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

% **Date of Decision: 07.08.2024**

+ **W.P.(C) 8387/2008 & CM APPL. 53389/2023**

UOI

.....Petitioner

Through: Ms Manisha Agrawal Narain, CGSC
with Mr. Sandeep Singh Somaria and
Ms. Khushi Mangla, Advocates

versus

DR. CHANDER PRAKASH & ANR

.....Respondents

Through: Mr. Lokesh Kumar, Mr. Sanjay Jain, Mr.
Yashdeep Srivastav, Mr. Amritanshu and
Mr. Amit, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. The present petition has been filed by the petitioner seeking the following prayer:

"1. Set aside the order dated 21.05.08 passed by the Learned Tribunal in OA No. 1664/07."

2. The learned counsel appearing on behalf of the petitioner submits that the relief sought in the present petition is confined to the following grounds:

"B. Because the Learned Tribunal has erred both on facts as well as on law. The Learned Tribunal failed to appreciate that unlike in a criminal trial, in the Departmental enquiry strict rules of evidence - proof beyond doubt etc.- are not applicable."



C. Because the Learned Tribunal has erred in concluding that the D D entries and logbooks had not been adduced in the Enquiry and the maker of DD Entries and Log Books were not cited as witnesses, whereas Log Books entries were proved by SI Raj Singh and DW-13 ND Sharma. Even otherwise since DD entries and log Books were official documents which were duly shown to the applicant and referred to in the charge sheet, the said documents were not required to be proved as correctness of those documents were not even disputed by the applicant. DW-13 Shri ND Sharma categorically stated that pages bearing dates from part of 31.10.84 to 10.11.84 has been torn. He further stated that since the pages have been torn from the book therefore, the page numbers have also been tampered with to serialize the book in a consecutive manner. Page No.190, 191, 192, 193, 194, 195 and 196 have been tampered with on the fact of it. He further stated that any message coming from outside the district from any authority i.e. the Commissioner of Police or Additional Commissioner of Police would first come in the District Control Room and then the District Control Room will pass it on to the DCP's car/vehicle and in case he is on move, the message so received in the vehicle should be recorded in the Radio Log Book of the vehicle. Similarly, the District Control Room passing the message to the vehicle Radio will also record in his log book. He stated that every message received in the vehicle radio should be recorded in the vehicle log book.

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H. (c) That the applicant had adduced no evidence to implement the Police Commissioner's order on promulgation of Section 144 Cr. PC and curfew in the region of his control.

(f) The entry in the Movement Chart showed firing ordered by the CO, but the Daily Chart entries of Srinivaspuri Police Station as well as Wireless Log entries of South District Control Room did not show any such incident. Wireless Log Book and Diary of DCP (South) which pertained to the crucial period of riots from 1.11.84 to 7.11.84 was manipulated and the relevant pages 192-195 of the DCP's Log Book were found missing and removed. None other than the Charged Officer would have had any motive to tear off these pages from the Log Book.

The commission after scrutiny of records held all the charges in Article I, II, III, IV and VIII as proved except Article V which was held as partly proved. However, Article VI and VII were held as not proved. It was observed by the Commission that the charged officer i.e. the Respondent No. 1 herein totally failed to exercise effective control and supervision over his posts, which resulted in a large number of deaths of innocent persons. The Respondent No. 1 was found unequal to the task of supervision and lacked quality of leadership. The UPSC further came to



the conclusion that retaining such an officer in the uniform force would send wrong signals and advised that ends of justice would be met by imposing a penalty of compulsory retirement on the charged officer.”

