



2025:DHC:11008-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 03.12.2025***

+ W.P.(C) 439/2024 & CM APPL. 2025/2024, CM APPL. 46389/2024

UNION OF INDIA & ANR.

.....Petitioners

Through: Mr. Anshuman, Ms. Lavanya
Kaushi, Mr. Vaibhav Sood,
Advs.

versus

DR. DHURJATI MAJUMDAR & ANR.Respondents

Through: Mr. V. Hari Pillai, Advs.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE MADHU JAIN****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed, challenging the Order dated 19.10.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal'), in O.A. No. 2085 of 2021, titled, ***Dr. Dhurjati Majumdar v. Union of India & Ors.***, allowing the O.A. filed by the respondent no. 1 herein, with the following directions:

"22. In view of the aforesaid, the present OA is allowed. The impugned order dated 27.07.2021 and the inquiry report dated 03.06.2015 are set aside. The applicant will be entitled for all consequential benefits in accordance with the relevant rules. The competent authority amongst the respondents is directed to pass necessary orders in this

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Signed By: RENUKA W.P.(C) 439/2024
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regard as expeditiously as possible and not later than 6 weeks from the date of receipt of a certified copy of this order. The respondents are, however, granted liberty to take appropriate action, if available, in accordance with law. No order as to costs."

2. To give a brief background of the facts in which the present petition arises, on a Complaint dated 04.02.2015 received by the petitioners against the respondent no.1, who was then posted as Scientist 'G' at DIPAS, the same was referred to the Internal Complaint Committee (ICC) constituted on 23.02.2015 to conduct an inquiry. Respondent no.1, *vide* letter dated 24.02.2015 was called upon to submit a written reply along with a list of documents and details of his witnesses and was further directed to appear before the ICC on 03.03.2015. On the said date, the respondent no. 1 appeared before the committee and submitted affidavits of six witnesses in support of his stand.

3. Interestingly, apart from the notice dated 03.03.2015, no further notice of any inquiry proceedings was sent to the respondent no.1. As noted by the learned Tribunal in its Impugned Order, subsequent to the notice dated 03.03.2015, many sittings were held by the ICC and 11 witnesses, including the complainant, were examined behind the back of respondent no.1. Respondent no.1 was neither informed about these sittings nor supplied the statements of these witnesses, nor was he given any opportunity to cross-examine any of them.

4. The ICC completed its inquiry, resulting in the report dated 03.06.2015, which, by a letter dated 11.08.2015 was forwarded to the



respondent no, 1 seeking his representation on the same.

5. The representation made by the respondent no.1 was considered by the Disciplinary Authority, and a Charge Memorandum dated 28.01.2016 for holding an inquiry under Rule 14 of the CCS (CCA) Rules, 1965, was issued to him.

6. Respondent no.1, aggrieved of the report of the ICC and the Charge Memorandum, filed an O.A. No. 597/2016 before the learned Tribunal.

7. The learned Tribunal without going into the validity of the proceedings of the ICC or the challenge to its report, and solely on the finding that after the ICC report no further inquiry under Rule 14 of the CCS (CCA) Rules was required, set aside the Charge Memorandum and directed the disciplinary authority to proceed by treating the ICC report as an inquiry report. We quote from the Order dated 01.03.2019 of the learned Tribunal, as under:

“15. In keeping with this ratio, it is very clear that the enquiry report finalised by the ICC on 03.06.2015 has already taken the statement of the applicant as well as that of his defence witnesses and they have been cross examined also. The entire defence of the applicant is thus already exposed. With this in view, it will not be correct to plead that the said proceedings by ICC should be treated as preliminary and another enquiry is to be held now. This is especially true as ICC in instant case has already concluded the applicant to be guilty. (Para 3 supra). Holding of another enquiry, will prejudice the principles of natural justice to the charged official. Moreover, the letter issued to the applicant on conclusion of enquiry by



ICC (para 4 supra), makes it very clear that enquiry is already done under Rule 15(2). When such is the express notation, holding of a second enquiry is not permissible except when the Disciplinary Authority has found

certain deficiencies in the enquiry report and remitted it back to the enquiry officer (ICC in instant case). This is, however, not the case in this OA as a new enquiry has been ordered(Para 6 supra).

16. In view of the foregoing, the respondents are directed to treat the ICC report dated 03.06.2015 as the final enquiry report (para 3 supra) and treat the letter dated 07.09.2015 (para 5 supra), submitted by the applicant, as his defence and take appropriate decision on the same with regard to quantum of punishment or otherwise as per merits. OA is disposed off with these directions. No order as to costs."

