



2024:DHC:2604-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 02.04.2024

+ W.P.(C) 4753/2024

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr. Satya Ranjan Swain, Sr. Panel
Counsel with Mr. Kautilya Birat,
Advocate with Major Gaurav.

versus

SH KAILASH

..... Respondent

Through: Mr. Piyush Sharma, Mr. Shivam
Dubey and Mr. Anuj Kumar Sharma,
Advocates.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

REKHA PALLI, J (ORAL)

CM APPL. 19472/2024 (Ex.)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 4753/2024, CM APPL. 19471/2024 –Stay, & CM APPL. 19473/2024 -LLOD.

3. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 15.04.2023 passed by the learned Central Administrative Tribunal in O.A. No. 992/2016. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent by setting aside the report of the Inquiry Officer dated 23.05.2013 as also the order dated 26.05.2015 passed by the disciplinary authority and has directed the petitioners to



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reinstate the respondent with all consequential benefits in accordance with rules. While quashing the aforesaid orders, the learned Tribunal has, however, granted liberty to the petitioners to proceed with the disciplinary proceedings in accordance with law, if they so deem appropriate.

4. In support of the petition, learned counsel for the petitioners submits that the impugned order is wholly perverse as the learned Tribunal has without any basis held that the provisions of Rule 14 (16) and 14 (23) CCS (CCA) Rules, 1965 were violated by the petitioners. He submits that principles of natural justice were duly followed and the respondent was given full opportunity to cross-examine the petitioners' witnesses. He, therefore, prays that the impugned order be set aside.

5. On the other hand, learned counsel for the respondent, who appears on advance notice, supports the impugned order and submits that the learned Tribunal was justified in quashing the inquiry report as also the order of the disciplinary authority after noticing that the inquiry report was cryptic and wholly bereft of any reasons. By drawing our attention to the report dated 23.05.2023 submitted by the Inquiry Officer, he contends that the Inquiry Officer has held the respondent guilty of all the nine charges without discussing any evidence whatsoever. The Inquiry Officer has simply noted the names of witnesses and enclosed their testimonies to the inquiry report. This approach adopted by the Inquiry Officer was clearly violative of Rule 14 (16) and 14 (23) of the CCS (CCA) Rules, 1965.



He, therefore, prays that the writ petition be dismissed.

6. From the rival submissions of the parties, we find that the primary contention of the respondent which was accepted by the learned Tribunal was that the Inquiry Officer had conducted the inquiry in violation of Rule 14 (16). Since it is the petitioners' plea that this finding of the learned Tribunal is erroneous as the inquiry was conducted as per the rules, it would be apposite to begin by noting herein below the inquiry report in its entirety:-

"REPORT OF THE INQUIRY OFFICER"

1. Under the authority of 338 Coy ASC (Sup), Type 'A' Mathura letter No. WP/4876/2012/ST- 12 (Civ) dated 06 Oct 2012, Major Shine Augustine was appointed as Inquiry Officer and Nb Subedar V Anil Kumar as Presenting Officer.
2. The date of hearing was fixed on 02 Nov 2012 and subsequent days, wherein the charged officer Chowkidar Kailash had appeared on hearing dates as per daily order sheet attached as per Page No 02 to 20.
3. The charge officer Chowkidar Kailash has engaged Mr Ramesh Chandra as his Defence Assistant.
4. The charges framed against the said charged officer as per Annexure (Articles) of the memorandum of charges No. - 338056/Dis/ST- 12 (Civ) dated 17.08.2010 attached with these inquiry proceedings as per **Page No. 103**.
5. All the charges contained in the said articles of charge have been enquired into and following prosecution witnesses and defence witness were cross examined.
 - (a) Subedar G B Rao
 - (b) Hav Jagat Pal
 - (c) P/Labour Shri Vijay Singh
 - (d) Hav Sulaf Singh
 - (e) Chowkidar Ramsakai Rai
 - (f) Chowkidar Ram Darsh Singh
 - (g) Chowkidar Vijender Kumar



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- (h) Chowkidar Birender Singh
- (j) Chowkidar Atma Swaroop
- (k) Chowkidar Kailash

6. That the statements of all the witnesses are attached as per **Page No. 21 to 32** with these inquiry proceedings.

7. That during the proceedings and cross examination, charge officer was not able to produce any evidence to substantiate his arguments and all the prosecution witnesses again given oral and documentary evidence against him. The accused officer during cross examination even denied the facts that he has accepted his earlier mistakes by his written statement on 04.02.2009 and 22.04.2010 for which records are already available. This shows that the accused officer has nothing to prove his arguments but is only interested in delaying disciplinary proceedings.

