CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

OA No. 060/00169/2014 **Date of decision:** 30.1.2015

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

Birbal Verma son of Sh. Ganga Ram resident of House no.15-A, Civil Hospital, Manimajra, Chandigarh.

...APPLICANT

BY ADVOCATE : Ms. Savita Saxena

VERSUS

1. Director Health Services, Govt. Multi Speciality Hospital, Sector-16, (Health Department), Chandigarh.

2. The Medical Superintendent cum Joint Principal Medical Officer, Govt. Multi Speciality Hospital, Sector-16, Chandigarh.

3. The Medical Officer, Poly Clinic, Sector-45, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Arvind Moudgil

ORDER

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present Original Application is directed against an order dated 16.08.2012 of the disciplinary authority inflicting upon the applicant the punishment of compulsory retirement and the order of the appellate authority rejecting his statutory appeal against the former order.

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2. The facts, which led to the filing of the present Original Application, are that a preliminary enquiry was got conducted from Dr. G. Verma, Medical Officer posted with the respondent-department on 21.05.2011 against the applicant on the charge of tampering with the attendance register. On the basis of a preliminary enquiry a fact finding enquiry was ordered under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for brevity, 1970 Rules) on 21.07.2011 on the charge of tampering with the attendance register. After considering his reply a retired IAS officer was appointed as enquiry officer to look into the charges, who submitted his report, holding the applicant guilty of the charge. The applicant was afforded an opportunity to submit his defence against the enquiry report and after providing him sufficient opportunities of hearing, the disciplinary authority based upon the fact finding enquiry report, held him guilty of the charge of tampering with the attendance register and inflicted the impugned punishment of compulsory retirement against which the applicant filed a statutory appeal, which too was dismissed by the appellate authority. There are allegations in the Original Application that the respondents have not adopted the procedure as stipulated under the 1970 Rules and thus there is violation of principles of natural justice and accordingly the impugned order be set aside. The respondents have filed their written statement wherein they have taken a categorical stand that on a complaint against applicant of tampering with the attendance register a preliminary enquiry was got conducted and after having the report of the preliminary enquiry where the applicant himself

pleaded guilty of tampering with the record, a full-fledged enquiry was conducted and the disciplinary authority before coming to the final conclusion afforded him an opportunity of hearing by granting him number of opportunities, which have been reflected in para-j of the facts but the applicants chose not to appear before the disciplinary authority, based on the material placed before the disciplinary authority the disciplinary authority inflicted the punishment of compulsory retirement from service, which was upheld by the appellate authority. So there is no violation of the principles of natural justice on their behalf. Rather the applicant did not avail the opportunity and now he cannot be allowed to say that there is violation of principles of natural justice.

3. Ms. Savita Saxena, learned counsel appearing on behalf of the applicant tried to support the averments made in the OA but she failed to do so. She submitted that the punishment of compulsory retirement is harsh and does not commensurate with the charge levelled against the applicant. To buttress her submission she relied upon a judgment of the Hon'ble Supreme Court in the case of **B.C. Chaturvedi v. U.O.I. & Others**, AIR 1996 SC 484 and the judgment in the case of **S.R. Tewari v. Union of** India, 2013 (3) SCT 461. She lastly submitted that even the appellate authority did not meet out the points raised therein and have not even considered the past conduct of the applicant before dismissing his appeal. Therefore, the orders of the appellate authority cannot be termed as an order in the eye of law.

4. On the other hand, Shri Arvind Moudgil, learned counsel appearing on behalf of the respondents reiterated what has been stated in the written statement.

5. We have given our thoughtful consideration to the entire matter and have perused the pleadings available on record with the able assistance of the learned counsel appearing for the respective parties.

6. The scope of interference with the disciplinary proceedings is limited and it is only in a rarest of the rare cases the Courts/Tribunal can interfere where an employee is able to prove that there is violation of principles of natural justice and the respondents have not adhered to the procedure laid down under the rules, which resulted into miscarriage of justice. Perusal of the preliminary enquiry report makes it clear that the applicant was held guilty of the charge of tampering with the record as he himself admitted his guilt. Based upon the enquiry report a full-fledged enquiry under Rule 8 of the 1970 Rules was conducted in which the applicant was also held guilty. He was afforded an opportunity to submit his defence which he submitted but did not avail the opportunity of personal hearing. Based upon the enquiry report and his reply thereto the disciplinary authority inflicted the punishment of compulsory retirement. The appellate authority did not meet out the points raised therein and has dismissed the appeal by quoting the orders of the appellate authority. Perusal of the appeal reveals that the applicant had taken a specific ground, i.e., ground no.9-A that the applicant is having

17 years of unblemished service record. Therefore, the punishment inflicted by the DA is too harsh and has requested to impose a lesser punishment. Though he has denied the charge, the appellate authority did not consider the same, rather affirmed the finding of the disciplinary authority by recording in last paragraph that he does not find any ground to interfere with the orders of the disciplinary authority, which, to our mind, does not satisfy the responsibility cast upon the appellate authority to apply his mind while considering the statutory appeal.

7. It is settled proposition of law that not only the judicial authorities but quasi-judicial authorities are also bound to pass a detailed and speaking order, meeting out all the points raised before them because the reasons are the backbone of the orders, which gives a right to a person to know what weighed in the mind of the authority who did not agree with the finding and he can agitate the matter before the higher authority on those points only, if so aggrieved.

8. Lord Denning M.R. in **Breen v. Amalgamated Engg. Union** (1971) 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 IC 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The law laid down by the lordships of Honourable Supreme Court in the

case of **Raj Kishore Jha versus State of Bihar & Others**, 2003 (11) CC 519 has again been reiterated in **Ram Phal Vs. State of Haryana**, 2009 (3) SCC 258, decided on 06.02.2009 stating that "reason is the heartbeat of every conclusion. Without the same, it becomes lifeless".

9. Therefore, there is no hesitation in our mind in holding that the order passed by the appellate authority cannot stand the scrutiny of law and accordingly the same is quashed and set aside. The matter is remitted back to the appellate authority to reconsider the entire matter to take a fresh view. While considering the same the appellate authority is also directed to consider the case of the applicant on quantum of punishment also, as the applicant has been thrown out of service by passing an order of compulsory retirement only on the allegation of tampering with the attendance register by marking himself present for two days on 17th & 18th May, 2011. Considering that the offence of tampering with the official record is of serious nature but that does not mean that the past conduct of the delinquent official should be ignored altogether.

10. It is permissible in law that while inflicting punishment the past conduct of the employee is also to be looked into and accordingly the punishment be imposed. In the case of **B.C. Chaturvedi** (supra) their Lordships of the Hon'ble Supreme Court have held that if the punishment is disproportionate to the charge alleged and proved and shocks the conscience of the Court then the punishment can be substituted. In this

case we are not ordering any punishment ourselves as we are remanding the matter back to the appellate authority to reconsider, as it is also one of the grounds in the appeal of disproportionate punishment, therefore we leave it open to the appellate authority to keep in mind while deciding his appeal the quantum of punishment also.

11. In view of the above discussion, the impugned order of the appellate authority is quashed and set aside. The matter is remitted back to the appellate authority to reconsider his appeal in the light of what we have observed above. The above exercise shall be carried out within a period of two months from the date of certified copy of this order.

12. No costs.

(Rajwant Sandhu)
Member (A)

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh

Dated: 30/1/2015

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