3. The respondent is a retired IPS officer and has impugned the disagreement note dated 8.8.1998 and the proceedings taken pursuant thereto before the learned Tribunal. Further, he has assailed an order passed by the President on 20.8.2007, imposing upon him post retirement penalty of 50% cut in monthly pension on permanent basis under Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958.
4. The respondent while posted during his tenure of service was served with a memorandum for disciplinary proceedings under Rule 9 of the All India Services (Discipline and Appeal) Rules, 1959 on the following allegations:

“ARTICLE-I

That the said Shri Chander Prakash while functioning as Deputy Commissioner of Police (DCP) (South) during the year 1984, failed to exercise effective control and supervision over his force in-as-much as when the trouble started in the South District in the wake of assassination of the late Prime Minister Smt. Indira Gandhi on 31.0.84, he made no attempts to control the situation. This resulted in 450 deaths in the areas under his jurisdiction. No preventive arrests were made either on 31.10.84 or from 1.11.84 to 3.11.84 when the riots were in full, swing.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Chander Prakash, when the riots had broken out in the areas under his charge, specially in the areas of Police Station Delhi Cantt., Srinivaspuri and Hauz Khas which were worst affected, did not order use of lathi charge, tear gas or effective firing to control the situation.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Chander Prakash made no efforts to enforce Section 144 Cr. P.C. which was promulgated on 31.10.84 itself and enforce the curfew which was imposed subsequently.



ARTICLE-IV

That during the aforesaid period and while functioning in the aforesaid office,...the said Shri Chander Prakash made no proper efforts to utilize the additional force which was made available to him.

ARTICLE-V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Chander Prakash disobeyed the orders of the Additional Commissioner of Police, New Delhi Range and did not get the cases registered against the rioters who had indulged in violence, killings and looting. .. He even released the culprits arrested by the Additional Commissioner of Police and thus sympathized with the culprits.

ARTICLE-VI

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Chander Prakash by taking some administrative actions, even demoralized the police officers, who were taking effective action in their areas against the mob' thus jeopardizing the credibility of the law enforcing agency.

ARTICLE-VII

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Chander Prakash deliberately did. not report correct figures of killings.

ARTICLE-VIII

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Chander Prakash in an effort to destroy the evidence tampered with the entries in his radio log books pertaining to the said period. ”

5. The aforesaid chargesheet was challenged in OA 1458/1997 before the Tribunal, which was turned down for being pre-mature. Thereafter WP(C) No. 641/98 was filed before this Court. Vide order dated 02.04.1998, this Court directed the petitioners herein to complete the disciplinary proceedings within a period of four months.



6. Consequently, the inquiry authority was appointed who completed the inquiry after examination of prosecution witnesses (PWs) and defence witnesses (DWs) and on consideration of respective briefs by the Presenting Officer and the Charged Officer had exonerated the respondent. However, the aforesaid inquiry report was disagreed to by the disciplinary authority vide memo dated 08.08.1998.

7. A response to the aforesaid Memo, the respondent filed in WP(C) No.641/1998 before the High Court of Delhi therein passed an order on 23.09.1998 and directed the respondents to promote the respondent. Accordingly, he was promoted as Inspector General of Police. However, a review application filed by the Government before the High Court of Delhi was also turned down on 14.10.1998 and WP(C) No.641/1998 was finally disposed of on 31.05.2002, directing the petitioner to pass appropriate final order. However, RA-9036/2002 was filed before the High Court of Delhi, which was disposed of on 17.11.2006, giving liberty to the respondent to raise all the submissions and legal issues in an appropriate remedy in accordance with law.

8. Earlier also, while the respondent was in service, Union Public Service Commission had recommended a penalty of compulsory retirement. However, in the changed circumstances when the respondent had retired on superannuation, in consultation with the Union Public Service Commission the President of India imposed upon a penalty of 50% permanent cut in pension, which was assailed before the learned Tribunal.

9. Case of respondent before the learned Tribunal was that as per Rule 9 (2) of the Discipline and Appeal Rules, the condition precedent for



disagreement is recording of reasons and a finding thereof by the disciplinary authority in disagreement, that too, on existence of sufficient evidence. It was further stated that there was no evidence on record to hold the respondent guilty and as the inquiry officer had already exonerated him, thus there is violence to Rule 9 (2) of the Rule mentioned above.

