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

% Judgment reserved on: 21.02.2013
Judgment pronounced on : 26.02.2013

\+ **LPA No. 472/2012**

DELHI TOURISM & TRANSPORTATION DEVELOPMENT CORP. LTD. ..... Appellant

Through: Mr S.B. Upadhya, Sr. Adv with Mr P.C. Sen and Ms Sara Sundaram, Adv.

versus

AZAD SINGH .... Respondent

Through: Mr. Anuj Aggarwal, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The respondent before this Court was working as a driver with the appellant. On 11.12.1987, a chargesheet was issued to him on the allegations that on 27.12.1987, he along with an outsider, entered the office of the appellant in N-Block of Connaught Place, started consuming liquor in the said office and misbehaved with the staff posted there, thereby indulging into acts unbecoming of a Government servant. The said chargesheet was followed by an inquiry in which the charges against

the respondent were held to be proved. The Disciplinary Authority, vide order dated 26.06.1989 imposed penalty of removal of service upon the respondent. The appeal filed by the respondent was dismissed by the Appellate Authority on 04.10.1989. The orders passed by the Disciplinary Authority and the Appellate Authority were challenged by the respondent way of WP(C) No. 3850/1991. The learned Single Judge vide impugned order dated 25.11.2011, allowed the writ petition by holding that the respondent would be entitled to back wages from the date of removal from service till the date of his superannuation along with all consequential reliefs of pension, etc. The appellant filed a Review Petition in respect of the aforesaid order dated 25.11.2011 which was dismissed vide order dated 18.05.2012. Being aggrieved, the appellant is before us by way of this appeal.

2. A perusal of the order passed by the learned Single Judge on 25.11.2011 would show that the said order was predicated on the premise that the respondent/writ petitioner was not assisted by any lawyer and the cross-examination of witnesses by his representative was illusory, he not being represented by a competent and qualified person. The learned Single Judge found that no opportunity was afforded by the Inquiry

Officer to the writ petitioner to lead defence evidence. He also held that there was no cogent and sufficient evidence against the writ petitioner.

3. When the appellant, by way of Review Petition, drew the attention of the learned Single Judge to Rule 14(8)(a) of CCS/CCA Rules which gives an option to the Charged Officer to either plead his case himself or to take the assistance of any other Government servant posted in any office at his Headquarters or at the place where the inquiry is held, but, does not entitle him to be represented by a legal practitioner as a matter of right unless the Department is represented by a legal practitioner, the learned Single Judge took the view that the observations made in his order dated 25.11.2011 as regards absence of assistance from a lawyer to the writ petitioner was meant to demonstrate that despite the fact that the respondent was not represented by a lawyer, the testimony of the witnesses was neither cogent nor sufficient and dismissed the Review Petition.

4. As per the procedure prescribed in sub-Rule (16) and (17) of Rule 14 of CCS/CCA Rules, for imposing major penalties, when the case for the Disciplinary Authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer and the

evidence on behalf of Government servant shall then be produced. The Government servant may examine himself in his own behalf, if he so prefers. The witnesses produced by the Government servant shall then be examined. Sub-Rule (18) of the aforesaid Rules provides that Inquiry Officer may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence, for the purpose of enabling the Government servant to explain any evidence appearing against him. The record of inquiry produced before us does not indicate that after recording of evidence on behalf of the Disciplinary Authority, the Inquiry Officer required the respondent to state his defence or produce his evidence. The learned counsel for the appellant submits that the respondent is deemed to have waived his right to produce evidence by not making a request to the Inquiry Officer in this regard, whereas the learned counsel for the respondent submits that the Inquiry Officer never called upon the respondent to lead his evidence and being ignorant of statutory rules and not being represented by an advocate or even a Defence Assistant on the relevant date, the respondent was not aware of

his legal right to produce in his defence and consequently could not make such a request.

5. The scheme of Rule 14 mandates the Inquiry Officer to give opportunity to the Charged Officer to produce his evidence. The record does not indicate that any such opportunity was given by the Inquiry Officer to the respondent. Even if no request to lead defence evidence was made by the respondent, the Inquiry Officer was duty bound to ask him as to whether he wanted to produce evidence in his defence or not. That having not been done, there is no escape from the conclusion that no opportunity to lead defence evidence was accorded by the Inquiry Officer to the respondent. Thus, there was no contravention of sub-Rule (17) of Rule 14 of CCS/CCA Rules which resulted in violation of principles of natural justice by not affording opportunity to lead defence to the respondent.

