Before M.M. Kumar and Ritu Bahri, JJ.

R.L. JAKHU,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 14785/CAT of 2003

15th December, 2010

Constitution of India, 1950—Art. 226—Central Civil Services (Classification, Control and Appeal) Rules, 1965—Rls. 14, 15(2)—Enquiry Officer exonerating petitioner from all charges—Disciplinary authority disagreeing with findings recorded by Inquiry Officer and issuing communication purporting to be dissenting note—Petitioner submitting representation—Respondents passing punishment order on basis of dissenting note and by taking into account advice tendered by UPSC—Provisions of Rl.15(2) require Disciplinary Authority, in case of disagreement with finding of inquiring Authority, to record its reasons for disagreement and then to record its own findings on such charge if evidence on record is 'sufficient' for the purpose—Complete non-application of mind by Disciplinary Authority—Neither any evidence was discussed to sustain charges nor any reasoning has been adopted to reach conclusion that petitioner is guilty of those charges— Petition allowed, orders of Tribunal and Disciplinary Authority set aside holding petitioner entitled to all consequential benefits.

Held, that the instant case present a gloomy picture of complete non-application of mind by the Disciplinary Authority. There is virtually no evidence discussed to sustain the charges nor any reasoning has been adopted to reach the conclusion that the petitioner is guilty of those charges. At the hearing, respondents have taken support of the advice tendered to the Union Public Service Commission by the Disciplinary Authority in pursuance of Rule 15(4) of the Rules and on that basis, submissions have been made that there is sufficient evidence to sustain the conclusion recorded by the Disciplinary Authority.

(Para 10)

Further held, that the order passed by the Tribunal is far from satisfactory. The Tribunal instead of devoting itself to the legal issue of finding out whether Rule 15(2) of the Rules has been complied with, it has misdirected itself to the irrelevant issue of general nature, namely, that it cannot become a Court of appeal and was unable to re-appreciate evidence. The Tribunal also bank upon another issue of citing the test of prejudice which was not relevant at all in the facts and circumstances of this case. The only issue which arose for consideration was whether the provisions of sub-rule (2) of Rule 15 were complied with or not. The aforesaid issue has been touched for much time has been devoted to the other issues, therefore, we are unable to accept the view taken by the Tribunal.

(Para 11)

Further held, that on statutory rule, principle and precedent no doubt is left that the disciplinary authority should have recorded reasons after looking into sufficiency of evidence to sustain the charges before it could disagree with the findings of the inquiry officer. The dissenting note recorded by the disciplinary authority on 2nd August, 2000 is a far cry from fulfilling the necessary requirement of the Rules. Therefore, the dissenting note as well as the susbequent proceedings based thereon are liable to the set aside.

(Para 15)

R.N. Raina, Advocate, and Daman Dhir, Advocate, *for the petitioner.*

Brijeshwar Singh, Advocate, *for the respondents.*

M.M. KUMAR, J.

(1) The instant petition filed by unsccessful original applicant under Article 226 of the Constitution, is directed against order, dated 12th May, 2003 (Annexure P-1), passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity 'the Tribunal'). The Tribunal has upheld the order of punishment, dated 22nd March, 2002 (Annexure P-2), inflicting upon the petitioner punishment of reduction of pay by three stages in his present pay sacle for a period of three years with further direction that the petitioner would not earn increments of pay during the said period and on expiry of the said period the reduction was to have the effect of postponing his future increments.

(2) Facts in brief, may be noticed so as to put the controversy in legal slots. The petitioner was selected by the Union Public Service Commission (for brevity 'the UPSC') and was posted as Group 'A' Officer on the post of Assistant Chief Accounts Officer on 24th August, 1987. He was promoted as Chief Accounts Officer/IFA in the year 1991 and remained posted as such in the office of Telecom District Manager, Hisar with effect from 20th November, 1991 to 15th September, 1993. He was further promoted as Director (F&A)/IFA and was transferred to Ludhiana as such.

(3) On 19th February, 1996, a charge memo (Annexure P-3) was served upon him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity, 'the Rules') by the Disciplinary Authority, namely, respondent Nos. 2 and 3. The petitioner was confronted with five charges relating to the period from 20th November, 1991 to 15th November, 1993 when he was posted as Chief Accounts Officer-cum-Finance Officer in the office of Telecom District Manager, Hisar. On 12th March, 1996, he submitted his reply (Annexure P-4) stoutly denying all the articles of charge levelled against him. He also expressed his desire to be heard in person. A departmental inquiry was held and the Inquiry Officer *vide* his Inquiry report, dated 28th July, 1999 (Annexure P-6) held that none of the five charges levelled against the petitioner, *vide* charge memo, dated 19th February, 1996 (Annexure P-3), could be proved. Accordingly, the Inquiry Officer exonerated the petitioner from all the charges. However on 2nd August, 2000, the Disciplinary Authority served upon the petitioner a communication purported to be a 'dissenting note' (Annexure P-7) and expressed its disagreement with the findings recorded by the Inquiry Officer. The petitioner was called upon to make representation against the said communication. It would be interesting to read the communication purporting to be dissenting note (Annexure P-7) :—

