

MA

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.060/508/2014 Date of order:- September 17,2015

Coram: **Hon'ble Mr. Uday Kumar Varma, Member (A).**
Hon'ble Dr. Brahm A.Agrawal, Member (J).

B.M.Verma, Income tax Officer (Retired) son of late Shri Gopi Chand and resident of House No.116-A, Shakati Nagar, Amritsar.

.....Applicant.

(By Advocate :- Mr. P.K.Khindria)

Versus

1. Union of India through the Secretary (Revenue), Ministry of Finance, Government of India, New Delhi.
2. The Department of Personnel & Training through its Secretary, Government of India, New Delhi.
3. The Chairman, Central Board of Direct Taxes, North Block, Central Secretariat, New Delhi.
4. The Director General of Income-tax (Vigilance) New Delhi.
5. The Chief Commissioner of Income-tax, North Western Region, Sector 17, Chandigarh.
6. The Chief Commissioner of Income-tax, Amritsar.
7. The Commissioner of Income-tax-1, Amritsar.
8. The Under Secretary to Government of India, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

...Respondents

OA 060/00508/14

B. m. Verma

vs

U O I

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH.

17/9/15

Order passed by Division Bench Comprising Hon'ble Mr. Uday Kumar Varma, M (A) and Hon'ble Dr. Brahm A. Agrawal, M (J) has been pronounced today in open Court. The OA /~~RA/CP~~ stand disposed of vide a separate detailed order of even date.

① 17/9/2015

Court Officer

Draft order in O.A.NO. 060/00508/2014 (B.M.Verma vs.
UOI & Ors.) for kind consideration and concurrence please.

ke
16/9
(Uday Kumar Varma),
MEMBER(A).

Hon'ble Dr. Brahm A. Agrawal,
Member(J).

B
16.9.15

(By Advocate : Mr. K.K.Thakur).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant has filed the present OA praying for the following relief:-

"a) Quash the impugned orders (Annexure A-16) dated 14.3.2014 passed by respondent no.1, whereby the statutory appeal (Annexure A-11) filed by the applicant against orders (Annexure A-9) has arbitrarily been rejected without considering the grounds/submissions made by him and without assigning any reasons for non-acceptance thereof;

b) Quash the impugned orders (Annexure A-9) dated 16.10.2008, passed by respondent no.7 inter-alia imposing a major penalty of reduction to a lower stage by one stage from Rs.25590/- to Rs.24840/- in the time scale of pay for a period of two years and two months, as provided under Rule 11(v) of the Rules, 1965; with the further direction that the applicant will not earn increments of pay during the period of such reduction and an additional direction that the reduction will have the effect of postponing the future increments of his pay i.e. to say this reduction will have thus cumulative effect adversely affecting all future benefits including pensionary benefits to the applicant;

c) Restore the pay of the applicant and grant regular annual increases in pay, with all consequential benefits;

d) direct the respondent authorities to consider the name of the applicant for promotion to the post of Assistant Commissioner of Income-tax w.e.f. the date persons junior to him were so promoted, and in case he is found entitled to the promotion, the same may be granted to the

✓

16A

applicant from due date with all further consequential benefits to which he may be entitled to under the rules;

e) Direct the respondent authorities to re-fix the pension of the applicant after granting him the aforementioned relief(s) and to pay the applicant all other additional pensionary benefits along with arrears arising thereon;

f) direct the respondent authorities to pay interest @ 18% per annum on all payments including arrears of increase in pay by grant regular annual increases, increase in pay on promotion, and consequential increases in pension, (pay/pension on promotion), denied to the applicant (him) on account of the impugned orders till the same are released;

g) Restrain the respondent authorities from passing orders of any sorts for cut in pension against the applicant".

2. Facts of the case are that the applicant joined the service of respondent department as Lower Division clerk on 1.3.1969. On the basis of his service record and seniority, the applicant was promoted as Inspector Income-tax on 19.9.1988 and thereafter as Income-tax Officer on 16.12.1997. While working as Income Tax Officer at Panchkula, the applicant was issued the memorandum of charge sheet dated 3.6.1999 to the effect that while functioning as Income-tax Officer, Ward-2, Panchkula and Authorized Officer u/s 133-A of the Income-tax Act, 1961, is charged to have failed to maintain absolute integrity and devotion to duty as stipulated by Rule 3(1)(1) and (ii) of the C.C.S. Conduct Rules, 1964, as such, the applicant is accused of gross negligence, dereliction of duty and conduct unbecoming of a government servant. On the basis of the charge-sheet dated

