



\$~22

*

IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 04.04.2024***

+

W.P.(C) 7525/2018**UNION OF INDIA AND ORS.****..... Petitioners****Through: Mr. T. P. Singh, Sr. Central Govt.
Counsel.****versus****J R SAKHARE****..... Respondent****Through: Mr. Ankur Chibber, Advocate.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 20.12.2017 passed by the learned Central Administrative Tribunal in O.A. No. 2827/2014. Vide the impugned order, the learned Tribunal has allowed the original application (OA) filed by the respondent applicant and has consequently, set aside the penalty order passed by the disciplinary authority on 22.10.2008 as also the appellate order dated 14.05.2009.

2. From a perusal of the impugned order, we find that the primary ground on which the learned Tribunal has set aside the penalty order as also the appellate order is that the bill dated 03.02.1993, which the respondent was alleged to have fabricated was neither produced during the departmental proceedings nor during the criminal



proceedings. We may note that in the departmental proceedings, it was the stand of the petitioners that the original bill had been submitted by way of evidence in the criminal proceedings. However, in the criminal proceedings which were concluded subsequently, the respondent has been acquitted on 30.11.2013 on the ground that the original bill which he had allegedly fabricated was not produced.

3. In support of the petition, learned counsel for the petitioners submits that even though the original bill was not traceable, an authenticated copy thereof was produced during the enquiry proceedings. The respondent having not raised any grievance at that stage could not be subsequently permitted to urge that he had suffered any prejudice on account of non-production of the original bill, which was fabricated by him. He, therefore, prays that the impugned order be set aside.

4. On the other hand, Mr. Ankur Chibber, learned counsel for the respondent, supports the impugned order and submits that at the stage of the enquiry, even though the respondent had raised the plea that his signatures on the purported fabricated bill were forged and, therefore, the same should be produced before the Enquiry Officer to give him an opportunity to demonstrate that the same was forged, the bill was never produced. This, he submits, was on the premise that the original bill had been submitted as evidence in the criminal proceedings and, therefore, the respondent remained under a *bonafide* belief that the bill dated 03.02.1993 had been filed in the criminal proceedings. However, it is only after the respondent was acquitted by the Court of learned Metropolitan Magistrate, Patiala House



Courts on 30.11.2013 that he learnt that the original bill was not produced even in the criminal proceedings and, therefore, he immediately approached the learned Tribunal for quashing the report of the Enquiry Officer as also the penalty order alongwith the appellate order.

5. Before dealing with the rival submissions of the parties, we may begin by noting the relevant extracts of the impugned order which read as under:-

“13. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Admittedly, the applicant, for the charge of alleged manipulation of words and figures in the sanction order dated 03.02.1993, was subjected to departmental proceedings as well as to trial in a criminal court for criminal offence. He has been acquitted in the criminal case due to lack of evidence vide criminal court's judgment dated 30.11.2013. However, departmental proceedings got concluded much earlier and he was removed from service vide disciplinary authority's order dated 22.10.2008, which was duly affirmed by the appellate authority vide Annexure A-2 order dated 14.05.2009.

14. Before examining the merits of the case, we would like to deal with the issue of limitation raised by Mr. Reen, learned counsel for respondents. He has relied upon the judgment of Hon'ble Apex Court in Arabinda Chakraborty's case (supra). The relevant portion of the said judgment is extracted below:-

"18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision regard to any statutory appeal. The respondent kept on representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If



accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

15. We are of the view that the above judgment of the Hon'ble Apex Court has no applicability to the instant case. The applicant was acquitted by the criminal court vide judgment dated 30.11.2013, albeit his removal from service was affirmed by the appellate authority on 14.05.2009. The applicant could not have approached the respondents seeking his reinstatement prior to knowing his fate in the criminal case. His acquittal in the criminal court, for lack of evidence, was pronounced only on 30.11.2013. Therefore, we do not find any flaw in the applicant moving applicant dated 22.10.2013 (Annexure A-3) to respondent N0.3 seeking his reinstatement in service. In view of these facts, we are of the view that the O.A. is not hit by limitation.

