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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 26.07.2019

+ W.P.(C) 2687/2007

UNION OF INDIA & ORS.

...Petitioners

**Through: Mr. T.P. Singh, Senior Central
Govt. Standing Counsel**

VERSUS

NIRANJAN SINGH

...Respondent

**Through: Mr. Arvind Kumar Shukla, Mr.
Kunal Yadav, Mr. Ziya Ahmad
and Ms. Neena Shukla,
Advocates**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

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JYOTI SINGH, J. (ORAL)

1. The petitioner by way of the present writ petition impugns the order dated 13.12.2006 passed by the CAT in OA No. 3023/2004 whereby the Tribunal has set aside the dismissal order of the respondent herein and has directed his reinstatement but under deemed suspension. Liberty was granted to the petitioners herein for proceeding further in the enquiry, from the stage of issue of chargesheet, in accordance with law. It has also been directed that on reinstatement, the respondent herein would be entitled to all consequential benefits as per FR. For the sake of convenience, the applicant before the Tribunal is being referred to as the respondent

hereinafter and the Union of India and others are being referred to as Petitioners.

2. The brief facts necessary for the present petition, as culled out from the Original Application filed by the respondent before the Tribunal, are that the respondent who was an ex-Subedar in the Indian Army was employed at The Golden Fish Canteen, Bulandshaher, UP vide appointment letter dated 30.05.1998 to the post of a Manager. The respondent was confirmed on 08.02.2000.

3. The respondent worked upto 31.03.2001 whereafter an order was passed on the said date relieving him from the service. The respondent brought to the notice of the petitioner that removing him from service without any justification was violative of the judgment of the Apex Court in the case of *Union of India vs. Mohd. Aslam AIR 2001 SC 526*, and on his oral representation, the order relieving him was recalled and the appointment of the respondent was restored as a Manager vide letter dated 13.04.2001.

4. Soon thereafter, the petitioners appointed another person to the post of Manager and the respondent was appointed to the post of Assistant Manager vide letter dated 31.05.2001 w.e.f. 01.06.2001. Aggrieved by the alleged demotion, the respondent filed an OA bearing No.688/2001 before the Central Administrative Tribunal, Allahabad for stay of the demotion order. The said OA was later dismissed in default by the Allahabad Bench of the Tribunal on 28.11.2007.

5. The respondent gave a representation to the Canteen management on 01.01.2002 regarding some irregularities in the Canteen by the new Manager and this complaint was signed by the entire staff of the Canteen. He also made a confidential complaint mentioning the irregularities and misappropriation in the Canteen to Commander, Headquarter, Meerut Cantt. Another representation dated 15.03.2004 on similar lines was sent by the respondent to the Headquarter Bareilly. The Headquarter issued a notice to the Meerut Canteen seeking para wise reply.

6. As a result of these complaints/representations, the Canteen Manager, Lt. Col. D.S. Sirohi was replaced by Col. Baswan on 01.04.2004. However, this led to the senior officers including these Managers, developing a grudge against the respondent. It is the case of the respondent that on account of this, false allegations were levelled against the respondent that he has used filthy language against the Army officers and on 27.04.2004, a one-man inquiry was directed without any chargesheet.

7. On 30.04.2004, the respondent was not permitted to enter the Canteen and was suspended. No suspension letter was given to him and on the same day, he submitted a representation to the Canteen Manager, pointing out the circumstances created against him. The respondent then filed an OA 521/2004 before the Tribunal at Allahabad against his suspension, but without the suspension order dated 27.04.2004 as he had never been served with a copy of the order. In this OA, he also mentioned about the conduct and misbehavior of the Manager.

8. On 14.05.2004, a letter was issued asking the respondent to appear before the Disciplinary Authority on a working day. The respondent was made to sit in the office of the Disciplinary Authority but no opportunity for leading the defence evidence or cross-examination was given.

