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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order delivered on: 16.01.2023

+ W.P.(C) 462/2023 & CM APPL. 1795/2023, CM APPL. 1796/2023
CM APPL. 1797/2023 and CM APPL. 1798/2023
O.P. GAUD Petitioner

Through: Mr. Medhanshu Tripathi, Advocate.

versus

DELHI JAL BOARD Respondent

Through: Ms. Sangeeta Bharti, Standing
Counsel, DJB with Ms. Pepakayala
Geetanjali and Ms. Malvi Balyan,
Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. Writ Petition under Article 226 read with Article 227 of the Constitution of India has been preferred on behalf of the petitioner with the following prayers:

a) *Quash and set aside the impugned order dated 12.10.2022 passed by Hon'ble Principal Bench of Central Administrative Tribunal, New Delhi:*

b) *Quash and set aside the impugned orders dated 27.01.2014 & 22.04.2014 of appointment of IO/PO by the Respondent:*

- c) *Quash and set aside the Impugned Charge-Memo dated 04.09.2013 and subsequent Inquiry Proceedings/Findings of Inquiry Officer & orders of suspension of proceedings in the interest of justice;*
- d) *Direct the respondent to implement by issuing immediately the order dated 31.10.2013 of exoneration of the Petitioner from all the charges recorded by the then Disciplinary Authority;*
- e) *Direct the respondent to release the pending salaries of the period of medical leave between 17.08.2012 to 05.09.2013 alongwith 18% interest on total amount of pending salaries and all other consequential benefits in accordance with law; and/ or*
- f) *Restrain the Respondent from issuing any adverse order other than the order of exoneration dated 31.10.2013 of the Applicant from all the charges recorded by the then Disciplinary Authority.*
- g) *Call the complete record/case file of the OA 2422/2022 from the court no 2, Honourable Principal Bench, Central Administrative Tribunal, New Delhi.*
- h) *Pass any such order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."*

2(i). In brief, as per the case of the petitioner, he was appointed as Junior Engineer (JE) in the year 1991 with the respondent- Delhi Jal Board (DJB) and subsequently selected as Assistant Engineer (AE) in DJB through direct recruitment in the year 1999. Further, he was entrusted with the charge of Executive Engineer (Civil) in February, 2006. A charge memo was issued to the petitioner alleging unauthorized absence from duty w.e.f. 17.08.2012 to 05.09.2013. The charge memo was duly replied by the petitioner vide letter/reply dated 18.09.2013 along with copies of medical-cum-fitness certificate for availing the leave during 17.08.2012 to 05.09.2013.

(ii) Shri Hozer Lollen, the then Disciplinary Authority/Member(A) by exercising powers conferred on him under Rule 14(2), (4) & (5a) of CCS(CCA) Rules 1965 read with Govt, of India's decision Para 1 (a) & (b)

of Govt, of India, MHA OM No. 11012/2/79-Estt.(A) dated 12.03.1981 and OM No. 11012/8/82-Estt.(A) dated the 08.12.1982, exonerated the petitioner from all the charges considering the written statement of defence vide noting dated 31.10.1993 recorded in the office file. However, despite an application filed by the petitioner for exoneration on 10.03.2014, departmental proceedings were initiated against him.

(iii) Further, the Disciplinary Authority passed an order as communicated on 11.11.2014 that since the IO/PO has already been appointed in this case, there is no scope for the Disciplinary Authority under any Rule to intervene at this stage. Thereafter, a fresh request for implementation of order of exoneration was made by the petitioner vide representation dated 19.11.2014 to the CEO, DJB. Legal advice was also taken by DJB on the said application/representation dated 19.11.2014 wherein the Legal Adviser opined that the Disciplinary Authority can discharge the charged officer after considering his written statement of defence, if he finds the petitioner to be not at fault.

(iv) The Inquiry Officer submitted his report dated 16.04.2016 to the Member (A), DJB which was put up on 18.07.2016 before the Disciplinary Authority for decision. The inquiry report was thereafter supplied to the petitioner by the respondent-department on 19.08.2016 against which a request was again made by the petitioner to implement the order dated 13.10.2013 whereby the petitioner was exonerated.

(v) Thereafter, on 12.06.2017, the Disciplinary Authority decided to keep the proceedings under suspension since the petitioner had already been

dismissed from service on 22.11.2016 in the case of another charge memo dated 22.02.2014 relating to submission of fake ST certificate.

(vi) The petitioner again represented before the respondent-department on 27.09.2018 and 12.11.2021 for exoneration from all the charges dated 31.10.2013. However, the Disciplinary Authority denied to interfere in the decision of suspension of disciplinary proceedings in the case on 18.01.2022 whereupon an OA No.2422/2022 was preferred on behalf of the petitioner before the Central Administrative Tribunal, Principal Bench, New Delhi.

