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

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Date of Decision:16.04.2019

% **W.P.(C) 3569/2019**

UNION OF INDIA & ANR

..... Petitioner

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel for Revenue.

versus

SH. S.K. SRIVASTAVA

..... Respondent

Through: Mr. S.K. Gupta with Mr. Vikram
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

REVIEW PETITION No. 173/2019 & C.M. No. 18204/2019 (for stay)

1. Issue notice. Mr. Gupta accepts notice on behalf of the respondent. We have heard learned counsels and proceed to dispose of the aforesaid review petition.

2. On 09.04.2019, we had dismissed the writ petition preferred by the petitioner Union of India. The said writ petition was preferred to assail the

order dated 31.07.2018, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1500/2018. The Tribunal, while allowing the Original Application had directed that before the passing of the final order of the Disciplinary Authority, the respondent original applicant shall be granted personal hearing.

3. In short, the brief background of facts is that the respondent had been charge-sheeted with 6 charges framed against him. The enquiry officer had exonerated him in respect of all the charges, but the Disciplinary Authority tentatively disagreed with the findings of the enquiry officer in respect of two of the charges, and issued a disagreement memo. At that stage, the respondent sought personal hearing from the Disciplinary Authority i.e. the President of India.

4. The Tribunal, as aforesaid, allowed the Original Application by placing reliance on ***Punjab National Bank v. Kunj Bihari Mishra***, AIR 1998 SC 2713. This Court, while dismissing the writ petition rejected the submission of the petitioner that to grant personal hearing in every case could lead to delay in proceedings. The submission of the petitioner, that the principles of natural justice would stand sufficiently complied with by granting an opportunity to the respondent/ delinquent officer to make his representation for consideration by the Disciplinary Authority, was also rejected. This Court relied upon the extract from ***Kunj Bihari Mishra*** (supra), which reads as follows:

“ *The principles of natural justice would demand that the authority which proposes to decide against the delinquent*

officer must give him a hearing. When the Inquiring Officers holds that charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.”

5. This Court went on to observe as follows:

“The aforesaid extract clearly shows that the Supreme Court has held in express terms that in such circumstances, the delinquent would be entitled to an opportunity of being heard. In every such case, the delinquent may or may not ask for personal hearing and in cases where he does not seek such an opportunity, personal hearing may not be granted to him. However, in our view, if the delinquent has asked for personal hearing in a given case, the same cannot be denied to him. The petitioner has not produced before us any decision of the Supreme Court or of a Co-ordinate Bench of this Court in support of his submission that personal hearing need not be granted to the delinquent officer in spite of his specifically asking for the same and that principles of natural justice would stand sufficiently complied with by merely granting the right of representation to the delinquent.”

6. Learned counsel for the petitioner points out that while rendering its decision, this Court had failed to consider the decision of the Supreme Court in ***J.A. Naiksatam V. Prothonotary & Senior Master, High Court of Bombay***, (2004) 8 SCC 653, which has been followed by the Division Bench of this Court in ***Union of India & Ors. v. Kushal Pal Singh***, (2014) SCC Online Del 7166.

7. In ***J.A. Naiksatam*** (supra), the Supreme Court, after noticing the decisions of the Supreme Court in ***Kunj Bihari Mishra*** (supra) as well as the subsequent decision in ***Yoginath D. Bagde v. State of Maharashtra***, (1999) 7 SCC 739, had observed as follows:

“Relying on these decisions, the counsel for the appellants contended that after the receipt of the report from the enquiry officer, the disciplinary authority should have given notices to the appellants with its tentative conclusion and an opportunity be given to the delinquent before the report of the enquiry officer is reversed by the disciplinary authority. It was also argued that the appellants should have been heard by the disciplinary authority before such a decision was rendered. Even though the rule as such does not contemplate giving an opportunity to the appellant delinquents before the disciplinary authority takes a final decision to disagree with the reasons given by the enquiry officer, such a provision could be read into the rule but even then the appellants cannot be heard to say that there shall be a personal hearing by the disciplinary authority. In the instant case, the appellants were given a copy of the tentative decision of the disciplinary authority and the appellants furnished detailed explanation and we are of the view that the principles of natural justice have been fully complied with and we do not find any infraction of rules or infirmity in the said decision.” (emphasis supplied)

8. Learned counsel for the petitioner submits that Rule 8 of the Bombay High Court Discipline and Appeal Rules, 1984, in the context of which this decision was rendered, and which is quoted in paragraph 6 of the said decision is *pari materia* with Rule 15 of the CCS (CCA) Rules. Learned counsel submits that, therefore, there was no necessity of granting personal hearing by the Disciplinary Authority.

