



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

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Date of decision: November 24, 2023

+ W.P.(C) 10443/2023, CM APPL. 40494/2023

(4) **DELHI TRANSPORT CORPORATION AND ORS.**

..... Petitioners

Through: Mrs. Avnish Ahlawat, SC (DTC) with
Mrs. Taniya Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Laavanya Kaushik,
Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advs.

versus

SURENDER KUMAR SHARMA

..... Respondent

Through: Mr. Sourabh Ahuja, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This writ petition has been filed by the Delhi Transport Corporation and its functionaries challenging the order dated May 19, 2023, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.693/2018 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraphs 15 onwards, as under:

"15. In the instant case, it is not in dispute that the inquiry has been held by a competent authority but we find serious lacuna in the procedure followed and admission of evidence. The most glaring discrepancy in the DE is the purported admission by the applicant at the



stage of preliminary inquiry that he had forged the NOC/signatures of Depot Manager, which is the foundation of the chargesheet. The so-called admission by the applicant remained verbal and no attempt was made to convert into a written admission during the preliminary inquiry. Also during the departmental inquiry, the applicant clearly stated that he had not made any such verbal submission before the official conducting the preliminary inquiry. The admission in the inquiry or earlier can be a valid piece of evidence if the condition preceding it is being specified. In the instant case, the preliminary inquiry report says that the applicant had admitted his guilt before him verbally but there is no documentary proof as to admission of the guilt and merely on verbal admission it cannot be sustained, as any order admissible in law, even applying the test of preponderance of probability, has to be in writing. As such, no legal credence can be given to such admission.

16. Besides this lacuna, we cannot afford to gloss over the impugned order passed by the appellate authority. It is a well-known principle duly settled by courts, that disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965 or under their corresponding rules, are quasijudicial in nature and as such, it is necessary that orders in such proceedings issued by the competent authorities are reasoned and speaking. The Hon'ble Supreme Court in the case of Mahavir Prasad vs. State of U.P. (AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency.

17. The applicant in his representation before the appellate authority has raised a number of grounds alleging denial of natural justice and due process but we find that the order passed by the appellate authority does not deal with any of them nor contain the reasons on the



basis whereof the decision communicated by that order was reached. Thus it does not conform to legal requirements. Moreover, both the impugned orders of disciplinary and the appellate authorities have been signed by the Depot Manager. Our understanding is that such authorities exercising quasi-judicial powers cannot delegate their powers to their subordinates. It is, therefore, essential that the decisions taken by concerned authorities are communicated by the competent authority under their own signatures. We find that the impugned order passed by the appellate authority is lacking on both the counts.

18. In view of above facts and circumstances of the case, the OA is allowed and the impugned orders are quashed. The applicant will be reinstated and will be entitled for all consequential benefits in accordance with the relevant rules & instructions on the subject. The same may be done expeditiously and preferably within eight weeks from the receipt of the order. However, the respondents will be at liberty to start the disciplinary proceedings afresh in accordance with law. No order as to costs."

2. The submission of Mr. N. K. Singh, learned counsel for the petitioners is that the Tribunal has erred in setting aside the order of the Disciplinary Authority and Appellate Authority only on the ground that the orders are non-speaking. According to him, it is a settled law that the Appellate Authority order passed on the basis of Inquiry record and report, the order is not required to be a speaking order. That apart, the finding that both the orders of Disciplinary and Appellate Authority have been signed by the Depot Manager is not a illegality inasmuch as the Depot Manager being the Disciplinary Authority has rightly signed the order and Depot Manager has only conveyed the decision of the Appellate Authority. That apart, it is his submission that when there is



an admission on the part of a delinquent employee, nothing is required to be proved and the Inquiry Officer has rightly relied upon the admission of the respondent to hold the charge as proved.

3. We are unable to agree with the submission of Mr. N. K. Singh. The Tribunal has rightly held, on the merit of the charge which has been though proved by the Inquiry Officer, that the so called 'admission' was not recorded. Even the author whose signatures said to have been forged was not produced in the Inquiry proceedings. This we say so, as the Inquiry officer has found the so called oral admission of the respondent does not have any basis as the respondent had denied his oral statement during Inquiry. Admittedly, there is nothing in writing given by the respondent in that regard. Having said that, the charge against the respondent was *inter alia* that the respondent, for the purpose of becoming a member of the Vishnu Cooperative Urban Thrift & Credit Society Ltd., Laxmi Nagar, had forged the seal and signatures of the Depot Manager.

4. The Inquiry Officer insofar as the charge of fabricating the seal as well as forging the signature of the Depot Manager is concerned has recorded, the deposition of the complainant and the cross examination by the respondent and also questions put by the Inquiry officer as under:-

"The Oral/detailed enquiry of Chargesheet No. Mi.De.-1/Sa.Pra.Ya./CS-51/2016/670 dated 06.06.2017 against Sh. Surendra Kumar Sharma, Driver, B. No. 20762, is hereby started w.e.f. today ie. 09.08.2016 in the office of undersigned, wherein, following persons are present-

1.	Smt. Shashi Bala	Enquiry Officer (S.)
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2.	Sh. Surendra Kumar Sharma	Driver, B. No. 20762(D. Emp.)
3.	Sh. Ramsharan	T.I., T. NO. 21608 (Complainant)

At this stage, delinquent employee was enquired as to whether he would like to get done the enquiry proceedings himself or with the help of any colleague employee/Co- worker or officer/T.L., on which, he asked to get done the same himself.

Sd/-

Delinquent Employee

Delinquent Employee was enquired as to whether he has received chargsheet and enclosed documents etc., on which, he admitted to receive the same.