(vii) The said OA was dismissed by the Tribunal vide the impugned order dated 12.10.2022 leading to filing of the present writ petition in this Court.

3. The petitioner is aggrieved by the fact that despite noting dated 31.10.2013 by the Disciplinary Authority/Member (A) to drop the departmental proceedings against the petitioner for unauthorized absence, the disciplinary proceedings were continued on a false premise that since the charged officer has denied all the charges, the inquiry is mandatory. The contentions raised before the Tribunal have been reiterated and it is submitted that the decision taken on office file vide noting dated 31.10.2013 by the Disciplinary Authority could not have been reviewed and a right accrued in favour of the petitioner. The conduct of the subsequent inquiry proceedings is contended to be vitiated. Reference is also made to Rule at Para-22.1, Chapter-XIII, Disciplinary Proceedings-IV (Miscellaneous) of Vigilance Manual Volume-1, 5th Edition 1991 (CVC, Govt. of India).

4. On the other hand, it is submitted by the learned counsel for the respondent-DJB that the disciplinary proceedings have been continued against the petitioner in accordance with law and no communication/order

was issued to the petitioner with reference to noting dated 31.10.2013 by the Disciplinary Authority. Further, the Disciplinary Authority on being pointed out with the correct legal position that inquiry is mandatory since charge is not accepted by the charged officer (C.O.), decided to continue with the disciplinary proceedings vide noting dated 24.01.2014. It is further urged that the file notings have to be read in continuity and merely on the basis of noting dated 31.10.2013 without being formally communicated to the petitioner by appropriate order, cannot be deemed to conclude that the proceedings had been ordered to be dropped since the said noting was never acted upon, implemented or communicated to the petitioner. Further, the inquiry was conducted in accordance with noting dated 24.01.2014 in which the petitioner duly participated and inquiry report was submitted whereby the charge No.1 was duly proved.

5. It may be noticed that the Tribunal dismissed the OA filed on behalf of the petitioner primarily observing that pursuant to charge memo issued way back in the year 2013, the inquiry had already been completed and IO had submitted the report. As such, the prayer to quash and set aside the order appointing Inquiry Officer is meaningless. Further, the charge memo could not be gone into at this stage, as the petitioner/applicant himself had participated in detailed inquiry and the Inquiry Officer had already submitted his report. It was further observed by the Tribunal that the so-called order dated 31.10.2013 vide which the petitioner/applicant claims to have been exonerated had not been produced and only reference had been made to notings in internal file which had not been filed on record. It was further noticed that the order dated 18.01.2022 whereby the disciplinary proceedings

had been kept under suspension was also not challenged by the petitioner and as such the OA was found to be devoid of any merits.

6. Having heard the learned counsel for the petitioner and respondents, at the outset, it may be noticed that as per the case of the petitioner, the charge memo was duly replied by the petitioner vide letter dated 18.09.2013 along with copies of the medical-cum-fitness certificate with the request for granting personal hearing to the petitioner for placing his defence in accordance with CCS(CCA) Rules, 1965. Further, Sh. Hozer Lollen, the then Member (A)/DA exonerated the petitioner by directing dropping of the charge of unauthorized absence vide noting dated 31.10.2013 recorded in the official file and may be beneficially reproduced for reference:

"2. After hearing Sh. O.P. Gaud, AE and after having taken into account all the circumstances and facts of the matter, I am inclined to conclude that, Sh. O. P. Gaud, AE complied with all the directions of administration and followed the procedures regarding availing of leave by submitting leave application in tune with required medical documents. He seems to have not committed anything wrong warranting disciplinary actions. However, it is also observed that he should not have continued his duty in the capacity of EE (C) at the same place after his reversion to AE without any order from competent authority. This was a mistake on his part.

3. In view of above, I consider it appropriate to order for dropping of the departmental proceedings against Sh. O. P. Gaud AE, because he was not on unauthorized absence. He had duly applied for leave and he was undergoing medical treatment during the said period. But for continuing to work as EE (C) even after reversion to AE, he should be reprimanded by issuing a warning letter appropriately."

7. However, it is pertinent to note that the said noting dated 31.10.2013 was neither formally communicated to the petitioner nor implemented in the proceedings.

Rather, the aforesaid noting dated 31.10.2013 marked by the DA/Member to the Joint Director (Vigilance) was further marked to CEO, DJB through CVO, DJB and the observations of CVO may be reproduced:

“ 35/N

May like to see the decision of Member(A) in capacity of Disciplinary Authority.

