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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment delivered on: 05.11.2024***

+ LPA 501/2008

NATIONAL INSTITUTE OF HEALTH & FAMILY
WELFARE

.....Appellant

Through: Representative of the appellant
(Appearance not given)

versus

DR.C.P.RAI & ANR.

.....Respondents

Through: Mr. Mahipal Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. This **Letters Patent Appeal**¹ is directed against the judgment and order dated 01 July 2008 rendered by the learned Single Judge and who has in terms thereof allowed the writ petition preferred by the respondents and set aside the order of removal. While doing so, and setting aside the order dated 04 May 1989 in terms of which the said penalty had come to be imposed, the learned Single Judge had further provided that the respondent-petitioner would be reinstated in service along with continuity in service together with 50% back wages. The order sheet would reflect that the instant appeal came to be admitted on 01 September 2008 and on which date an interim order was passed placing the judgment of the learned Single Judge in abeyance. It is that order which has operated on the appeal since then.

2. It becomes pertinent to note, however, that while the appeal had been dismissed initially for want of non-prosecution on 12 April 2013,

¹ LPA



an application for restoration of the appeal had been preferred and allowed by way of order dated 05 July 2013, as a result of which the appeal was restored to its original number. Thereafter, the appeal was dismissed in default yet again after repeated non-appearance by parties on 02 August 2016. Ultimately, however, the subsequent restoration application preferred by the appellant came to be allowed on 26 October 2016.

3. As we view the judgment rendered by the learned Single Judge, we find that the respondent was appointed initially to the post of Research Officer in the **National Institute of Health and Family Welfare**², the appellant herein, on 03 September 1982. His probationary period was extended on 03 September 1984 and 03 September 1985. It was the case of the appellant that the work and conduct of the respondent was not found to be satisfactory and as a consequence of which various memos had come to be issued to him from time to time.

4. On 16 January 1986, Articles of Charge came to be framed against the writ petitioner. The seven articles of charge which were laid and alleged acts of misconduct committed by the respondent read as follows:

“ARTICLE I:

That the said Dr. C.P. Rai while functioning as Research Officer in the National Institute of Health and Family Welfare from 03rd September, 1982 had not shown interest for the job; despite repeated verbal advice and cautioning, he had not cared to improve. He had not submitted the detailed plan of three projects inspite of verbal as well as written instructions from the Head of the Department of Reproductive Boi-medicine. He had not prepared

² NIHFW



the requisite information in the quarterly report as per instructions of the Head of the Department of Reproductive Boi-Medicine. He had neither reviewed the literature, nor prepared the guidelines and also not prepared an appropriate proforma for generic counselling. He had thus violated the provisions of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE II:

That during the aforesaid period and while functioning in the aforesaid Institute and said Dr. C.P. Rai was found generally difficult and could not work in a team. His behaviour with senior officers in the Department of Reproductive Bio-medicine and also in the Institute was irresponsible and objectionable which is unbecoming of a Government servant under Rule 3(iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE III:

That during the aforesaid period, and while functioning in the aforesaid Institute the said Dr. C.P. Rai showed lack of sense of discipline and responsibility for the order of the seniors. He has not maintained absolute devotion to duty and violated and provisions of the Rule 3(iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE IV:

That during the aforesaid period and while functioning in the aforesaid Institute and Dr. C.P. Rai had quarrelled with Shri B.S. Negi in Accounts Section on 14th December, 1983. He had also misbehaved with Dr. B.P. Dass, Asstt. Professor, Department of Reproductive Bio-medicine on 13th December, 1964 (sic 1984). His conduct was unbecoming of a Government servant under Rule 3(iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE V:

That during the aforesaid period and while functioning in the aforesaid Institute the said Dr. C.P. Rai had divulged information about the Institute to the Press. He had violated the provisions of the Rule 11 and 19 of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE VI:

That during the aforesaid period and while functioning in the aforesaid Institute the said Dr. C.P. Rai forced open the room of microscope on 2.4.1985 and 11.4.85 without obtaining the key of the room. He had violated the provision of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE VII:



That during the aforesaid period and while functioning the aforesaid Institute the said Dr. C.P. Rai had proceeded on leave from 1st Feb., 1985 to 6th Feb. 1985 without prior permission/sanction from the competent authority of the Institute. He had violated the provisions of Rule 7 of the Central Civil Services (Leave) Rules, 1972.”

