



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

% **Reserved on: August 14, 2024**

Pronounced on: August 30, 2024

+ **W.P.(C) 7404/2024 & CM APPLs.30920/2024 & 39541/2024**

**rites ltd through its chairman and managing
director**

.....Petitioner

Through: Mr. Chetan Sharma, ASG with
Mr. Govind Chaturvedi, Mr. Vinay
Yadav, Mr. Amit Gupta, Mr. Saurabh
Tripathi, Mr. Vikramaditya Singh,
Mr. Shubham Sharma, Advocates and
Mr. Krishan Mohan, AGM

Versus

AVDESH KUMAR SHARMA & ANR.

....Respondents

Through: Mr. Shanker Raju & Mr. Nilanshu
Gaur, Advocates for respondent No.1

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT

SURESH KUMAR KAIT, J

1. Learned Central Administrative Tribunal, Principal Bench, New Delhi vide order dated 01.03.2024 in O.A. No.534/2022 has allowed the application preferred by respondent No. 1, thereby setting aside Charge Memorandum dated 31.07.2020 issued by the petitioner – RITES Limited; Disciplinary Authority's order dated 23.07.2021 and Appellate Order dated 20.12.2021 with direction to the petitioner to re-fix pension and other consequential benefits in respect of respondent No. 1 w.e.f. the date of his

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retirement on 31.12.2020, in the rank of General Manager (Pay Rs.152600/ in scale of Rs.120000-280000) and release the dues within a period of eight weeks. The aforesaid order dated 01.03.2024 passed by the learned Tribunal has been assailed in the present petition by the petitioner.

2. The facts giving rise to the present petition, as spelt out by the petitioner in the present petition, are that respondent No. 1 had joined the services of petitioner on the post of 'Assistant Manager' in September, 1990 and after earning promotions, he reached up-to the level of General Manager. According to the petitioner, respondent No. 1 had acquired a *residential property* at Andheri (W), Mumbai on 17.11.2009, however, intimated about acquisition of a *commercial property* as Andheri (W), Mumbai on 16.12.2013. The source of acquisition of the said property mentioned by respondent No. 1 was loan from bank and personal savings.

3. During scrutiny of the property returned by the Vigilance Department of the petitioner, respondent No. 1 reiterated the same position in respect of the said property vide letter dated 24.05.2016. Additionally, respondent No. 1 also informed that the said property will fetch rent of Rs.60,000/- per month, which is being remitted in the Axis Bank towards loan amount against him.

4. According to petitioner, on 11.07.2016 respondent No. 1 put forth a story of gift by his father-in-law to his wife, in different financial years, detailing as under:-

Sr. No.	Financial Year	Amount
1.	2009-10	Rs.13 Lacs
2.	2010-11	Rs.10 Lacs
3.	2011-12	Rs.9 Lacs
4.	2012-13	Rs.8 Lacs



5. The case of the petitioner is that the above amount of Rs. 40 lacs was found deposited in personal account of respondent No. 1 which was not jointly owned by his wife. Vide letter dated 30.03.2017, interrogation was referred to CBI.

6. As enquiry was initiated with regard to the disproportionate assets held by respondent No. 1, he submitted a complaint levelling allegations against the CVO which are as under:-

“I want to bring to kind notice of Hon'ble Central Vigilance Commission with due respect that the CVO asked me some favour to him. I completely refused to do so. Annoyed with this the CVO sent false, baseless, malicious report to CBI”

7. Besides above, respondent No. 1 gave a written communication, stating that when the movie namely ‘Jigariya’ was released in 2016, the said CVO, whose son had a lead role in the movie, asked him to purchase the ticket for entire hall at PVR Theatre, Juhu, Mumbai and to sell tickets of movie in half price or free of cost to the viewer/public. Then CVO also demanded the funds for marketing and installing hoardings at various places in Mumbai.

8. According to the petitioner, the said movie was released on 10.10.2014 and the CVO would never ask for a favour in respect of a movie which was released two years before.

9. The charge-sheet dated 31.07.2020 was served upon respondent No. 1 wherein two Articles of Charge were framed against him. Even though



respondent No. 1 retired on 31.12.2020, however, the enquiry initiated against him continued.

10. The Enquiry Officer submitted enquiry report dated 24.05.2021 wherein both the charges levelled against respondent No. 1 stood proved, to which respondent No.1 also filed a reply.

11. The Disciplinary Authority vide order dated 23.07.2021 imposed punishment of reduction of to the lower post of Additional General Manager.