9. On 24.06.2004, the respondent made a representation demanding the assistance of one civilian Gazetted officer to defend him in the inquiry, but the same was not allowed. The relevant documents relied upon in the inquiry, were also not given to him. Thereafter, a Show Cause notice dated 03.08. 2004 was served on the respondent asking him to show cause why his services may not be terminated. Without considering the reply to the show cause notice and giving him a chance to defend his case, the petitioner dismissed the respondent on 21.08.2004 w.e.f. 27.04.2004 which was the date of his suspension. The order of dismissal was served on the respondent on 27.08.2004.

10. Against the dismissal order, the respondent filed an OA before the learned Tribunal, Principal Bench, New Delhi, being OA No. 3023/2004. As an appeal against the dismissal order was pending before the Appellate Authority, the OA was disposed of on 8.2.2005 directing the petitioners to pass a final order in the appeal giving reasons for the decision taken. The respondent was given the liberty to seek revival of the OA, in case he was still aggrieved. The Appellate Authority passed an order on 16.04.2005 rejecting the appeal of the respondent and the respondent then sought a revival of the earlier OA.

11. The learned Tribunal heard the respective parties and passed the order dated 13.12.2006 which is impugned before us.

12. Learned counsel for the petitioner has, at the outset, contended that the impugned order ought to be set aside as the Principal Bench of the Tribunal at Delhi did not have the territorial jurisdiction to entertain the OA. He points out that the suspension order was challenged by the respondent at Allahabad, Court of Inquiry was held at Babu Garh, the respondent was employed in the canteen outside Delhi, the dismissal order was passed at Meerut and the order in appeal was also passed at Bareilly. Learned Counsel has further contended that the inquiry held against the respondent was a Fact Finding inquiry and at every occasion an opportunity was given to the respondent to defend himself and project his case. In any case, the respondent was only a contractual employee and not a regular employee of the canteen and therefore strict rules of domestic inquiry were not required to be followed in his case. It is further contended that the Tribunal has erred in directing the petitioner to grant consequential benefits to the respondent in terms of the Fundamental Rules, since the same do not apply to the employees of Unit Run Canteens. Another submission made by the learned counsel for the petitioner is, that in any case the tenure of the respondent was coming to an end on 30.05.2004 and the dismissal has not therefore, prejudiced the further employment of the respondent.

13. Per contra, learned counsel for the respondent as contended that the learned Tribunal at Delhi had the jurisdiction to entertain the OA. In fact, when the initial OA was filed, the Tribunal had directed the

petitioners to dispose off the appeal and liberty was granted to the Respondent to revive the said OA in case of any grievance. The said order was never challenged by the petitioner and the present order passed by the Tribunal is after the revival of the OA sought by the respondent, pursuant to the liberty granted to him.

14. On merits, the learned counsel for the respondent contends that the status of the employees of the Unit Run Canteen now stands decided by the Apex Court in the judgment of *Mohd. Aslam (supra)* and it is now settled that these employees are 'Government servants'. It is thus, not open for the petitioners to even claim that the respondent was a contractual employee, whose tenure had come to an end on 30.05.2004. The learned counsel next contends that the Dismissal Order was passed on account of certain allegations against the Respondent and therefore, the law requires that proper procedure of an inquiry should be followed. In the case of the respondent, no chargesheet was issued. No right was given to lead evidence. A report, without even noticing the defence of the respondent has been given. Even if the respondent had not cross-examined the prosecution witnesses, the Department was bound to prove the allegations through a proper inquiry. The order of the Disciplinary Authority as well as the Appellate Authority is also assailed by contending that these are non-speaking and non-reasoned orders, and the contentions of the respondent have not been dealt with. The learned counsel supports the impugned order and seeks a direction to the petitioner to implement the same forthwith.

15. We have heard learned counsel for the parties.

16. We find that on 20.08.2007, the contempt proceedings filed by the respondent before the learned Tribunal were stayed and the said interim order was made absolute on 13.02.2009, till the final disposal of the petition. On the same day, Rule DB was issued. An early hearing application was subsequently allowed, and the petition has now come up for hearing before us.

