

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

% **Date of order : 31st October, 2022**

+ **W.P.(C) 2298/2012**

SEEMA KHATTAR

..... Petitioner

Through: Mr. Vishal Chaudhary, Mr. Rohit Singh and Mr. Tabrez Anwar, Advocates

versus

THE PROJECT AND EQUIPMENT CORPORATION OF INDIA LTD

..... Respondent

Through: Mr. M. K. Vashisht, Advocate along with Mr. Jitesh Aggarwal, Sr. Manager

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil writ petition under Article 226 of the Constitution of India has been filed on behalf of the Petitioner to quash the impugned order dated 21st July 2011 passed by the Disciplinary Authority which has also been upheld by the Appellate Authority vide order dated 5th October 2011.

2. The brief facts leading to the present writ petition are that the Petitioner was posted as an Executive Assistant with the Project and Equipment Corporation of India Ltd. (hereinafter referred to as 'Respondent Company'). A memorandum of charge-sheet was issued to the Petitioner

vide letter dated 28th February 2011 of four charges which pertained to the visit of the Petitioner to the United States of America in the year 2008. The Petitioner was asked to submit her statement of defence within 15 days and accordingly, the Petitioner submitted her reply to the said memorandum vide letter dated 27th March 2011.

3. Vide letter dated 8th April 2011, the Disciplinary Authority appointed Shri, Satya Babu, Deputy Secretary, Ministry of Overseas, Government of India as the Inquiry Officer. The Inquiry Officer found the Petitioner guilty of all the charges and the Disciplinary Authority while adopting the findings of the Inquiry Officer imposed a major penalty of termination from the job on the Petitioner. The Petitioner challenged the said order of the Disciplinary Authority before the Appellate Authority which was dismissed vide its order dated 5th October 2012.

4. Aggrieved by the dismissal of his appeal by the Appellate Authority, the Petitioner has challenged the impugned order dated 21st July 2011 passed by the Disciplinary Authority as well as the impugned order dated 5th October 2016 passed by the Appellate Authority by way of the instant writ petition.

5. Learned counsel appearing on behalf of the Petitioner has stated that the Inquiry Authority as well as the Disciplinary Authority has not given any reasons for imposing major penalty on the Petitioner and hence both the orders cannot be sustained in the eyes of law as being arbitrary and violative of the principles of natural justice. It is further submitted that Rule 35 of the PEC Employees (Conduct, Discipline and Appeal) Rules, 1975 (hereinafter referred to as 'PEC Rules') has been violated in the facts and circumstances of the present case. It provides that the Appellate Authority shall consider

whether the findings recorded by the Disciplinary Authority are justified or whether penalty imposed is excessive or adequate and pass an appropriate order within three months from the date of filing of Appeal. Hence, the findings recorded by the Disciplinary Authority warrant interference by this Court.

6. Learned counsel for the Petitioner further submitted that the Disciplinary Authority has taken into consideration extraneous material in arriving at its conclusion. It is further submitted that the even if the facts alleged in the four heads of charges are accepted as fully proved yet it would not amount to be misconduct as prescribed under Rule 5 of the PEC Rules and no penalties can be imposed for such conduct, because Rule 25 of the PEC Rules which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on the employees for misconduct committed by him/ her. It is further submitted that the Rule 4 of the PEC Rules specifies a norm of behaviour but does not specify that its violation would constitute misconduct in any of the sub-clause of Rule 5 of the PEC Rules. It is further submitted that the Rule 4 of the PEC Rules deals with 'what is unbecoming of a public servant' which may vary with individuals and may expose employees to vagaries of subjective evaluation.

7. It is further submitted that the Respondent Company has levelled certain charges against the Petitioner which have nothing to do with the Petitioner but are completely related to the husband of the Petitioner, who is an Afghan national but not an employee of the Respondent Company. It is further submitted that the husband of the Petitioner is a Sunni Muslim and after marriage of the Petitioner, she is now governed by Muslim personal laws which do not permit interference/questioning in to the affairs of the

husband.

8. It is further submitted that all the charges against the Petitioner are with respect to the information furnished to the Ministry of External Affairs, Government of India by the husband of the Petitioner for which she is being targeted. It is further submitted that the information given by the husband of the Petitioner is the sole basis of dismissal of job of the Petitioner and such information on which the Disciplinary Authority has relied upon is not a legal document in the eyes of law. It is vehemently argued that the Petitioner was not in a position to question the authority of her husband as her personal laws do not permit the same.

9. It is also argued that the Disciplinary Authority has failed to appreciate that certain documents which were not within the control of Petitioner but were sought to be produced by her through several written requests and were all within the control of the Ministry of External Affairs, Government of India were not produced. It is further submitted that the sole motivation for the dismissal of the Petitioner from the service is that she had the courage to bring the instances of sexual harassment by her seniors including Sh. P.K. Jain, General Manager, against whom the Petitioner had also filed a complaint of sexual harassment.

