

11 **22.03.
2022**

Ct. No. 04

Ab

WP.CT 11 of 2022

Union of India and others

Vs.

Shri G. P. Agarwal.

**Mr. Promod Kumar Drolia,
Mrs. Sarda Sha.**

... for the petitioners.

Mr. Arun Kanti Chattopadhyay.

... for the respondent no. 3.

The affidavit of service filed in Court today is kept with the record.

Despite service there is no appearance on behalf of the respondent no. 1. The respondent no. 3 is represented.

The case pertains to a disciplinary proceeding initiated against the respondent no. 1 alleging illegal refund of Rs. 1.56 crores as liquidated damages in gross violation of the terms and conditions embodied in the contract. It is further indicated that the integrity of the delinquent is also doubtful and his conduct in disbursement of such huge sum amounts to misconduct.

All article of charges accompanied by a show-cause were issued upon the delinquent, who made himself available before the enquiry officer appointed by the competent authority. The enquiry officer while submitting the report did not find any corroborative evidence in support of the article of charges against the delinquent and exonerated him from all such allegations with a specific finding that those article of charges have not been proved.

The report was submitted before the disciplinary authority and on the basis of the second stage of advice

by the Central Vigilance Commission, the disciplinary authority without embarking upon the provisions contained in Rule 15(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as ‘said Rules’) imposed major penalty by way of reduction to two stages lower in the time scale of pay for a period of one year without adversely affecting the pension. The order imposing major penalty was assailed before the tribunal.

By the impugned order dated 16th September 2021 the tribunal held that the disciplinary authority miserably failed to adhere the mandate given in Rule 15(2) of the said Rules and simply proceeded on the dictate in the form of so-called advice of the Central Vigilance Commission and, therefore, the disciplinary proceeding at the stage of the submission of the enquiry report is vitiated.

According to Mr. Promod Kumar Drolia, learned Advocate appearing on behalf of the petitioners, the tribunal ought not to have declared the proceeding of the disciplinary authority to have been vitiated when they have acted strictly in terms of the Rules applicable in this regard. The manner in which the tribunal has couched its judgment would have an impact in further course of action and, therefore, interference is called for in this regard.

The pivotal issue involved in the writ-petition pertains to the applicability and adherence of the provisions contained under Rule 15(2) of the said Rules, which runs thus:

“15. Action on inquiry report

(1).....

(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.”

It is axiomatic to record that the language employed in the above quoted provisions mandate the disciplinary authority to forward a copy of the report of the enquiry officer together with its own tentative reasons for disagreement to the delinquent permitting him to make a written representation or the submission within a specified time without taking into consideration whether the report is favourable or not to the delinquent. In fact, it is the second stage of show-cause notice at the behest of disciplinary authority when it does not concur with the findings returned by the enquiry officer exonerating the delinquent from all the charges leveled against him and to decide afresh.

Such Rule is founded upon the principles of natural justice, as a person is required to be heard before any adverse order is passed against him. The expression “tentative reasons” is not a mere formality or a ritual but must be actuated with the disclosure of the mind and the reasons for taking a dissenting view to the findings of the enquiry officer. Any action of the disciplinary authority without following the mandate of the aforesaid Rule will obviously impinge the action and further decision. When the foundation is shaken by non-observance of the inviolable Rules, it cannot support the structure standing thereupon and as a usual corollary such structure would fall. This has precisely been done by the Tribunal in the impugned order by not scrapping the whole proceeding but from the stage when the enquiry report was submitted to the disciplinary

authority and disagreement was shown to the enquiry report.

It is no longer *res integra* that if a thing is required to be done in a particular manner it should be done in the manner and not otherwise. The statutory Rules provides the mechanism and modalities to be followed before the disciplinary authority ventures to achieve the ultimate goal i.e. the penalty (major or minor) and in the event the same is not, there is no impediment on the part of the court or the tribunal to interfere with the said order and put the clock in right direction. The Rules having a statutory flavour is required to be adhered to and/or implemented with full rigor and force, as any departure shall render the action susceptible to be interfered with.

We, thus, do not find any infirmity and/or illegality in the order of the tribunal based upon the findings that the disciplinary authority did not embark upon the provisions contained in Rule 15(2) of the said Rules and, therefore, the decision of the disciplinary authority is liable to be set aside.

The writ-petition fails.

However, we have been given to understand that the timeline set forth in the impugned order has since elapsed, we, therefore, extend the time by four months from date.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