12. Respondent No. 1 preferred an appeal against the order dated 23.07.2021 passed by the Disciplinary Authority, which was declined by the Appellate Authority vide order dated 20.12.2021.

13. Being aggrieved, respondent No. 1 thus preferred O.A.No.534/2022 before the learned Tribunal, wherein he pleaded that he had provided all necessary information in respect of purchase of immovable properties in terms prescribed by HRD, however, the petitioner harassed him on baseless grounds. Further submitted before the learned Tribunal that the act of initiating disciplinary proceedings against him at the time when the matter was pending investigation before the CBI agencies; was erroneous, illegal and unjustified. Also pleaded that the enquiry proceedings were conducted in violation of principles of Natural Justice and the Inquiry officer exceeded his jurisdiction in declining examination of his witness namely, Arvind Patel.

14. Respondent No. 1 also pleaded before the learned Tribunal that the petitioner has not given cognizance to his letter RITES/WR/09 dated 22.03.2009 whereby he had informed about transactions carried out by his father-in-law and without even looking into the contents thereof merely



stated that the folio number like RITES.WR.AKS.09, were very much unlikely. However, what is important is the content of the letter and not the folio number, which Disciplinary Authority did not consider. Even the fact that it was containing signatures of Shri Rahul Jha and the then GGM (CS), who despite his request were denied to be examined as defence witnesses.

15. Respondent No. 1 also averred before the learned Tribunal that the Disciplinary Authority concluded in violation of Rule 5(3) of *RITES (Conduct, Discipline and Appeal) Rules, 1980*, as in the absence of any CBI report and statement of his father-in-law regarding gift of Rs.40 lacs cash given to his wife, charge framed against him could not be proved.

16. Respondent No. 1 pleaded that his father-in-law by submitting his affidavit regarding confirmation of Gift' dated 26.05.2017, tried to explain the issue regarding the source of income, but the petitioner did not take it into consideration.

17. To the contrary, the stand of the petitioner before the learned Tribunal was that in Statement of Assets and Immovable Properties as per Form- 1 submitted by respondent No. 1 on 01.01.2014 as per Form-1, respondent No.1 had though provided information with regard to the office accommodation acquired by him by taking loan of Rs.65 lacs from Axis Bank and that the remaining amount was incurred from his savings account, but he did not disclose about the gift from his father-in-law. Even in his Statement of Assets and Immovable Properties submitted on 25.07.2016 as per Form- 3, there was no mention of any gift from his father- in-law.

18. The petitioner pleaded before the learned Tribunal that allegations raised by respondent No. 1 against the CVO on the aspect of purchase of tickets for entire hall of PVR theatre, Juhu, Mumbai for film 'Jigariya' in



which son of CVO was in the main role, the Inquiry Officer examined the issue during investigation, who observed that no proof in support of above allegations was given by respondent No. 1.

19. Learned Tribunal, in light of the contentions raised by both sides, observed and held as under:-

“5.4 A bare perusal of the aforementioned rules indicates that the reference to reversion to a lower grade or post is for an employee officiating in a higher grade or post whereas the applicant had been promoted to the post of General Manager on a regular basis. Moreover, the said Rule nowhere allows retrospective reversion. Such a punishment of reversion to a lower .post with retrospective effect cannot be implemented even for a serving employee, leave alone a retired employee. Reversion can be implemented in case of serving employee but only with prospective effect because the service already rendered by an employee on his regular promotion to any post cannot be taken away from him. He has already performed the duties of the post held by him and has been given pay of that post.

6. Taking an overall view of the issues discussed above, it is seen that the charge sheet and the punishment imposed upon the applicant vide the punishment order dated 23.07.2021 suffer from various lacunae as pointed out above.

7. In view of the above, Charge Memorandum dated 31.07.2020, impugned disciplinary and appellate orders dated 23.07.2021 and 20.12.2021 respectively are hereby quashed and set aside. Accordingly, the respondents are directed to re-fix the pension and other pensionary benefits of the applicant with effect from the date of his retirement



on 31.12.2020 in the rank of General Manager (Pay Rs.152600/ in scale of Rs.120000- 280000) and release all his retirement dues within a period of eight weeks from the date of receipt of a certified copy of this order.”

20. The petitioner, in the present petition, has contended that the observation of the learned Tribunal that amount of Rs.40 lacs in cash deposited in personal account of respondent No. 1 by his father-in-law was *stridhan* under provisions of Section 14 of Hindu Succession Act, 1956, deserves to be set aside.

