013 as aforesaid, the CVC chose to express its disagreement with the GNCTD by passing a wholly

cryptic and unreasoned order.

16. The very purpose of the CVC rendering its advice to the Disciplinary Authority is to guide and assist the concerned Disciplinary Authority to take an informed decision. The so called advice in the present case is not an advice, but in the nature of a *demarche* to the Disciplinary Authority, to punish the respondent. From the two aforesaid communications of the CVC, it appears to us that the CVC considered itself to be the decision making super – authority and, therefore, it did not see the need to communicate any reasons while rendering its advice. It expected the concerned Disciplinary Authority to follow its dictates without any question.

17. Pertinently, the CVC is only a consultative body and its mandate is to examine the cases referred to it and to render its “advice”. *In Union of India v. Alok Kumar*, (2010) 5 SCC 349, the Supreme Court, inter alia, observed:

79.....“Unless the Rules so require, advice of the CVC is not binding. The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. In the absence of any specific rule, that seeking advice and implementing thereof is mandatory, it will not be just and proper to presume that there is prejudice to the officer concerned. Even in the cases where the action is taken without consulting the Vigilance Commission, it necessarily will not vitiate the order of removal passed after inquiry by the departmental authority. Reference in this regard can also be made to the judgment of this Court in *State of A.P. v. Dr. Rahimuddin Kamal* [(1997) 3 SCC 505 : 1997 SCC (L&S) 827] and *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330] .”

18. The *Shorter Oxford English Dictionary, Fifth Edition, Vol-1, A-M*, gives, inter alia, the following meanings of the word “advice” as:

- “1. The way in which a matter is looked at; opinion, judgement.
2. Forethought, wisdom.
3. Consideration, consultation, reckoning.
4. An opinion given or offered as to action; counsel.”

19. The two communications sent by the CVC dated 12.06.2013 and 09.09.2013 to the petitioner do not satisfy the requirements of an advice, as generally understood in the English language. We may refer to the decision of the Division Bench of this Court in **Union of India & Ors. v. R.P. Sharma (Rtd.)**, 2013 Lab IC 232. In this case, the enquiry officer held the two charges framed against the respondent as “not proved”. The advice of the UPSC was sought and UPSC found Article I of the Charge as “not proved” and Article II of the charge as “proved”. The Advice of the UPSC was unreasoned. This Court in the course of its decision observed as follows:

“6. The Tribunal considered the question whether, even if Article-II of the charge stood established against the charged officer, it would amount to ‘grave misconduct’? In doing so, the Tribunal examined the above extracted Rules as also decisions of the Supreme Court including the decision in the case of *D.V. Kapoor v. Union of India*: (1990) 4 SCC 314.

Finally, the Tribunal concluded as under:-

22.....

23.....“We find that UPSC has in a casual and routine manner advised the President that the charge in Article-II is a misconduct of grave nature which was followed simply by the President. This approach, in our opinion, is arbitrary and non-application of mind..... From the above, it can be seen that the Tribunal noted that the UPSC in a casual and routine manner advised the President that Article 2 of the charge amounted to misconduct of a grave nature which was also simply

followed by the President (Disciplinary Authority).” (underlining added)

7. *We agree with the observation of the Tribunal that the UPSC has dealt with the issue of ‘grave misconduct’ in a very casual and mechanical manner. There is no discussion as to how the alleged misconduct under Article-II of the charge could be regarded as ‘grave misconduct’ within the meaning of Explanation (b) after Rule 8(5) of the CCS (Pension) Rules, 1972. Consequently, we agree with the finding of the Tribunal that a case of ‘grave misconduct’ has not been made out.”*

20. The CVC, like the UPSC is bound to give meaningful and actionable advice, if it really expects the Disciplinary Authority to take the same into consideration while arriving at its decision.

