



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 22nd July, 2022**
+ **W.P.(C) 5520/2012**

C.P.SINGH Petitioner
Through: Mr. Shanker Raju, Mr. Nilash Gaur
and Mr. Rajesh Sachdeva,
Advocates

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD Respondent
Through: Mr. Parvinder Chauhan, Standing
Counsel

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking following reliefs:-

“a) Set aside the penalty order dated 27.07.2012 and the Disagreement Note dated 19.01.2012 as well as the entire disciplinary proceedings;

b) Grant all consequent benefits to the petitioner including his consideration for promotion on the available vacant post of Superintending Engineer as well as grant of MACP with all arrears...”



FACTUAL MATRIX

2. The brief facts of the case are that the petitioner was appointed as a Junior Engineer in Municipal Corporation of Delhi (hereinafter “MCD”) on 1st October, 1981 and by virtue of his good performance, he was promoted to the post of Assistant Engineer and Executive Engineer on 6th August, 1996 and 11th December, 2007, respectively.

3. Vide Resolution bearing no.293, the MCD with an object to earn revenue, began utilizing the vacant land at their district centers for booking purposes, to allow people to hold social functions.

4. With regard to the aforesaid resolution, Office of the Chief Engineer (Slum) vide order dated 27th September 2000, issued terms and conditions for temporary use of ground at West District Centre at Raja Garden, for booking of the vacant land for social purposes. The booking could be made for a particular period for which charges were claimed by the MCD. As per Condition No. 8 of the said Resolution, if the ground is not vacated on stipulated date, the security amount gets forfeited.

5. The petitioner was working as Executive Engineer in Slum and J.J. Department of MCD in the year 2008 and was also supervising his subordinate officers regarding bookings in the West District Centre at Raja Garden.

6. From 17th October 2000 to 19th October 2000, the ground was booked by Rajasthan Club, for organizing Diwali Mela. After the booking period was over, a vigilance spot inspection was conducted on 24th October 2008 and the ground was found to be still occupied. On 6th



November, 2008, another investigation was conducted by the Special Cell and there still was unauthorized occupancy, without any booking.

7. After the aforesaid investigation was conducted, the petitioner was called to give explanation regarding the unauthorized occupancy. The petitioner explained to the higher authorities that there was indeed unauthorized occupancy of the said ground but no function was being organized by Rajasthan Club. The problem was that the erected structure of the occupant was still present at the ground, and the process of dismantling the said structure was going on.

8. The petitioner further took the decision to forfeit the security amount. It was also indicated from records that the approval for forfeiting the security was also recommended by the petitioner himself.

9. The Disciplinary Authority decided to proceed against the petitioner for misconduct, however, subsequently on the suggestion of the Chief Vigilance Officer (hereinafter referred to as 'CVO'), the disciplinary proceedings against the petitioner were dropped by the Commissioner and opinion from the Central Vigilance Commission (hereinafter referred to as 'CVC') was sought.

10. It is the case of the petitioner that the CVC advised at first stage to initiate major penalty proceedings against the petitioner and other subordinates on 25th August 2009.

11. Thereafter, on 20th April, 2010, a major penalty charge-sheet under Delhi Municipal Corporation (Discipline & Appeal) Regulations, 1959 was issued against the petitioner, alleging lack of supervision over the subordinates in the context of non-removal of structures of tent from



ground at Raja Garden and failure to take action for unauthorized occupancy.

12. An inquiry was then initiated by the Inquiry Officer, who examined four prosecution witnesses, and it was admitted that on inspection carried out, only dismantled tents were found at the spot and no function was being hosted.

13. After completion of the inquiry, the Inquiry Officer held that the charges against the petitioner were not proved.

14. In the year 2011, the Slum and J.J. Department had been made an autonomous body in the name of Delhi Urban Shelter Improvement Board (hereinafter referred to as 'DUSIB') and hence the final decision to impose penalty was directed to be taken by the Chief Executive Officer (respondent) of DUSIB.

15. After the inquiry report, advice of CVC was again sought by the respondent. The CVC in its report dated 29th September, 2011, advised imposition of major penalty upon the petitioner.

16. Thereafter, on 19th January 2012, the Disciplinary Authority, i.e., CEO of DUSIB, relying upon the CVC advice, and disagreeing with the inquiry report, proved charges against the petitioner and issued a notice to him.

17. Vide order dated 27th July, 2012, the CEO of the Board has passed the following order:-

"I have considered the representation of Sh. C.P. Singh. He has failed to bring any new facts except the facts already considered. As such the penalty of "reduction to lower stage in present scale of pay by one stage for a period of three years with direction that the officer will not earn increments



of pay during the periods of this reduction to the lower stage and on the expiry of such period the reduction will not have the effect of postponing of the further increment of his pay" is confirmed and imposed upon Sh, C.P. Singh, Executive Engineer with immediate effect."

