

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 11.11.2022

+ **W.P.(C) 5562/2019 & CM APPL. 24478/2019, CM APPL. 8219/2021**

MR. B. VASUDEVA RAO

..... Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Ankur Chhibber with Mr Anshuman Mehrotra, Advocates.

For the Respondents : Mr Kirtiman Singh, CGSC with Mr Waize Ali Noor, Mr Madhav Bajaj, Ms Kunjala Bhardwaj and Mr Yash Upadhyay, Advocates for UOI/R-1.
Mr Abhishek Puri and Ms Surbhi Gupta, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The petitioner has filed the present petition being aggrieved with the dismissal of the appeal by the Appellate Authority, whereby, the challenge laid by the petitioner to the order dated 31.08.2017

passed by the Disciplinary Authority, compulsorily retiring the petitioner from the service was dismissed. The petitioner seeks the following reliefs:

“A. Issue a Writ in the nature of certiorari or other suitable writ or order or direction setting aside/quashing of order No. F/C-16018/8/2018 .P.E.II dated 20.03.2019 (Annexure P/1) passed by the Respondent No.1 and Order No. JNP/ADMN/P&IR/Dis-Proc/2017/2223 dated 31.08.2017 (Annexure P/2) passed by Respondent No.2;

B. Issue a Writ in the nature of certiorari or other suitable writ or order declaring that Regulation 12 of JNPT Employees Classification Control and Appeal Regulations as ultra vires, unconstitutional, arbitrary and illegal;

C. Issue a Writ in the nature of mandamus or other suitable writ or order or direction for re-instatement of Petitioner in service with full consequential benefits;

D. Pass any other or further order or orders that this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case and in the interests of justice.”

2. The order dated 31.08.2017 passed by the Disciplinary Authority and order dated 20.03.2019 passed by the Appellate Authority, have been challenged, essentially, on two counts. First, that the Disciplinary Authority could not have passed an order imposing major penalty without providing the Inquiry Report to the petitioner, and, second, that the Appellate Authority has, by way of the impugned order, enhanced the penalty from “compulsorily retirement” to “dismissal from service”, without affording the petitioner any

opportunity to represent, which is in gross violation of principles of natural justice.

Non-supply of Inquiry Report

3. Therefore, the issue, which arises for consideration in the present case, is whether an Inquiry Report relied upon by the Disciplinary Authority for the purpose of passing an order imposing major penalty is required to be supplied to the delinquent officer before imposition of any such penalty.

4. In an appeal filed before the Appellate Authority, the petitioner had specifically raised an issue that the Inquiry Report, which formed the basis of the impugned order dated 31.08.2017 passed by Disciplinary Authority, was not provided to the petitioner. The learned Appellate Authority negated the said contention by holding that there is no provision in the Jawahar Lal Nehru Port Trust Employees (CCA), Regulations, 1988 (“**JNPTE Regulations**”), which requires that the copy of the inquiry report is to be provided to a delinquent officer, before arriving at any final decision. The Appellate Authority referred to Regulation No. 12(4), which reads as under :-

“12. Action on the Inquiry report –

XXXX

XXXX

XXXX

(4) 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 (v) to (ix) of regulation 7 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee an opportunity of making representation on the penalty proposed to be imposed

XXXX

XXXX

XXXX ”

5. The Appellate Authority referred to the judgment passed by the Apex Court in the case of *Uttarakhand Transport Corporation (Earlier known as U.P.S.R.T.C.) & Ors. Vs. Sukhveer Singh: Civil Appeal No. 18448 of 2017* to hold that the question whether a prejudice has been caused to the delinquent employee depends on the facts and circumstances of each case and there is no rule of universal application in this regard. It further held that nothing has been placed on record, which indicates that the petitioner had suffered any prejudice due to non-supply of an inquiry report.

