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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 10.05.2023

Judgment delivered on: 02.06.2023

+ W.P.(C) 11031/2022, CM APPL. 32309/2022 & 32310/2022

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. N.K. Aggarwal, Sr. Panel,
Counsel.

versus

SURENDER KUMAR

..... Respondent

Through: Mr. Nilansh Gaur, Advocate.

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.

1. The challenge in this writ petition is to an order dated January 12, 2022, passed by Central Administrative Tribunal (hereinafter, referred to as Tribunal) in O.A. No. 4280/2018, whereby the O.A. filed by the respondent was partly allowed in the following terms:

“20. In the aforesaid facts and circumstances, we are of the considered view that OA deserves to be partly allowed and the same is accordingly partly allowed with the following orders:-

(i) The impugned inquiry reported dated 22.12.2017 (Annexure A-2), penalty order dated 17.1.2018 (Annexure A-3) passed by the Disciplinary Authority and the Appellate Authority's order dated 24.10.2018 (Annexure A -4) are set aside;

(ii) The respondents are directed to re-instate the applicant forthwith;



(iii) *The applicant shall be entitled for consequential benefits in accordance with the relevant rules and law on the subject and the respondents shall pass an appropriate speaking order in this regard within four weeks of receipt of a copy of this Order; and*
(iv) *The respondents shall be at liberty to proceed in the matter, if they so decide, however, in accordance with law.”*

2. In brief, the respondent was appointed as Caretaker in Safdarjung Hospital on July 25, 1986, as per Recruitment Rules on the basis of matriculation certificate i.e. Higher Secondary School Examination 1982 from the Board of Secondary Education, Madhya Pradesh, Bhopal. Respondent was promoted in the course of his service to the post of Chief Sanitary Superintendent on January 01, 2000. Vide memorandum dated December 26, 2012, Central Vigilance Commission forwarded a complaint dated August 13, 2012, received by CVC against respondent Surender Kumar and one Shri O.P. Sharma, DDA, including disappearance of respondent's educational qualification certificate of eligibility. It was informed that the complaint is not an anonymous one and had been forwarded under “Public Interest Disclosure Resolution” keeping the identity of the complaint secret. Accordingly, memorandum was issued to Vigilance Officer, Safdarjung Hospital for taking necessary action.

3. Consequently, respondent was directed to produce original certificate of his educational qualification before the Section Incharge of Admn. II. In response to reminder dated April 12, 2013, issued to the respondent, it was informed that the information has already been given to the Vigilance Officer. The necessary documents were stated to have been submitted to the



Administrative Section from time to time in original but the same were not returned to the individual concerned. However, respondent failed to file any proof of submission of original certificates. An NCR No. 180/2014 was also furnished by the respondent.

4. In response to the letter issued by the Administrative Section for verification of genuineness of certificates pertaining to Sanitary Inspector Diploma of the year 1984 as well as Senior School Examination Certificate 1984 issued vide S. No. DSSC/84 001500, Roll No.301991 dated June 15, 1984, the verification reports dated July 02, 2015 and July 30, 2015 were respectively received.

Also, letter dated June 24, 2015, was sent to Director/Secretary, Board of Secondary Education, Madhya Pradesh, Bhopal regarding verification of Mark Sheet of Higher Secondary School submitted by the respondent bearing certificate 'S No.236825 Roll No.1557766' in the name of Surender Kumar S/o Shri Ishwar Singh.

5. In response, letters dated December 18, 2015 and June 25, 2016, were received from the Office of Board of Secondary Education, Madhya Pradesh, Bhopal, wherein it was stated that upon comparison, discrepancies/variations have been observed qua the certificate forwarded by the department vis-a-vis record of the Board. It was therein mentioned that as per record of the Board, Shri Surender Kumar S/o Shri Ishwar Singh having Roll No.157766, and Mark Sheet serial No.054283 appeared for Higher Secondary Examination in



1982 from Centre No.1316 and had failed in the said examination having scored 256 marks. However, as per copy received from the department/petitioners, the serial number of the Mark Sheet is 236825, Centre No.1304, marks obtained 577. Thereafter, vide communication dated March 31, 2016 the petitioner department further sought clarification from the Board since the serial number of the Mark Sheet forwarded by the department is 236925 but the same was reflected by the Board as '236825' in their earlier communication. In response to the same, it was clarified by the Board vide letter dated June 25, 2016 that the department had forwarded Mark Sheet bearing serial No.236825 for verification which was correctly reflected in the letter of the Board dated December 18, 2015.