He,

17A

3.6.1999, an Inquiry Officer was appointed to enquire into the charges levelled against the applicant. The Inquiry Officer in its enquiry report dated 28.7.2006 has held that the article of charge framed in memorandum dated 3.6.1999 against the applicant is not proved. After going through the enquiry report, the Chief Commissioner of Income-tax, Amritsar (Respondent no.6) vide letter dated 11.12.2006 had recommended to respondent no.5 that the disciplinary proceedings against the applicant be dropped. Respondent no.5 instead of dropping the proceedings sent the proposal to respondent no.6 for seeking 2nd stage advice from the Central Vigilance Commission, New Delhi. On being asked by the CVC, respondent no.6 i.e. the disciplinary authority again submitted the detailed comments on 10.4.2008 and made observation that the charges levelled against the applicant were not proved, as such the same need to be dropped. However, the CVC vide its office memorandum dated 4.8.2008 took shelter of hypothesis of strong "circumstantial evidence" as if "circumstantial evidence" was more important than the entire exercise from 3.6.1999 to 10.4.2008 i.e. inquiries before issue of charge-sheet, issue of charge-sheet, thorough enquiry by the Inquiry Officer, processing of enquiry report by two senior officers of the department of the rank of Chief Commissioners of Income-tax who were disciplinary authorities - when the last disciplinary authority

He

88

submitted his comments about the enquiry conducted and report of the IO.

3. Respondent no.6 vide its letter dated 8.8.2008 had issued a letter for granting the applicant an opportunity of being heard before imposing a major penalty as enumerated in Rule 11 of the CCS (CCA) Rules, 1965 inspite of the fact that the Inquiry Officer in its enquiry report had already held that the charges levelled against him were not proved. On the basis of the letter dated 8.8.2008, the applicant submitted a detailed representation on 10.9.2008 with a request that he be granted personal hearing. However, respondent no.7 without adhering to the mandatory provisions of Rule 15 of the CCS (CCA) Rules, 1965, proceeded with a chosen determination to hold that the charges have been established against the applicant as he was convinced and satisfied and he passed the impugned order dated 16.10.2008 imposing a major penalty of reduction to a lower stage in the timescale of pay for a period of two years and two months as provided under Rule 11(v) of the Rules, 1965 with further direction that the applicant would not earn increments of pay during the period of such reduction with an additional direction that the reduction will have the effect of postponing the future increments of pay. By the impugned order, it was further ordered that the pay of the applicant be reduced by one stage from Rs.25590/- to Rs.24840/- in the time

He/

99A

scale of pay of Rs.9330-34800 plus grade of Rs.4800/- for a period of two years and two months w.e.f. 1.11.2008 to 31.12.2010.

4. Feeling aggrieved against the impugned order dated 16.10.2008, the applicant filed a statutory appeal before Chief Commissioner of Income-tax, Amritsar. The said appeal was referred to the Director General of Income-tax(Vigilance), New Delhi, and the same was returned back to the disciplinary authority vide letter dated 5.10.2009 with a technical objection that the appeal be addressed to the President of India. The applicant again submitted the appeal to the President of India on 19.12.2008. The applicant has stated that without waiting the outcome of the appeal, the respondent authorities decided to fill up the posts of Assistant Commissioners of Income-tax by way of promotion and the office of respondent no.6 vide its letter dated 31.8.2010 had directed the applicant to submit the requisite information in the prescribed proforma. The applicant submitted the said requisite proforma within time. The Departmental Promotion Committee met and considered the cases of all the eligible candidates and on the basis of the recommendations of the DPC, office order dated 17.9.2010 was issued by respondent no.1 promoting many junior officers than the applicant to the post of Assistant Commissioner of Income-tax and the rightful claim of the applicant was not considered on the ground that the currency of punishment inflicted

ke/

2018

upon him. In the meantime, the applicant stood retired from service on 31.12.2010 on attaining the age of superannuation. Earlier, the applicant had also filed OA No.848/PB/2010 before the Tribunal for directing the respondents to decide the statutory appeal with further prayer that he be promoted to the post of Assistant Income-tax with effect from the date juniors to him were promoted. Lastly, the appeal filed by the applicant was rejected vide order dated 14.3.2014. Hence the present OA.

5. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement, wherein they have stated that there is no procedural lapse or irregularity in passing the impugned orders. They have stated that it is well settled that strict rules of evidence are not applicable to the departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer should be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the charges against the delinquent officer. By relying upon the judgment passed by the Hon'ble Apex Court in the case of **Bank of India & Another** versus **Degala Suryanarayana** (A.I.R. 1991 S.C. Page 2407), they have stated that that the Court exercising jurisdiction of judicial review would not interfere with the findings of fact arrived at in the

Ve

departmental enquiry proceedings except in case of malafides or perversity and the Court cannot embark upon re-appreciating the evidence weighing the same like an appellate authority. They have further relied upon the judgment passed by the Hon'ble Apex Court in the case of **Union of India & Ors. vs. Himmat Singh Chahar** (A.I.R. 1999 S.C. Page 1980), wherein it was held that although the High Court is entitled to exercise its power to judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceedings or that the authority exercising jurisdiction had not been vested with jurisdiction under the Act.

6. On merit, the respondents have stated that under the rules and law, a person undergoing a penalty cannot be granted promotion. The allegations levelled in the charge-sheet stood proved against the applicant upon which he was punished, as such, the claim of the applicant that he was having the clean record is untrue. They have thus prayed for dismissal of the OA.

Ve

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

8. The applicant in his oral arguments has mainly emphasized that the order in appeal is against the mandate and spirit of the provisions of Rule 27 of the CCS (CCA) Rules, 1965, which provides that the each point raised in the appeal should be considered and findings on each such ground with reasons for non-acceptance thereof, must also be recorded. On asking, he read out the provisions of Rule 27 of the CCS(CA) Rules, which are as follows:-

"27. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

W/

23A

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

provided that-

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and in inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an enquiry under rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(ii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty.

16/

24A

(3) In an appeal against any other order specified in rule 23, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

While it is correct and we agree that the order in appeal should be reasoned and speaking, but we do not agree with the contention of the learned counsel for the applicant that each point raised in the appeal has to be mentioned, analyzed, discussed and then a finding has to be recorded. An appeal is not like exercising an original jurisdiction. It has specific but limited scope. However, it must not be wanting in considering an important legal lacunae or deficiency or gross neglect of procedures in the original order. The applicants have failed to point out as to which specific point raised in the appeal whose non consideration will compromise the fairness and propriety of the original order has been disregarded by the appellate authority.

9. We have gone through the order in appeal in depth and we do not see any reason to interfere with it because it adequately explains and is sufficiently clear as to why the appeal was not accepted.

10. Generally in the matter of disciplinary proceedings, the scope for interference by the Tribunals is rather limited. In a catena of judgments by the Hon'ble Apex Court, it has been held that the judicial

Ve

review in the disciplinary matters should not be in the form of re-appreciation of evidence. The Courts should generally only look at the correctness of process and not get into re-evaluation of evidence before the Inquiry Officer. The findings recorded by the Disciplinary Authority which are affirmed or diluted by the Appellate Authority should not be interfered with unless the applicant shows that the order is without jurisdiction; or that there is procedural irregularity in conducting the enquiry.

11. We are well aware of the law laid down by the Hon'ble Apex Court in the case of **S.R.Tewari** versus **Union of India** (2013(7) Scale Page 417) that "The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice".

26A

Again, the Hon'ble Apex Court in the case of **Deputy Commissioner, Kendriya Vidyalya Sangthan & Ors. vs. J.Hussain** (2013 (10) S.C.C. Page 106) has held that the Courts should not be guided by misplaced sympathy or continuity ground, as a factor in judicial review while examining the quantum of punishment. Again the jurisdictional High Court in the case of **Union of India versus Raghubir Singh** (CWP No.1154 of 2014) decided on 6.5.2014 has held that "the relationship between an employer and employee is of utmost vital importance and where an employer loses confidence and faith in such an employee and awarding punishment of dismissal/removal/termination is the very prerogative of the concerned Disciplinary Authority and there is no place for generosity or misplaced sympathy and, therefore, judicial authorities needs to be cautious in their approach towards such infringement over the powers of Disciplinary Authority".

12. In the present case, we cannot hold that there has been serious lapse in procedure nor the punishment awarded to the applicant is grossly disproportionate to the alleged misconduct of the government employee. Like wise the appeal has been rejected on credible grounds and a concurrence with the original order has been recorded.