9. In ***Kushal Pal Singh*** (supra), this Court had taken note of the decision in ***Kunj Bihari Mishra*** (supra) and ***SBI and Others v. Arvind K. Shukla***, AIR 2001 SC 2398 and it observed in paragraph 8 as follows:

“It is thus clear that the first part of the finding, that the Enquiry Officer did not give a disagreement note and denied the applicant an opportunity to represent against the hearing, arrived at by the CAT, is in fact without foundation. What Kunj Bihari Mishra and subsequently Arvind Kumar Shukla (supra) require is that as a matter of course, if the disciplinary authority proposes to arrive at a finding contrary to that of Enquiry Officer, a disagreement note spelling briefly the reasons why the contrary opinion is to be formed, has to be given to the charged officer. The reasons are that the charged officer should be given an opportunity to air his views on the proposed opinion and the reasons in support of it. Like in the case of an enquiry report which does not exonerate but records findings of guilt (where the officer is given a copy of the report to elicit his response), equally when a contrary view which seeks to override findings of the Enquiry Officer and arrive at a findings of guilt is proposed, the same standard i.e. granting opportunity to the charged officer is insisted upon. Although, the observations in Kunj Bihari Mishra and Arvind Kumar Shukla (supra) and Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739 appear to be broad and

general as to the nature of hearing, this aspect was clarified in the ruling reported as J.A. Naiksatam v. Prothonotary & Senior Master, (2004) 8 SCC 653. It was held that the nature of the opportunity need not necessarily comprehend a mandatory personal hearing but an opportunity to represent against the proposed findings. This, in the opinion of the Court, is in line with the logic of providing an opportunity. Whenever a finding of guilt based upon materials discussed in the course of the enquiry proceedings are recorded, the final order is to be made after considering the representation of the charged officer. The hearing, therefore, extends only to the grant of opportunity to represent against the proposed contrary findings and not to the extent of a compulsory personal or oral hearing in every case, as has been held by the CAT in the present case.” (emphasis supplied)

10. This decision was rendered in the context of the CCS (CCA) Rules, 1965. Learned counsel for the petitioner further submits that to oblige the Disciplinary Authority – which is the President of India, to grant personal hearing to every delinquent officer would also lead to great inconvenience and chaos, and would make it impossible for the Administrative Authorities to discharge their functions and duties, considering the fact that there are thousands of officers appointed under the Central Government, in respect of whom the Disciplinary Authority is the President of India.

11. On the other hand, Mr. Gupta submits that the present Review Petition is not maintainable, since the present petition does not fall within the well settled parameters for review. He further submits that Rule 15 of the CCS (CCA) Rules is not *pari materia* with Rule 8 of the Bombay High

Court Discipline and Appeal Rules, 1984, which was considered by the Supreme Court in ***J.A. Naiksatam*** (supra).

12. He points out that in Rule 15(2) of the CCS (CCA) Rules, the delinquent officer is permitted to submit “*his written representation or submission to the Disciplinary Authority within fifteen days.....*”. (emphasis supplied). He submits that the use of the expression “*submission*” apart from “*written representation*” in Rule 15(2) clearly indicates that the said Rule contemplates grant of personal hearing by the Disciplinary Authority, where such hearing is sought by the delinquent officer. He submits that in this respect, the Rule considered by the Supreme Court in ***J.A. Naiksatam*** (supra) is different.

13. Having heard learned counsels, considered their respective submissions and the decisions relied upon by them, we are of the considered view that the order dated 09.04.2019 deserves to be reviewed since, while deciding the writ petition on 09.04.2019, this Court has not taken into consideration the aforesaid decision of the Supreme Court in ***J.A. Naiksatam*** (supra), and the decision of the co-ordinate Bench of this Court in ***Kushal Pal Singh*** (supra), which are both binding precedents and which take a view contrary to the view taken by this Court in its decision dated 09.04.2019.

14. Even though Rule 15 uses the expression “*submission*”, which is absent in Rule 8 of the Bombay High Court Discipline and Appeal Rules, 1984, in our view, the same makes no difference. Even a written representation is a “*submission*” and the said expression does not necessarily

connote an oral submission. The principle laid down by the Supreme Court clearly is that the requirement of personal hearing by the Disciplinary Authority, cannot be read into the Rules in a situation like the present.

15. Pertinently, in ***Kushal Pal Singh*** (supra) this Court arrived at its conclusion by taking note of ***Kunj Bihari Mishra*** (supra) & ***Arvind K. Shukla*** (supra) in the context of CCS (CCA) Rules, and held that hearing extends only to the grant of an opportunity to represent against the proposed contrary findings, and not to compulsory personal or oral hearing in every case.

16. The submission of Mr. Gupta that the present Review Petition does not lie, has no merit. In our decision dated 09.04.2019, we had specifically observed that the petitioner had not produced before us any decision of the Supreme Court, or of a Co-ordinate Bench of this Court, in support of his submission that personal hearing need not be granted to the delinquent officer inspite of his specifically asking for the same, and that principles of natural justice would stand sufficiently complied with by merely granting the right of representation to the delinquent.

17. No doubt, the petitioner was expected to bring to the notice of this Court the aforesaid decisions in ***J.A. Naiksatam*** (supra) and ***Kushal Pal Singh*** (supra). However, since they have now been brought to our notice, and we have become wiser, we have no hesitation in reviewing our order dated 09.04.2019.

18. Accordingly, we review and recall the same. We, consequently, allow the writ petition and set aside the impugned order passed by the Tribunal.
19. The petition stands disposed of in the aforesaid terms.
20. Dasti.

VIPIN SANGHI, J.

REKHA PALLI, J.

APRIL 16, 2019
N.Khanna