21. The CVC is not expected, under its mandate, to “Order” the Disciplinary Authority to act in a particular manner in any case. That is the domain of the Disciplinary Authority. The CVC has itself issued a Circular No. 02/01/2009 dated 15.01.2009, wherein it has, inter alia, stated “ *The commission would, therefore, again reiterate that the CVC’s view/ advices in disciplinary cases are advisory in nature and it is for the DA concerned to take a reasoned decision by applying its own mind. The DA while passing the final order, has to state that the Commission has been consulted and after due application of mind, the final orders have been passed. Further, in the speaking order of DA, the Commission’s advice should not be quoted verbatim*”

22. The view of the CVC is considered as weighty—only for the reason that the same is expected to be well considered and reasoned, and not because it is that of the CVC. Ultimately, it is the Disciplinary Authority who is empowered to take a decision, whether, or not, to proceed against an officer against whom disciplinary proceedings may be contemplated or

initiated.

23. Pertinently, the communication dated 09.09.2013 of the CVC, reiterating its second stage advice, was responded to by the petitioner/Directorate of Vigilance, GNCTD on 20.02.2014. In this communication, the petitioner stated *“this Directorate is not in a position to take action on the second stage advice for imposing suitable major penalty upon Dr.Sandeep Miglani, the then CMO (S&P) as L.G. Delhi has passed an order dated 28/02/2013 to drop the charges and Disciplinary Proceedings be closed against the Charged Officer”* (emphasis supplied). Thus, the petitioner was firm on its position that the Lt. Governor had passed the order dated 28.02.2013, dropping the charges against the respondent.

24. It is even more pertinent to note that the CVC issued a final communication on 16.04.2014 stating that the *“Commission has observed that the decision taken by the DA to drop proceedings against Dr.Sandeep Miglani as a case of deviation from Commission’s advice”*. This communication, thus, leaves no manner of doubt that, in so far as the CVC is concerned, it treated the matter as closed. This communication also shows that the CVC recognised, at its end, the position that the Disciplinary Authority had not only made recommendations, but had taken a decision to drop the proceedings against the respondent while passing the order dated 28.02.2013.

25. The file notings placed on record, which were recorded after the issuance of the communication dated 16.04.2014, show that when the matter was placed before the Lieutenant Governor once again, he raised doubts whether the earlier decision taken by the erstwhile Lieutenant Governor on

28.02.2013 could be reviewed. On that aspect, the matter was referred to the Law Department which opined that there was no question of the order dated 28.02.2013 being reviewed, since the said order had not been communicated to the respondent and, therefore, it had not attained finality. It further opined that the order dated 28.02.2013 contained only the intention of the then Disciplinary Authority to drop the charges, and take a final decision in the matter after considering the second stage advice of the CVC and, thus, the Lieutenant Governor could pass final order in the matter regarding continuation of disciplinary proceedings, or dropping the charges, as the case may be. The record shows that on the basis of the aforesaid advice of the Law Department, the matter was once again placed before the Lieutenant Governor, GNCTD who passed the following order:-

“1. I have perused the tentative decision of my predecessor recorded at 99/N ante, 2nd stage advice of Central Vigilance Commission, dated 12.6.2013 (available at page 454/C) and facts and record of the case.

2. I am of the considered view that the averments of the Charged Officer, Dr.Sandeep Miglani the then CMO (S&P), DHS, GNCTD in his defence are not sufficient grounds to hold him not guilty of the Article of Charge at this stage and there is cause to inquire into the truth of the Imputation of Misconduct against him.

3. I, therefore, order appointment of an authority to inquire into the truth thereof, under Rule 14(2) of CCS (CCA) Rules 1965 and a Presenting Officer under Rule 14(5)(c).

4. A panel of Inquiry Authorities and Presenting Officers be immediately submitted for my consideration and further orders.”