✓

27th

13. Accordingly, we find no merit in interfering with the impugned order. The OA is thus dismissed with no orders as to cost.

Uday Kumar Varma
(UDAY KUMAR VARMA)
MEMBER (A).

B. A. AgSawal
(DR. BRAHM A.AGRAWAL)
MEMBER (B)

Dated:-September 17, 2015.

Kks

28

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, SECTOR-17,
CHANDIGARH.

SUBJECT:- Particlars of orders challenged in the Hon'ble High COURT
OF PUNJAB AND Haryana Chandigarh.

PUC is a notice received from the Hon'ble High Court of Punjab and Haryana, Chandigarh in C.W.P.No. 342/2016 title B.M. Verma Versus UOI & ors. filed against the CAT order dated 17/9/2014 in O.A.No 60/508/2014 passed by the Hon'ble Bench consisting of Hon'ble Mr. Uday Kumar Verma Member (J) and Hon'ble Mr. B.A. Aggarwal Member (J).

CAT has been impleaded as a party simply because the order under challenge was passed by it. No relief has been claimed against the CAT. No action is, therefore, required to be taken by CAT. We may file it.

Submitted for order please.

ms
3/2/16

Pran
3/2/16

SECTION OFFICER(J).

DEPUTY REGISTRAR

REGISTRAR

8
3/2/16

60/508/2014 on 12/9/2015
passed by HON'ble UHV (MA)
B.A.A (M)

29

No.H.C.J.D./C.-30(a)

W-10

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT JURISDICTION

O.A. No. 060/508/CH/01/2014

Civil Writ Petition-No. 342 of 2016

B.M. Verma

Petitioner(s)

Versus

Union of India & ors

Respondent(s)

NOTICE OF MOTION

To,

9. Central Administrative Tribunal, Chandigarh Bench, Chandigarh through its Registrar.

Whereas the petition under Article 226/227 of the Constitution of India, wherein you have been joined as respondent and of which a copy is enclosed/a copy has already been sent to you with this Court's letter No. _____/Writes, dated _____ has been presented to this Court.

You are hereby informed that the said petition has been fixed for hearing on **21.03.2016 (Actual)** and that if you wish to urge anything in reply to the petition, you may appear in this court on that date, and file your written statement 3 days before that day either in person or through any Advocate duly instructed.

Take notice that in default of your appearance on the date aforementioned the case shall be heard and decided in your absence.

Given under my hand and the seal of the court this 19th day of January 2016.

BY ORDER OF THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Superintendent (Writs)
For Assistant Registrar (Writs)



229

82
29/1/16

1715
Rambh
28/1/16

Central Administrative Tribunal
Chandigarh Bench Sector -17.
Chandigarh.

Subject :- Particular of order challenged in the Hon'ble High Court of Punjab and Haryana at Chandigarh.

Order dated 10/05/17 (Flag 'A') by Hon'ble Punjab and Haryana High Court in C.W.P. No 342/16 Under.
Article 226/227, of the Consitution of India from the Judgement and order dated 17/09/15 (Flag'B' of the Central Administrative Tribunal , Chandigarh Bench at Chandigarh in O.A. No. 60/508/14
Delivered by Hon'ble Mr. *Vijay Kumar Verma* Member (A) and Hon'ble Mr. *Dr. Bhabin D. Agrawal* Member (B)

B.M. Verma
Applicant in C.W.P.

Versus *Union of India & Ors.*
Respondents in C.W.P.

1. *The writ petition is allowed.*

2. The main case is placed below submitted for information please.

my 9/6/17
~~Deputy Registrar~~

Registrar

Hon'ble Member (J)/ HOD.

Hon'ble Member (J- II)

Hon'ble Member (A-I)

~~Hon'ble Member (A-B)~~

For information, p

dy 12/9/17

(On SCL)

Seen

Seen 14-6-17

Scanned 12/8/17
RECORD INCHARGE.

REPORTABLE

Status Allowed

DP No.-

74
3-6-17

508/14

W-10

31

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

To,

1. Union of India through the Secretary
(Revenue), Ministry of Finance, Government
of India, New Delhi.
2. The Department of Personnel & Training, through its Secretary,
Government of India, New Delhi.
3. The Chairman, Central Board of Direct Taxes,
North Block, Central Secretariat, New Delhi.
4. The Director General of Income-tax (Vigilance),
New Delhi.
5. The Chief Commissioner of Income-Tax, North Western Region, Sector 17,
Chandigarh.
6. The Chief Commissioner of Income-tax, Amritsar
7. The Commissioner of Income-Tax-I, Amritsar.
8. The Under Secretary to Government of India,
Department of Revenue, Ministry of Finance,
Government of India, New Delhi.
9. Central Administrative Tribunal, Chandigarh Bench,
Chandigarh through its Registrar.