10. The case put up before the learned Tribunal was that once a quasi-Judicial authority is bound by the rules, it has to act within its four corners. A thing is to be performed in a particular manner and no other manner can be approved of. To buttress his arguments, learned counsel for the respondent relied upon a decision of the Constitution Bench in *Calcutta Discount Company Limited vs Income Tax Officer, Companies District I & Anr*, 1960(2) SCR 241 to contend that when a condition precedent for exercise of a jurisdiction is not discharged, the order has to be treated as without jurisdiction.

11. The disciplinary authority is precluded from taking a fresh material into consideration and relying upon the decision of the Hon'ble Supreme Court in *M/s Bareilly Electricity Supply Co. Ltd. vs The Workmen and others*, 1971 (2) SCC 617 to contend that mere production of documents, even keeping in view the non-applicability of Indian Evidence Act, does not amount to proof unless the maker of it is called in evidence with an opportunity of rebuttal and cross-examination to the concerned. Accordingly, it is stated that admittedly the disagreement note is based on the log book of the relevant period, the daily diary register maintained at Police Station and log book of the Deputy Commissioner of Police, including PCR log book, yet these documents have not been exhibited



during the course of disciplinary proceedings. The persons who had lodged these reports have not been summoned in the inquiry. As such, when these documents have not formed part of the record, though may be part of the chargesheet, yet due to non-adducing these documents in the inquiry, they cannot be treated as evidence, let alone a legally admissible evidence.

12. The case of petitioner before the learned Tribunal was that referring to the statement recorded it is submitted that unlike a criminal trial, in the departmental inquiry, strict rules of evidence are not applicable. The log-book entries have been proved by SI Raj Singh and the DW-13 N.D. Sharma has also established the prosecution's story.

13. It is submitted that sufficiency of evidence is not within the scope of judicial review. It is stated that the V.P. Manwah's report has proved the allegation to its hilt. Due to inefficiency of the respondent and his non-supervision and non-effective control over his subordinates, deaths had occurred in his jurisdiction.

14. Case for the petitioner before the learned Tribunal was that Union Public Service Commission earlier through its advice recommended a penalty of compulsory retirement, as respondent was found wanting in his duties due to dereliction and negligence, which resulted in omission of the respondent to effectively control the riots within his area of jurisdiction. The advice of the Union Public Service Commission tendered has been reiterated in the subsequent advice, which has been considered by the disciplinary authority and thereafter the punishment was imposed post retirement upon the respondent.



15. Moreover, the learned Tribunal after scanning through the articles and imputation observed that the disagreement arrived at by the disciplinary authority is on the allegation that respondent had failed to give any specific directions to his staff for controlling the situation despite receipt of repeated messages of violence.

16. However, importantly in support thereof, certain instances have been mentioned from column-1 A to J. The learned tribunal found that the aforesaid instances levelled as charges against the respondent in the disciplinary proceedings have been brought outside the scope of the inquiry as an extraneous matter. It amounts to framing of a new charge against the respondent, against which he has not been afforded an opportunity to rebut. What is provided under Rule 9 (2) is that disagreement can be made only on the evidence on record and that too on the charges levelled. But if the charge established on disagreement in the inquiry is alien to the charges framed and on the basis of documents not mentioned or forming part thereof, then it is a case where extraneous matter and a charge alien to the record of the proceedings has been relied upon by the petitioner. This not only deprives a reasonable opportunity to effectively rebut the allegations but is also in contravention of the principles of natural justice.

17. The learned Tribunal has also traversed through the material relied upon to take a different view by the disciplinary authority, which is the affidavit of the witnesses given before Justice Ranganath Mishra Commission of Enquiry. The learned Tribunal find that these statements were part of the departmental record but yet considered to disagree is not on evidence recorded during the course of the inquiry.