Accordingly, the case of the petitioners is that the respondent had failed in the Higher Secondary Examination and had got the Job in Safdarjung Hospital by forging the results and marks in the Mark Sheet No.236825 submitted with the department.

6. The respondent was accordingly directed to give an explanation vide memorandum dated August 02, 2016, and as to why necessary disciplinary action should not be initiated against him. Respondent did not initially claim that the aforesaid certificate bearing S. No.236825 does not belong to him but subsequently claimed that Mark Sheet of serial No.236925 was forwarded by the department.

7. An FIR No. 52/2017, under Sections 420/478/471 IPC was also



lodged against the respondent by the Administrative and Vigilance Section of the petitioners at Safdarjung Enclave Police Station. Simultaneously, the departmental proceedings were also initiated after approval of Medical Superintendent. The chargesheet was issued to the respondent vide memorandum dated May 22, 2017, in response to which the respondent denied the charges.

8. The Inquiry Officer submitted an inquiry report dated December 22, 2017, concluding that the respondent had submitted a copy of fake and forged Mark Sheet of Higher Secondary Examination 1982 and tampered with the actual Mark Sheet issued to him by the Board.

9. The inquiry report was duly supplied to the respondent and after considering representation made by the respondent, the Disciplinary Authority imposed the penalty of “Dismissal from Service” under Rule 11 (ix) CCS (CCA) Rules, 1965 vide order dated January 17, 2018.

10. An appeal was preferred by the respondent under Rule 27 of the CCS (CCA) Rules, 1965, before the Appellate Authority on January 19, 2018. Since the appeal was not disposed of, directions were issued in O.A. No.2211/2018 preferred by respondent, directing the Appellate Authority to pass a final order within three months. Thereafter, appeal was dismissed vide order dated October 24, 2018.

11. Aggrieved against the same, respondent preferred the O.A. 4280/2018 before the Tribunal, thereby seeking following reliefs:-



“8. **RELIEF:**

In view of the submissions made in the foregoing paras this Hon'ble Tribunal may be pleased to:

*8.1 Quash and set aside suspension order at **Annexure A-1** and direct the respondents to treat the suspension from 3.10.2017 till 17.1.2018 as spent on duty for all purposes including pay and allowances; and*

*8.2 To set aside the inquiry report at **Annexure A-2** as perverse; and*

*8.3 To set aside the dismissal order at **Annexure A-3** and the appellate order at **Annexure A-4** with further directions to the respondents to reinstate the applicant in service w.e.f. 17.1.2018 with all consequential benefits including back wages, seniority and promotion etc.; and*

8.4 Cost of this application may be directed in favour of the applicant and against the respondents; and

8.5 Any other relief which this Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case.”

12. The O.A. was partly allowed vide order dated January 12, 2022 by the Tribunal, as noticed above, setting aside the inquiry report, penalty order passed by the Disciplinary Authority as upheld by the Appellate Authority and also directed to reinstate the respondent.

13. Learned counsel for the petitioners assails the order passed by the Tribunal and urged that the verification proceedings were commenced only on specific complaint received from the Central Vigilance Commission whereby it was informed that the complaint has been made under the Public Interest Disclosure Resolution. The respondent failed to produce the original certification of his educational qualification despite Office Memorandum dated September 29, 2012, reminder dated November 24, 2012 and November 18, 2012. Further, in response to reminder dated April 12, 2013 respondent informed that information had already been given to Vigilance Officer and the necessary documents were submitted to Admn. Section from



time to time in original, but the same were not returned. The respondent failed to file any proof of submission of original certificate initially and, thereafter, forwarded a cryptic reply dated October 21, 2013 along with copies of unsolicited Office Memorandums. Also, NCR No.180/2014 was finally given about missing/lost certificates. It is urged that the conduct of the respondent clearly reflects that he evaded to furnish the original certificates for verification.

