

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. No. 8916 of 2019

With

I.A. No. CAN 1 of 2020

Rajeev Varma

vs.

The Balmar Lawrie & Co. Ltd. & ors.

For the Petitioner : Mr. Soumya Majumdar,
Mr. Kushal Chatterjee,
Mr. Debabrata Roy
.....advocates

For the Respondents : Ms. Sonal Shah,
Mr. Kushagra Shah
.....advocates

Heard on : 09.11.2022

Judgment on : 24.01.2023

Hiranmay Bhattacharyya, J.:-

1. The petitioner has challenged the penalty order dated 03.05.2018 and the appellate order dated 06.03.2019 and has prayed for quashing of the said orders in this writ petition.
2. The petitioner was an employee of Balmer Lawrie & Co. Ltd. (for short "BL") While he was performing his duties as AVP "Finance" in SBU-Travel & Vacation at Mumbai a memorandum dated

06.05.2015 was served upon him along with an article of charge. The allegation against the petitioner was that while he was functioning as AVP(F) in SBU-Travel & Vacation at Mumbai, he has finalised accounts in such manner that it resulted in release of excess payment amounting to Rs. 409.94 Lakhs to M/s. Vacations Exotica Destinations Private Limited (for short "VEDPL"). It was alleged that the writ petitioner has committed an act which is unbecoming of an executive thereby contravening provisions of misconduct under Rule 26(ix) and 26(xx) of the Conduct, Discipline and Review Rules.

3. The Inquiry Officer submitted his report dated 03.06.2016 by observing that the petitioner was not guilty of the charges leveled against him. On 27.02.2018 the Director (Finance) sought for some clarifications from the petitioner which were duly replied to by the petitioner on 06.03.2018. Thereafter, the Director (Finance) & Disciplinary Authority issued a note of disagreement with the conclusion of the Inquiry Officer by issuing a letter dated 11.04.2018 and asking the petitioner to submit his reply/representation against such note of disagreement. Petitioner duly submitted his reply/representation against the note of disagreement of the disciplinary authority by a representation dated 25.04.2018. Thereafter, the disciplinary authority passed the penalty order dated 03.05.2018. Petitioner filed a review petition/appeal under Rule 37(2) of the Balmer Lawrie & Co. Ltd. CDR Rules of executives on 31.05.2018 against the penalty order dated

03.05.2018. The appellate/ review authority by its order dated 06.03.2019 affirmed findings of the disciplinary authority.

4. The penalty order dated 03.05.2018 and the appellate/ review order dated 06.03.2019 are under challenge in this writ petition.
5. Mr. Majumdar learned advocate for the writ petitioner submitted that the Inquiry Officer after considering the materials on record including the evidence of the parties passed an order assigning cogent reasons in support of his findings that the petitioner is not guilty of the charges leveled against him. He further submitted that the petitioner made a detailed representation against note of disagreement by the disciplinary authority with the findings and observations of the Inquiry Officer but the disciplinary authority while passing the penalty order did not deal with the submissions made by the writ petitioner in reply to such note of disagreement. He submitted that the order of the disciplinary authority is a non speaking one and as such the same is liable to be set aside and quashed. Mr. Majumdar relied upon the decision of the Hon'ble Supreme Court of India in the case of ***Punjab National Bank and ors. vs. Kunj Behari Misra*** reported at ***(1998) 7 SCC 84*** in support of his submissions that in case the disciplinary authority chooses to disagree with the conclusions arrived at by the Inquiry Officer, the disciplinary authority could not have come to adverse conclusions without giving the delinquent an opportunity of being heard.

6. Per contra, Ms. Shah, learned counsel representing the respondents contended that the order of the disciplinary authority as well as the review authority is a well reasoned one. She further submitted that the disciplinary authority furnished a detailed note of disagreement after considering the materials on record and the order of the Inquiry Officer. She further submitted that since the note of disagreement was issued after considering the materials on record and the petitioner could not rebut such note of disagreement, the disciplinary authority was justified in passing the penalty order. She contended that the review/ appellate authority also passed the order dated 06.03.2019 after considering the submissions made by the petitioner and the points raised in the review petition. According to Ms. Shah, petitioner was given adequate opportunity to defend himself at every stage of the disciplinary proceeding and therefore, the principles of natural justice cannot be said to have been violated in the instant case. She concluded by placing reliance upon a decision of the Hon'ble Supreme Court of India in the case of ***Union of India and ors. vs. Dalbir Singh*** reported at **(2021) 11 SCC 321** in support of her submission that in disciplinary proceedings the High Court cannot act as a court of appeal and the scope of interference with the orders passed in disciplinary proceedings is very much limited.
7. Heard the learned advocates for the parties and perused the materials placed.