> "A copy of inquiry report submitted by Shri K.K. Kulshrestha, ADG (DI), DOT, New Delhi who was appointed as Inquiring Authority to inquire into the charges framed against Shri R.L. Jakhu, formerly CAO, O/o TDM, Hissar and now Director (Finance), O/o GMTD, Ludhiana, is forwarded herewith. The Disciplinary Authority proposes to disagree with the findings of the inquiring Authroity to the following extent :—
>
> (i) That the charged officer failed to point out the irregularities while recommending placement of purchase orders on

M/s B.R. Electricals, New Delhi on the rates approved by J&K Circle for supply of 625 Kms of PVC insulated 2 mm diameter Galvanised Steel Twin Drop Wire worth Rs. 46,80,575 as no tenders were invited as required under the rules in view of huge quantity to be purchased.

(ii) That non-availability certificate had not been obtained from Circle Store Depot, Ambala before making local purchase of 100 lbs Drop Wire.

(iii) That TDMs financial powers for purchase were limited to Rs. 2 lakhs on each occasion from the sources other than PSUs.

(iv) That the purchase orders were split up to avoid the necessity for obtaining the sanction of the competent authority required with reference to total amount of the orders in violation of Rules 104 GFRs, 1963.

(v) That recommending to TMD, Hissar the local purchase of 50 numbers of Portable Line Testers for a total cost of Rs. 2,03,364 from M/s Tayal Telesytem without inviting tenders.

(vi) That he failed to give right advice to the TDM in financial matters.

2. Shri R.L. Jakhu is hereby given an opportunity to make such representation as he may wish to make against the findings of the Inquiring Authority in the light of the proposed disagreement with the findings of the Inquiring Authority, as aforesaid, but only on the basis of evidence adduced during inquiry. Such representation, if any, shall be submitted in writing to this office within 15 days from the date of receipt of this memorandum, failing which it will be presumed that he has no representation to make and further proceedings against him are liable to be held *ex parte* by the Disciplinary Authority.

3. The receipt of this Memorandum shall be acknowledged by Shri R.L. Jakhu, Director (Finance).

By order and in the name of the President."

(4) The petitioner submitted his reply to the aforesaid dissenting note on 25th August, 2000 (Annexure P-8). However, the respondents have passed 'punishment order dated 22nd March, 2002 (Annexure P-2) on the basis of 'dissenting note' and also by taking into account the advice tendered by the UPSC, dated 3rd August, 2001 (Annexure P-9).

(5) Feeling aggrieved, the petitioner approached the Tribunal and impugned the order dated 22nd March, 2002 (Annexure P-2) by filing an Original Application No. 425-PB of 2002 (Annexure P-1) with a prayer for quashing the same. The petitioner also sought directions to the respondents to grant him all consequential benefits regarding his regular promotion as Director (Financial). The petitioner failed to persuade the Tribunal to agree with his submissions for quashing the order dated 23rd February, 2002. The reliance of the petitioner on the judgment in the case of **Punjab National Bank and others** *versus* **Kunj Behari Misra, (1)** did not find favourable response from the Tribunal. The Tribunal, in fact, was persuaded to reject his prayer by referring to the decision of Hon'ble the Supreme Court to say that if certain formalities or legal requirements were not followed, the test of prejudice is required to be satisfied by an employee who has approached the Tribunal to assail the departmental proceedings. Although the Tribunal has not cited any judgment taking the aforesaid view but reference has been made for the purpose for non-furnishing of inquiry report to a delinquent employee so as to vitiate the departmental proceedings which in the opinion of the Tribunal was old law. The Tribunal has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of **Oriental Insurance Co. Ltd.** *versus* **S. Balakrishnan, (2)** to conclude that no prejudice is caused to the delinquent employee on account of non-furnishing of Inquiry report, then disciplinary proceedings were not to be vitiated. The Tribunal has further specified that its jurisdiction is limited and that it could not become the court of appeal by recording his own findings in the matter of departmental Inquiry. In that regard the Tribunal has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of **State of Tamil Nadu and another** *versus* **S. Subramaniam, (3).** Another argument raised by the petitioner that the reply of the UPSC tendered under Article 320 (3) (c) of the Constitution should have been put to him, has also been rejected.