18. In view of the above, the learned Tribunal observed that the reply filed by the respondent to the disagreement clearly demonstrated as the disagreement was based on an extraneous matter. It was also observed that surmises and conjectures and the evidence outside the record should not have been relied upon to hold respondent guilty of the charge.

19. A reading of Rule 9 (2) lays down a condition precedent on disciplinary authority while disagreeing to first record his finding with reasons on articles of charge. The only interpretation in its logic and rationale is that while disagreeing, the disciplinary authority has to record reasons in a very specific manner, as provided under the Rules. The learned Tribunal finds that the IO with his elaborate conclusions, whereby eight articles of charge have not been proved against the respondent, has arrived at a detailed finding. It was imperative upon the disciplinary authority to have recorded reasons for disagreement on each article of charge with the reasoning thereof. From the disagreement note it appears that without discharging the mandate of the rule and without specifying as to which part of the charge has been disagreed and on what reasoning, a generalized view of the evidence brought on record has been mentioned and thereafter the respondent was asked to comment upon.

20. Had there been a case where Union Public Service Commission was not consulted, the orders passed by the disciplinary authority dealing with the contentions of the respondent in response to the disagreement would have been made available to him, by which he would have known whether there has been application of mind by the disciplinary authority or not. However, with the methodology under the rules requires consultation from



Union Public Service Commission but in the present case, the conclusion arrived at has been directly forwarded to the Union Public Service Commission and thereafter, the advice of the Union Public Service Commission was dittoed by the disciplinary authority, resulting in imposing the post retiral punishment upon respondent which is unfair and against the principle of natural justice.

21. It cannot be disputed that in the case of ***Bhavnagar University v, Palitana Sugar Mills, 2003 (2) SCC 111***, the Supreme Court held that if a statutory body or authority is bound by the rules or statute acts, it has to be done in the manner prescribed under the rules and if any other manner is adopted, it shall be an illegality in the decision-making process, which shall vitiate the administrative order. Moreover, a quasi-judicial authority, like disciplinary authority is bound by the statutory rules.

22. In view of the above, the learned Tribunal observed that by not recording a disagreement on each article of charge with reasoning thereof, not only the mandate as an obligation under Rule 9 (2) has been violated but also prejudice has been caused to respondent on denial of reasonable opportunity to effectively defend the disagreement. It was further observed that “Right to know” is a constitutional right, which has transformed into principle of *audi alteram partem*.

23. As far as Union Public Service Commission advice is concerned, as per Article 320 (c) of the Constitution of India, consultation with Union Public Service Commission whether under the CCS (CCA) Rules or under the All India Services Rules is only directory. The advice of the Union Public Service Commission being a consultative body is not binding on the



disciplinary authority, as has been ruled by the Apex Court in *Union of India v. T.V. Patel, 2007 (2) SCC (L&S) 98*.

24. If any order passed by the President post retirement of a government servant imposing a penalty of pension cut, Rule 6 of the All India Services (Death-cum- Retirement Benefits) Rules, 1958 provides that if a pensioner is found in departmental proceedings to have been guilty of a grave misconduct, the Central Government will have a right to withhold pension. But nothing in this rule by necessary implications excludes recording of reasons by the President or the Central Government. When a quasi-judicial or even an administrative authority acts where there is determination of right of a party or there has been civil consequences ensued upon a Government servant, as a condition precedent, reasons are to be recorded.

25. In case of *S.N. Mukherjee v. Union of India, 1990 (4) SCC 594*, the Hon'ble Supreme Court has held that reasons are essence of rule of law and cannot be dispensed with, unless by necessary implications of the rules. When discretion is vested in a public functionary, it becomes more important to record reasons. The reasons make transparency in the order and facilitate cause of justice. For want of reasons, the aggrieved person would not be able to effectively defend his right before the departmental authorities and also impede adjudication by the Court.