6. Admittedly, the respondent did not examine himself as a witness. In view of the provisions contained in sub-Rule (18) of Rule 14, it was obligatory for the Inquiry Officer to question him generally on the circumstances appearing against him in evidence, so as to afford an opportunity to him to explain such circumstances. The Rule requiring

questioning of the Charged Officer in respect of the circumstances appearing against him in evidence is not a formality, but is a vital right granted to him since it gives an opportunity to him to explain the evidence which has been given against him during the course of inquiry. The punishment imposed on the basis of an inquiry held in violation of the aforesaid statutory provision would not be sustainable in law.

7. We are, therefore, of the view that the penalty imposed upon the respondent is liable to be quashed on account of the respondent not being given an opportunity to produce his witnesses and not being questioned by the Inquiry Officer in respect of the circumstances appearing in evidence against him.

8. The next question which comes up for our consideration is as to whether, while maintaining the order quashing the penalty, we should remit the matter back for resuming the inquiry from the stage it became defective or not. During the course of arguments, the learned counsel for the respondent submitted that since no evidence on behalf of the Disciplinary Authority was led against the respondent, there would be no justification to remit the matter back to the Inquiry Officer. There can be no dispute with the proposition that if no evidence on the basis of which

charge against the employee can be sustained has been produced during the course of inquiry, no useful purpose would be served from remitting the matter back to the Inquiry Officer for resuming the inquiry from the stage at which defect occurred in the inquiry proceedings.

9. It is by now a settled proposition of law that the Court, while considering challenge to the orders passed in disciplinary proceedings does not act as an Appellate Authority and does not reassess the evidence led in the course of the inquiry nor can it interfere on the ground that another view in the matter is possible on the basis of the material available on record. If the Court finds that the inquiry has been conducted in a fair and proper manner and the findings rendered therein are based on evidence, the adequacy of evidence or the reliability of the evidence are not the grounds on which the Court can interfere with the findings recorded in the departmental inquiries. It is not open to the Court to interfere with the finding of fact recorded in such inquiries unless it is shown that those findings are based on "no evidence" or are clearly perverse. A finding would be considered to be perverse if no reasonable person could have recorded such a finding on the basis of material available before him. Another ground on which the Court can

interfere with the findings recorded in a disciplinary proceeding is violation of principles of natural justice or statutory rules or if it is found that the order passed in the inquiry is arbitrary, mala fide or based on extraneous considerations. This proposition of law has been reiterated by Supreme Court in a number of cases including ***B.C.Chaturvedi v. Union of India: 1995(6) SCC 749, Union of India v. G.Gunayuthan: 1997 (7) SCC 463, Bank of India v. Degala Suryanarayana: 1999 (5) SCC 762 and High Court of Judicature at Bombay v. Shahsi Kant S. Patil: 2001 (1) SCC 416***.

10. On a perusal of the evidence produced on behalf of the Disciplinary Authority, it cannot be said there was absolutely no evidence produced against the respondent. We find that Chander Prakash (Bill Clerk) in his deposition before the Inquiry Officer stated that on 27.11.1987, the respondent Azad Singh along with his friend had come to M-Block and after sitting on Sofa both of them had consumed alcohol. He further stated that the companion of the respondent asked him to bring water and when he declined "they" started abusing him. He maintained in his cross-examination that the appellant and his companion had brought the bottle of alcohol with them and "they" had kept on abusing for about

15-20 minutes. Thus, it cannot be said that there was absolutely no evidence against the respondent. Since we propose to remit the matter back to the Inquiry Officer for resuming the inquiry from the stage at which inquiry proceeded in violation of the Statutory Rules and the principles of natural justice, it would not be appropriate for us to analyze the evidence in detail and take a view either way, since the view, if any, taken by us on merits, may tend to prejudice the Inquiry Officer and/or the Disciplinary Authority. For our purpose, it would be sufficient to say that this was not a case where no evidence was produced against the Charged Officer, during the course of inquiry.

11. It was then contended by the learned counsel for the respondent that since the incident took place about more than 25 years ago, it would not be appropriate to remit the matter back to the Inquiry Officer and the order passed by the learned Single Judge quashing the penalty inflicted upon the respondent and granting back wages, etc. needs to be maintained. We, however, cannot agree. Ordinarily, when the Court finds that the inquiry proceedings got tainted on account of some irregularity in the inquiry, the appropriate order would normally be to remit the matter back to the Disciplinary Authority, with liberty to direct

resumption of the inquiry from the stage at which the inquiry became defective on account of such contravention. It is only in a case where the employee is able to establish a prejudice being caused to him on account of resumption of the inquiry, that the Court will be justified in not remitting the matter back to the Disciplinary Authority/Inquiring Authority, as the case may be. Considering the serious nature of the allegations against the respondent, who is alleged to have entered the office along with an outsider and consumed liquor right there sitting in the office, followed by abusing the other members of the staff, we see no justification for not allowing inquiry proceedings to be taken to their logical conclusion, particularly when no prejudice, to the respondent has been demonstrated.