(1) (1998) 7 S.C.C. 84
(2) 2001 AIR S.C.W. 2450
(3) AIR 1996 S.C. 1232

(6) Mr. R.N. Raina, learned counsel for the petitioner, has raised three submissions before us. His first submission is that once Inquiry Officer recorded findings on all the five charges exonerating the petitioner then for recording a dissenting opinion, the Disciplinary Authority was under legal obligation to comply with requirement of Rule 15(2) of the 'Rules' as it stood at that time. According to the learned counsel, the communication purporting to be dissenting note, dated 2nd August, 2000 (Annexure P-7), is a far cry from satisfying the requirement of Rule 15(2) of the Rules. Learned counsel has further argued that some foreign material has also been brought into consideration of the Disciplinary Authority while recording order dated 2nd August, 2000 which is purported to be a dissenting note inasmuch as under sub para (vi), the Disciplinary Authority has stated that the officer failed to give right advice to the TDM in financial matters. According to the learned counsel this does not even constitute the part of the charge-sheet. Mr. Raina, has also emphasized that 'dissenting note' did not discuss any evidence or reason for recording the finding expressing disagreement with the well based findings recorded by the Inquiry Officer. The learned counsel has also drawn our attention to the punishment order dated 22nd March, 2002 (Annexure P-2) and para 2 of the Disciplinary order to argue that there again some foreign material which was never put to the petitioner, has been incorporated without confronting the same to him.

(7) Mr. Brijeshwar Singh, learned counsel for the respondents, however, has submitted that the advice tendered by the UPSC under Rule 15(4) of the Rules has been taken into account various factors which have led the Disciplinary Authority to reach the conclusion recorded in the dissenting note dated 2nd August, 2000 (Annexure P-7). Learned counsel has read out various portions of the advice tendered by the UPSC to argue that there was ample evidence for the Disciplinary Authority to record the finding against the petitioner. Learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of **Tota Ram** *versus* **Union of India and others, (4)** and argued that there is no bar for the Disciplinary Authority in exercise of its powers to disagree with the findings recorded by the Inquiry Officer exonerating the employee to record finding contrary to the one recorded by the Inquiry Officer, which could always be incorporated in the order of dissent.

(4) (2007) 14 S.C.C. 801

(8) Having heard learned counsel for the parties and perusing the paper book with their able assistance, we find it necessary first to peruse Rule 15 insofar as it has bearing on the controversy in hand and the same reads thus :–

"15 Action on the inquiry report

(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 for as may be.

[(1-A) 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 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.

(1-B) The disciplinary authority shall consider the representation, if any, submitted by the Government servant before proceeding further in the manner specified in sub-rules (2) to (4).]

(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 record is sufficient for the purpose. (emphasis added)

XX XX XX XX XX

(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."

(9) A bare perusal of the aforesaid rule contemplates the action to be taken on the inquiry report in case the Disciplinary Authority is not itself an Inquiring Authority. According to sub-rule (1) of Rule 15, the disciplinary Authority for reasons to be recorded in writing could remit the case to the inquiring Authority for further Inquiry and the inquiring Authority is obliged to proceed to hold further inquiry according to the provisions of Rule 14. However, sub-rule (2) of Rule 15 deals with a situation when the disciplinary Authority prefers to disagree with the findings of the inquiring Officer on articles of charge. In such situation, the disciplinary Authority is under obligation to record its reason for such disagreement and then records its own findings on such charge if the evidence on record is 'sufficient' for the purpose. Sub-rule (4) of Rule 15 contemplates consultation with the Union Public Service Commission by forwarding the record of the Inquiry by the Disciplinary Authority to seek its advice. The advice tendered by the Public Service Commission is required to be taken into consideration before making an order imposing any penalty on the charge officer.

(10) On a bare perusal of communication dated 2nd August, 2000 (Annexure P-7) it becomes patent that the necessary requirement of sub-rule (2) of Rule 15 of the Rules has not been complied with. The Disciplinary Authority in case of disagreement with the finding of the inquiring Authority was required to record its reason for the disagreement and then it was obligatory to record its finding on such charge in case the evidence on record