As per Rule 14 CCS (CCA) Rules, if the charges are not accepted inquiry is mandatory. The points raised though not correct, can be valued only after the inquiry. Once he reported for the duty and received orders for handing over the charge and fresh posting, he should have taken permission for leave from the officer where he got posted by new order. Even at the earlier posting his leave was not granted hence let the conclusion be decided by the inquiry. May kindly pass suitable direction. Brief summary enclosed.

*Signature of A.K. Ambastha, IFS,
CVO, dt. 27.11.2013*

Marked CEO”

8. The issue was finally considered by the CEO, DJB vide noting dated 09.01.2014 whereby it was observed:

“Ref note pre-page, the disciplinary authority may be requested to follow the rule as detailed at 'X' at 32/N & 'A' at 33/ N.

Vijay Kumar (IAS), CEO, DJB/09.01.2014”

Accordingly, the PO and IO were approved for holding the inquiry against the petitioner as approved by the Disciplinary Authority vide noting dated 24.01.2014.

9. It may be observed that for the reasons best known, the petitioner did not challenge the continuation of the disciplinary proceedings against him as approved by the Disciplinary Authority but only preferred the OA before the CAT in the year 2022 after the inquiry proceedings were completed. No right

can be presumed to have accrued to the petitioner since the aforesaid noting dated 31.10.2013 was merely an internal file noting and was neither communicated to the petitioner nor implemented by the Disciplinary Authority. Further, the same had been re-considered by the Disciplinary Authority vide noting dated 24.01.2014 after considering the rule position apprised on record. It may also be noticed that the observations made by the Disciplinary Authority vide noting dated 31.10.2013, directing for reprimanding the petitioner by issuing a warning letter for continuing the work as Executive Engineer (Civil) even after reversion to Assistant Engineer is also in violation of rules as no such punishment could have been proposed without holding an inquiry in accordance with law, since the memorandum of charge had already been issued.

10. Reference made by the petitioner to Rule at Para-22.1, Chapter-XIII, Disciplinary Proceedings-IV (Miscellaneous) of Vigilance Manual Volume-1, 5th Edition 1991 (CVC, Govt. of India) also does not appear to further the case of the petitioner in any manner since it relates to a decision recorded by the Disciplinary Authority at the stage of conclusion of the departmental proceedings (*emphasis made*).

The disciplinary proceedings in the present case were still at the initial stage and it cannot be assumed that the departmental proceedings stood concluded at the aforesaid stage. Even the decision dated 31.10.2013 reflected by way of internal noting was never implemented and was re-considered by the Disciplinary Authority as noticed vide noting dated 24.01.2014.

11. It is well settled that a quasi judicial authority will become *functus officio* only when its order is pronounced or published/notified or communicated to the party concerned. If an order is made in an office noting in a file but is neither pronounced, published nor communicated, nothing prevents the Authority from correcting or reconsidering it for valid reasons. A right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right. Reliance in this regard may be placed upon ***State Bank of India and Ors. Vs. S.N. Goyal***, MANU/SC/7605/2008.

12. It may also be observed that a noting recorded in the file merely represents an opinion and cannot be deemed to culminate into an order affecting the rights of parties unless communicated to parties concerned. A noting or decision recorded in the file can always be reviewed/reversed and merely on the basis of a noting, it cannot be presumed that an order had been passed until and unless the same is formally communicated to the concerned individuals in accordance with law. It may also be difficult to accept that the disciplinary authority/competent authority was bound by what was recorded in the file though the legality of the same was questioned before the Chief Executive Officer, DJB. The crux of the issue is that the order needs to be formally passed and communicated to the charged officer, before the department can be said to be bound by it. A mere noting till its communication, cannot be regarded anything more than provisional in character. From the notings, it is clear that note dated 31.10.2013 was reconsidered/reviewed, considering the rule position in terms of note dated 24.01.2014 whereby the IO and PO were directed to be appointed for the

purpose of conduct of an inquiry. Even otherwise, it may be observed that internal notings made by the concerned officers are for the benefit of the final decision making authority and are not meant for outside exposure. The noting culminates in an executable order affecting the rights of the parties when it is finally approved and communicated.

13. The contention put forward by the petitioner that the aforesaid noting dated 31.10.2013 culminated into final order which was bound to be implemented, is devoid of merits as no final order was passed and communicated to the petitioner. Further, the said noting was re-considered by the Disciplinary Authority and the inquiry proceedings were directed to be proceeded with.

In view of above, we do not find any infirmity in the reasons recorded by the Tribunal dismissing the OA at the stage of admission itself.

For the reasons stated hereinabove, the writ petition is dismissed. Pending applications, if any, also stand disposed of. No order as to costs.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JANUARY 16, 2023/dc/sd