Central Administrative Tribunal
Principal Bench
New Delhi

OA No.2658/2015

This the 7th day of April, 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)

Anil Kumar Kain S/o B. S. Kain,
Executive Engineer (E),
R/O A-189 (First Floor),
Meena Bagh, Paschim Vihar,
Delhi-110087. ... Applicant

(By Advocate: Mr. Ashish Nischal)

Versus

Union of India through
Secretary, Ministry of Urban Development,
Nirman Bhawan, New Delhi-1100108. ... Respondent

(By Advocates: Mr. R. K. Sharma)

O R D E R

Justice Permod Kohli, Chairman :

While working as Executive Engineer (Elec.), CPWD, the applicant was served with a memorandum of charge dated 26.09.2006 with two articles of charge for initiating major penalty disciplinary proceedings under rule 14 of the CCS (CCA) Rules, 1965. The applicant was required to submit his response. Vide his representation dated 10.11.2006, the applicant denied the charges. The disciplinary authority appointed the inquiry officer and the presenting officer and proceeded to hold the inquiry. The inquiry

officer, on conclusion of the inquiry, submitted his report dated 03.11.2008 holding both the charges as not proved.

2. The disciplinary authority disagreed with the report of the inquiry officer and issued disagreement note dated 24.03.2009. The applicant made representation against the disagreement note on 02.04.2009. The UPSC tendered its advice holding both the charges as proved vide communication dated 03.06.2010. Agreeing with the opinion of UPSC, the disciplinary authority vide its order dated 17.06.2010 imposed the penalty of withholding of next increment due to the applicant for two years without cumulative effect. Aggrieved of the penalty order, the applicant filed OA No.4291/2010 before this Tribunal challenging the penalty order dated 17.06.2010. This OA was allowed by the Tribunal vide its judgment dated 06.09.2011 (Annexure A-8) with following observations/directions:

> "4. We find two major defects in the note of dissent, relevant part whereof has been quoted above. Firstly, it is far from being a tentative and is a final expression of opinion, which is wholly impermissible as per settled law on the issue. The representation given by the applicant against note of dissent, in view of the final expression as regards guilt of the applicant having already been given, would be of no meaning and consequence. Secondly, no reasons for disagreeing with the inquiry officer have been given, which though may have been given briefly but without any expression of final opinion. If the reasons for disagreeing with the findings of the inquiry officer are not given, once again it will be well neigh impossible for an employee to make a meaningful representation. That being so, the note of dissent

> dated 24.03.2010 needs to be set aside so also the order inflicting the punishment upon the applicant dated 17.06.2010. The OA shall be allowed to that extent. The disciplinary authority would proceed from the stage when it received the report of inquiry officer, and if once again its opinion may be otherwise than what has been given by the inquiry officer, to record a note of dissent which may be tentative, but give the reasons for its disagreement on the report of inquiry officer, obtain the representation of the applicant and pass final orders thereafter. If the disciplinary authority may record a note of dissent, it must be served upon the applicant as expeditiously as possible and definitely within a period of six weeks from the date of receipt of certified copy of this order. The applicant may respond to the same within the time limit as may be specified by the disciplinary authority, but once the applicant makes his representation, the same be taken to its logical ends within six weeks from receipt thereof. This time limit has been prescribed as the applicant is facing the disciplinary proceedings since September, 2006 and there has to be an end to this, now since about five years have gone by, as early as possible. OA disposed of accordingly. No costs."

From the perusal of the aforesaid order, we find that the order imposing penalty was set aside on two counts – firstly, that it was a final expression and not a tentative opinion of the disciplinary authority, and secondly, that no reasons for disagreeing with the inquiry officer were given. The disciplinary authority was directed to proceed from the stage when it received the report of the inquiry officer.

3. The disciplinary authority issued a fresh disagreement note dated 08.03.2013 tentatively holding article of charge-II as proved, and agreed with the findings of the inquiry officer as regards

article of charge-I holding the charge as not proved. The applicant submitted representation dated 25.03.2013 against the disagreement note dated 08.03.2013. On 03.09.2014 the applicant was served with the advice of UPSC dated 25.08.2014. The Commission was of the opinion that the charge established against the charged officer was proof of misconduct on his part, as is evident from para 5 of the Commission's advice, quoted hereunder:

> "5. In view of the findings discussed and also taking into account all other aspects relevant to the case, the Commission consider that the charges established against the CO constitute misconduct on his part and the ends of justice would be met if a penalty of "withholding of one increment for a period of six months without cumulative effect and not affecting his pension" is imposed on Shri Anil Kumar Kain (the CO). They advise accordingly."