5. In the course of the inquiry, according to the appellant, the respondent failed to cooperate and despite repeated opportunities being given, neither acceded to the liberty granted by the inquiry officer to cross-examine witnesses or effectively pursue his defence. Ultimately, and on 13 March 1987, the inquiry officer submitted its report holding the respondent guilty of Charge Nos. I, IV & VI out of the seven imputations of misconduct which formed part of the original chargesheet.

6. The respondent thereafter is stated to have made a representation to the Disciplinary Authority on 06 July 1987 raising various challenges to the manner in which the inquiry proceedings had been conducted. Taking cognizance of the same, it would appear that the Disciplinary Authority remitted the matter for consideration afresh by the inquiry officer.

7. This is duly acknowledged by the inquiry officer itself as would be evident from a reading of its communication of 22 September 1988 and which is reproduced hereinbelow in entirety:

“PROF T R ANAND
INQUIRY OFFICER

N I H F W
File No.6-26/86-MCHA
22 September 1988

To

The DIRECTOR,
N I H F W
New Delhi.

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Sir,

I was appointed Inquiry Officer to inquiry into the charges against Dr. C.P. Rai, Research Officer, Department of Reproductive Bio-medicine, NIHF, vide order No. 6-1/85-Admn.I dated 11-9-86. I had submitted the Report of the Inquiry vide my letter of even number dated 13-3-1987. The Administration of NIHF again instructed me to re-open the inquiry vide letter of even number dated 6-7-1987. I was instructed to take the following steps:

- i. The Inquiry Officer should re-open the inquiry and give opportunity to the Charged Officer to cross-examine the prosecution witness with the help of Defence Assistant.
- ii. The Charged Officer should be given permission to produce his Defence witnesses if any and allow the Presenting Officer to cross-examine the defence witnesses.
- iii. After completing these formalities the Presenting Officer may be asked to submit a fresh written brief which may be supplied to the Charged officer so that the Charged officer may submit his written brief taking into account the contents of the brief by the Presenting Officer.

In response to this letter, I re-opened the inquiry and requested the Defence Assistant, Shri K.L. Juneja as well as Dr. C.P. Rai to cooperate in the enquiry. All the documents were examined by Dr. C.P. Rai along with his Defence Assistant, but when it was decided to hold oral inquiries on 4-1-1988, I was informed by the Executive Engineer, Municipal Corporation of Delhi that permission given to Shri K.L. Juneja to act as Defence Assistant is withdrawn. As a result thereof, the inquiry proceedings were once again halted. Dr. C.P. Rai was instructed to communicate the name of his new Defence Assistant. In spite of repeated efforts on my part to proceed further with the inquiry and give opportunity to Dr. C.P. Rai to cross-examine all the witnesses and to produce all the witnesses in his defence, no progress could be made. Dr. C.P. Rai has again and again raised issues like employment of a legal counsellor as Defence Assistant as no government servant is willing to become his Defence Assistant and thus put repeated obstacles in the conduct of this inquiry. I, therefore, find myself unable to proceed further with the inquiry.

The Report submitted by me vide my letter of even number dated 13-3-1987 is resubmitted to the authorities for further necessary action. It is once again pointed out that Dr. C.P. Rai has failed to utilise the repeated opportunities and cooperate in the conduct of the inquiry. Folders nos. 1 to 6 containing various documents pertaining to this inquiry are enclosed.



Yours faithfully,

T R ANAND
INQUIRY OFFICER”

8. As is revealed in that communication, the Disciplinary Authority of the appellant had commanded the inquiry officer to reopen the inquiry, provide an opportunity to the respondent to cross-examine the prosecution witnesses with the aid of a defence assistant, accord the respondent an opportunity to produce defence witnesses and to thereafter submit a fresh report.

9. The inquiry officer, however, records that although and pursuant to the directives of the Disciplinary Authority the inquiry proceedings were in fact reopened, the respondent did not cooperate and participate in the inquiry proceedings. It consequently proceeded to re-submit the original report dated 13 March 1987 and which formed the basis for the passing of the final order of removal which came to be impugned in the writ petition.

10. As we read the judgment rendered by the learned Single Judge, we find that the majority of the challenges which stood raised by the respondent and which essentially pertained to procedural irregularities and an alleged failure on the part of the inquiry officer to provide him an opportunity to effectively mount a defence, have come to be answered against the original writ petitioner.

