



\$~8

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

Date of decision: 31.07.2025

+ W.P.(C) 13719/2018

DR. B.N. MITTAL THROUGH LRSPetitioner

Through: Ms. Tamali Wad, Senior
Advocate with Mr. Varyam
Pandey, Advocate.

versus

UNION OF INDIA & ANRRespondents

Through: Ms. Manisha Agrawal Narain,
CGSC with Mr. Chandan Deep
Singh, Ms. Ananya Arora and
Mr. Nipun Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 02.02.2017 passed by the learned Central Administrative Tribunal (hereinafter referred to as the 'Tribunal') in O.A. No. 2339/2004, titled ***Dr. B.N. Mittal v. Union of India & Anr.***, filed by the petitioner herein, with the following directions:

"11. In normal circumstances, we would have remitted the case back to the disciplinary authority with liberty to the charged officer to submit his response to the UPSC report and permit the disciplinary authority to pass a fresh reasoned order on consideration of the response of the charged officer to the UPSC report, particularly when the impugned order



is without any reasons. However, the charged officer having expired during the pendency of the disciplinary proceedings, the legal heirs are disabled to submit the response as they are not aware of the complete facts. The matter is otherwise very old, as the disciplinary proceedings were initiated in the year 1999 and there have been two rounds before the Hon'ble Delhi High Court. We do not feel it appropriate to allow the proceedings to continue further. This OA is, accordingly, allowed. The impugned order dated 09.07.2004 is hereby set aside. However, in the peculiar facts and circumstances, we direct the disciplinary authority to settle the pensionary benefits of the deceased employee, Dr. B. N. Mittal, within 3 months from the date of receipt of copy of this order. However, such pensionary benefits shall become payable from the date of this judgment, in accordance with rules applicable for payment of pension to the eligible legal heirs, if any. The pensionary benefits will include the revision of pension, if any. No order asto costs."

2. The limited grievance of the petitioner before us is that having set aside the penalty order, the learned Tribunal has erred in still imposing penalty on the petitioner by stating that the pensionary benefit shall become payable to Dr. B. N. Mittal from the date of the said order.

3. The petitioner also challenges the order dated 16.10.2018 passed by the learned Tribunal in Review Application No. 76/2017 in the above O.A., dismissing the said review petition filed by the petitioner herein. It is stated that the review was dismissed on the ground that the order dated 02.02.2017 has been challenged by the respondent and such challenge is pending before this Court, while not



appreciating that the said challenge had already been disposed of by way of order dated 20.12.2017 passed by this Court in W.P. (C) No. 11390/2017.

4. The Tribunal in its impugned order dated 02.02.2017 itself records, and we would only reiterate, that the present case has chequered history. Dr. B. N. Mittal, who was working as Additional DG was served with the Memorandum dated 14.12.1999 containing the following three charges:

“Article-I

Dr. B. N. Mittal, while working as Deputy Director General (Leprosy), later designated as Addl. DG (since retired), failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. Servant in as much as he entered into a criminal conspiracy with a private firm namely M/s International Pharmaceuticals Ltd., Ahmedabad to defraud the public exchequer.

Dr. B. N. Mittal rejected the lowest bidder on an untenable ground and the order was placed on the sixth lowest bidder. The difference in the quoted price between the lowest bidder and the sixth lowest bidder was Rs.9 crore.

Article-II

Dr. B. N. Mittal, while working as Deputy Director General (Leprosy), later designated as Addl. DG (since retired), failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. Servant in as much as he placed a repeat order on the basis of an artificially projected urgency.

Article-III

Dr. B. N. Mittal, while working as Deputy Director General (Leprosy), later designated as Addl. DG (since retired), failed



to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. Servant in as much as he signed the repeat order on 7.5.96, while, from the official records, it has been verified that he was on earned leave on that date.

Dr. Mittal issued a Project Authority Certificate on 12.6.96 while from the official records, it has been verified that he was on commuted leave on that date.

By his aforesaid act, Dr. B. N. Mittal has exhibited lack of devotion to duty. The action of Dr. B. N. Mittal has resulted in a loss of precious revenue to the public exchequer and a concomitant wrongful gain to a private firm contravening thereby the provisions of rules 3.1(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.”

5. The Inquiry Officer, by his report dated 29.11.2001, found that none of the charges were proved. The Disciplinary Authority, however, issued a Disagreement Note dated 18.06.2003 to Dr. B. N. Mittal, seeking his response thereto. The Disagreement Note indicated that the same was on the finding of the Inquiry Officer on all three charges. Dr. B. N. Mittal submitted his response to the Disagreement Note, however, vide the order dated 09.07.2004, the Disciplinary Authority visited him with a penalty of 100 % cut in pension on permanent basis along with the forfeiture of entire gratuity admissible to him. Aggrieved of the same, he filed the above OA.

6. The O.A. was initially dismissed by the learned Tribunal by its order dated 27.04.2005. The same was challenged by Dr. B. N. Mittal before this Court by filing a Writ Petition, being W.P.(C) 14690/2005. This Court, by its order dated 08.02.2007, remanded the matter to the learned Tribunal for a fresh consideration. On such remand, the



Tribunal, vide its order dated 30.03.2007, quashed the penalty order dated 09.07.2004 with further direction to release the withheld retiral benefit benefits to Dr. B. N. Mittal.

7. This time around it was the respondent who challenged the said order before this Court by way of a Writ Petition, being W.P.(C) No. 9562/2007. The same was disposed of by this Court, vide the judgment dated 06.12.2012, again remanding the matter back to the Tribunal and directing the Tribunal to reconsider the entire matter afresh without being influenced by its earlier order and/or any observations made by this Court in the said order.