Subject:- CWP No. 342 of 2016
B. M. Verma

Petitioner(s)

Versus

Union of India and others

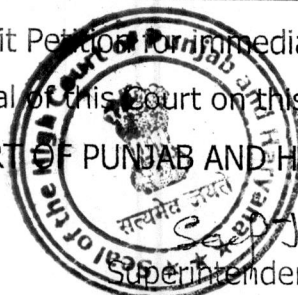
Respondent(s)

Sir,

In continuation of this Court's order dated _____ I am directed to
forward herewith a copy of Order dated 10.05.2017 passed by this Hon'ble High
Court in the above noted Civil Writ Petition for immediate strict compliance.

Given under my hand and the seal of this Court on this 30th Day of May 2017.

BY ORDER OF HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH



Superintendent (Writ)
for Assistant Registrar (Writs)

92/
8/6/17

Handwritten signature/initials.

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA ³²

AT CHANDIGARH

Civil Writ Petition No. ³⁴² of 2015, ✓

(District: Amritsar)

B.M. Verma, Income-tax Officer (Retired) ✓

son of Late Shri Gopi Chand, and resident of

House No.116-A, Shakati Nagar, Amritsar

....Petitioner

Versus

- 9 1. Union of India through the Secretary
(Revenue), Ministry of Finance, Government
of India, New Delhi.
 - 9 2. The Department of Personnel & Training, through its Secretary,
Government of India, New Delhi.
 - 9 3. The Chairman, Central Board of Direct Taxes,
North Block, Central Secretariat, New Delhi.
 - 9 4. The Director General of Income-tax (Vigilance),
New Delhi.
 - 9 5. The Chief Commissioner of Income-tax, North Western
- ✓

Region, Sector-17, Chandigarh

6. The Chief Commissioner of Income-tax, Amritsar
7. The Commissioner of Income-Tax-I, Amritsar.
8. The Under Secretary to Government of India,
Department of Revenue, Ministry of Finance,
Government of India, New Delhi.

....Respondents

9. Central Administrative Tribunal, Chandigarh Bench,
Chandigarh through its Registrar.

... Performa Respondent

CIVIL WRIT PETITION UNDER ARTICLES

226/227 OF THE CONSTITUTION OF INDIA

FOR THE ISSUANCE APPROPRIATE WRIT,

ORDER OR DIRECTION ESPECIALLY IN THE

NATURE OF **CERTIORARI** INTERALIA**QUASHING:****IMPUGNED ORDER (ANNEXURE P-1)**

DATED 17-09-2015, PASSED BY

RESPONDENT NO. 9 - THE CENTRAL

ADMINISTRATIVE TRIBUNAL, CHANDIGARH

BENCH, CHANDIGARH;

IMPUGNED ORDER (ANNEXURE A-16 WITH

ANNEXURE P-2) DATED 14-03-2014,

PASSED BY RESPONDENT NO. 1,

WHEREBY THE STATUROTY DEPARTMENT

APPEAL (ANNEXURE A-11 WITH ANNEXURE

P-2) FILED BY THE PETITIONER WAS

DISMISSED;

IMPUGNED ORDER (ANNEXURE A-9 WITH

ANNEXURE P-2) DATED 16-10-2008,

PASSED BY RESPONDENT NO. 7 WHEREBY

PUNISHMENT WAS IMPOSED ON THE

PETITIONER;

FURTHER A WRIT IN THE NATURE OF

MANDAMUS MAY ALSO BE ISSUED TO:

DIRECT THE RESPONDENT AUTHORITIES TO RESTORE THE PAY OF THE APPLICANT AND GRANT REGULAR ANNUAL INCREASES IN PAY, WITH ALL CONSEQUENTIAL BENEFITS;

DIRECT THE RESPONDENT AUTHORITIES TO CONSIDER THE NAME OF THE APPLICANT FOR PROMOTION TO THE POST OF ASSISTANT COMMISSIONER OF INCOME-TAX W.E.F. THE DATE PERSONS JUNIOR TO HIM WERE SO PROMOTED, AND IN CASE HE IS FOUND ENTITLED TO THE PROMOTION, THE SAME MAY BE GRANTED TO THE APPLICANT FROM DUE DATE WITH ALL FURTHER CONSEQUENTIAL BENEFITS TO WHICH HE MAY BE ENTITLED TO UNDER THE RULES;