12. In ***State of Punjab* Vs. *Harbhajan Singh Greasy*** [1996 SCC (L&S) 1248, the report of the inquiry officer leading to removal of the respondent from service was passed on an admission alleged to have been made by him. The High Court set aside the order of dismissal on the ground that the alleged admission was not supported by any written statement of the respondent. The High Court while setting aside the order directed reinstatement of the respondent in service. Setting aside the order of the High Court, Supreme Court, inter alia, held as under:-

> "Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction."

In ***Union of India*** **Vs.** ***Y.S. Sadhu-Ex. Inspector*** 2009(1) SCC (L&S) 126, the departmental inquiry against the respondent was found to be defective inasmuch as the witnesses who had been examined earlier were not produced for cross-examination. Based upon the findings returned in the inquiry, the respondent was dismissed from service. The order of dismissal of the respondent from service was set aside by the High Court which also directed his reinstatement without back wages. The Supreme Court, however, held that the proper course which the High Court should have adopted was to allow the proceedings to continue from the stage where it stood before the alleged vulnerability surfaced.

13. The learned counsel for the respondent has referred to the decision of Supreme Court in ***Munna Lal v. Union of India and Ors.*** *(2010) I LLJ 11 SC.* In the aforesaid case, the charge against the appellant was that he was found on duty in a drunken condition. The submission of the appellant before Supreme Court was that there was no medical evidence

to prove that he was drunk on that day and was an alcoholic. However, in the case before us, there is positive evidence of a witness, who has clearly stated that the respondent had entered the office of the appellant company along with an outsider, and they had brought a bottle of liquor which they consumed right in the office of the appellant in the presence of the witness. Therefore, the facts of this case are altogether different, this not being a case of an employee being found in a drunken condition, but being a case where he consumed alcohol right in the office in the presence of the witnesses.

The learned counsel for the respondent has also relied upon State of ***Bombay vs. Gajanan Mahadev Badley*** *AIR 1954 Bom 351*, ***Devender Kumar vs. Union of India and Ors.*** *W.P.(C) 1532/1999,* decided on 14.05.2012 and ***Union of India & Anr. vs. D.S. Manchanda*** *W.P.(C) No. 215/2009* decided on 10.03.2011. However, none of these judgments contains any such legal proposition which would dissuade us from remitting the matter back to the Inquiry Officer. The learned counsel for the respondent has also relied upon the decision of Andhra Pradesh High Court in ***B.F. Pushpaleela Devi vs. State of A.P.*** *AIR 2002 A.P.320*, where the Court held that an appeal under clause 15 of Letters Patent

filed against an order of the learned Single Judge in a Review Petition, declining to review the order is not maintainable. However, in the case before us, the appellant is challenging not only the order passed in the Review Petition, but also, the initial order passed in the writ petition and, therefore, this judgment does not apply to the case before us.

14. It was submitted by the learned counsel for the respondent that the appeal against the order dated 25.11.2011 alone would be barred by limitation. We, however, find that no objection with respect to the maintainability of the appeal on account of its being barred by limitation was taken by the learned counsel for the respondent when this appeal came up for hearing on 28.08.2012 or on any other subsequent date. There was no objection from the Registry that the appeal is barred by limitation. Had there been an objection either from the Registry or from the respondent, the appellant could have made attempt to explain the delay and sought condonation of delay in filing the appeal. In any case, we take note that the Review Petition came to be dismissed only on 18.5.2012 and the appeal was filed soon thereafter. Therefore, we are not inclined to allow this plea to be raised at this stage.

15. For the reasons stated hereinabove, while maintaining the quashing of the penalty awarded to the respondent, we remit the matter back to the Disciplinary Authority, which shall be competent to direct resumption of the inquiry from the stage envisaged in sub-Rule (16) of Rule 14 of CCS/CCA Rule. Considering the delay, which has already taken place in conclusion of the inquiry, we direct the inquiry, if resumed by the Disciplinary Authority, to be concluded within three months of a copy of this order being made available to the appellant. The decision on the report of the Inquiry Officer shall be taken by the Disciplinary Authority, within one month of the receipt of the Inquiry Report.

The appeal stands disposed of in terms of these directions. There shall be no order as to costs.

V.K.JAIN, J

CHIEF JUSTICE

FEBRUARY 26, 2013
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