26. A few questions remain to be answered about the manner in which the petitioner proceeded in the matter after the CVC, vide its communication dated 16.04.2014, closed the case at its end. Firstly, where was the need to proceed in the matter any further when the CVC had accepted the consistent

stand of the petitioner that the Lt. Governor had passed an “Order” on 28.02.2013 dropping the charges against the respondent, and to call for the opinion of the Law Department? Secondly, the Law Department rendered its opinion on the issue raised by the Lt. Governor with regard to the power of the Lt. Governor to review the order dated 28.02.2013 by taking a summersault with regard to the status of the order dated 28.02.2013. These aspects leave us with a feeling that someone in the Government was interested in resurrecting the case against the respondent.

27. We may now turn to the order passed by the Lt. Governor on the file on 08.08.2014 as extracted herein above.

28. Unfortunately, the said order dated 08.08.2014, neither deals with the reasoning given by the erstwhile Lieutenant Governor while passing the order dated 28.02.2013, nor does it take into account the fact that the CVC itself had treated the case as closed while issuing the Office Memorandum dated 16.04.2014.

29. In the light of the aforesaid, the submission of Ms.Ahlawat that the decision dated 28.02.2013 taken by the erstwhile Lieutenant Governor was not final, and could not be nomenclatured as a decision/order has no merit. Firstly, the said order, in terms, records the same to be an “order”. Obviously, the then Lieutenant Governor was conscious of the fact that he was passing an order, and that is why it also contained a direction that the same be communicated to the respondent. Since the order directed communication thereof to the respondent, by not communicating the same to the respondent, its efficacy could not be diluted. Actual communication of the order, once passed and directed to be communicated, was a ministerial/nominal act. Just because the same was not done, the petitioner cannot seek

to take advantage of the said lapse on its part.

30. Even if one were to accept the submission that the final order could be passed only after obtaining the second stage advice by the CVC, it is clear from the aforesaid discussion that the second stage advice received from the CVC was completely unreasoned. A further communication sent to the CVC, highlighting the aspects that it had not taken into consideration, met with another unreasoned Office Memorandum from the CVC wherein it stuck to its earlier second stage advice for undisclosed reason. Thus, the said advice was not accepted and the Directorate of Vigilance, GNCTD again communicated to the CVC its decision not to re-open the proceedings in the light of the order passed by the Lieutenant Governor on 28.02.2013. As noticed above, vide Office memorandum issued by the CVC on 16.04.2014, it accepted the order passed by the Lieutenant Governor dropping the proceedings against the respondent. Thus, the order dated 28.02.2013 attained finality as an “order”.

31. We have consciously set out the nature of charge framed against the respondent, and the order passed by the Lieutenant Governor on 28.02.2013. The respondent, as a part of the TEC, made recommendations for laying down conditions for acceptance of tender of the L-3 bidder, for which justification was provided by him. The same is reflected in the order passed by the Lieutenant Governor on 28.02.2013. In these circumstances, we fail to understand as to how the respondent could be held guilty of misconduct, firstly, when he was only one of the members of the TEC which made the recommendation – and not the final decision and, secondly, the recommendation was made only to ensure compliance of the labour laws. There is no hard and fast rule in law that the bid of only the lowest, (or

highest), bidder should be accepted (as the case may be). Merely because the lowest/highest bid may not be recommended for acceptance, it would not *per se* tantamount to misconduct, particularly when the recommendation is accompanied by germane considerations and reasons. We are rather surprised that the respondent was sought to be blamed for ensuring compliance with the labour laws, when the State – which is expected to act as a model employer and comply with all laws itself, could not have accepted the bids of L-1 and L-2 bidders/labour contractors, since acceptance of their bids would have meant that they would not have paid the minimum wage to their employees. It, thus, appears to us that the resurrection of the case against the respondent, even after the CVC had accepted closure of the same vide the OM dated 16.04.2014, was unwarranted and untenable.

32. We, thus, find no reason to interfere with the impugned order. The petition alongwith the pending application is dismissed with costs which are quantified at Rs.10,000/-.

VIPIN SANGHI, J.

REKHA PALLI, J.

MAY 21, 2019/aa