DIRECT THE RESPONDENT AUTHORITIES TO RE-FIX THE PENSION OF THE APPLICANT AFTER GRANTING HIM THE AFORE-MENTIONED RELIEF(S) AND TO PAY THE APPLICANT ALL OTHER ADDITIONAL PENSIONARY BENEFITS ALONGWITH ARREARS ARISING THEREON;

DIRECT THE RESPONDENT AUTHORITIES TO PAY INTEREST @ 18% PER ANNUM ON ALL PAYMENTS INCLUDING ARREARS OF

INCREASE IN PAY BY GRANT REGULAR ANNUAL INCREASES, INCREASE IN PAY ON PROMOTION, AND CONSEQUENTIAL INCREASES IN PENSION, (PAY/PENSION ON PROMOTION), DENIED TO THE APPLICANT (HIM) ON ACCOUNT OF THE IMPUGNED ORDERS TILL THE SAME ARE RELEASED;

RESTRAIN THE RESPONDENT AUTHORITIES FROM PASSING ORDERS OF ANY SORTS FOR CUT IN PENSION AGAINST THE APPLICANT; AND

ANY OTHER AND/OR ALTERNATIVE RELIEF TO WHICH THE APPLICANT IS FOUND ENTITLED TO UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE;

RESPECTFULLY SHOWRTH:

1. That the petitioner is a citizen of India and a resident of the State of Punjab, and as such is competent to invoke the extraordinary writ jurisdiction of this Hon'ble Court.
2. That the petitioner is aggrieved by the Order (ANNEXURE P-1), dated 17-09-2015 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh whereby the Original Application No. 060/00508/CH/ 2014 (ANNEXURE P-A) filed by

CWP-342-2016

-1-

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-342-2016

Date of Decision: May 10, 2017

B.M.Verma

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

- | | | |
|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

.....

Present: Mr.P.K.Khindria, Advocate
for the petitioner.Mr.Puneet Gupta, Advocate
for the respondents.

.....

SURYA KANT, J.

The petitioner seeks quashing of the order, dated 17.09.2015, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') whereby his Original Application in which he laid challenge to the orders passed in the disciplinary proceedings culminating into imposition of major penalty of reduction to a lower stage in the time scale of pay for a period of two years, has been dismissed.

[2] A brief reference to the facts may be made.

[3] The petitioner joined the Income Tax Department, Ministry of Finance, as a Lower Division Clerk on 01.03.1969. He earned various promotions, i.e. Inspector Income Tax on 19.09.1988 and thereafter as Income Tax Officer on 16.12.1997. The petitioner retired from service on attaining the age of superannuation on 31.12.2010.

CWP-342-2016

-2-

[4] The Joint Commissioner of Income Tax, Ambala, nominated the petitioner as a member of the Inspection team on 03.12.1998 to conduct survey of a godown of an assessee located at Baldev Nagar Camp, Ambala where the wet skins of animals were stored. It appears that the authorities were not satisfied with the survey action, hence a second team was constituted in which again the petitioner was nominated as a member. Subsequently, it was alleged that in the first survey conducted by the team headed by Mewa Ram, ITO (in which petitioner was a member) "the stock taking exercise was done on estimate basis in an extremely hasty and casual manner", as a huge difference to the extent of 49,340 wet blue skins in different qualities and sizes was detected after the subsequent survey.

[5] Based upon the afore-stated allegation, the petitioner was served with charge-sheet dated 03.06.1999. As the reply was found to be unsatisfactory, the Commissioner of Income-tax (Appeals)-XIX, New Delhi who was appointed the Inquiry Officer held in his report dated 28.07.2006 that the charges against the petitioner were not proved.

[6] Agreeing with the enquiry report, the Chief Commissioner, Income-tax, Amritsar, vide memo dated 11/15.12.2006 (Annexure A-5) recommended to the Competent Authority that the disciplinary proceedings against the petitioner may be dropped. The matter was again considered by the successor Chief Commissioner of Income-tax, Amritsar, who also vide Memo dated 10.04.2008 (Annexure A-6) reiterated that the disciplinary proceedings against the petitioner need to be dropped. Though it is not clear from the record as to how and in what circumstances the matter was forwarded to the Central Vigilance Commission (for brevity, 'the CVC'), but

/ 8

CWP-342-2016

-3-

the CVC vide Memorandum dated 04.07.2008 in disagreement with the opinion of the departmental authorities advised "imposition of suitable major penalty against the petitioner".