26. It is not in dispute that the Presidential order has reflected the factual aspect of the matter and the stages reached in arriving at a final decision after Union Public Service Commission advice had been received with the following observations, a penalty had been imposed:



“12. AND WHEREAS the earlier advice tendered by the Commission imposing the penalty of compulsory retirement had, in the meantime, become infructuous as Shri Chandra Prakash had retired from service on 30-11-2001 on superannuation.

13. AND WHEREAS Union Public Service Commission vide their letter No.F.3/357/2006-S.1 dated 18.06.2006 observed that the charges proved against Shri Chander Prakash constitute grave misconduct on his part and advised that the ends of justice would be met if the penalty of 50% (fifty percent) cut in the monthly pension on permanent basis is imposed on Shri Chander Prakash. The gratuity as admissible to him may be released, unless otherwise required to be withheld under the Rules. A copy of the Union Public Service Commission's letter No. F.3/357/2006-S. 1 dated 18.08.2006 is enclosed.

14. AND WHEREAS the President, after going through the case records, the findings of the Inquiring Authority, the representation of Shri Chander Prakash, advice of the Union Public Service Commission and all other relevant factors related to case, has come to the conclusion that the ends of justice in this case would be met if a penalty of 50% (fifty percent) cut in the monthly pension on permanent basis is imposed on Shri Chander Prakash.

15. Now, therefore, the President, in exercise of the powers conferred under Rule 6 of All India Services (Death-cum-Retirement Benefits), Rules, 1958 orders that the penalty of 50% (fifty percent) cut in the monthly pension on permanent basis be imposed on Shri Chander Prakash.

By Order and in the name of the President

Sd/-

Under Secretary to the Government of India.”

27. The learned Tribunal was of the opinion that the disciplinary proceedings initiates from the stage of serving memorandum of allegations and ends with a final order passed by the disciplinary authority. Though consultation with the Union Public Service Commission is a mandate under the rules, yet it is only an opinion tendered on the basis of a findings arrived at in the inquiry as well as by the disciplinary authority. From the allegations leveled against the respondent in the inquiry, there was no allegation of grave misconduct but there has been a violation of Rule 3 of AIS Service



(Conduct) Rules, i.e., unbecoming of a Government servant and in a nutshell, the sum and substance of the allegation is negligence on the part of the respondent in controlling the riots.

28. We have gone through the material on record and order passed by the learned Tribunal, we found that in the departmental proceedings, all other officers have been exonerated except the respondent herein for the reasons best known to the petitioner.

29. During the course of hearing, we put a query to the learned counsel for the petitioner as to how many DCPs in Delhi were chargesheeted for the riots that happened in the year 1984. Though she failed to reply to that query, however, learned counsel for the respondent submitted that except respondent no.1, not even a single DCP of the particular area was chargesheeted or punished. Not only that, under his district (South District), the incharge of the Police Stations were SHOs and also, there are other Additional DCPs and ACPs concerned available and supervising the particular area or that district, but not even a single officer has been punished except the respondent herein.

30. If that is the position on the ground, the SHO concerned is the officer to control the law and order situation in the jurisdictional area. Above the SHOs, ACPs and additional DCPs are there in hierarchy, however, they were not punished. Even if we take every supervisory officer to be booked and punished, then even CP Delhi was at that time supervisor of all the DCPs of Delhi, however, he was not punished. It seems as observed by the learned Tribunal that it was some bias attitude of the petitioner and the respondent was made the scapegoat for some ulterior purpose.



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31. In view of the above, we find that there is no error or perversity in the order passed by the learned Tribunal. Petition is accordingly dismissed being without merit.

32. The concerned authorities are directed to clear the arrears of the respondent (who has expired) to his legal heirs within four weeks from today with interest @ 7% per annum from the due date till it is paid.

33. Pending applications, if any, stand disposed of.

SURESH KUMAR KAIT
JUDGE

GIRISH KATHPALIA
JUDGE

AUGUST 7, 2024/as/riya