10. *Per Contra*, learned counsel appearing on behalf of the Respondent Company has submitted that the Petitioner is guilty of wilful misrepresentation and suppression of documents. It is demonstrated that the Petitioner submitted an application on 18th January 2008 seeking grant of leave up to 31st December 2008 and for permission to visit United States of America temporarily along-with her husband and two children. Pursuant to the requirement under the Service Rules as applicable to the Petitioner, she

W.P.(C) 2298/2012

Page 4 of 17

in her application for Vigilance clearance declared that the aforesaid trip to United States of America will be financed by her husband's uncle. Further, the Respondent Company asked the Petitioner to submit permission of her husband's stay in India as well as the copy of the Passport and Visa of her husband, herself and her children but despite several reminders the Petitioner failed to submit the said documents.

11. It is further submitted that in the year 2010, Respondent Company received a complaint that the Petitioner provided wrong information in respect of the financing and the reasons for her visit. Based on investigation conducted by the Respondent Company and on the basis of the information received from the United Nations High Commissioner for Refugees (hereinafter referred to as 'UNHCR') it transpired that the Petitioner wanted to settle permanently in the United States of America; their expenses of the trip were borne by the Government of the United States of America and also that the children and husband of the Petitioner has passports issued at New York by the Government of USA. It is further submitted that it was found that the Petitioner fraudulently declared that her livelihood is through private tuition and she did not disclose that she is not a refugee but a public servant working with the Government of India.

12. Learned counsel for the Respondent Company has further submitted that a reasoned order based on materials on record has been passed by the Disciplinary Authority as well as the Appellate Authority, and no extraneous consideration was entertained while arriving at the findings. It is further submitted that the Inquiry Officer gave all opportunities to the Petitioner to present her defence during Inquiry proceedings and gave the Petitioner an opportunity to be assisted by a defence assistant or even an

advocate, which the Petitioner declined. The Petitioner was given an opportunity to inspect all the 17 documents relied upon in the charge-sheet and also other documents if the Petitioner wanted to. However, the Petitioner stated in her defence that she did not intend to inspect any document.

13. It is also argued that the Petitioner in the Inquiry was also given an opportunity to produce witnesses in her defence to which the Petitioner declined. Even after the conclusion of the Inquiry, the Inquiry Officer gave opportunity to the petitioner to present evidence, if any, in case the same was missed out at the time of making the submissions. However, the Petitioner submitted that she had nothing to present. It is further submitted that after the conclusion of hearing on 27th May 2011, the Inquiry Officer arranged a meeting of the Presenting Officer, Petitioner and Inquiry Officer on 1st June 2011 to hand over a copy of the proceedings sheet in Hindi to the Petitioner since the same could not be given to the Petitioner on 27th May 2011. On 1st June 2011, the Petitioner after receiving the copy of the order sheet dated 27th May 2011 and after conclusion of proceedings against her, insisted to make further submissions and to place further additional documents on record. The Inquiry Officer keeping in view the circumstances of the case allowed the Petitioner to make further submissions and also to place additional documents in this regard. Therefore, it is submitted that these instances negate the possibility of violation of principle of natural justice by the Disciplinary Authority.

14. It is further submitted that the Respondent Company has not imputed any charges towards misconduct of her husband but has only brought charges for misconduct against her committed by the Petitioner herself. It is

lastly argued that the present writ petition being devoid of merits should be dismissed with costs.

15. Heard learned counsel for the parties and perused the record.

16. The Petitioner was issued a chargesheet on 28th February 2011 containing four charges to which the Petitioner duly submitted her reply vide letter dated 27th March 2011 denying all the charges. One important issue that arises in the facts and circumstances of the case is that:

Whether the requisite documents were issued to the Petitioner?

If not, then whether any prejudice can be said to have been caused to the Petitioner and consequently, the disciplinary proceedings impugned herein be sustained in the eyes of law?

17. It is important to highlight the importance of principles of natural principles in a disciplinary proceeding as compliance with the principles of natural justice is not an empty formality but a mandatory requirement.

18. In **Chamoli District Co-operative Bank Ltd. & Anr. vs. Raghunath Singh Rana & Ors., Civil Appeal No. 2265 of 2011**, decided on 17th May 2016, the Hon'ble Supreme Court held that:

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry.....”