[7] Based upon the opinion of CVC, the Disciplinary Authority served the petitioner with a show cause notice, dated 08.08.2008 (Annexure A-7) proposing to give an opportunity to him to explain as to why a major penalty, as enumerated in Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity, 'the 1965 Rules') be not imposed on him. Relevant part of the notice issued by the Disciplinary Authority reads as follows:-

"2) An enquiry was also conducted into the charges after following the procedure laid down in the CCS(CCA) Rules, 1965. After taking into account entire material on record, evidence available as well as after considering the fact that your plea of informing the discrepancies in preparing the stock inventory by the authorised officer late Mr. Mewa Ram, TRO, Panchkula is found to be an after-thought because this information was given by you only after the Range Jt. CIT decided for re-count of the stock inventory, it is observed that you (then ITO, Ward 2, Panchkula) failed to report on time the discrepancies in the stock tally prepared on 03.12.1998 to the Range, Jt. Commissioner of Income Tax and thus, as Joint-member of the survey team, it is established that you committed gross mis-conduct in using unfair means, not informing the Department about the discrepancy in the stock tally on time. Accordingly, in terms of Rule 15 of the CCS (CCA) Rules, 1965, I propose to impose a major penalty on you for such mis-conduct and behaviour which tantamount to dis-honesty, thus, unbecoming of a government officer.

3) Before any such order is passed, you are hereby given an opportunity to explain why a major penalty, as enumerated in Rule 11 of the CCS(CCA) Rules, 1965 may not be imposed upon you. You are requested to furnish your written reply within fifteen days of the receipt of this letter."

[8] The petitioner's reply to the show cause notice was turned down and consequently, the order dated 16.10.2008 (Annexure A-9) was passed whereby the pay of the petitioner was reduced by one stage, i.e. from Rs.25590/- to Rs.24840/- for a period of two years and two months w.e.f. 01.11.2008 to 31.12.2010. The punishment was imposed with cumulative effect and it was expressly recorded that it shall have an adverse affect to all future benefits including pensionary benefits. The petitioner filed appeal under Rule 23 of the 1965 Rules which was also turned down by the Appellate Authority vide order dated 14.03.2014 (Annexure A-16).

[9] The aggrieved petitioner approached the Tribunal which also dismissed his challenge concluding as follows:

"12. In the present case, we cannot hold that there has been serious lapse in procedure nor the punishment awarded to the applicant is grossly disproportionate to the alleged misconduct of the government employee. Like wise the appeal has been rejected on credible grounds and a concurrence with the original order has been recorded."

[10] The disciplinary action against the petitioner was initiated under the provisions of the 1965 Rules. Rule 15 of the 1965 Rules, which has a direct bearing on the controversy reads as follows:-

"15. Action on Enquiry report:

10

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall

42
be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

[emphasis applied]

[11] It may be seen from its plain reading that the Sub Rule (2) mandates that the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by it or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit his written representation or submission to the Disciplinary Authority. Sub Rule (2A) obligates the Disciplinary Authority to consider the representation, if any, submitted by the Government servant and record its findings before

12

proceeding further in the matter. Thereafter, the Disciplinary Authority shall form its opinion under Sub-Rule(3) regarding imposition of punishment to the Government servant and under Sub Rule (4) it can impose one of the punishments as enumerated in Rule 11 of the 1965 Rules.

[12] The solitary question which falls for consideration in these proceedings is whether the procedure mandated under Sub Rule (2) of Rule 15 has been followed in the instant case? If not, what are the consequences?

[13] It may be mentioned at this stage that the respondents were directed to produce the records of the enquiry but learned counsel for Union of India, on the basis of written instructions, dated 08.05.2017, states that the original records are not traceable though photo-copies of the original noting-sheet and some documents are available which may be considered as true and authentic. We have no reason to doubt the genuineness of the photocopies of the record produced on behalf of the respondents and have perused the same to see whether Sub Rule (2) of Rule 15 was complied with or not.