11. The same becomes apparent from a reading of the following passages of the impugned judgment:

“6. The next contention of the counsel for the petitioner is that as against seven charges, the petitioner was found guilty in respect of three charges, while in respect of the remaining four charges the



petitioner was not found guilty. The contention of the counsel for the petitioner is that even in respect of three charges i.e. charge Nos. 1, 4 and 6 the Enquiry Officer failed to give any reasons whatsoever as to why the petitioner was held guilty of these charges. The counsel contended that there is a total non-application of mind as the Enquiry Officer jumped to conclusions without there being any reason to justify the conclusions arrived at by the Enquiry Officer. In support of his argument counsel for the petitioner placed reliance on sub rule 23(d) of Rule 14 of CCS Rules, which states that the report of the Enquiry Officer shall contain findings on each article of charge and the reasons thereof. Counsel thus contended that the enquiry report given by the Enquiry Officer is in utter violation of said provision of CCS Rules and therefore, the report given by the Enquiry Officer is ex- facie illegal. Counsel for the petitioner further contended that despite specific request made by the petitioner vide his letter dated 23rd September, 1987 the petitioner was not supplied with documents, which were material to the controversy involved. The counsel for the petitioner contended that in the absence of the said documents the petitioner was not in a position to cross-examine the witnesses. The counsel for the petitioner also submitted that the examination of all these witnesses was required to be conducted in presence of the petitioner and not in his absence as it was done by the Enquiry Officer. The counsel also submitted that vide letter dated 25.11.1987 the petitioner had apprised the Enquiry Officer of the fact that he was not allowed to inspect various documents, details of which was given in the said letter. The contention of the counsel for the petitioner was that in absence of all these documents and assistance of a legal practitioner, the petitioner could not effectively participate in the enquiry proceedings. The Enquiry Officer should not have proceeded in the matter unless the petitioner was allowed assistance of a legal practitioner and the inspection of all the documents for the purpose of giving free and fair trial to the petitioner, counsel contended.

7. Counsel for the petitioner raised another contention that the Disciplinary Authority has not given any reasons in its order for agreeing with the findings given by the Enquiry Officer. The counsel contended that order of the Disciplinary Authority is not a reasoned order and, therefore, the same is also illegal and arbitrary in nature.

8. The counsel also contended that even the punishment awarded by the Disciplinary Authority directing removal of the petitioner from his service is highly disproportionate to the charges, which were proved against him by the Enquiry Officer.....”



12. However, the learned Single Judge has, insofar as the findings rendered by the inquiry officer on merits is concerned, ultimately found that no reasons in support of the findings of guilt returned in respect of the three charges were either recorded or set forth in the inquiry report. This, according to the learned Single Judge, clearly amounted to a violation of Rule 14 of the **Central Civil Services (Classification, Control and Appeal) Rules, 1965³**.

13. This becomes evident from the following conclusions which have come to be recorded by the learned Single Judge:

“The grievance of the petitioner that the inquiry officer had failed to follow the instructions given by respondent No.1, thus, cannot sustain as throughout the proceedings before the inquiry officer even after reopening of the inquiry, the petitioner remained totally uncooperative and was creating hindrance in the progress of inquiry proceedings. The letter dated 22.9.1988 written by the said inquiry Officer to the Director clearly highlights the helplessness of the Inquiry Officer due to the conduct of the petitioner. The petitioner, thus, cannot take advantage of his own wrongs and uncooperative attitude and then put blame on the conduct of the inquiry officer.

Dealing with next contention raised by the counsel for the petitioner that the Enquiry Officer failed to give any reason to justify the conclusion in violation of sub rule 23(D) of Rule 14 of CCS (CCA) Rules, I find that there is some merit in the submission made by the counsel for the petitioner. It is a settled legal position that the disciplinary enquiry is in the nature of quasi judicial inquiry and the minimum expectation from the enquiry officer is that the report given by him must be reasoned one and the same cannot be an ipsi dixit of the enquiry officer. Merely giving a reference to the statements made by various witnesses during the course of the evidence of the prosecution without discussing the same in the enquiry report clearly proved failure on the part of the enquiry officer to establish linkage to show as to how such statement made by the witness goes to prove a particular charge against the delinquent official. To state that the statement of SW-1 and the documentary evidence in Ex-X-1 at pages 2,3,4,10 & 11 are relevant regarding Article of Charge No.1 is not the correct method