17. We would first examine the objection taken by the petitioner regarding the territorial jurisdiction of the learned Tribunal at Delhi. Suffice it would be to observe that the OA was filed in the year 2004 and its revival was sought in the year 2005. The impugned judgment was passed on 13.12.2006. The present writ petition was filed in 2007 and on 20.08.2007, notice was issued and contempt proceedings were stayed. On 13.2.2009, Rule DB was issued and the interim order was made absolute. After the petition was admitted by this Court, way back in 2009, we see no reason why in the year 2019, the territorial jurisdiction should come in the way of the respondent who has been litigating for his rights since 2004. In any case, the learned counsel for the respondent is right in his contention that the OA was initially disposed of on 08.02.2004 by the Tribunal at Delhi, directing the petitioners to dispose of the appeal with liberty to the Respondent for revival. This order was never challenged by the petitioner and has attained finality. It was in terms of this order passed at Delhi, that the present OA was revived and the impugned order was passed. Even the revival was never assailed. Thus, we do not find any merit in the contention of counsel for the petitioner that the issue of territorial

jurisdiction would come in the way of the respondent in ventilating his grievance in the present petition.

18. We would now examine the present case on its merits. The respondent who was a retired Subedar from the Army, was admittedly appointed as a Manager with a Unit Run Canteen and after working for about 3 years, he was demoted to the post of Assistant Manager, although the case of the petitioners is that the lower post carried the same salary and perks. The Apex Court had the occasion to deal with the issue of the nature of employment of the employees of the Unit Run Canteens in the Armed Forces, in the case of ***Mohd. Aslam (supra)***. The Apex Court has held that the employees of the URCs are Government Servants as these Canteen Stores Departments form a part of the Ministry of Defence. Therefore, it cannot be contended by the petitioners that the respondent was a contractual employee. Nor can it be contended that there was no necessity of complying with the principle of *audi alteram partem* and holding a proper inquiry, proving the allegations against the respondent, before imposing the major penalty of dismissal.

19. The learned Tribunal has noted as a finding of fact that before dismissing the respondent, no chargesheet was issued and the suspension order was pleaded as a basis to examine some witnesses in a shoddy manner and the respondent was dismissed. The Tribunal has also noted that no opportunity of defence was given to the respondent. The Tribunal has also observed that a perusal of the report given against the respondent shows that his contentions in defence were neither discussed nor rebutted and he was not given any chance to

make his defence statement. The report does not give any reason as to how and why the allegations have been substantiated and proved. We find that the Tribunal has rightly held that the principle embodied in the maxim *audi alteram partem* need to be followed in letter and spirit. If there were any allegations made against the respondent, the petitioners should have issued a chargesheet to him detailing the specific allegations. He should have been permitted to lead his defence evidence in a departmental inquiry and the petitioners should have proved and substantiated the allegations through evidence. Even assuming that the respondent did not avail the opportunity of cross-examination, the law mandated the Department to prove the allegations through their own evidence. None of these mandatory requirements have been followed and the respondent has been dismissed.

20. In fact, in the present case, we find that a very strange methodology has been followed by the petitioners, wherein no chargesheet was issued but the suspension order has been treated as an imputation of charges. This methodology is completely unknown to service jurisprudence. The mandate of issuing a chargesheet prior to an inquiry has been upheld by the Apex Court as well as this Court and several High Courts in several judgments. In ***K.S. Rahi v. Boards of Directors and Ors. 2004 SCC OnLine HP 91***, which had similar facts, the High Court of Himachal Pradesh observed as under:

“9... The Inquiry Officer has violated the principles of natural justice in holding the petitioner guilty of the charge concerning to chargesheet No. 1881 dated 29.6.1990 without serving the said chargesheet upon him

in accordance with law. It is well settled principles of law that no person shall be held guilty and punished without affording him reasonable and proper opportunity to defend himself against any act for which proceedings are initiated against him. It was incumbent upon the Inquiry Officer to have served and punished chargesheet No. 1881 dated 29.6.1990 upon the petitioner to defend himself against any act for which failed to do so, we are left with no option but to set aside report (Annexure P-7) of the Inquiry Officer. The Inquiry Officer has recorded its report in violation of natural justice enshrined in the Constitution. Office order dated 16.6.1994 (Annexure P-9/1) recorded by respondent No. 2 on the inquiry report, appellate authorities order dated 5.10.1995 (Annexure P-10) and final order of the State Administrative Tribunal dated 28.6.1999 (Annexure P-12) passed on O.A (M) No. 1050/95 are all not sustainable. The order of punishment passed against the petitioner by the authority pertaining to chargesheet No. 1881 dated 29.6.1990 is held to be in violation of natural justice...”