8. Record reveals that the Inquiry Officer after taking into consideration the evidences adduced by the respective parties arrived at a conclusion that the petitioner is not guilty of charges leveled against him. The disciplinary authority by an order dated 27.02.2018 sought for some clarification from the petitioner and the petitioner submitted a representation dated 05.03.2018 by replying to the queries by giving reference to various documents which were marked as exhibits. Thereafter, the disciplinary authority issued a note of disagreement with the findings of the Inquiry Officer. The petitioner by a letter dated 25.04.2018 replied to the note of disagreement. After going through the representation dated 25.04.2018 this Court finds that the same is a detailed one dealing with each and every point raised in the note of disagreement. The said representation runs to ten pages.
9. The disciplinary authority in its penalty order dated 03.05.2018 held that the representation dated 25.04.2018 is not acceptable. The observation of the disciplinary authority in its penalty order dated 03.05.2018 with regard to the contentions in the representation of the petitioner against the note of disagreement is as follows:-

“8. After carefully going through the representation of Shri Rajeev Varma vide letter dated 25/04/2018, I find the representation not acceptable. I have also gone through the documents and evidence placed on record including deposition by witnesses and conclusion of the Inquiry Officer.

I also find that he was given full opportunity to defend his case and to lead his witnesses, if any during the Inquiry proceedings.

9. I am of the conclusion that the observations of the Inquiry Officer as per para 4.0 of the report and the conclusion as per para 5.0 are not fully based on the facts, documents and without considering the substantiality of roles and responsibilities of Shri Rajeev Varma, the Charge Sheeted Executive, in his capacity as In-charge of Finance & Accounts of Vacation Exotica Business.”

10. It is well settled that the Inquiry Officer's report is not binding upon the disciplinary authority and it is open to the disciplinary authority to arrive at its own conclusion on the charges leveled against the delinquent. Three Hon'ble Judges of the Supreme Court of India in the case of **Kunj Behari Misra** (supra) held that in case the disciplinary authority disagrees with the conclusions arrived at by the Inquiry Officer the disciplinary authority is required to give an opportunity to the delinquent to submit a representation against the reasons for disagreement and the disciplinary authority is to take a decision after considering the evidence, the report of the Inquiry Officer and the representation of the employee.

11. The purpose behind giving an opportunity to make a representation against note of disagreement is to allow the petitioner an opportunity to prove that the tentative findings recorded in the note of disagreement cannot be sustained. When the petitioner has submitted a detailed representation dealing with each and every point contained in the note of disagreement issued

by the disciplinary authority, the minimum that was expected from the disciplinary authority was that such authority would deal with the submissions made by the petitioner against the points raised in the note of disagreement and pass a reasoned order.

12. A party affected by a decision is entitled to know the reason for which the submissions made by the petitioner in response to the points raised in the note of disagreement was not accepted. Merely, recording that after going through the representation the same is found to be not acceptable cannot be said to satisfy the test of a reasoned order.

13. The Hon'ble Supreme Court in the case of **Cyril Lasrado (dead) by Lrs. and ors. vs. Juliana Maria Lasrado and Anr.** reported at **(2004) 7 SCC 431** held that one of the salutary requirements of natural justice is spelling out reasons for the order made. The Hon'ble Supreme Court in the said reports held thus-

"12. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engg. Union observed : (All ER p.1154h) "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the

power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

14. This Court accordingly holds that failure to record reason while passing the penalty order by the disciplinary authority amounts to violation of the principles of natural justice.

15. The appellate authority, however, overlooked such aspect of the matter and mechanically affirmed the order of the disciplinary authority by observing that the primary charge of negligence in performance of duty is evident from the records.

16. The Hon'ble Supreme Court of India in the case of *Dalbir Singh* (supra) after taking into consideration various decisions of the Hon'ble Supreme Court held that the High Court in exercise of its powers under Article 226/227 of the Constitution of India, while dealing with orders passed in disciplinary proceedings cannot act as a second court of first appeal. It was further held therein that the writ court shall not venture into reappreciation of evidence. However, in paragraph 21 of the said reports it was held that the writ court can only see amongst others whether there is violation of the principles of natural justice in conducting the proceedings.

17. This Court is, therefore, of the considered view that the order of the disciplinary authority is an unreasoned and cryptic one and for such reason this Court is inclined to grant relief to the petitioner. However, taking into consideration the fact that the order of the disciplinary authority was passed sometimes in the year 2018 and the writ petitioner had filed a review petition taking all points including the violation of the principles of natural justice, this Court feels that the interest of justice would be subserved if the review authority is directed to consider the review petition dated 04.06.2018 afresh in the light of the observations contained in this order and to pass a reasoned order dealing with the points raised by the petitioner more particularly the reply of the petitioner to the note of disagreement of the disciplinary authority.

18. For the reasons as aforesaid WPA No. 8916 of 2019 is allowed in part by setting aside the review order dated 06.03.2019 and by directing the review authority to reconsider the review application dated 04.06.2018 upon giving an opportunity of hearing to the petitioner and by passing a reasoned order which shall be communicated to the petitioner immediately thereafter. The entire exercise shall be completed within a period of four weeks from the date of communication of this order. The application stands disposed of accordingly.

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

20. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)