In the aforesaid circumstances, a letter dated June 24, 2015 was issued to Director/Secretary, Board of Secondary Education, Madhya Pradesh, Bhopal for verification of photocopy of Mark Sheet of Higher Secondary Examination furnished by the respondent bearing S No.236825 Roll No.157766 issued in the name of Surender Kumar son of Ishwar Singh. A letter dated December 18, 2015 and June 25, 2016 was received from the office of Board of Secondary Education, Madhya Pradesh whereby it was informed that upon comparison, various discrepancies/variations have been observed. It was therein mentioned that as per record of the Board, Shri Surrender Kumar son of Shri Ishwar Singh having Roll No.157766 and Mark Sheet serial no. 054283 appeared in Higher Secondary Examination in Centre No.1316 and had failed in the said examination having scored 256 marks. As such, it is contended that respondent submitted forged Mark Sheet as evident from the verification report received from the concerned Board. It is pointed out that at the aforesaid stage, the respondent never pleaded that Certificate No.236825 does not belong to him and his certificate



bears serial No.236925 which has been claimed at a belated stage. An FIR in this regard is also stated to have been lodged against the respondent by the department and was also placed under suspension in exercise of powers under Rule 10(1) of CCS (CCA) Rules, 1965. The defence of respondent of possibility of multiple candidates with same name is stated to be baseless as same Roll Number cannot be issued to different candidates. Further, even if the name and parentage could be incidentally similar, the date of birth of the candidate i.e. November 04, 1963 could not have been the same. Also, the defence of the respondent regarding submission of original documents is stated to have been concocted as it was revealed in the police investigation that the top side of the document bears no.E6 dated January 01, 2009 while different 'Code' was being used by the diary and dispatch section at the relevant time. The Inquiry Officer is stated to have correctly concluded regarding submission of fake and forged Mark Sheet by the respondent vide Inquiry Report dated December 22, 2017 and a copy of the same was also supplied to the respondent for representation, if any. The appeal preferred by the respondent before the Appellate Authority, DGHS is also stated to have been found without merits and was dismissed vide order dated October 24, 2018.

It is further pointed out that the AO had been examined instead of AAO of Admn. Section as mentioned in the charge sheet for production of relevant record since the AAO stood transferred from the concerned Section. The witness is stated to have been deputed after the approval of the



Disciplinary Authority/Medical Superintendent. As such, it is claimed that there was no irregularity in production of said witness.

Reliance is also placed upon the judgment in ***Pravin Kumar v. Union of India, (2020) 9 SCC 471.***

14. On the other hand, learned counsel for respondent justifies the order passed by the Tribunal. It is submitted that the Inquiry Officer did not consider the contentions raised by the respondent and the order passed by the Disciplinary Authority is based on suspicion, surmises and without any conclusive evidence of forgery. The report from the concerned Board relied by the petitioner is stated to have not been validly proved and the proceedings are stated to have been initiated on a false and fabricated complaint. Reliance is further placed upon ***Roop Singh Negi v. Punjab National Bank, (2009) 1 SCC L&S 398 and State of U.P. v. Saroj Kumar Sinha, 2010 (3) SCALE 42.*** The verification report forwarded by the Board is stated to pertain to some other candidate with similar name and parentage and reflected a different serial number along with Centre Number. The contentions raised before the Tribunal have been further reiterated.

15. We have given considered thought to the contentions raised.

The scope of the powers of judicial review in disciplinary proceedings as summarized in ***Union of India v. P. Gunasekaran, AIR 2015 SC 545*** may be recapitulated:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the



disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate 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.”