6. The learned counsel for the petitioner contended that non-supply of the Inquiry Report caused grave prejudice since the petitioner was not allowed to point out the defects in the said Inquiry Report. He further contends that the Inquiry Report is factually incorrect and is liable to be struck down; and should not be relied upon on various grounds referred to not only in the present writ petition, but also pleaded before the Appellate Authority.

7. The petitioner was not granted an opportunity to point out the lacunas in the Inquiry Report to the Disciplinary Authority, which has led to passing of the order of major penalty. It was argued that imposition of a major penalty on the basis of the Inquiry Report without supplying a copy to the petitioner is against the principles of natural justice. The learned counsel relied upon following judgments: *Oriental Bank of Commerce and Another vs. R. K. Uppal : (2011) 8 SCC 695, Yoginath D. Bagde vs. State of Maharashtra and Another : (1999) 7 SCC 739, Managing Director, ECIL, Hyderabad and*

Others vs. B. Karunakar and Others : (1993) 4 SCC 727, State Bank of India and Others vs. Ranjit Kumar Chakraborty and Another : (2018) 12 SCC 807, in support of his contention.

8. On the other hand, the learned counsel for the respondent argues that failure to supply the Inquiry Report would not, *ipso facto*, result in the proceedings being vitiated. He further stated that the concept of natural justice cannot be put in a straitjacket and applied in a rigid manner. The petitioner is required to prove that prejudice has been caused due to non-supply of the Inquiry Report and it cannot be presumed that in every case where an inquiry report is not supplied, the principles of natural justice have been violated. He further stated that the petitioner, in the present case, has not been able to show any prejudice that may have been caused because of non-supply of the inquiry report. The petitioner was always aware of the charges leveled against him and participated throughout the inquiry. Therefore, mere non-supply of the inquiry report, when the petitioner was aware of the facts, will not prejudice the right of the petitioner to give an effective representation to the Disciplinary Authority. The learned counsel relied upon the following judgments: ***ECIL v. B. Karunakar: (1993) 4 SCC 727, Union of India v. Tulsiram Patel: (1985) 3 SCC 398, Haryana Financial Corporation & Anr. v. Kailash Chandra Ahuja: (2008) 9 SCC 31, Union of India & Ors. v. Alok Kumar : (2010) 5 SCC 349, Zonal Manager cum A.G.M. Uco Bank & Ors. v. Golok Bihari Sharan Tewari : 2004 SCC OnLine Pat 5, State of Bihar and Ors. Vs. Bihar Distillery Ltd. and Ors. : (1997) 2 SCC 453, Bangalore Development Authority Vs. The Air Craft Employees***

Cooperative Society Ltd. and Ors. : (2012) 3 SCC 442 , B.R. Enterprises Vs. State of U.P. and Ors. : (1999) 9 SCC 700, Ambaji Physiotherapy College Vs. State of Gujarat and Ors. : (2011) SCC ONLINE Guj 5046, Sarva Uttar Pradesh Gramin Bank Vs. Manoj Kumar Sinha: (2010) 3 SCC 556, in support of his contention.

9. The JNPTE Regulations provide a detailed procedure for imposition of major penalties on any delinquent officer. Regulation 11 and 12 of the Regulations are relevant and reproduced as under:-

“11. Procedure for imposing major penalties:

- (1) *No order Imposing any of the penalties specified in clauses (v) to (ix) of regulation 7 shall be made except after an inquiry held as far as may be in the manner provided in this regulation and regulation 12.*
- (2) *Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself inquire into, or appoint an authority to enquire into the truth thereof.*

Explanation: - *Where the disciplinary authority itself holds the enquiry, any reference in sub-regulation (7), sub-regulation (20) or sub-regulation (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.*

- (3) *Where it is proposed to hold an inquiry against an employee under this regulation or regulation 12, the disciplinary authority shall draw up or cause to be drawn up.*
 - (i) *the substance of the imputations of misconduct or misbehavior into definite and distinct articles or charge;*
 - (ii) *statement of the imputation of misconduct or misbehavior in support of such article of charges which shall contain-*
 - (a) *a statement of all relevant facts including any admission or confession made by the employee*
 - (b) *a list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained.*