³ CCS(CCA) Rules



to hold the delinquent official guilty of such a charge. While holding the delinquent official as guilty of charge no.1, the enquiry officer observed that there is plenty of evidence pointing out to the fact that Dr. C.P. Rai is not interested in the job he was appointed for and therefore, he was found guilty of such charge. Similarly, for holding the petitioner guilty of charge no.IV, the enquiry officer held that the evidence is quite convincing proving the charge against him of quarrelling with the LDC on duty. Likewise for holding the appellant guilty for charge no. IV, it was held that there is sufficient evidence to prove that he had broken the door of microscope room and therefore he was held guilty. Such findings without establishing any linkage with the evidence produced on record by the prosecution is in clear violation of sub rule 23(D) of Rule 14 of CCS (CCA) Rules. The Apex Court in the judgment of **Anil Kumar Vs. Presiding Officer & Ors. (1985) 3 SCC 378** has held that where the evidence is annexed to an order sheet and no correlation is established between the two showing an application of mind, then, such a report cannot be considered an enquiry report at all. Paras 5 and 6 of the **Anil Kumar's case (Supra.)** is reproduced as under:

5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the enquiry officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. The enquiry officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not creditworthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the enquiry officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. v. Union of India* this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in *Mahabir Prasad Santosh Kumar v. State of U.P.* this Court reiterated that satisfactory decision of a disputed claim



may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a more gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

14. On the basis of the aforesaid conclusions the learned Single Judge proceeded further to hold and observe as follows:

“In view of the said legal position the inquiry report submitted by the enquiry officer holding disciplinary enquiry for immediate removal suffers from infirmity and illegality on account of the violation of sub rule 23(D) of Rule 14 of CCS (CCA) Rules and therefore, the same is not sustainable in the eyes of law. Even otherwise, the disciplinary authority has imposed major punishment of removal of the petitioner from service, although, out of seven charges, three were held to be proved against him. The three charges which were proved against the appellant even if the same are taken to have been proved against the petitioner are not so grave in nature warranting dismissal of appellant from his service. The punishment of removal is therefore totally disproportionate to the gravity of said three charges proved against the petitioner.”

15. Proceeding then to examine whether the punishment as imposed could be said to be commensurate with the misdemeanour and



misconduct which had come to be alleged, the learned Single Judge ultimately came to render the following findings:

“It is a settled legal position that normally the court would not substitute its own decision on the order of punishment passed by the disciplinary authority and it is only in a case where it shocks the conscience of the Court, then only the same can be interfered. In the present case after taking into consideration the proven charges against the appellant certainly, the punishment of removal shocks the conscience of the court and therefore also the impugned order is illegal, perverse and unconscionable. Since the present writ petition filed by the petitioner succeeds on these two grounds, therefore, I do not feel inclined to discuss other contentions raised by the parties. The impugned order dated 4.5.89 is quashed and consequently the respondents are directed to reinstate the petitioner with continuity of service and grant of 50% back wages. The petitioner is not found entitled to claim full back wages as he himself was responsible for causing delay in the expeditious disposal of disciplinary proceedings.

In view of the above position, the writ petition is allowed.”

16. Quite apart from the reasons which weighed upon the learned Single Judge in allowing the writ petition, we find that the procedure as adopted by the respondents cannot possibly be sustained. Undisputedly, the Disciplinary Authority of the appellant had remitted the matter for the consideration of the inquiry officer for drawing proceedings *de novo* and for trial of the charges afresh. Rather than doing that, all that the inquiry officer has done is to reiterate the inquiry report of 13 March 1987 which had been originally submitted.

17. In our considered opinion, once the matter had been remitted by the Disciplinary Authority for the inquiry proceedings to be commenced afresh, and with the inquiry officer being placed under the obligation to provide an adequate opportunity to the respondent to defend the charges as laid, it was clearly impermissible for the inquiry officer to have merely reiterated or, as he chooses to describe it,



“resubmitted” the original inquiry report. The original inquiry report in light of the directives framed by the Disciplinary Authority clearly did not survive once the matter had been remitted for proceedings being drawn afresh.

18. Regard must also be had to the fact that in terms of the inquiry report of 13 March 1987, the inquiry officer had found the petitioner guilty of charges I, IV and VI alone. Insofar as the rest of the articles of charge were concerned, no findings of guilt came to be returned against the writ petitioner. It is these facts which appear to have weighed upon the learned Single Judge in proceeding to allow the writ petition and directing the appellants to reinstate the respondent with continuity of service and grant of 50% back wages. On an overall conspectus of the aforesaid, we find no merit in the challenge which stands raised in the appeal.

19. The appeal consequently fails and shall stand dismissed. The appellant shall consequently effect compliance of the judgment rendered by the learned Single Judge forthwith.

20. Even if the respondent may have crossed the age of superannuation, the appellant shall be obliged to provide all notional benefits strictly in accordance with the directions as framed by the learned Single Judge.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

NOVEMBER 5, 2024/kk