16. It may also be noticed that judicial review seeks to ensure fairness in treatment and fairness of conclusion and ought to be used to correct manifest errors of law or procedure, which might result in significant injustice or in case of bias or gross unreasonableness of outcome as held in **Pravin Kumar v. Union of India & Others, (2020) 9 SCC 471**. Reference therein was also made to principles elucidated in **B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749** in this regard and may be beneficially referred:-

“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 concerned is 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 therefrom, 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 reappreciate 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 reappraise 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. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR pp. 728-29 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.”

Thus, judicial review is a review of judicial making process and not merits of the decision itself.

17. Reverting back to the facts of the present case, the departmental inquiry has been challenged by the respondent/delinquent official before the Tribunal primarily on the ground of violation of principles of natural justice, on account of failure to examine the relevant witnesses to prove the documents and follow the procedure as contemplated in Rule 14 of CCS (CCA) Rules. Based upon the same, it is contended that the respondent stood prejudiced.

18. Perusal of impugned order dated January 12, 2022 passed by the Tribunal reveals that the Inquiry Report dated December 22, 2017, penalty order dated January 17, 2018 passed by the Disciplinary Authority and order dated October 24, 2018 passed by the Appellate Authority have been set



aside by the Tribunal upholding the contentions raised on behalf of the respondent that the inquiry has been conducted in violation of provisions of Rule 14 of CCS (CCA) Rules and orders were passed by the Disciplinary Authority as well as Appellate Authority in a mechanical manner, without recording any reasons and/or dealing with the grounds taken by the respondent.

19. Briefly, the grounds/reasons recorded in para 13 and 14 of order dated January 12, 2022, on which the inquiry proceedings have been set aside by the Tribunal may be underlined as under:-

"13. On perusal of the Inquiry Officer's report dated 22.12.2017 (Annexure A-2), it is evident that even before prosecution could lead their evidence on 6.10.2017, questions were put to the applicant in the manner as if the applicant was required to prove his innocence. In the last line of the concluding para of the proceedings held on 6.10.2017, the IO has given a finding that "The statement does not seem to be logical and true." From the inquiry proceedings as held on 9.11.2017 and recorded in the impugned report of the IO, it is evident that Defence Assistant of the applicant has raised the objection for nonappearance of the prosecution witness. It is further evident from the impugned IO's report that on 23.11.2017, one Mr. Ram Niwas, Administrative Officer, had appeared as a prosecution witness. However, in the list of witnesses annexed with the charge memo AAO was mentioned as a prosecution witness. The change of witness, though prosecution produced the file to show authorisation in favour of Mr. Ram Niwas as a prosecution witness, however, the fact remains that no formal order to this effect was found to have been issued by the Disciplinary Authority or found to have been communicated to the applicant in this regard. However, no remedial action was taken by the respondents in this regard. The prosecution witness, namely, Mr. Ram Niwas in his cross examination has accepted that verification of the documents after applicant's appointment under the respondents have been done but he could not remember the exact date thereof. It was also admitted by the said witness, namely, Mr. Ram Niwas that as per the records, the original documents, Mark Sheet of Higher



secondary examination was verified from the original by the hospital authority and found satisfactory. From the contents of hearing of inquiry proceedings dated 04.12.2017, as recorded in the impugned IO's report, it is evident that a letter no. Nil dated nil with diary no.E-6, 01.01.2009 regarding submission of original documents, i.e., (i) certificate of matriculation/ equivalent; (ii) Caste certificate; and (iii) Diploma in public hygiene were produced by the applicant. It had come on record of the IOs that relevant file of the respondents was admitted to be missing and the applicant has alleged fabrication and manipulation in the said file by the respondents' hospital. From the IO's report, it is also evident that the applicant was examined before the prosecution evidence was closed. On the date of inquiry, the prosecution witness was not examined rather questions were put to the applicant. The Inquiry Officer has not questioned the applicant on the circumstances appearing against him in the evidence for the purpose of enabling the applicant to explain any circumstances appearing in the evidence against him.