Findings:-

8. On the basis of oral and documentary evidence in the case, brought before me and in view of my assessment as brought out above, I hold Articles I to IX of against Chowkidar Kailash of 338 company ASC (Supply), Type 'A' **as sustained**.

Date: 23 May 2013

(IC -68498-K Major Shine Augustine)
Inquiry Officer”

7. From a bare perusal of the aforesaid inquiry report, it is evident that the learned Inquiry Officer has miserably failed in discharging the onus placed on him to give findings regarding the guilt of the respondent after weighing the evidence led before him. Even though we are conscious of the fact that an inquiry officer is not expected to function like a judicial authority and, therefore, it may not be necessary for him to give detailed reasons qua each finding. This, however, does not imply that an Inquiry Officer can as per his whims and fancies hold an employee guilty of the charges levelled against him. In our view, the inquiry report must depict at least a



basic application of mind to the evidence led before the Inquiry Officer. Even though the inquiry report and the consequential penalty order are liable to be set aside on this ground alone, we have at the insistence of the learned counsel for the petitioner examined the penalty order and find that even the same does not discuss the evidence and has been passed simply on the basis of the inquiry report which we have found to be unsustainable.

8. We may now proceed to note the relevant extracts of the impugned order, which read as under:-

“11. While going through the relevant disciplinary proceeding file, we have found that on 'no date', it has been recorded by the inquiry officer that the case of disciplinary proceeding is closed and the delinquent i.e. applicant herein has been required to state his defence. Thus, we find that the inquiry conducted by the inquiry officer is vitiated being violative of the provisions of Rule (14) (16) of the rules ibid. Similarly, we have also not found the date on which the delinquent has closed his case and nowhere the statement of the delinquent and/or his witnesses have been recorded. However, of course, cross examination of the said defence witnesses are available on record. We also do not find the assessment made by the IO to the evidence in respect of each article of charges and his specific findings qua the same. Thus, we find that there is violation of the provisions of Rule (14) (23) (i) of the rules ibid as well.

12. Illegality has been alleged by the applicant in his representation before the disciplinary authority as well as before the appellate authority, however, the same is not found to have been dealt with by the respondents while passing the impugned disciplinary and appellate authorities' orders. We also do find illegality, which we have precisely noted herein above and which are available in the relevant proceeding file. On perusal of the impugned orders, we also find that apparently the efforts of the respondents while passing the orders was to confirm and uphold the order dated 05.10.2010 passed by the disciplinary authority, which stood set aside by the Hon'ble High Court vide Order/Judgment dated 14.08.2012 passed in the aforesaid Writ Petition filed by the petitioner.



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13. In view of the aforesaid facts and circumstances, we are of the considered view that OA deserves to be allowed and the same is allowed with the following directions:-

I) The impugned orders dated 23.05.2013 26.05.2015 passed by the disciplinary and appellate authorities respectively are set aside.

II) The applicant shall be entitled for all consequential benefits in accordance with relevant rules and instructions.

III) The respondents shall be at liberty to proceed with the disciplinary proceedings, however, in accordance with law, if they are so advised.

IV) In case, the respondents decide to continue with the inquiry, the applicant shall remain under suspension for the duration the inquiry is completed and taken to its logical conclusion.

14. OA stands partly allowed in the aforesaid terms. However, in the facts and circumstances, there shall be no order as to costs."

9. From a perusal of the aforesaid, we find that besides observing that the inquiry report was unsustainable, the learned Tribunal has also noted the fact that even the procedure as prescribed under the CCS (CCA) Rules was not followed. In fact, it also emerges that the petitioners instead of considering the respondent's representation in its letter and spirit had merely attempted to confirm the penalty order dated 05.10.2010 even though the same was set aside by this Court in W.P. (C) 4876/2012 while remanding the matter to the petitioner on 14.08.2012 for consideration of the respondent's representation. We have also examined the nature of charges levelled against the respondent who is a Group D employee and are of the view that it is only because of the unfair and arbitrary attitude adopted by the petitioners that he continues to be under suspension for the last 14



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years with the threat of disciplinary proceedings still looming over his head. It was always for the petitioners to complete the inquiry in a time bound manner as per the liberty granted by the learned Tribunal but it has chosen to file this misconceived petition and that too almost after one year of the passing of the impugned order.

10. For the aforesaid reasons, we are of the considered view that the present petition is a gross abuse of process of law. The same is, accordingly, alongwith all pending applications dismissed with costs of Rs. 25,000/-. The costs in terms of this order be paid to the respondent within four weeks from today.

(REKHA PALLI)
JUDGE

(DR. SUDHIR KUMAR JAIN)
JUDGE

APRIL 2, 2024

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