is sufficient for the purpose. The obligation casts on the disciplinary Authority is more heavier because the evidence on record has to be 'sufficient' to sustain the finding on any such disagreement, which the Disciplinary Authority may proceed to record. Ordinarily sufficiency and insufficiency of evidence to sustain the charge would be a question which would not be required to be gone into but the rule imposes an obligation on the Disciplinary Authority to record a finding on a charge where it expresses disagreement only if the evidence on record is 'sufficient' for that purpose. It may be for the reason that once inquiring authority has concluded one or the other then to reverse those findings sufficient evidence would be necessary to over turn those findings. Therefore, findings cannot be reversed on flimsy evidence. A perusal of the order of disagreement would show that in para 1, the charges have been reproduced and charge No. (vi) has been set out which was not even incorporated in original charge-sheet. In para 2, the Disciplinary Authority has recorded that if the petitioner wishes to make any representation against findings of the Inquiring Authority in the light of the proposed disagreement with the findings of the Inquiring Authority on the basis of evidence adduced during the inquiry, then the same is required to be submitted in writing. There is not an iota of evidence which has been made part of discussion in order to reach a conclusion that there is sufficient evidence to sustain the charge in support of disagreement. The instant case presents a gloomy picture of complete non-application of mind by the Disciplinary Authority. There is virtually no evidence discussed to sustain the charges nor any reasoning has been adopted to reach the conclusion that the petitioner is guilty of those charges. At the hearing, respondents has taken support of the advice tendered to the Union Public Service Commission by the Disciplinary Authority in pursuance of Rule 15(4) of the Rules and on that basis, submissions have been made that there is sufficient evidence to sustain the conclusion recorded by the Disciplinary Authority.

(11) The order passed by the Tribunal is far from satisfactory. The Tribunal instead of devoting itself to the legal issue of finding out whether Rule 15(2) of the Rules has been complied with, it has mis-directed itself to the irrelevant issue of general nature, namely, that it cannot become a court of appeal and was unable to re-appreciate evidence. The Tribunal

also bank upon another issue of citing the test of prejudice which was not relevant at all in the facts and circumstances of this case. The only issue which arose for consideration was whether the provisions of sub-rule (2) of Rule 15 were complied with or not. The aforesaid issue has been touched for much time has been devoted to the other issues, therefore, we are unable to accept the view taken by the Tribunal.

(12) The question which has been raised before us, has also been considered by Hon'ble the Supreme Court in the case of **Punjab National Bank** *versus* **Kunj Behari Misra, (5).** The specific question formulated by their Lordships' is as under :–

> "When the enquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the delinquent officer."

(13) Placing reliance on Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977, which is *pari materia* to Rule 15(2) of the Rules, as also the judgment of a Constitution Bench rendered in the case of **Managing Director, ECIL** *versus* **B. Karunakar, (6)** their Lordships of Hon'ble the Supreme Court in para 17 have observed as under :–

> "17. .....If the inquiry officer had given an adverse finding, as per Karunakar's case [Managing Director, ECIL *versus* B. Karunakar, (1993) 4 SCC 727] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its

(5) (1998) 7 S.C.C. 84
(6) (1993) 4 S.C.C. 727

findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer, but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority."

(14) In para 18 of the judgment it has been held that the principles of natural justice have to be complied with in case the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion. It has further been observed that it would be most unfair and iniquitous where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment upon the officer. In para 19 it has been pointed out that on the language of Regulation 7(2), the principle of natural justice must be followed and proceeded to observe as under :—

"19. 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 whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records 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 a representation before the disciplinary authority records its findings on the charges framed against the officer." (emphasis added)

(15) The aforesaid view has also been followed and applied in the case of **SBI** *versus* **Arvind K. Shukla, (7).** Therefore, on statutory rule, principle and precedent no doubt is left that the disciplinary authority should have recorded reasons after looking into sufficiency of evidence to sustain the charges before it could disagree with the findings of the inquiry officer. The dissenting note recorded by the disciplinary authority on 2nd August, 2000 (P-7) is a far cry from fulfilling the necessary requirement of the Rules. Therefore, the dissenting note as well as the subsequent proceedings based thereon are liable to be set aside.

(16) We would have remanded the case back to the disciplinary authority for the purposes of proceeding afresh from the stage of recording a dissenting note. However, for various reasons the aforesaid course has not been adopted. The learned counsel for the respondents has not been able to show from the report of the inquiry officer that there is any incriminating evidence sufficient to indict the petitioner, which may consititute the basis for recording a finding against him. Therefore, it is better if the matter is given a finality at this stage itself.

(17) As a sequel to the aofresaid discussion, order dated 12th May, 2003 (Annexure P-1) passed by the Tribunal as also the order of the Disciplinary Authority dated 22nd March, 2002 (Annexure P-2) are hereby set aside. The finding recorded by the Inquiry Officer are reiterated and the petitioner is deemed to be exonerated from the charges. As a result, petitioner would be entitled to all consequential benefits including consideration of his case for promotion or higher pay in accordance with law.

R.N.R.

(7) (2004) 13 S.C.C. 797

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(7) (2004) 13 S.C.C. 797