14. On receipt of the Inquiry Officer's report along with a show cause notice dated 26.12.2017, the applicant has preferred a detailed representation/ objections to the Inquiry Officer's report dated 10.1.2018 (Annexure A-11) therein he has raised various illegalities in conducting the inquiry like violation of various provisions of Rule 14 of the Rules of 1965 and also violation of law laid down by the Hon'ble Apex Court in **LIC vs. Rampal Bishan**, reported in 2010 (3) SCALE 121 and **Bilaspur Gramin Bank vs. Madanlal Tandon**, reported. in 20 16(8) SCC 461. The applicant has also taken the ground that the inquiry has been conducted in violation of principles of natural justice and provisions of Rules 14(15) and 14(18) of the Rules of 1965. However, the Disciplinary Authority vide order dated 17.1.2018 (Annexure A-3) has inflicted the penalty of dismissal from service upon the applicant. The impugned Disciplinary Authority's order dated 17.1.2018 (Annexure A-3) clearly indicates that none of the grounds taken by the applicant in his representation dated 10.1.2018 (Annexure A-11) has been considered or dealt with. The applicant being aggrieved by the impugned Disciplinary Authority's order dated 17. 1.2018 has preferred a very detailed statutory appeal dated 19.1.2018 (Annexure A-12 Colly) wherein he has taken various specific grounds like violation of provisions of Rules 14 and 15 of the Rules of 1965, including the ground that as per the provisions of Rule 15 of the Rules of 1965, the Disciplinary Authority is duty bound to pass a speaking order. However, the said statutory appeal has been rejected by the Appellate Authority vide impugned order dated 24.10.2018



(Annexure A-4). Once again it is evident from the impugned order dated 24.10.2018 (Annexure A-4) that none of the grounds taken by the applicant in his statutory appeal has been consider and/ or has been dealt with by the Appellate Authority...”

20. On the face of record, the disciplinary proceedings were initiated by the department only on receipt of complaint from the Central Vigilance Commission wherein the identity of the complainant was directed to be kept confidential in view of Public Interest Disclosure Resolution. As such, the proceedings were not initiated due to any malice against the respondent. In response to the complaint, respondent was requested to furnish the original certificate which he later on claimed to have submitted/deposited with the department. The aforesaid stand of respondent is disputed by the petitioners and it is claimed to be false as the dispatch/receipt number is stated to be discrepant to the practice followed at the relevant time. Further, left with no other option, the department had to forward the photocopy of Higher Secondary Certificate for verification by the Board of Secondary Education, Madhya Pradesh, Bhopal. The certificate in issue bore certificate ‘S No. 236825 Roll No. 1557766’ in the name of Surender Kumar S/o Shri Ishwar Singh. In response to request for verification by the department, letters dated December 18, 2015 and June 25, 2016, were received from the Office of Board of Secondary Education, Madhya Pradesh, Bhopal, wherein it was stated that upon comparison, various discrepancies/variations have been observed in the certificate forwarded by the department and record of relevant Roll No. maintained by the Board. It was therein mentioned that as per record of the Board, Shri Surender Kumar S/o Shri Ishwar Singh having



Roll No.157766 and Mark Sheet Serial No. 054283 appeared for Higher Secondary Examination in 1982 from Centre No. 1316 and had failed in the said examination having scored 256 marks. As per communication received from the Board, the certificates were specifically stated to be maintained as per Roll Numbers and not as per the serial number mentioned on the certificate. Considering the aforesaid aspects, we are unable to agree with the observations of the Tribunal that some of the questions put to the respondent on October 06, 2017, in any manner shifted the burden of proof to the respondent to prove his innocence.

In law, it is a common ground that if the Inquiry Officer conducts the inquiry proceedings as a Prosecutor and puts leading questions on prosecution witnesses exposing a prejudiced or biased mind or in any manner conducts the inquiry proceedings ignoring the principles of natural justice, the inquiry would be considered to be opposed to principles of natural justice. However, the Inquiring Authority is entitled to put questions to the witnesses for clarification if it becomes necessary, so long the delinquent employee is permitted to cross-examine the witnesses after the Inquiry Officer questions the witnesses. The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, appears to have put questions to the respondent.