4. The applicant made his representation against the advice of UPSC on 16.09.2014. Vide the impugned order dated 14.05.2015 the disciplinary authority imposed the penalty of withholding of one increment for a period of six months without cumulative effect and not affecting his pension, on the advice of UPSC. After imposing the penalty the disciplinary authority vide letter dated 02.06.2015 sought clarification from the CVO with regard to the date of implementation of the penalty order dated 14.05.2015. The Vigilance Unit, CPWD vide its letter dated 10/12.06.2015 communicated to the disciplinary authority that the penalty order has to be implemented from the

current date. It is under these circumstances the present OA has been filed seeking following reliefs:

> "a. Quash and set aside the Impugned Penalty Order dated 14.05.2015 and grant all consequential benefits to the applicant:
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> OR
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> The Impugned Penalty Order dated 14.05.2015 may be ordered to be implemented from the date of initial penalty order dated 17.06.2010 with all consequential benefits to the applicant.
>
> b. Pass any other relief that this Hon'ble Tribunal may consider fit in the interest of justice."

5. Detailed counter-affidavit has been filed justifying the impugned penalty order referring to the UPSC advice. The applicant has filed rejoinder and a surrejoinder has also been filed by the respondents.

6. During the course of arguments, learned counsel for the applicant vehemently argued that the impugned penalty order has been passed on the basis of the disagreement note dated 08.03.2013, and this disagreement note is in contravention of the provisions of rule 15 (2) of the CCS (CCA) Rules, 1965, as it does not record reasons for disagreement with the report of the inquiring authority.

7. We have carefully examined the material on record. The inquiry officer in its inquiry report recorded following findings with regard to article of charge-I:

> "9.2.9 In view of the position discussed above, both the constituents of Article of Charge-1 could not be proved."

This finding has been accepted by the disciplinary authority. Regarding article of charge-II, the inquiry officer recorded the following findings:

> "10.3.2 There is nothing on record to suggest that the CO justified and recommended the quotations of the participants who were not the manufacturers or the dealers. It is true that the CO did not forward such quotations to SE. Forwarding a quotation as a part of the total case and recommending a particular quotation is not the same thing. In fact if the officer does not forward some of the quotations/tenders, which are received in the tender box, he would be guilty of suppressing information. It is for the accepting authority whether it wants to consider such quotations as invalid or to accept such quotations for consideration or to order fresh invitation of quotations with amended requirements. The issue would have to be decided on merits of each case and the desirability of achieving competitiveness. But such a decision has to be taken by the accepting authority and there is no misgiving apparent in the CO forwarding all the quotations received to the higher authorities."

The disciplinary authority in its second disagreement note dated 08.03.2013 recorded as under:

> "The President, in agreement with the findings of the Inquiring Authority, tentatively held that the charge under Article-I as 'Not Proved'. However, in respect of the charge under Article-II of the findings of the Inquiring Authority, the President has observed that quotations were opened by AE, who mentioned

> the deficiencies on the bodies of quotations. But the same deficiencies were not reflected on the comparative statement (Exhibit-P-15) and Charged Officer had signed it. However, Charged Officer mentioned the condition of payment given by the contractor in memorandum of forwarding of quotations. But the Charged Officer has not mentioned the factual position that out of four quotations three are invalid as per the NIQ conditions (firm did not submit Income Tax Clearance Certificate and Sales Tax Certificate). Instead of doing that, Charged Officer mis-represented the facts by stating in Exhibit-P-17 (mentioned in memorandum of forwarding of quotations) that rate of lowest firm is very reasonable and competitive and recommended for approval. Although these deficiencies were detected timely and competent authority approved the single valid quotation but it is a fact that the Charged Officer could not reflect the deficiencies of quotations while forwarding the quotation to the higher authority for approval. Deficiencies were detected timely and competent authority approved the single valid quotation. The President, therefore, proposed to hold the charge under Article-II tentatively proved to the extent that invalid quotations were taken into consideration, on the basis of evidence on record, in disagreement with the findings of the Inquiring Authority."