16. Coming to the merit aspect of the case, it is not in dispute that the original documents, referred to in paragraph (7) above, were never produced during the course of inquiry as they were in the possession of Inspector Ashok Hari, investigating officer in the criminal case and with his death during the course of investigation itself, original documents were lost. For non-availability of the original documents, the case of the applicant has definitely got prejudiced. The applicant has stoutly claimed that his signature was forged in the bill for manipulating the words and figures in it. This assertion of the applicant could have been got examined by a competent technical authority only if the original documents were available. No doubt, the applicant had been given photocopies of these documents but the same was not sufficient for conduct and conclusion of the disciplinary inquiry proceedings as per law. In this regard, we would like to refer to the following judgments of the Hon'ble Apex Court;

(i) Chandrama Tewari v. Union of India through General Manager, Eastern Railways, 1988 AIR 117, wherein it has been held as follows:-

"However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only



material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied up by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recoding finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non- supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer."

(ii) *Syndicate Bank & others v. Venkatesh Gururao Kurati*, (2006) 3 see 150, wherein it has been held as follows:-

"18. In our view, non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the Enquiry Officer to arrive at his conclusion, the non-supply of which would cause prejudice being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of delinquent officer must be established by the delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

17. The main thrust of the pleadings of the applicant in the O.A. & rejoinder as also the arguments of his counsel, Mrs. Harvinder Oberoi, has been that due to non-production of the original



documents during the inquiry, the applicant could not contest his case properly, nor could he examine the prosecution witnesses in a meaningful manner. This contention definitely merits consideration.

*18. In the conspectus of discussions in the pre-paragraphs and taking cognizance of the fact that originals of some of the vital documents relied upon were not produced during the course of inquiry as also the ratio of law laid down by the Hon'ble Apex Court in **Chandrama Tewari & Venkatesh Gururao Kurati** (supra), we have no option except to quash and set aside the impugned Annexures A-i & A-2 orders passed by the disciplinary and appellate authorities. Accordingly, ordered.*

19. As a consequence of the quashment of Annexures A-i & A-2 orders, we direct the respondents to reinstate the applicant in service within eight weeks from the date of receipt of a copy of this order. We further direct that the respondents shall pay 50% of his back-wages without interest to the applicant subject to the applicant furnishing non-employment certificate by self for the period when he remained out of service due to the removal order.

20. With these observations/directions, the O.A. is allowed. No order as to costs."

6. From a perusal of the aforesaid, we find that the learned Tribunal has taken note of the fact that the respondent had approached immediately after he was acquitted in the criminal proceedings on the ground of lack of evidence. The learned Tribunal, therefore, held that when the original document which the respondent was alleged to have forged was not produced either in the criminal proceedings or in the departmental enquiry, the respondent's plea that he had suffered grave prejudice deserves to be accepted. The Tribunal also took note of the fact that it was the respondent's specific case both in the departmental enquiry and in the criminal case that the signatures on the bill which he was alleged to have forged were not his and, therefore, in the absence of original bill, he



was unable to prove that the signatures were not his.

7. However, taking into account that the respondent had been dismissed from the services in the year 2008 and was acquitted in the criminal proceedings in 2013, the learned Tribunal has balanced the equities by directing that the respondent would be paid only 50% back wages. In a case like the present where even before us, learned counsel for the petitioners fairly concedes that the original purportedly fabricated bill is not traceable, the respondent's plea that he has suffered grave prejudice on account of non-production of the most vital document in the departmental proceedings has to be accepted. Furthermore, it is now evident that even the petitioners' original plea that the original bill was tendered as evidence in the criminal proceedings has turned out to be incorrect.

8. For the aforesaid reasons, we are of the view that the learned Tribunal was justified in quashing the enquiry report as also the penalty order and the consequential appellate order. We, therefore, find no infirmity in the impugned order. The writ petition being meritless is dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

APRIL 4, 2024

P