Reference may also be made to *Pravin Kumar v. Union of India and Others* (2020) 9 SCC 471 wherein the contention that examination and cross examination of witnesses by Inquiry Officer amounts to making the



prosecutor the Judge in violation of principles of natural justice was rejected, since no malice or bias could be established in the facts of the case.

Observations in para 31 may further be beneficially reproduced:-

31.It must be recognised that, under Section 164, Evidence Act, Judges have the power to ask any question to any witness or party about any fact, in order to discover or to obtain proper proof of relevant facts. While strict rules of evidence are inapplicable to disciplinary proceedings, enquiry officers often put questions to witness in such proceedings in order to discover the truth. Indeed, it may be necessary to do such direct questioning in certain circumstances. Further, the learned counsel for the appellant, except for making a bald allegation that the enquiry officer has questioned the witnesses, did not point to any specific question put by the officer that would indicate that he had exceeded his jurisdiction. No specific malice or bias has been alleged against the enquiry officer, and even during the enquiry no request had been made to seek a replacement, thus, evidencing how these objections are nothing but an afterthought."

21. The Tribunal has further upheld the contentions raised on behalf of the respondent finding deficiencies in the conduct of inquiry, in violation of provisions of Rule 14 of CCS (CCA) Rules on the ground that instead of examining the concerned AAO as a witness on behalf of the department, one Ram Niwas, Administrative Officer had appeared as a witness without issuing of any formal order by the Disciplinary Authority. It was also held that the Inquiry Officer did not question the respondent on the circumstances appearing against him in the evidence for the purpose of enabling him to explain the circumstances appearing in the evidence. Further, the grounds taken by the respondent were neither considered by the Disciplinary Authority vide order dated January 17, 2018, nor by the Appellate Authority in the subsequent appeal preferred by the respondent.



It needs to be kept in perspective that for purpose of proving the verification report qua the certificate in question, the Inquiry Officer was required to prove the same by examining the official from the Board or by examining the official from the department who may have obtained the verification report from the concerned Board. This could have ensured a fair and proper opportunity to the respondent for furnishing his defence/explanation, if any, qua the certificate in question. The substitute AO, who had not participated in obtaining the verification report, could not have proved the verification report received from the Board, on record.

In the aforesaid background, the failure of the department to examine the relevant witness from the Board in the disciplinary proceedings is crucial and consequently the Tribunal has rightly set aside the inquiry proceedings. Hon'ble Apex Court in **Roop Singh Negi vs. Punjab National Bank and Others (supra)** has held that mere production of documents is not enough and the contents of the documentary evidence has to be proved by examining witnesses. Further, FIR in itself is not an evidence without actual proof of facts stated therein.

22. It may further be noticed that in terms of Rule 14(18) of CCS (CCA) Rules, after the prosecution evidence is over, the charged officer is required to submit his statement of defence indicating his line of defence, if any. The evidence is to be led in the same manner giving an opportunity of cross-examination to the Presenting Officer. Thereafter, the Inquiring Authority shall enquire the charged officer if he wishes to appear as his own witness



and in case the charged officer declines to do so, the Inquiring Authority is required to generally question him to explain any circumstances appearing against him.

The statement of the respondent, if any, recorded in defence has not been placed on record or discussed in the Inquiry Report. Neither, it has been reflected in case the questions were put up to the respondent in respect of the evidence appearing against him during the course of inquiry as contemplated under Rule 14(18) of CCS (CCA) Rules. The complete record of inquiry proceedings has not been placed on file. Rule 14(18) of CCS (CCA) Rules, 1965 has been formulated for enabling the delinquent official to rebut and explain the circumstances appearing against him in evidence. The Inquiry Officer, as such, is obligated to put the incriminating evidence to the respondent in order to give him a proper opportunity of explaining the circumstances appearing against him unless he is examined in defence. Reliance may also be placed upon *Ministry of Finance v. S.B. Ramesh*, (1998) 3 SCC 227 wherein the Hon'ble Supreme Court held the Rule 14(18) of CCS (CCA) Rules, 1965 to be mandatory.