- *(4) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputation of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit, within 15 days of the receipt a written statement of his defence and to, state whether he desires to be heard in person. The disciplinary authority may on request extend the time limit up to the maximum of sixty days for sub mission of the written statement of his de fence.*

***Amended Vide notification No. H-11011/7/91-P.E. I dated 21/2/1994**

- (5) (a) *On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted or if it considers necessary so to do, appoint under sub-regulation (2), an inquiring authority for the purpose and where all the articles of charge have been admitted by the employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in regulation 12.*
- (b) *If no written statement of defence is submitted by the employee, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary so to do, appoint under sub-regulation (2), inquiring authority for the purpose.*
- (c) *Where the disciplinary authority itself inquires into any articles of charge or appoints an inquiry authority for holding an inquiry into such charge, it may, by an order, appoint any person to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.*
- (6) *The disciplinary authority shall where it is not the inquiring authority, forward to the inquiry authority –*
- (i) *a copy of the articles of charge and the statement of the imputations of misconduct or misbehavior;*
 - (ii) *a copy of the written statement of defence, if any, submitted by the employee;*
 - (iii) *a copy of the statement of witnesses, if any, referred to in sub-regulation (3)*
 - (iv) *evidence proving the delivery of the documents referred to in sub-regulation (3) to the employee; and*
 - (v) *a copy of the order appointing the "Presenting Officer".*

- (7) *The employee shall appear in person before the inquiring authority On such day and at such time within ten working days from the date of receipt by him of the articles of charge and the Statement of the imputations of misconduct on misbehavior, as the inquiring authority May, by a notice in writing, specified in this behalf or within such further time, not exceeding ten days, as the inquiring authority may allow.*
- (8) *The employee may take the assistance of any other employee to present the case on his behalf, but shall not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits.*

NOTE: *The employee shall not take the assistance of any employee who has two pending disciplinary cases in which he has to give assistance, but may take the assistance of a retired employee of the Board or Government, subject to such conditions as may be specified from time to time by the Board.*

- (9) *If the employee who has not admitted any of the articles of charge in his written statement of defence or has submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring Authority shall record the plea, sign the record and obtain the signature of the employee thereon.*
- (10) *The inquiring authority shall return of finding of guilty in respect of those articles of charge to which the employee pleads guilty.*
- (11) *The inquiring authority shall, if the employee fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence.*
- (i) *inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-regulation (3)*
- (ii) *submit a list of witnesses to be examined on his behalf,*

NOTE: *If the employee applies orally or in writing for the supply of copies of the statements of witness mentioned in the list referred to in sub-regulation (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witness of the disciplinary authority.*

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of the Board but not mentioned in the list referred to in sub-regulation (3)

Note :- The employee shall indicate in the notice the relevance of the documents required by him to be discovered or produced by the Board.

- (12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forwarded the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition.

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are in its opinion, not relevant to the case.

- (13) On receipt of the requisition referred to in sub-regulation (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the interest of the Port Trust, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed communicate the information to the employee and withdraw the requisition made by it for the production or discovery of such documents.

- (14) (a) On the date fixed for the inquiry, the Oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority.

(b) The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee.

(c) The Presenting Officer shall be entitled to re-examine the witness on any points on which they have been cross-examined but not on any new matter, without the leave of the inquiring authority.

(d) The inquiring authority may also put such questions to the witnesses as it thinks fit.

- (15) (a) If it appears necessary before close of the case on the side of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to

the employee or may itself call for new evidence or recall and re-examine any witness and in such case the employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned.