18. Aggrieved by the order of the CEO, the petitioner has approached this Court by way of filing the instant writ petition.

SUBMISSIONS

19. Learned counsel appearing on behalf of the petitioner submitted that the proceedings for imposing major penalty were initiated by the CVC without application of mind. Moreover, the advice given by the CVC was relied upon by the CEO while passing the order dated 19th January 2012, however, in the said order no reasons were recorded for disagreeing with the inquiry report and a final view was taken instead of a tentative view.

20. Learned counsel appearing on behalf of the petitioner submitted that the penalty imposed upon the petitioner is rendered illegal for depriving him a reasonable opportunity. It is further submitted that, the CVC advice, on which basis the Disciplinary Authority had taken a different view from the Inquiry Officer, had not been served upon the petitioner before imposing the said penalty. Imposing of such penalty, without supplying the CVC advice to the petitioner is contrary to the law settled by the Division Bench of this Court in ***R.P. Singh Vs. Union of India, 2007 SCC OnLine Del 91***, which held as follows:



“13. Without going into the factual aspects of the matter like the discrepancies in the inquiry report and the statements of witnesses, the question of seminal importance which arises for our consideration is whether there is a denial of natural justice to the petitioner by not supplying a copy of the UPSC advice at pre-decisional stage. It is an admitted fact that the inquiry officer exonerated the petitioner of all the charges. The disciplinary authority sought the advice of CVC and UPSC and acted thereon to finally arrive at a conclusion contrary to that of the Inquiry officer. The opportunity of representation given to the petitioner was merely at the stage of disapproval by the Disciplinary Authority, of the inquiry officer's report. No opportunity was made available to respond to the UPSC advice. The established legal position apparent from the judgments quoted above is that material on the basis of which punishment is imposed on a charged officer must be provided to the charged officer prior to finalising the punishment in order to implement the principles of natural justice. Non supply of such material would amount to denial of a fair opportunity of being heard.”

21. Learned counsel for the petitioner submitted that as per Section 90(8) and 96 of the Delhi Municipal Corporation Act, 1957 for 'A' post category employee, a consultation with Public Service Commission at the time of appointment or imposition of penalty, as per Article 320(c) of the Constitution of India, is obligatory, however, no such advice was sought from the UPSC before imposing the penalty upon the petitioner and therefore, the penalty imposed on the petitioner is liable to be rendered illegal.

22. It is further submitted that penalty imposed upon the petitioner is vitiated on the ground that the Disciplinary Authority being a quasi-judicial authority, is obligated to pass a reasoned order dealing with the



contentions of the petitioner. The petitioner, in response to the Disagreement Note, filed his defense representation which was not considered by the Disciplinary Authority. There was no mention or discussion of the defense of the petitioner in the order. A non-speaking order had thus been passed in the instant case, which is illegal in the light of judgment of the Hon'ble Supreme Court in **Roop Singh Negi Vs. PNB, 2009 (2) SCC 570**. In the said case it was held as under:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

23. It is submitted by learned counsel appearing on behalf of the petitioner that even though the Disciplinary Authority has the prerogative to disagree with an independent application of mind, they were however, dictated by CVC and therefore, issued a Disagreement Note to the petitioner, where extraneous matters have been taken into consideration. It is submitted that the defense of the petitioner was ignored and instead of taking a tentative view, a final view of the matter had been taken, which amounts to post decisional hearing.



24. In furtherance of the aforesaid argument made by the counsel appearing on behalf of the petitioner, reliance was placed on decision of Hon'ble Supreme Court in ***Yoginath D. Bagde Vs. State of Maharashtra, (1999) 7 SCC 739***, wherein it was held that in case of disagreement in inquiry, the Disciplinary Authority is precluded from taking a final view of the matter and instead take a tentative view. The Hon'ble Supreme Court in the said case held as under:

“29. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the



findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the “right to be heard” would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.”

25. It is further submitted that the CVC advice, as per DoPT OM of 2000, is not binding on the Disciplinary Authority. However, in the instant case, the advice of CVC was reproduced verbatim in the Disagreement Note, which clearly shows a mechanical approach and predetermination of the Disciplinary Authority to punish the petitioner.

26. Lastly, the counsel for the petitioner placed reliance upon the decision of the Hon’ble Supreme Court in the case of ***State Bank of India and Others vs. D.C. Aggarwal and Another*, (1993) 1 SCC 13**, wherein it was held that the disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplies but not disclosed to him cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself. It was found that CVC recommendation prepared behind the back of the respondent without his participation and its non-supply was violative of procedural safeguard and contrary to fair and just inquiry.