8. There was no challenge to the said Order and instead, the Disciplinary Authority issued an Order dated 22.09.2020 imposing a penalty of withholding 20% of the monthly pension for a period of two years with immediate effect on the respondent no.1.

9. Respondent no.1, aggrieved by the same, challenged it before the learned Tribunal in the form of O.A. No. 2137 of 2020. In the said O.A., a challenge was also laid to the ICC report.

10. The learned Tribunal, however, *vide* its Order dated 05.03.2021, again without going into the challenge to the ICC report and merely finding that the Order of penalty dated 22.09.2020 had not considered the reply given by the respondent, set aside the same and remanded the matter back to the Disciplinary Authority for a fresh consideration



and Order. We quote from the Order dated 05.03.2021 of the learned Tribunal, as under:

“11. The whole episode is in a very poor taste. Though it was very much open to the competent authority to express its own reservation about the order passed by the Tribunal, at least it ought to have discharged the obligation imposed upon it under the law, in the context of examination of the various issues raised by the applicant in his explanation. Not a syllable was said about it and straightway punishment was imposed. It has reduced the entire requirement under law regarding the furnishing the copy of the report of the IO, which in this case, is the ICC report, and that of the advice of the UPSC, to an empty formality. Either it is a case of non application of mind or a clear dereliction of duties on the part of the DA.

12. We accordingly allow the OA and set aside the impugned order. The DA shall pass a fresh order duly taking into account, the explanation submitted by the applicant to the report of the ICC as well to the advice of the UPSC, and deal with the same before arriving at any conclusion. We make it clear that it is an obligation under law and any deviation from it would have its own legal consequences. Since the applicant is not being given the retiral benefits, this exercise is to be completed within a period of two months from the date of receipt of copy of this order.”

11. On such remand, the Disciplinary Authority *vide* its Order dated 27.07.2021, again imposed the same penalty on the respondent no.1.

12. Respondent no.1 challenged the same in form of O.A. No.



2085/2021, which has resulted in the Impugned Order herein. In the Impugned Order, for the first time, the learned Tribunal went into the correctness of the proceedings undertaken by the ICC and found the same to be in violation of principles of natural justice, by observing as under:

“13. On perusal of records of the proceedings, we find that it suffers from a number of infirmities. Learned counsel for the applicant has contended that the applicant was not given adequate opportunity to defend himself. We find from the relevant records that he only appeared once at the initial stage on 03.03.2015 but subsequently though many sittings were held but he was never called and examined. No date was assigned to him to participate in the proceedings. Further though 11 witnesses, including the complainant, were examined by the ICC during the inquiry, the applicant was neither informed about them nor supplied their statements and therefore he was denied the opportunity to cross examine such witnesses so as to verify the correctness of their claims.

14. Learned counsel for the respondents in his counter has submitted that since it was a preliminary investigation, the statement of possible witnesses were recorded by the ICC in the absence of the applicant (charged officer). He also averred that the oral inquiry, as envisaged in the CCS (CCA) Rules, 1965, commences only after denial of charges by the charged officer. As per procedure during the oral inquiry, the charged officer was entitled to adduce witnesses in his defence and cross examine prosecution witnesses as per the law of evidence.



15. *It is evident from the above submission that since the respondents had taken the ICC report as a preliminary investigation, as opposed to final report of the authority (ICC) furnished under Rule 14 of CCS (CCA) Rules, the requisite procedure was not followed.*

16. *Relevant record presented by the respondents also indicates the evidence of six witnesses was submitted by the applicant and all of them deposed in favour of the applicant but this was not duly considered by the ICC in their report.*

17. *Perusal of the inquiry report also shows that the documents relied upon by the DA for proving the charge against the applicant leading to imposition of the impugned penalty was not supplied to the applicant, which has also prejudiced the inquiry.*

18. *At the cost of repetition, we allude to the order passed by this Tribunal during the second round of litigation holding that the report of the ICC is to be treated as inquiry report under the CCS (CCA) Rules. The disciplinary authority based on their own evaluation initially took a decision to treat it as a preliminary inquiry but there is no such rule or judgment to suggest that the disciplinary authority was right in doing so. Moreover, the manner in which ICC report is to be treated*

*has already reached finality wherein the Hon'ble Supreme Court vide judgment dated 19.10.2012 in **Medha Kotwal Lele and Ors. Vs. Union of India and Ors.** AIR 2013 SC 93 has held as under:*

"16. In what we have discussed above, we are of the considered view that guidelines in Vishaka should not remain symbolic and the following further



directions are necessary until legislative enactment on the subject is in place.