- (b) The inquiring authority shall give the employee an opportunity of inspecting such documents before they are taken on the record.*
- (c) The inquiring authority may also allow the employee to produce new evidence, if necessary, in the interest of justice.*

NOTE: - *New evidence shall not be permitted or led for and no witness shall be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.*

- (16) (a) When the case for the disciplinary authority is closed, the employed shall be required to state his defence orally or in writing as he may prefer.*
 - (b) If the defence is made orally, it shall be recorded and the employee shall be required to sign the record: in either case, a copy of the statement of defence, shall be given to the Presenting Officer, if any, appointed.*
- (17) (a) The evidence on behalf of the employee shall then be produced and the employee may examine himself on his side if he so prefers.*
 - (b) The witness produced by the employee shall then be examined and may be cross-examined on behalf of the disciplinary authority.*
- (18) The inquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstance appearing against him in the evidence for purpose of enabling the employee to explain any circumstances appearing in the evidence against him.*
- (19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed and the employee, or permit them to file the written briefs of their respective cases if they so desire.*
- (20) If the employee, to whom a copy of the articles of charges has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the*

provisions of this regulation, the inquiring authority may hold the inquiry exparte.

- (21) (a) *Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of regulation 7, but not competent to impose any of the penalties specified in clauses (v) to (ix) of regulation 7, has itself inquired into or caused to be enquired into the articles of any charge and that authority, having regard to its own findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of regulation 7 should be imposed on the employee, that authority should forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.*

(b) *The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the employee such penalty as it may deem fit in accordance with these regulations.*

- (22) *Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercise, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its or partly recorded by its predecessor and partly recorded by itself.*

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witness whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine and re-examine any such witness as herein before provided.

- (23) (i) *After the conclusion of the inquiry, a report shall be prepared and it shall contain*

(a) *the articles of charge and the statement of imputations of misconduct or misbehavior*

(b) *the defence of the employee in respect of each article of charge;*

(c) *an assessment of the evidence in respect of each article of charge;*

(d) *the findings on each article of charge and the reasons therefore.*

Explanation- *If in the opinion of the inquiring authority, the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge*

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on

which such article of charge is based or has a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include:

- (a) the report prepared by it under clause(i);*
- (b) the written statement of defence, if any, submitted by the employee;*
- (c) the oral and documentary evidence produced in the course of the inquiry;*
- (d) the written briefs, if any, filed by the Presenting Officer or the employee or both during the course of inquiry, and*
- (e) the order if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.*

12. Action on the 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. The inquiring authority shall there upon proceed to hold the further inquiry according to the provision of regulation 11 as may be.*
- (2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement, and record its own findings on such charge, if the evidence on record is sufficient for the purpose.*
- (3) 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 regulation 7 should be imposed on the employee, it shall notwithstanding anything contained in regulation 13 make an order imposing such penalty.*
- (4) 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 (v) to (ix) of regulation 7 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee an opportunity of making representation on the penalty proposed to be imposed.*

Provided that in every case where it is necessary to consult the Central Government the record of inquiry shall be forwarded by the disciplinary authority along with its recommendations to the Central government for passing order.”

10. In the present case, the petitioner was issued a Show Cause Notice alleging misconduct on the account of alleged fraud amounting to ₹180 crores, being caused to JNPT.

11. It is alleged that JNPT has transferred ₹180 crores in two installments to the Oriental Bank of Commerce, Malwani Branch, Malad (W), Mumbai – 400095 for creation of fixed deposits. However, no FD accounts were created; no receipts were issued; and the funds were transferred to the account of one M/s Padmavati International.

12. It was, thus, alleged that a huge amount of money was siphoned to unauthorised recipients. It was alleged that the petitioner, being the Manager (Finance) during the relevant time, was responsible for siphoning off.

13. Major penalties are prescribed in Regulation No. 7 (v) to (ix) of the JNPTE Regulations and detailed procedure for imposition of such penalties is prescribed in Regulation 11 of the JNPTE Regulations, as referred above.

14. The Inquiry Officer was appointed on 16.01.2017; he made and submitted the report on 24.05.2017 to the Disciplinary Authority.