21. In **ChougulePopatraoAnnasaheb v. Managing Director, Maharashtra Cotton Growers Marketing Federation, Ltd., 2002 SCC OnLineBom145**, the High Court of Bombay, Aurangabad Bench observed as follows:

“20. In the said inquiry the petitioner was admittedly one of the witnesses and no chargesheet was issued against him along with said Sri Patil. A copy of the said report has been submitted before us. The petitioner was sought to be punished with trial which cannot be sustained in law. If the petitioner was found guilty in any other inquiry in which he was a witness, the Federation was free to issue a charge-sheet against him and initiate disciplinary inquiry proceedings as per the Discipline and Appeal Rules. However, he was called as a witness in support of the charges levelled against Sri M.J. Patil and the enquiry officer recorded collateral findings

against the petitioner though he was called upon to investigate the charges levelled against Sri M.J. Patil. At the first instance the enquiry officer was not justified in doing the same and secondly, it was illegal on the part of the employer to accept such findings against an employee who was not proceeded against under the Discipline and Appeal Rules. It is implied that the disciplinary authority was aware of this legal position and therefore, decided to take a lenient view against the petitioner ” .

22. In **Anant R. Kulkarni v. Y.P. Education Society, (2013) 6 SCC 515 : (2013) 2 SCC (L&S) 593**, the Apex Court observed the importance of clear and specific charges in the chargesheet :

“16. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed

the basis of charges and no enquiry can be sustained on vague charges. (Vide State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , Sawai Singh v. State of Rajasthan [(1986) 3 SCC 454 : 1986 SCC (L&S) 662 : AIR 1986 SC 995] , U.P. SRTC v. Ram Chandra Yadav [(2000) 9 SCC 327 : 2001 SCC (L&S) 79 : AIR 2000 SC 3596] , Union of India v. Gyan Chand Chattar [(2009) 12 SCC 78 : (2010) 1 SCC (L&S) 129] and Anil Gilurker v. Bilaspur Raipur KshetriyaGramin Bank [(2011) 14 SCC 379 : (2012) 2 SCC (L&S) 926] .)”

23. We also find that even the Disciplinary Authority has not given any finding or reason as to how the allegations stand proved against the respondent. The Appellate Authority has simply narrated the factual matrix of the case and has not dealt with any of the issues raised by the respondent.

24. We thus find that this part of the impugned order setting aside the dismissal order suffers from no infirmity. We may also like to pen down here that when the judgment was passed by the Tribunal, liberty was granted to the petitioners to take recourse to a fresh inquiry, if they so wanted and the respondent was to be reinstated under deemed suspension. Instead of resorting to this path, the petitioners filed the present petition challenging the order and prayed for a stay of the order. With the passage of so many years, during which the petition has remained pending, we feel, at this stage, it would be traversity of justice and harassment to the respondent if we were to sustain this direction of the Tribunal. Thus, this part of the direction of the Tribunal is set aside.

25. We, however, find force in the contention of the learned counsel for the petitioner that the Fundamental Rules would not apply to the respondent and therefore, consequential benefits cannot be granted to him as per the FRSR. The Apex Court in the case of ***Mohd. Aslam (supra)*** while holding that the employees of the URCs would be Government Servants, has held that the Fundamental Rules would nevertheless not apply to these employees *ipso facto*. Thus, this part of the direction of the Tribunal is also set aside.

26. The writ petition is partly allowed. The petitioners are directed to issue an order notionally reinstating the respondent from the date of dismissal and grant him whatever consequential benefits are due to him consequent to his reinstatement. Since we have set aside part of the judgment of the Tribunal giving liberty for fresh inquiry, the direction of treating the respondent under deemed suspension is also set aside.

27. The writ petition is disposed of with the above directions.

JYOTI SINGH, J

G.S.SISTANI, J

JULY 26, 2019

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