Sd/-

Delinquent Employee

The charges mentioned in the chargsheet were read over to the delinquent employee in Hindi and he was enquired as to whether he admits the charges leveled against him or not, on which, he by stating the charges to be wrong. denied the same

Sd/-

Delinquent Employee

Statement of Sh. Ramsharan, T.I., T. No. 21608 (Complainant)

On 18.05.2016, I was posted as Section Officer from 9.00 a.m. to. 17.30 p.m. A letter which was produced by driver Sh. Surendra Kumar Sharma. B. No 20762 for becoming member of Co-Operative Society, was given to me by Depot Manager for conducting it's verification, wherein, in the application submitted by the Driver for becoming member in the Co-Operative Site, he driver had forged the signatures and seal of Depot Manager, which was



also admitted orally by the driver that these signatures and seal have been forged by me. After making seal of Depot Manager which was office seal, the same was compared with the seal forged by the driver, on which, it was found that both the seals are different. On finding the matter suspicious, an appropriate report was submitted by me.

Complainant
Delinquent Employee

Delinquent employ was enquired as to whether he wants cross-examination of complainant or not, on which, he asked following questions from him:-

Question 1 The documents which were received from the Society, which were examined by you, through whom, those documents were received by you?

Answer: By Post

Question 2 On what ground, you can say that the seal was prepared by me, whether any shopkeeper who makes seal, told that the seal was prepared by me?

Answer: Not told, whereas, I have made it clear in my statement that Driver has orally stated that it has been prepared only by me.

Question3 Whether, you saw me making forged signatures, how can you say that these signatures were made by me?

Answer: I did not see making forged signatures, but, when I compared the signatures of letter which was given to me for the verification, with the signatures of the Depot Manager, then I found that same



were not of Depot Manager.

Question 4 Whether, had you identified my handwriting?

Answer: This case does not appear related to the handwriting. Co-operative Society sent papers related to the membership of driver Surendra Kumar Sharma, which were sent to Depot Office only for the verification.

*Sd/-
Delinquent Employee
(Complainant)*

Following questions were asked by the Enquiry Officer (S.) from the Complainant:

Question 1: Whether, you have verified the forged signatures of delinquent officer and seal of Depot Manager from the Society?

Answer: No.

Question 2: On what ground, you can say that the signatures of Depot Manager have been made by the delinquent employee and also the Seal has also been affixed by him?

Answer: Driver was orally enquired, on which, driver admitted himself.

Question 3: As you stated yourself in your statement that driver was enquired, then, whether any statement of driver was recorded in this regard?

Answer: No

Question 4: Then, on what ground you can say that



these signatures and seal were forged only by the driver?

Answer: On the basis of oral enquiry.

Complainant

Delinquent Employee was enquired as to whether he want to produced any witness/ evidence in his defence or not, on which, he denied the same?

Delinquent Employee

Delinquent Employee was asked to produce his final statement, on which, he gave his statement today:-

Statement: The reply of chargesheet which has been submitted by me on 14.06.2016, same shall be treated as my final statement. Apart from it, I don't want to say anything else.

Delinquent Employee

The present case is concluded for the result of enquiry with this right that if it would be necessary in the interest of natural justice, then, the case can be re-opened at any stage by the Corporation.

Enquiry Officer (S)
Delinquent Employee

Copy of enquiry was received."

(emphasis supplied)

5. According to us, the above does not prove that the respondent has fabricated/forged the seal / signatures. There has to be a cogent



evidence to prove such a serious charge. Even on preponderance of probability, the charge cannot be said to be proved.

6. Insofar as the plea of Mr. Singh that the Disciplinary Authority and Appellate Authority need not be reasoned one is concerned, the law in this regard is very well settled that the Appellate Authority order considering the grounds of appeal has to be a reasoned order, as he is required to answer all the grounds raised by the delinquent employee in his appeal. Admittedly, the Appellate Authority order only reads as under:-

“Reference an appeal dated 22.05.2017 to RM (South) against the punishment of "removal from of the services of the corporation" by Depot Manager, Kalkaji Depot. In this connection it is to inform you that the appellate authority recommends that the punishment of "removal from of the services of the corporation awarded to the appellant seems to be justified, hence the appeal a hereby "Rejected"”

7. Whereas the appeal submitted by the respondent reveals that number of grounds have been urged by him for the consideration of the Appellate Authority. In this regard, a reference was made to the judgment of the Supreme Court in the case of **Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713**, wherein Supreme Court has held:

“32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter partes was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be



a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

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34. In Apparel Export Promotion Council v. A.K. Chopra which has heavily been relied upon by Mr Gupta, this Court stated: (SCC p. 770, para 16)

“16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities.”

(emphasis supplied)

35. The Appellate Authority, therefore, could not ignore to exercise the said power.

36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression “consider” is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him;



and (iii) whether penalty imposed by the disciplinary authority was excessive.”

(emphasis supplied)

8. Having said that, we are of the view that though the conclusion drawn by the Tribunal cannot be faulted inasmuch as the respondent shall be entitled to be reinstated with all consequential benefits, but surely the petitioners shall be at liberty to initiate disciplinary proceedings if deem appropriate from the stage following the issuance of chargesheet by producing such evidence as available with them and also by producing any other witness including the Depot Manager in the Inquiry proceedings for proving the charge against the respondent. The directions of reinstatement with consequential benefits be complied within eight weeks from today.

9. With the above, the petition is disposed of.

CM APPL. 40494/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 24, 2023/ds