*(i) The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. **The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.***

(emphasis supplied)

19. Thus there is no ambiguity about the fact that the disciplinary authority was to treat the findings of the ICC as inquiry report against the delinquent and not merely as a preliminary report which was also reiterated by this Tribunal vide its order dated 01.03.2019 wherein it was held that holding of another inquiry will prejudice the principles of natural justice to the charged official. Moreover, the letter issued to the applicant on conclusion of inquiry by ICC makes it clear that the inquiry is already done under Rule 14(2), and therefore holding of a second inquiry was not permissible.

20. Thereafter the only seminal issue which remains to be considered is whether the said inquiry has been done



in accordance with the relevant rules or not. We find the inquiry report lacking on this score as discussed above.”

13. The learned counsel for the petitioners submits that the issue of validity of the ICC proceedings having been taken by the respondent no.1 in the earlier two O.A.s, would act as a *res judicata* against the respondent no.1. He further, submits that the learned Tribunal has, therefore, erred in setting aside the ICC report and the subsequent proceedings by re-examining the very same issue in the third round of O.A.

14. He submits that the ICC report was in fact a preliminary fact finding report and therefore, was not complying with the requirements of Rule 14 of the CCS (CCA) Rules. It was for this reason that the petitioner had decided to issue a Charge Memorandum dated 28.01.2016 to the respondent no.1, proposing to hold an inquiry under Rule 14 of the CCS (CCA) rules. However, the learned Tribunal faulted this action by directing that the ICC report should be considered as an inquiry report. Having done so, the learned Tribunal should not now find fault in the same.

15. He submits that due to passage of time, now even the complainant or other witnesses will no longer be available and the respondent no.1 will go scot free.

16. On the other hand, the learned counsel for the respondent no.1 submits that the ICC proceedings had been conducted behind the back of the respondent no.1 and in gross violation of the principles of natural justice, as has been found by the learned Tribunal in the



Impugned Order. He submits that though the respondent no.1 from the very first day and from his very first O.A., has been challenging the report of the ICC, the learned Tribunal decided not to go into the same at the earlier stage. However, the same cannot act as a *res judicata* against the respondent no.1.

17. We have considered the submissions made by the learned counsels for the parties.

18. As would be evident from the above, the fact that the ICC proceedings were in violation of principles of natural justice cannot be seriously disputed by the petitioner. The fact remains that witnesses were examined behind the back of the respondent no.1 and he was not granted any opportunity to defend himself, except to examine his own defence witnesses that too at the initial stage of the proceedings.

19. The only issue left to be determined is whether the earlier Orders passed by the learned Tribunal would have any effect on the right of the respondent no.1 to challenge the ICC report in the third round of litigation in form of O.A. No. 2085/2021 which has resulted in the Impugned Order.

20. In our view, the Orders dated 01.03.2019 and 05.03.2021 passed by the learned Tribunal in O.A. No's from 597/2016 and 2137/2020 respectively, cannot act as a *res judicata* against the respondent no.1. As would be evident from the narration of the facts given hereinabove, the learned Tribunal in its Order dated 01.03.2019 considered only the issue whether a Charge Memo could be issued to the respondent no.1 post the ICC report and found that the ICC report is to be considered as an inquiry report and further proceedings under



Rule 14 of the CCS (CCA) rules are to be taken. It did not find it necessary to go into the report of the ICC as the proceedings were still pending before the disciplinary authority in terms of its finding.

21. Similarly, in the Order dated 05.03.2021, the learned Tribunal did not deem it necessary to go into the challenge to the ICC report, inasmuch as it found that the Order dated 22.09.2020 visiting the respondent no. 1 with a penalty had been passed without considering his representation thereagainst by the Disciplinary Authority.

22. It is only on the conclusion of the disciplinary proceedings in form of the Order dated 27.07.2021 that the occasion of looking into even the inquiry/ICC report arose for the learned Tribunal, and the learned Tribunal finding the same to be in violation of principles of natural justice, has set that aside including all consequential orders passed thereon. Therefore, principle of *res judicata* would have no application in the facts of the present case.

23. The ICC proceedings being in violation of the principles of natural justice have rightly been quashed by the learned Tribunal. Once the foundation falls, the superstructure has to fall. This would be an unfortunate outcome of the proceedings.

24. Accordingly, we find no merit in the present petition, the same is dismissed.

25. We are informed that the petitioners inspite of there being no stay on the Order of the learned Tribunal has gone ahead and implemented the penalty Order dated 27.07.2021.

26. If that be so, the petitioners shall refund the amounts due to the respondent no. 1 along with interest at the rate of 6 % per annum



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within a period of eight weeks from today.

27. The petition along with pending applications stand disposed of.

NAVIN CHAWLA, J

MADHU JAIN, J

DECEMBER 03, 2025/prg/k/SS