8. On a careful perusal of the aforesaid disagreement note, we find that the disciplinary authority while accepting the findings of the inquiring authority on article of charge-I as 'not proved', did not accept the findings of the inquiring authority on article of charge-II. Unfortunately, the disciplinary authority committed the same error as in the earlier disagreement note and recorded no reasons for disagreeing with the findings of the inquiring authority on article of charge-II. The inquiring authority in its findings on article of charge-

II categorically recorded that the charged officer did not recommend any particular quotation and forwarded all the quotations to the Superintending Engineer, and it was for the accepting authority to have decided on merits of each case and the desirability of achieving competitiveness. The disciplinary authority in its disagreement note referred to hereinabove did not record any reason, much less a plausible, legal and valid reason, for disagreeing with the findings of the inquiring authority, and simply on the advice of UPSC recorded its own findings without recording any reasons for disagreement with the inquiring authority. It is accordingly contended that the disagreement note requires to be quashed on this count alone.

9. Rule 15 (2) of the CCS (CCA) Rules, 1965 reads as under:

> "(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."

Rule 15 (2) *inter alia* provides that the disciplinary authority will forward or cause to be forwarded a copy of the report of the inquiring authority together with its own tentative reasons for

disagreement, if any, with the findings of the inquiring authority on any article of charge to the Government servant seeking his written representation or submission, if he so desires. The mandatory requirement of rule 15 (2) is recording of reasons for disagreement with the report of the inquiring authority. We have quoted hereinabove findings of the inquiring authority in para 10.3.2 of its report, but the disagreement note of the disciplinary authority does not deal with the findings of the inquiring authority although it recorded its own findings.

10. This issue is no more *res integra* having been considered by the Apex Court in a catena of judgments. A three-Judge Bench of the Apex Court in case of ***Punjab National Bank & others*** *v* ***Kunj Behari Misra*** [(1998) 7 SCC 84] considered a similar provision, i.e., regulation 7 (2) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977. Sub-regulation (2) of regulation 7, though not *pari materia*, but carries similar provision as rule 15 (2) of the CCS (CCA) Rules, 1965. For purposes of understanding the mandate of regulation 7(2), the said regulation is noticed hereunder:

> "(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

A perusal of the above regulation will definitely convey that the purpose, scope and ambit of regulation 7(2) are similar to rule 15(2) of CCS (CCA) Rules, 1965. Interpreting the said regulation, the Hon'ble Supreme Court relied upon an earlier decision in ***Ram Kishan v Union of India & others*** [(1995) 6 SC 157], wherein the following observations were made:

> "...The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect...."

The Hon'ble Supreme Court, considering ***Ram Kishan***'s case (supra) and some other judgments, held as under:

> "The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof <u>whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records</u>

> its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."

A similar view has been held by another Bench of the Hon'ble Supreme Court in a later judgment reported as ***S. P. Malhotra*** *v* ***Punjab National Bank & others*** [(2013) 7 SCC 251], wherein it is held that in case the disciplinary authority does not agree with the findings recorded by the inquiry officer in disciplinary proceedings, it must record reasons for disagreement and communicate the same to the delinquent and seek his response and only after considering the same, pass the order of punishment.

11. In view of the law laid down by the Apex Court in the aforesaid judgments, this OA is to be allowed. Under normal circumstances, we would have remanded the case to the disciplinary authority for re-consideration of the matter from the stage of recording of disagreement note. However, we are of the considered view that such recourse would be travesty of justice in the facts and

circumstances of the present case. The disciplinary proceedings were initiated in the year 2006 in respect to the events of period 08.02.2000 to 06.06.2004. It was only on account of the incompetency of the disciplinary authority that the earlier disagreement note was quashed by this Tribunal and the disciplinary authority was allowed to proceed further from the stage of receipt of the inquiry report. The disciplinary authority recorded another disagreement note dated 08.03.2013, which also suffered from the same defect and error of not recording the reasons for its disagreement with the findings of the inquiring authority. The disciplinary proceedings are pending for the last about 11 years. Even though the charge-sheet was for major penalty, but the disciplinary authority in its wisdom chose to impose only a minor penalty. The applicant has suffered a lot on account of pendency of the disciplinary proceedings for a period of 11 years which might have hampered his promotional chances as well which is more than the punishment awarded to him by virtue of the impugned penalty order. In view of the above circumstances, we do not feel it judicious to remit this matter to the disciplinary authority.

12. The OA is accordingly allowed. The impugned penalty order is hereby quashed. No costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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