21. Learned ASG appearing on behalf of petitioner submitted that in the Letter dated 11.07.2016, there was no reference to letter dated 23.09.2009, which has been cropped up as an afterthought by respondent No.1 in order to show declaration about his properties. Also submitted that in the initial letter by respondent No.1 to CVC, which was forwarded in terms of CVC letter dated 17.12.2018, vague allegation was levelled against the then CVO. The allegation of promotion of a film ‘Jigariya’ and CVO asking respondent No.1 to purchase full hall tickets in 2016 is inherently improbable for the established fact that the movie was released on 10.10.2014. For a movie, which was released two years back, it is inherently improbable that then CVO will ask for its promotion after two years, as the promotion of a film is done at the initial stage. However, it was a Counter Blast to exercise of official duties by then CVO.

22. On behalf of petitioner reliance was placed upon decision of Hon’ble Supreme Court in ***K.L. Shinde Vs. State of Mysore*** (1976) 3 SCC 76, wherein it is held that neither the High Court nor the Tribunal or the Supreme Court can re-examine and re-assess the evidence. Reliance was



also placed upon another decision of Hon'ble Supreme Court in ***B.C. Chaturvedi Vs. Union of India & Ors.***, AIR 1996 SC 484 to submit that Inquiry Officer and Disciplinary Authority is the sole judge of facts.

23. To submit that the settled position of law is that even when there is some evidence, which reasonably supports the conclusion that the delinquent officer is guilty of the charge, the High Court cannot function to review the evidence to arrive at an independent finding based upon the said evidence, reliance was placed upon decision of Hon'ble Supreme Court in ***State of Andhra Pradesh Vs. Sree Rama Rao*** AIR 1963 SC 1723.

24. To submit that interference by Courts in disciplinary proceedings has been deprecated by the Hon'ble Supreme Court, reliance was placed upon decision in ***Union of India and Ors. Vs. P. Gunasekaran***, 2015 2 SCC 610.

25. Reliance was also placed upon decision of Hon'ble Supreme Court in ***State Bank of India Vs. A.G.D Reddy*** 2023 INSC 766, to submit that the scope of judicial review against disciplinary inquiry is limited.

26. Learned ASG also submitted on behalf of the petitioner that the learned Tribunal has erroneously placed reliance upon explanation to Rule 23, as the same is an exclusionary clause explains as to what does not amount to punishment and so, the same could not have been relied upon by respondent No.1. Further submitted that as per Rule 27A, inquiry against a delinquent can continue even after retirement and punishment can be imposed on the basis of charges proved. In support of this contention, reliance was placed upon a decision of Hon'ble Supreme Court in ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey*** AIR 2020 SC 2978.



27. Learned ASG by making above submissions sought setting aside of impugned order dated 01.03.2024 passed by the learned Tribunal.

28. Having considered the submission advanced by both the sides and on perusal of impugned order dated 01.03.2024 passed by the learned Tribunal as well as other material placed on record, this Court finds that vide Charge Memorandum dated 31.07.2020, the following charges were levelled against the respondent No.1:-

“Article I

That the said Shri Avdesh Kumar Sharma, the then AGM/Mech acquired a property (Office Space) in Mumbai at a price of approximately 89.50 Lakh in the year 2013-14 by bank loan and gift from his father-in-law to his wife but failed to inform the department about the receipt of gift of Rs.40 Lakh arranged by his father-in-law to his wife.

Article II:

That the said Shri Avdesh Kumar Sharma, the then AGM/Mech leveled false and malafide allegation of bribery against the earlier CVO, Shri Prabhat Ranjan Deo in the year 2018.

By his aforesaid acts of breach of conduct rule the said Shri Avdesh Kumar Sharma, Emp. No.6703, the then Addl. General Manager/Mech, presently working as GM (I)/CR/RITES/Bhilai, (i) got possession of property disproportionate to the known sources of income by him and (ii) abetment of act by him which amounted to misconduct, and thereby violated Rule 5(3) and 5(17) of RITES (Conduct, Discipline and Appeal) Rules, 1980”



29. The Disciplinary Authority vide order dated 23.07.2021 imposed punishment of reduction of to the lower post of Additional General Manager, holding as under:-

“Reduction to the lower post, i.e., from post of General Manager (Pay Rs.152, 600.00 in scale Rs.120, 000. 00-280, 000. 00) to Additional General Manager (Rs.1 00,000-280,000.00) with pay fixed as Rs.135, 000. 00 (on his last pay drawn for the post of AGM as if he was not promoted as GM) is imposed upon Shri Avdesh Kumar Sharma, and we order accordingly under the provision of Rule 23(f) of RITES (Conduct, discipline & Appeal), Rules, 1980. Since, he had already superannuated from service on 31.12.2020, his final settlement shall be done on the pay thus reduced as Rs.135,390.00, as a result of this punishment.”