15. Thereafter, the impugned order imposing a major penalty of compulsory retirement was passed on 31.08.2017 and the petitioner was served the impugned order along with the Inquiry Report.

Admittedly, the Inquiry Report was provided to the petitioner for the first time along with the impugned order.

16. The law in relation to the supply of the Inquiry Report and its effect when the same is not supplied is well-settled.

17. The Courts have, in several decisions, considered the ratio laid down by the Constitution Bench in the case of ***Managing Director, ECIL, Hyderabad and Others*** (*supra*) and have held that prejudice must be proved and not presumed even in cases where procedural requirements have not been complied with. Therefore, the supply of an inquiry report may be part and parcel of the natural justice, however, failure to do so would not automatically lead to quashing of the penalty, on the ground of non-supply of the Report. Therefore, unless the delinquent officer is able to show that non-supply of the report of an inquiry officer has resulted in prejudice or miscarriage of justice, the imposition of penalty cannot be interfered with. Whether prejudice has been caused or not is dependent upon the facts and circumstances of each case.

18. The Constitution Bench (Hon'ble Apex Court) in the case of ***Managing Director, ECIL, Hyderabad and Others*** (*supra*) had categorically held that the copy an inquiry report is required to be provided to the aggrieved employee. However, in relation to the stage at which it is to be given, it has been held that the employee has to get an opportunity to show cause as to how he was prejudiced because of non-supply of the report. The court or the tribunal, where the impugned action is challenged, has to determine after hearing the parties whether non-supply of the report had caused any prejudice. If

the court/tribunal finds that supply of the inquiry report would have made no difference to the ultimate finding or the punishment imposed, the courts would not interfere with the order of punishment. At the same time, the court / tribunal are not to mechanically set aside the orders of punishment for the reason that the inquiry report was not furnished prior to imposition of penalty.

19. In the present case, the petitioner had specifically pleaded before the Appellate Authority as well as this Court that non-supply of the Inquiry Report amounts to denial of an opportunity to defend his case and is against the principles of natural justice. The petitioner had pleaded that prejudice was caused as the petitioner was denied the opportunity to contest the finding in the Inquiry Report on various grounds such as non-production of vital witness, non-adherence of the procedure by the Inquiry Officer, production of a prosecution witness, who was a charged officer herself etc.

20. Even before this Court, various grounds have been raised attacking the credibility of the Inquiry Report. The learned Appellate Authority indicated that the argument raised by the petitioner that non-supply of the Inquiry Report amounts to denial of principles of natural justice, however, negated the said argument by simply saying that *“nothing given on record which signals towards any prejudice against the appellant in this regard”*.

21. As mentioned above, the Constitution Bench had, way back in the year 1993, categorically held that the courts / tribunals have to apply their judicial mind and give a reason whether furnishing of a report would have made a difference to the result of the inquiry. When

the law requires that the courts / tribunals should not mechanically set aside the order of punishment on the ground that the report was not furnished, it also casts a duty on the courts / tribunals to not mechanically accept the order of punishment by merely stating that non-furnishing of the report has not caused any prejudice.

22. The petitioner, in the present case, has specifically taken grounds as to how prejudice has been caused due to non-supply of the Inquiry Report. The grounds taken go to the root of the matter.

23. In our opinion, the Appellate Authority should have given reasons on the issue whether non-supply of the Inquiry Report has caused any prejudice to the petitioner. We, therefore, feel appropriate that instead of deciding the issue in this petition, at this stage, the matter be remanded to the Appellate Authority to consider the grounds taken by the petitioner and decide by passing a reasoned order, the issue whether the petitioner had suffered to any prejudice because of non-supply of the Inquiry Report prior to imposing major penalty.

