



\$~13

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23.07.2024

+ W.P.(C) 1559/2021

MANMEET POKHRIYAL

.....Petitioner

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Mr. Amrit Kaul, Mr. Prahil Sharma & Mr. Arjun Panular, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Vikrant N. Goyal with Ms. Nikita Goyal, Advs.
SI Shiv Kumar Singh.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

REKHA PALLI, J (ORAL)

1. The petitioner has approached this Court under Article 226 of the Constitution of India assailing the order dated 16.11.2020 passed by the respondents whereby he has been dismissed from service on the basis of a 'disagreement note' issued to him on 01.02.2017, of which also quashing is sought.

2. Learned counsel for the petitioner submits that the petitioner was exonerated not only in the departmental inquiry held against him on two Charges as set out in the dismissal order but was also acquitted after a full



fledged trial by the CBI Court in respect of the same incident which forms subject matter of the Articles of Charge against him. However, the disciplinary authority, while disagreeing with the finding of the inquiry officer, has come to a conclusion that the charges against the petitioner were duly proved and has consequently, issued a note dated 01.02.2017 which, though titled as a disagreement note is, in fact, conclusive in nature. By placing reliance on a decision of this Court in ***Sunil Kumar vs. UOI: 2018 SCC Online Del 6433***, he submits that the disagreement note and the consequential dismissal order are liable to be set aside on this ground alone. He, therefore, prays that the writ petition be allowed by directing the respondents to reinstate the petitioner in service w.e.f. 24.11.2020 with all consequential benefits.

3. On the other hand, Mr. Vikrant N. Goyal, learned counsel for the respondents supports the impugned orders and submits that merely because the disciplinary authority after examining the evidence led in the departmental inquiry, opined that the charges against the petitioner were proved, cannot imply that the said conclusion was a final conclusion and not tentative. The very fact that the petitioner was given a show cause notice to explain his stand before any final order was passed against him, in itself shows that the disagreement note was only tentative in nature. He, therefore, prays that the writ petition be dismissed.

4. Having considered the submissions of learned counsel for the parties and perused the record, we find that the parties are *ad idem* that the petitioner was exonerated in the departmental inquiry as also in the criminal



case by the CBI Court. It is only on the basis of the impugned disagreement note dated 01.02.2017 that the petitioner has been dismissed from service vide order dated 16.11.2020. Taking into account that it is the petitioner's plea that this disagreement note that forms the basis of the dismissal order was contrary to the settled legal position, we may refer to the relevant extracts of the disagreement note, which read as under:

"The Inquiry Officer while evaluating the evidences has ignored the above direct and circumstantial evidence and relied upon the defence statement and defence brief. Therefore, the report of Inquiry Officer that the charge levelled against Shri Manmeet Pokhriyal, Dy. Commandant "STANDS NOT PROVED" not acceptable due to the reasons as enumerated above. On the basis of oral as well as documentary evidence available in the DE proceedings, the report of IO in the DE against Shri Manmeet Pokhriyal, Dy. Commandant that the charges framed against him at Article-I and II as not proved, has been disagreed upon and the Disciplinary Authority has held the charges at Article-I & II framed against Shri Manmeet Pokhriyal, Dy. Commandant (Charged Officer) as "PROVED" on preponderance of probability based on the evidence I circumstantial evidence adduced during the course of enquiry."

5. From a bare perusal of the aforesaid extract of the disagreement note, it is evident that the disciplinary authority had, instead of forming a tentative opinion regarding the petitioner's misconduct, given a conclusive finding regarding his guilt. This course of action was held to be impermissible by the Hon'ble Apex Court in ***Yoginath D. Bagde vs. State of Maharashtra: (1999) 7 SCC 739***. This decision has been consistently followed by this Court in a number of cases and therefore, it would be apposite to refer to the following extracts of the decision of this Court in ***Sunil Kumar (supra)*** relied upon by the petitioner. The same reads as under:

15. A bare perusal of the disagreement note dated 03.01.2015, as reproduced hereinabove, clearly shows that after examining the inquiry



proceedings the disciplinary authority had not only disagreed with the Inquiry Report, but had conclusively opined that the petitioner had made excess withdrawals from his GPF account and he could not be acquitted from the charge leveled against him.

16. The aforesaid categorical findings of the Disciplinary Authority clearly shows that instead of taking a tentative view while issuing a disagreement note, the Disciplinary Authority had taken a final decision that the charge against the petitioner stood proved. In fact, the Disciplinary Authority has gone to the extent of holding that the petitioner could not be acquitted from the charge leveled against him. In these circumstances, we have no hesitation in holding that the disagreement note was merely an eyewash as the Disciplinary Authority had already made up its mind to hold the petitioner guilty.

17. In our aforesaid conclusion, we are fortified by the decision of the Supreme Court in the cases of Punjab National Bank (supra) & Yoginath D. Bagde (supra) and by the decision of this Court in the case of Rajpal Singh (supra), on which reliance has been placed by the learned counsel for the petitioner, In the case of Yoginath D. Bagde (supra), the Supreme Court had, while dealing with similar facts held as under:-

"37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank ((1998) 7 SCC 84) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no



avail, at least, in the circumstances of the present case. "
(emphasis added)

18. For the aforesaid reasons, the impugned order dated 29.01.2015 imposing the penalty on the petitioner stands vitiated and is accordingly quashed and set aside. As a consequence thereof, the order passed by the appellate authority and revisional authority are also quashed as the same do not deal with the aforesaid vital aspect of the matter.

19. While quashing the impugned penalty orders and the disagreement note, the matter is remanded back to the Disciplinary Authority for issuance of a fresh disagreement note if so advised, after following the legal principles laid down in the aforesaid decisions of the Supreme Court. It is however made clear that we have not dealt with merits of the charge leveled against the petitioner and after issuing a fresh disagreement, if so advised, the respondents would be free to take appropriate action as per law. In case the petitioner feels aggrieved by the decision taken, he will be at liberty to take legal recourse, as available to him."

6. In the light of the aforesaid, once it is clear that the opinion arrived at by the disciplinary authority was not tentative in nature but was a conclusive finding regarding the petitioner's guilt, we have no other option except to set aside the disagreement note as also all consequential orders passed on the basis thereof.

7. The writ petition is, accordingly, allowed by setting aside the disagreement note dated 01.02.2017 and the dismissal order dated 16.11.2020 and the matter is remanded back to the disciplinary authority for issuance of a fresh disagreement note, if so advised, after following the legal principles laid down in the aforesaid decisions. It is, however, made clear that this Court has not expressed any opinion regarding the merits of the charges against the petitioner, which aspect will be examined in appropriate



2024:DHC:5430-DB



proceedings if the need so arises.

8. We further direct that the petitioner will be forthwith reinstated in service and orders regarding the benefits, if any, payable to him for the intervening period from the date of his dismissal till his reinstatement will be taken in accordance with Fundamental Rule 54 after a fresh decision by the respondents is taken in terms of this order

9. The petition is allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 23, 2024

ab