[14] It emerges out from the admitted facts that in the instant case, the Inquiring Authority was other than the Disciplinary Authority. It is also not in dispute that the Inquiring Authority exonerated the petitioner as the charges were not proved against him. It is also on record that the departmental authorities had decided to drop the proceedings, but CVC intervened and found that it was a fit case for imposition of a major penalty. The Stage was, thus, set to proceed further and follow Sub Rule (2) of Rule 15, which mandates that in case the Disciplinary Authority wants to disagree

with the findings rendered by the Inquiring Authority, it is obligatory on it to give its 'tentative reasons for disagreement' and communicate such reasons to the Government servant to enable him to submit his representation against those reasons. The photo-copies of the record including noting on the file produced on behalf of the respondents unambiguously suggest that at no stage the Disciplinary Authority recorded its reasons for disagreement and obviously never ever came an occasion to communicate such 'reasons of disagreement' to the petitioner. The fact that there is no separate note of disagreement recorded by the Disciplinary Authority is not disputed on behalf of the respondents as well.

[15] Further, the show cause notice dated 08.08.2008 (Annexure A-7), relevant extracts of which have been reproduced in para 7 of this order, also did not contain even a single reason of disagreement on behalf of the Disciplinary Authority. The said show cause notice does not at all discuss the findings returned by the Enquiry Officer and as to why the Disciplinary Authority differed with those reasons. In fact the show cause notice is a mere repetition of the accusations attributed to the petitioner in the charge-sheet. The observations made by the Disciplinary Authority that "it is established that you committed gross mis-conduct in using unfair means by not informing the Department about the discrepancy in the stock tally on time", is nothing but reproduction of the statement of allegations. It is reiterated at the cost of repetition that no such finding was recorded by the Inquiry Officer. Similarly, the Disciplinary Authority also recorded no such finding against the petitioner except that it mechanically reproduced the allegations from the charge-sheet while issuing the show cause notice dated

08.08.2008, apparently to comply with the CVC opinion.

[16] In a such like case where the Inquiring Authority had exonerated the delinquent, it was imperative upon the Disciplinary Authority to give its own reasons of disagreement as to why the Government servant is liable to be held guilty of the charges. Unless such reasons are communicated to the charged employee, he cannot submit any effective defence, for he does not know as to what is stocked in the mind of Disciplinary Authority to hold him guilty of the charges. Such a recourse is not only mandated under the Rules, it is also fundamental to the principles of natural justice and fair play. It would, in a way, amounts to condemning the petitioner unheard.

[17] It may be true that the Disciplinary Authority as well as the Appellate Authority have passed reasoned orders but those reasons have been taken straight out of the charge-sheet only and are not supported by any fact finding process under the Rules. Learned Tribunal also proceeded on the premise as if the enquiry proceedings were conducted in accordance with the procedure contemplated under the 1965 Rules and that the "confidence of the employer/employee is of paramount consideration." It was not a case where the principle of 'loss of confidence' could be invoked. It is a case where the Disciplinary proceedings were initiated under the 1965 Rules and the same ought to have been taken to a logical conclusion in accordance with the procedure prescribed under these Rules. Any deviation therefrom especially when it results into denial of fair opportunity to defend himself to an employee, will have serious repercussions on the fate of the enquiry proceedings.

CWP-342-2016

-10-

[18] We are thus of the considered view that the learned Tribunal fell in error in holding that the proceedings have been conducted in accordance with the prescribed procedure.

[19] In the light of the above discussion, the writ petition is allowed. The order passed by the Tribunal dated 17.09.2015 is set aside. Similarly the orders passed by the Appellate Authority as well as the Disciplinary Authority as also the disciplinary proceedings from the stage of issuance of the show cause notice dated 08.08.2008 and subsequent thereto are quashed. There shall, however, be liberty to the Disciplinary Authority to record the reasons of its disagreement, if so advised; communicate such reasons to the petitioner within the prescribed period and thereafter take a decision on consideration of petitioner's reply, if any, as to whether or not he is guilty of charges leveled against him. Since the respondent has retired from service meanwhile, it is directed that the Disciplinary Authority shall take a conscious decision within a period of three months from the date of receipt of a certified copy of this order as to whether or not to proceed against him. The petitioner shall be entitled to all consequential benefits including arrears of pay and pension, if the Disciplinary Authority decides not to proceed against him or if he is finally exonerated by the Competent Authority.



(SURYAKANT)
JUDGE

May 10, 2017
meenuss

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

✓ Yes/No
✓ Yes/No

Sub.
2.6.17

15