24. So far as the challenge to Regulation 12(4) of the JNPTE Regulations are concerned, it is clarified that the said regulations cannot be read to mean that the concerned employee is not required to be provided a copy of the Inquiry Report. Clearly, whether the Disciplinary Authority takes into account the Inquiry Report and seeks to impose a penalty on that basis, it would be necessary that the principle of natural justice demand that the employee be provided the copy of the Inquiry Report to make any representation against the proposed action. Therefore, in the present case, the question whether not providing the Inquiry Report would be fatal to the order imposing

penalty is, as held above, contingent whether the employee has suffered any prejudice on account of non-supply of the Inquiry Report.

Enhancement of Penalty without affording an opportunity to show cause to the petitioner

25. In the present case, the petitioner has challenged the impugned order dated 31.08.2017 by filing an appeal before the Disciplinary Authority. The Disciplinary Authority, however, instead of allowing the appeal, enhanced the penalty from “compulsory retirement” to “dismissal from service” by way of the second impugned order dated 20.03.2019. The learned Appellate Authority held that the Disciplinary Authority was lenient while taking the final decision in the matter and had awarded a penalty of “compulsory retirement”, whereas the petitioner deserved a more severe penalty. The learned Appellate Authority, therefore, enhanced the penalty of “compulsory retirement” to that of “dismissal from service”.

26. The learned counsel for the petitioner has contended that without prejudice to the argument that the order of the Disciplinary Authority deserves to be set aside, the Appellate Authority has erred in enhancing the impugned penalty without affording a reasonable opportunity to the petitioner to make a representation.

27. It is contended that the law does not permit the Appellate Authority to enhance the imposition of penalties without issuance of an appropriate notice on the delinquent officer.

28. The learned counsel relies upon the judgment passed by the Hon'ble Apex Court in the case of ***Oriental Bank of Commerce and Another vs. R. K. Uppal : (2011) 8 SCC 695***, in support of this contention.

29. The learned counsel for the respondent, on the other hand, relied upon the provisions of Regulation 28 of the JNPTE Regulations to contend that the Appellate Authority, on consideration of an appeal, has power to confirm, enhance, reduce or set aside the order of penalty.

30. The consideration of an appeal against imposition of penalties specified in Regulation No. 7 of the JNPTE Regulations is provided under Regulation No. 28 of the JNPTE Regulations, which reads as under:

“28. Consideration of appeal –

- (1) *In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provision of regulation 6 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.*
- (2) *In the case of an appeal against an order imposing any of the penalties specified in regulation 7 or enhancing any penalty imposed under the said regulation, the appellate authority shall consider-*
 - (a) *Where the procedure laid down in these regulations has been complied with and if not, whether such non-compliance has resulted in denial of justice;*
 - (b) *Whether the findings of disciplinary authority are warranted by the evidence on the record; and*
 - (c) *whether the penalty imposed is adequate, inadequate or revise and pass orders-*
 - (i) *confirming, enhancing, reducing or setting aside the penalty; or*

- (ii) *remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direct or: as it may deem fit in the circumstances of the case:*

Provided that-

- (i) *If the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (v) to (ix) of regulation 7 and an inquiry under regulation 11 has not already been held in the case, the appellate authority shall, subject to the provisions of regulation 16, itself hold much enquiring in accordance with the provisions of regulations 11 and 12 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;*
 - (ii) *If the enhanced penalty which the appellate authority propose to impose is one of the penalties specified in clauses (v) to (ix) of regulation 7 and an inquiry under regulation it has already been held in the case, the appellate authority shall, make such orders as it deem fit; and*
 - (iii) *no order imposing an enhanced penalty shall be made in any other case unless the appellate has been given a reasonable opportunity, as far as may be in accordance with the provisions of regulation 11, of making a representation against such enhanced penalty.*
- (3) *In an appeal against any order specified in regulation 20 to 22, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”*

31. There are three provisos to Regulation 28 of the JNPTE Regulations concerning enhancement of penalties.

32. Proviso 1 of Regulation 28 of the JNPTE Regulations provides for the circumstances where the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clause (v) to (ix) of Regulation 7 of the JNPTE Regulations and where an inquiry under Regulation 11 of the JNPTE Regulations has

not already been held. Therefore, this proviso envisages the circumstances where the penalty proposed to be imposed is now a major penalty, whereas earlier it was a minor penalty because Regulation 11 of the JNPTE Regulations is the procedure for imposition of major penalties and requires the conduct of inquiries.