27. It is submitted that in light of the aforesaid arguments, the penalty order dated 27th July 2012 and the Disagreement Note dated 19th January 2012 order are liable to be set aside.

28. *Per Contra*, Mr. Parvinder Chauhan, learned standing counsel appearing on behalf of the respondent/DUSIB vehemently opposed the contentions raised on behalf of the petitioner and submitted that the impugned order passed by the Disciplinary Authority was in accordance with law and had been passed after assigning detailed reasons. It is further submitted that the petitioner did not even allege any kind of procedural lapse or shortcoming in the proceedings taken by the Disciplinary Authority. Therefore, this Court may not interfere in the impugned order.

29. It is vehemently submitted by learned standing counsel appearing on behalf of the respondent that the CVC advice clearly indicates that the same was tendered in the light of the fact that there existed material which *prima facie* indicated commission of misconduct on the part of the petitioner and other officials.

30. It is submitted that the Disciplinary Authority (CEO) had recorded reasons in the note of disagreement and proper opportunity to make submissions was granted to the petitioner. It is submitted that the disagreement clearly shows that only tentative decision was taken by the Disciplinary Authority and it is wrong to say that the Disciplinary Authority had taken a final decision.

31. Learned counsel appearing on behalf of the respondent vehemently submitted that there is no merit in the instant petition and no grounds are



available for interfering in the impugned order passed by the Disciplinary Authority. Hence, it is devoid of any merit and is liable to be dismissed.

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

ANALYSIS AND FINDINGS

33. It is an admitted fact that initially the disciplinary proceedings against the petitioner were dropped by the competent authority on advice of the CVO. It is also an admitted fact that the Inquiry Officer held the inquiry in detail and found that there was no material on record to hold the petitioner guilty for the charges which were levelled against him. However, subsequently the Disciplinary Authority sought advice of the CVC and on its advice the CEO disagreed with the finding of the Inquiry Officer and took a decision that the petitioner was guilty for non-supervision of the subordinates. It is vehemently argued by the learned counsel appearing on behalf of the petitioner that the punishment imposed on the petitioner is based on “no evidence” and that non-furnishing of the recommendation/advice of CVC to the petitioner at pre-decisional stage deprived the petitioner of his valuable right of availing a reasonable opportunity to defend himself.

34. After perusal of the records available, this Court has reached to the conclusion that the CVC advice was not served upon the petitioner. Without going into the factual aspects of the matter, like the discrepancies in the inquiry report, the statements of the witnesses and non-supply of the CVC advice at pre-decisional stage, it is an admitted fact that the Inquiry Officer exonerated the petitioner of all the charges. The



Disciplinary Authority sought the advice of CVC and acted thereupon to finally arrive at a conclusion contrary to that of the Inquiry Officer. The opportunity of representation given to the petitioner was merely at the stage of disapproval by the Disciplinary Authority of the Inquiry Officer's report. No opportunity was made available to the petitioner to respond to the CVC advice.

35. The established legal position, apparent from the judgments quoted above, is that material on the basis of which punishment is imposed on a charged officer must be provided to the charged officer prior to finalizing the punishment in order to implement the principles of natural justice. Not supplying such material would amount to denial of a fair opportunity of being heard. Accordingly, in the present case, non-availability of CVC advice has resulted in denying the petitioner an opportunity to make an effective representation in his defence.

36. The Hon'ble Supreme Court in ***Deputy General Manager (Appellate Authority) & Others. v. Ajai Kumar Srivastava, 2021 SCC OnLine SC 4***, held as under:

“25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.”



37. Further, in the same judgement the Hon'ble Apex Court *qua* the duty of Disciplinary Authority held as under:

“26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.”

38. In case of **Ram Kishan vs. Union of India, (1995) 6 SCC 157**, the Hon'ble Supreme Court held as under:-

“10. The purpose of the show-cause notice, in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect....”



CONCLUSION

39. Keeping in view the facts and circumstances, arguments advanced and law settled as well as the discussion in the foregoing paragraphs, it is found that the penalty order as well as the Disagreement Note were passed in violation of principles of natural justice and hence, are liable to be set aside.

40. Accordingly, the order of the Disciplinary Authority dated 27th July, 2012 and the Disagreement Note dated 19th January, 2012 are hereby set aside. The concerned authority is directed to calculate the arrears of the increments withheld by virtue of order dated 27th July 2012 and grant the petitioner the arrears of the increment due to him, along with Simple Interest @ 6%. The concerned authority of the respondent is directed to release the same forthwith in accordance with due process.

41. With the aforesaid directions, the instant petition is allowed.

42. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JULY 22, 2022
dy/ms