30. The petitioner before this Court has relied upon various decisions noted above to contend the High Court cannot function to review the evidence to arrive at an independent finding based upon the said evidence and there shall be no interference by Courts in disciplinary proceedings.

31. The Hon’ble Supreme Court in ***Union of India Vs. Subrata Nath*** 2022 SCC OnLine SC 1617 while disposing of appeal preferred by Union of India, has observed as under:-

“13. The point that arises for our consideration is whether in the given facts of the case, the learned Single Judge and the Division Bench ought to have interfered with the punishment imposed on the



respondent by the Disciplinary Authority and upheld by the Appellate Authority as also by the Revisional Authority.

14. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are mala fides attributable to the Disciplinary Authority, then the courts can certainly interfere.”

32. The settled position of law is thus that in such cases where the Court finds that the disciplinary proceedings suffers *mala fides* or where the evidence brought on record is insufficient to prove guilt of an official, the punishment resultant thereof, the Court is well within its power to interfere with such findings.

33. With regard to First Charge, the learned Tribunal has taken note of the fact that the respondent vide letter dated 23.03.2009 had informed the petitioners about gift of Rs.40.00 lacs to be given by his father-in-law to his wife. The details of the amounts given in subsequent years has been noted in Para-4 above. In our opinion, the learned Tribunal has rightly observed that petitioner was either required to approve or to make queries about these transactions, which was not done by the petitioner.

34. On Second Charge, the learned Tribunal observed that it was incumbent upon the petitioner to permit the respondent No.1 to examine



Mr.Prabhat Ranjan Deo, CVO against whom he had made allegations of bribery, however, petitioner deprived him of this opportunity.

35. Under Article 311(2) of the Constitution of India, a departmental inquiry has to be conducted in accordance with rules of natural justice and the delinquent official is required to be given opportunity to prove his case. The Hon'ble Supreme Court in ***State Bank of India Vs. R.K. Jain and Ors.***, (1972) 4 SCC 304 has held that if an inquiry is vitiated by violation of principles of natural justice or if no reasonable opportunity was provided to the delinquent to place his defence, it cannot be characterized as a proper domestic inquiry held in accordance with the rules of natural justice. Thus, by denying the respondent to examine the concerned CVO, the second charge could not have been proved against the respondent No.1.

36. The Hon'ble Supreme Court in ***Bhagirathi Jena Vs. Board of Directors, O.S.F.C.***, (1999) 3 SCC 666, while dealing with case wherein the charged employee was suspended and disciplinary inquiry commenced but could not finish before his superannuation and the charged employee was relieved after superannuation without prejudice to the claim of the employer; but the disciplinary proceeding continued even after his superannuation; which he challenged before the High Court and thereafter in Supreme Court, observed as under:-

“7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be



made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

37. In the present case, the Enquiry Officer submitted his report on 28.05.2021 holding that the charges stood proved against the respondent No.1. The said respondent retired on 31.12.2020 and vide order dated 23.07.2021, punishment of reversion was imposed upon him with retrospective effect.

38. The learned Tribunal vide impugned judgment has rightly observed that Rule 23 Explanation (iii) of RITES (Conduct, Discipline and Appeal) Rules, 1980, nowhere allows retrospective reversion and such punishment with retrospective effect cannot be implemented even in case of serving employee as the service already rendered by an employee on his regular promotion to any post cannot be taken away from him.

39. In our considered opinion, the order dated 01.03.2024 passed by the learned Tribunal in O.A. No.534/2022 suffers from no infirmity, calling interference by this Court. Consequentially, the Charge Memorandum dated 31.07.2020 issued by the petitioner; Disciplinary Authority's order dated 23.07.2021 and Appellate Order dated 20.12.2021, are rightly quashed by the learned Tribunal.

40. With aforesaid, the present petition and pending application, if any,



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are accordingly dismissed with direction to the petitioner to calculate and grant respondent No.1's retiral benefits within four weeks.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 30, 2024

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