8. It is on this remand that the learned Tribunal first passed an order dated 27.02.2015, remitting the matter back to the Disciplinary Authority to issue a fresh show cause notice to Dr. B. N. Mittal after the criminal proceedings against him would conclude.

9. As Dr. B. N. Mittal had unfortunately passed away on 28.07.2014 and the criminal proceedings against him stood abated, his LRs filed the review application, being Review Application No. 91/2015, before the Tribunal, which was allowed by the Tribunal by its order dated 12.07.2016 and the order dated 27.02.2015 was recalled. The learned Tribunal has now disposed of the O.A. by way of the impugned order.

10. Learned Senior Counsel appearing for the petitioner, i.e. LRs of Dr. B. N. Mittal, submits that the learned Tribunal found that the Disagreement Note did not contain any reasons for the disagreement. In spite of the said finding and merely on an observation of this Court in its order dated 05.05.2011 in W.P.(C) No. 9562/2007, and in spite of



this Court's observation that none of the observations made by the Court shall influence the Tribunal, the learned Tribunal held that not giving of reasons in the Disagreement Note would have not caused prejudice to Dr. B. N. Mittal. She submits that the reasons being contained in the file noting is not sufficient as these reasons for disagreement have to be communicated to the delinquent employee for him to be able to respond to the same.

11. She further submits that the learned Tribunal further found that even the impugned penalty order dated 09.07.2004 was unreasoned and even otherwise vitiated inasmuch as the UPSC advice has not been communicated to Dr. B. N. Mittal prior to the passing of the impugned penalty order. She submits that it is in these facts that the learned Tribunal set aside the penalty order, however, as Dr. B. N. Mittal has expired, it found that there would be no justification in remanding back the matter to the Disciplinary Authority. She submits that having found the same, the learned Tribunal erred in thereafter modifying the penalty imposed on Dr. B. N. Mittal by holding that his pensionary benefits would be payable only from the date of the order and not before.

12. On the other hand, the learned counsel for the respondent submits that the learned Tribunal has not only considered in detail the chequered history of the OA, but also the peculiar facts of the case. It found that there were cogent reasons contained in the file for disagreeing with the opinion of the Inquiry Officer. It further found that though there were procedural errors committed by the Disciplinary Authority in not communicating the advice of the UPSC



to Dr. B. N. Mittal prior to the passing of the impugned penalty order, it would not completely exonerate Dr. B. N. Mittal of the charges. Having considered these facts, the learned Tribunal found it just and proper to direct payment of pensionary benefits to Dr. B. N. Mittal only from the date of the order. She submits that therefore this order should not be interfered with by this Court.

13. We have considered the submissions made by the learned Counsels for the parties.

14. The learned Tribunal in its impugned order itself has noted that the inquiry proceeding were initiated in the year 1999 and culminated in the penalty order dated 09.07.2004. The learned Tribunal found glaring procedural errors in the same. The Disagreement Note as communicated to Dr. B. N. Mittal did not contain any reasons. Requirement of giving tentative reasons for disagreement has been emphasized by this Court in *K. C. Sharma v. BSES Yamuna Power Limited*, 2015 SCC OnLine Del 8125.

15. The learned Tribunal further found that the UPSC advice had also not been communicated to Dr. B. N. Mittal prior to passing of the penalty order, which the Supreme Court in ***Union of India & Ors. v. S. K. Kapoor***, (2011) 3 SCR 906, and ***Union of India v. R. P. Singh***, (2014) 7 SCC 340, has held to be a violation of the principles of natural justice.

16. The learned Tribunal further found that even otherwise, the impugned penalty order dated 09.07.2004 was non-speaking in nature as it did not show any application of mind to the representation of Dr. B. N. Mittal while rejecting the same.



17. Having found the above, the learned Tribunal rightly set aside the impugned penalty order dated 09.07.2004. It rightly observed that one option open to it would have been to remand the matter back to the Disciplinary Authority for initiating the proceeding afresh from the stage of the Disagreement Note, however, as Dr. B. N. Mittal has unfortunately passed away, the same would have been a futile exercise causing great prejudice to his LRs as they would not have been in a position to controvert to the Disagreement Note.

18. Having found the above, however, in our view the learned Tribunal exceeded its jurisdiction by taking the mantle of the Disciplinary Authority and itself imposing a punishment on Dr. B. N. Mittal with what it found just and proper in the given facts in imposing the penalty on Dr. B. N. Mittal by forfeiting his pensionary benefits for the period between his superannuation until the date of order passed by the learned Tribunal. The impugned order does not even give any reasons for such penalty being imposed on Dr. B. N. Mittal.

19. In our view, having decided that the impugned penalty order has to be set aside and that in the facts of the case the remand of the same to the Disciplinary Authority is not justified, the learned Tribunal should have stopped there rather than itself becoming the Disciplinary Authority and imposing a punishment on Dr. B. N. Mittal.

20. Accordingly, the impugned order is hereby set aside only to the limited extent that it takes away the right of Dr. B. N. Mittal to the pensionary benefits from the date of his superannuation till the date of



2025:DHC:6419-DB



the passing of the impugned order by the learned Tribunal. The petitioner, i.e. LRs of Dr. B. N. Mittal, would, therefore, be entitled to all pensionary benefits for the said period as well. The same be released by the respondent to them within a period of eight weeks from today along with interest @ 6% per annum. The parties shall bear their own costs.

NAVIN CHAWLA, J

MADHU JAIN, J

JULY 31, 2025
ssc/VG