For the foregoing reasons, we agree with the finding of the Tribunal to the extent of setting aside the inquiry proceedings along with the penalty order with liberty to proceed in the matter in accordance with law.

23. However, we are unable to agree with the directions of the Tribunal that the respondent be re-instated forthwith and shall be entitled for



consequential benefits in accordance with the relevant rules and law on the subject.

It is settled legal position that once the Court sets aside an order of punishment on the ground that the inquiry was not properly conducted, the Disciplinary Authority is to conduct the inquiry from the point it stood vitiated and conclude the same. In *The Inspector of Panchayats and District Collector, Salem v. S. Arichandran & Ors.*, Civil Appeal No.6776 of 2022 decided by the Hon'ble Supreme Court on September 23, 2022, the Division Bench of the concerned High Court confirmed the order passed by the learned Single Judge directing the appellant to reinstate the respondent by observing that the order of dismissal was in breach of principles of natural justice as the copy of inquiry report was not given to the delinquent and without calling for his comments on the Inquiry Officer's report, the order for dismissal was passed. Relying upon *Chairman, Life Insurance Corporation of India and Ors. v. A. Masilamani*, (2013) 6 SCC 530 and *State of Uttar Pradesh and Ors. v. Rajit Singh*, 2022 SCC OnLine SC 341, it was contended therein that if the High Court found the order of punishment in breach of natural justice, in that case, the matter ought to have been remanded to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated. Hon'ble Apex Court quashed the order passed by the Division Bench as well as the learned Single Judge for reinstatement and remitted the case to the Disciplinary Authority to conduct the inquiry from the point it stood vitiated and to conclude the same after furnishing a copy of



Inquiry Officer's report and giving an opportunity to the delinquent to submit his comments on the inquiry report. The observations of the Hon'ble Apex Court in para 6 & 7 may be beneficially reproduced:-

6. At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. It is to be noted that the respondent – delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.

6.1 At this stage, a recent decision of this Court in the case of Rajit Singh (supra), in which this Court had considered its earlier decision in the case of A. Masilamani (supra) is required to be referred to. In paragraph 15, it is observed and held as under:-

“15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the 5 delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India v. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:—

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It



must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]).”

6.2 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer’s Report.

7. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment(s) and order(s) passed by the Division Bench as well as learned Single Judge of the High Court ordering reinstatement with back wages are hereby quashed and set aside. The case concerned is remitted to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Officer’s Report and after giving an opportunity to the delinquent to submit his comments on the Inquiry Officer’s Report. The aforesaid exercise be completed within a period of six months from today. However, at the same time, considering the fact that earlier also the dismissal order was set aside on the ground that the same was found to be in breach of principles of Natural Justice and the matter was remitted back and thereafter again when the fresh order of dismissal has been passed, which is again found to be in violation of principles of Natural Justice and again the matter is to be remitted back, we allow the present appeal with costs to be paid by the appellant to the respondent - delinquent quantified at Rs. 50,000/-, which shall be paid to the respondent – delinquent within a period of six weeks from today.

Present appeal is accordingly allowed to the aforesaid extent.

24. In the present case, the respondent allegedly would not be qualified or eligible for recruitment in service on account of producing a forged certificate, which entails serious consequences. A premium cannot be given



to a person who allegedly committed forgery, by directing re-instatement on account of procedural faults in the inquiry proceedings. It may be noticed that apart from the name of respondent, parentage, Roll Number and date of birth in both the certificates is the same. Even if the name or parentage could be identical, it cannot be comprehended that the date of birth of the candidate would also be the same. The respondent has failed to produce any other certificate in case the aforesaid verification report is disputed. Accordingly, we are of the considered opinion that the order passed by the Tribunal directing the re-instatement of the respondent with back wages needs to be set aside. The case is further remitted back to the Disciplinary Authority to conduct the inquiry from the point it stood vitiated and to conclude the same within a period of six months from the date of passing of this order.

The writ petition is accordingly disposed of. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JUNE 02, 2023/R/sd