19. The Apex Court again in **State Bank of India Vs. R.K. Jain and Ors.,** reported as **(1972) 4 SCC 304** held that if an inquiry is vitiated by violation of principles of natural justice or if no reasonable opportunity was provided to the delinquent to place his defence, it cannot be characterized as a proper

domestic inquiry held in accordance with the rules of natural justice. In paragraph 23, the following was laid down:-

“23.As emphasised by this Court in Ananda Bazar Patrika (P) Ltd. v. Its Workmen, (1964) 3 SCR 601, the termination of an employee's service must be preceded by a proper domestic inquiry held in accordance with the rules of natural justice. Therefore, it is evident that if the inquiry is vitiated by violation of the principles of natural justice or if no reasonable opportunity was provided to a delinquent to place his defence, it cannot be characterized as a proper domestic inquiry held in accordance with the rules of natural justice...”

20. In **Janakinath Sarangi vs. State of Orissa, (1969) 3 SCC 392**, the Hon'ble Supreme Court made the following pertinent observations :

“5. From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief among which are State of Bombay v. Narul Latif Khan; State of Uttar Pradesh and Anr. v. Sri C.S. Shanna and Union of India v. T.R. Varma. There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right.... Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representation and curiously enough, he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in his case by

not examining the two retired Superintending Engineers whom he had cited or any one of them.”

21. In the present case the Respondent Company has taken a stand that not only a detailed opportunity was granted to the Petitioner in her defence but she was also given many opportunities to inspect the documents relied upon by the Respondent Company. The relevant portion of the Counter Affidavit is reproduced below:

“It is submitted that the Disciplinary Authority after considering the reply of Petitioner dated 27.3.2011 and finding it to be unsatisfactory, appointed the Enquiry Officer. The Enquiry Officer gave all opportunities to the Petitioner to present her defence during Enquiry proceedings and also gave the Petitioner an opportunity to be assisted by a defence assistant or even an advocate to which the Petitioner declined. The Petitioner insisted to defend her case on her own and a copy of the CDA rules were also handed over to the Petitioner. The allegations of the Petitioner that the Enquiry officer has concluded the enquiry without exercising his legal mind, being biased to the Petitioner are wrong and denied. The allegations of the Petitioner that no opportunity of hearing was given to the Petitioner are baseless. The enquiry officer during the preliminary hearing on 18.5.2011 gave an opportunity to the Petitioner to inspect all the 17 documents listed in the Charge sheet. The Enquiry officer also gave the Petitioner the opportunity to inspect other documents if she required the same besides the ones relied on in the charge sheet to help her to present her case more effectively. The enquiry officer on 27.5.2011, on the day of the first regular hearing again gave the Petitioner an opportunity to inspect all the 17 documents relied upon in the charge-sheet and also other documents if the Petitioner wanted to. However the petitioner stated in the enquiry that she did not intend to inspect any document. The Petitioner in the course of the Preliminary enquiry and, also vide letter dated 26.5.2011 stated her request to receive all the proceeding sheets of the enquiry in Hindi to which the enquiry

officer acceded and also directed the Presenting Officer to ensure that the proceeding sheets were provided to the petitioner in Hindi and were also signed by her. The Petitioner in the Enquiry was also given an opportunity to produce witnesses in her defence to which the Petitioner declined. Even after the conclusion of the Enquiry, the Inquiry Officer gave opportunity to the petitioner to present evidence, if any. In case the same was missed out at the time of making the submissions. The Petitioner at this stage also submitted that she had nothing to present. After the conclusion of hearing on 27.5.2011, the Inquiry Officer arranged a meeting of the Presenting officer. Petitioner and Inquiry Officer on 1st June 2011 to hand over a copy of the proceedings sheet in Hindi to the Petitioner since the same could not be given to the petitioner on 27.5.2011. On 1st June 2011 the Petitioner after receiving the copy of the order sheet dated 27.5.2011 and after conclusion of proceedings against her insisted to make further submissions and also to place further additional documents on record. The Inquiry Officer keeping in view the circumstances of the case allowed the Petitioner to make further submissions and also to place additional documents in this regard. These instances negate the possibility of violation of principle of Natural justice and also of not being given opportunity of hearing to the Petitioner as alleged by the Petitioner in her Writ. It is also denied that the Disciplinary Authority violated the principles of natural justice.....”

22. In the Rejoinder affidavit, the Petitioner has generally denied the position as reflected from the counter affidavit but has failed to substantiate the position taken by her. The relevant portion of the counter affidavit is reproduced below:

“That the contents of the para 4 of the counter affidavit of the answering respondent is another unsuccessful attempt to misguide this Hon'ble Court. It is vehemently denied that any principle of natural justice and being given opportunity of hearing to the petitioner alleged by the respondent to the

petitioner and it is further denied that the disciplinary Authority had dully taken into consideration reply dtd 15.07.2012 to the show cause notice dtd.22.06.2011 and the charges levied by the respondent against the petitioner were proved beyond doubt as petitioner wanted to submit the additional document which was the actual genesis of the present Enquiry such as letter wrote to CVC as misappropriation of funds in the respondent company by the culprits, complaint of sexual harassment etc but same was not appreciated by the Authority during the appeal stated that same was afterthoughts and it is just a sheer averments so as to misguide the Hon'ble Court. It is further reiterated by the petitioner that appellate Authority did not consider the legality and validity of the order of the Disciplinary Authority dismissed the Appeal of the petitioner is correct. It is further submitted that after great Endeavour of the petitioner, respondent gave the Hindi version documents when everything has been concluded and nothing has left to pursue. Rest of the para is being denied by the petitioner and the corresponding para of the petition is reiterated”

23. This Court finds force in the arguments of the Respondent Company that ample opportunity was provided to the Petitioner to lead evidence and put forth her defence but she has failed to take due advantage of the opportunities granted to her. No prejudice can be said to have been caused to the Petitioner by way of the approach taken by the Inquiry Officer as well as the Appellate Authority. Merely making a bald allegation *qua* violation of the principles of natural justice will not help the Petitioner to establish the actual violation of principles of natural justice and resultantly, prejudice being caused to her in her defence. At this stage, it becomes quintessential to highlight the scope under Article 226 of the Constitution of India to interfere in the findings of a disciplinary proceeding which on appeal have been upheld by the Appellate Authority.

W.P.(C) 2298/2012

Page 11 of 17

24. Recently, the Hon'ble Supreme Court in ***State Bank of India & Anr. v. K.S. Vishwanath, (2022) SCC OnLine SC 667***, had an opportunity to re-iterate the literature on the subject and it was held as follows:

“27. Recently in the case of Nand Kishore Prasad (Supra) after considering other decisions of this Court on judicial review and the power of the High Court in a departmental enquiry and interference with the findings recorded in the departmental enquiry, it is observed and held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is further observed and held that the High Court is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. It is further observed that if there is some evidence, that the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition under Article 226 of the Constitution of India to review/reappreciate the evidence and to arrive at an independent finding on the evidence.....”

25. In ***State of A.P. v. S Sree Rama Rao, AIR 1963 SC 1723***, the three judge Bench of the Hon'ble Supreme Court observed as follows:

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may

reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.....”

26. In ***B.C. Chaturvedi v. Union of India***, (1995) 6 SCC 749, again the three Judge Bench of the Hon’ble Supreme Court held as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of

each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. HC Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

27. In ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya***, (2011) 4 SCC 584, the Hon’ble Supreme Court held as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations....”

28. In ***Union of India v. P Gunasekaran***, (2015) 2 SCC 610, the

Hon'ble Supreme Court delineated the parameters as to when the High Court shall not interfere in the disciplinary proceedings:

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based. (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

29. Therefore, this Court cannot act as an appellate authority over the findings as recorded by the Disciplinary Authority. This Court cannot re-appreciate the evidence on the basis of which the Disciplinary Authority has come to a conclusion and interfere in the findings so recorded by it below unless they are perverse or suffers from gross illegality.

30. In the present case, the Disciplinary Authority has relied on two letters received from the UNHCR dated 22nd December 2010 and 13th January 2011 to hold that the Petitioner wilfully submitted wrong facts to the UNHCR. This Court has perused both the letters and is in complete agreement with the findings so recorded by the Authorities below. The relevant portion of the letter dated 22nd December 2010 is reproduced below:

“...While our office sought detailed information from Mr. Taj Zai as he was a refugee under or mandate, basic information

was sought from Ms. Khattar, as she was not afforded protection by UNHCR given that she is an Indian national. Ms. Khattar informed our office that she was earning a small amount by providing private tuition ”

31. The relevant portion of the letter dated 13th January 2011 is reproduced below:

“.... Our office would like to confirm that the tickets for Ms. Seema Khattar’s travel to the USA in February 2008 were issued by the Government of the USA”

32. It is crystal clear that the Petitioner has concealed the fact that she was working as a Public Servant and has wilfully concealed the source of funding of her trip to the United States of America. It is on the basis of above wilful misrepresentation and suppression of facts that the Disciplinary Authority has held all the charges to be proved against the Petitioner.

33. In view of the above said discussion on facts as well as law, this Court does not find any perversity or gross illegality in the orders passed by the Disciplinary Authority as well as the Appellate Authority as they have acted on the basis of material evidence on record and have come to a reasoned reasonable conclusion after giving the Petitioner a detailed opportunity of hearing in accordance with the principles of natural justice. No infraction of principles of natural justice can be said to have been proved by the Petitioner to call for the interference by this Court.

34. Accordingly, the instant writ petition being devoid of merits is dismissed.

35. Pending applications, if any, also stand dismissed.

W.P.(C) 2298/2012

Page 16 of 17

36. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 31, 2022
gs/mg