33. Proviso 2 of Regulation 28 of the JNPTE Regulations envisages a situation where an inquiry under the said regulation has already been held and the penalty proposed to be enhanced is one of the penalties specified in Clause (v) to (ix) of Regulation 7 of the JNPTE Regulations, that is, major penalties. Therefore, the proviso applies in circumstances where the earlier penalty was also a major penalty.

34. Proviso 3 of Regulation 28 of the JNPTE Regulations, however, states that no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given an opportunity of making a representation against such enhanced penalty.

35. Proviso 3 of Regulation 28 of the JNPTE Regulations, in our opinion, does not specify as to which would be the other cases where a reasonable opportunity is given to the appellant for making a representation.

36. The Hon'ble Apex Court, in the case of ***Oriental Bank of Commerce and Another vs. R. K. Uppal*** (*supra*), has distinguished an earlier judgment passed by the Hon'ble Apex Court in the case of ***Ganesh Santa Ram Sirur vs. SBI Anr*** (2005) 1 SCC 13 and held that where the Appellate Authority proposes to enhance the penalty, it must issue notice to the delinquent and give a personal hearing. The

Hon'ble Apex Court, in the said case, was considering a similar provision of appeal, which gave power to the Appellate Authority to pass an order to confirm, enhance, reduce or set aside the penalty.

37. The rule of natural justice does not require that in all cases a right of audience is conferred on the appellant.

38. It is also fairly well-settled that the requirement of natural justice depends on the facts and circumstances of each case and the same cannot be in a straitjacket or a rigid formula.

39. In our opinion, whenever any authority proposes to enhance the imposition of penalty, which has been challenged before it, an opportunity is to be provided to the delinquent calling upon him to show cause why the penalty that has been awarded be not enhanced. The requirement of fairness and natural justice demand that the person should not be saddled with a liability for which he has had no opportunity to contest.

40. Therefore, a punishment, which has been imposed for the first time does require that the delinquent should be heard and the Appellate Authority must issue a notice in that regard and give a reasonable opportunity of being heard. This is for the reason that enhanced penalty is imposed for the first time and the law does not permit imposition of any penalty without adhering to principles of natural justice. The Hon'ble Apex Court in the case of ***Oriental Bank of Commerce and Another vs. R. K. Uppal*** (*supra*) held as under:

24. The appeal provision in Regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the

provision? We think not. In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing. It is so because the appellate authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. Although there are no positive words in Regulation 17, requiring that the appellant shall be heard before the enhancement of the penalty, the fairness and natural justice require him to be heard.

(Emphasis Supplied)

41. Moreover, when Proviso 3 to Regulation 28 of the JNPTE Regulations specifically provides that the appellant has to be given a reasonable opportunity of making a representation against such enhanced penalty as specified in the said proviso. Therefore, we do not see any reason why the requirement to afford such an opportunity to the delinquent employee be not read into the other proviso to Regulation 28 of the JNPTE Regulations.

42. In view of the above, the impugned order dated 20.03.2019 is, accordingly, set aside. We deem it appropriate to remand the case to the Appellate Authority to consider afresh including the following aspects:

- (i) Whether non-supply of Inquiry Report has caused prejudice to the petitioner and pass a reasoned order.
- (ii) If the Appellate Authority is of the opinion that no prejudice has been caused to the petitioner, then give an opportunity of

hearing to the petitioner to consider whether the penalty, as imposed, is required to be upheld or enhanced.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

NOVEMBER 11, 2022

SS/KDK

