

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

% **Date of Order: 19th May, 2022**

+ W.P.(C) 7881/2009, CM APPL. 4251/2009 & CM APPL.
10622/2012

AVINASH CHANDER Petitioner

Through: Mr. Arvind Kr Sharma,
Advocate

versus

AAI Respondent

Through: Ms. Anjana Gosain, Ms. Shalini
Nair and Ms. Ritika Khanagwal, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present Petition has been filed under Articles 226 & 227 of the Constitution of India praying for issuance of a writ of certiorari and appropriate writ or order and/or direction for quashing the impugned order dated 17th December, 2007, passed by the Disciplinary Authority thereby withholding the increment of the petitioner for a period of one year without cumulative effect.

2. The brief background of the matter is that the petitioner was working as Manager, Air Traffic Control (ATC) in Airports Authority

of India, New Delhi. He was transferred from New Delhi to Mumbai on inter-regional transfer vide order bearing No. CHQ NO. 2/3/2002/EA/1058-69 dated 24th April 2002 and was relieved of his duties at New Delhi, Airport with effect from 30th April 2002.

3. The petitioner joined the office of Mumbai on 11th July 2002, after lapse of 71 days, including admissible joining time of 12 days and leave for 59 days, on medical record owing to poor health conditions. After taking over of charge at Mumbai office as Manager (ATC), the petitioner applied for a leave for 15 days from 26th July 2002 to 9th August 2002 along with the station leaving permission to proceed to New Delhi on 11th July 2002, however, the petitioner could not return to Mumbai office after the period of his leave ended. The petitioner also remained absent from his duties till 24th March 2003 on account of his sudden ill health. He reported for duty on dated 25th March 2003 after long period of absence of 227 days and submitted leave application on the same day along with medical certificates including fitness certificate.

4. The Respondent issued memorandum proposing to hold an inquiry against petitioner under Regulation 29 of the Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003 on account that the petitioner failed to maintain devotion to his duty and acted in a manner unbecoming of him as an employee of the authority, thereby, violating Rules 4 (1)(B),(C) and (D) and 5 (V), (VI), (VII), (XXVIII) and (XXXV) of the said Regulations. Memorandum of Charge dated 23rd November 2004 was

filed by the respondents whereby the following statement of charges framed against the petitioner were made: -

“Article-1 Shri Avinash Chander. Manager (ATC) remained absent from duty without prior intimation/sanction of leave from 1st May 2002 to 10th July 2002 on 71 days. Medical certificate dated 10th July 2002 was submitted only after reporting at duty.

Article-2 Shri Avinash Chander while functioning as Manager (ATC). Wider Receiver remained absent from duty without prior intimation/sanction of leave from 10th August 2002 to 24th March 2003 on 227 days.”

5. The petitioner replied to the said memorandum and gave explanation as regards to the charges against the petitioners on dated 21st December 2004.

6. The respondent appointed Shri L.R. Singh, Additional General Manager (Comm.) as inquiry authority to inquire into the charges framed against the petitioner under by sub-regulation 4 of regulation 29 of 2003 and the sent notice to the petitioner, subsequently, the preliminary hearing commenced of the departmental inquiry on dated 5th April 2005. The respondent withheld the annual increments of the petitioner, which were due on 1st January 2003, 1st January 2004 & 1st January 2005, till the finalization of his case vide letter dated 15th June 2005. Aggrieved by the withholding of the increments of the petitioner, he approached this Court invoking its writ jurisdiction.

7. Learned counsel appearing on behalf of the petitioner submitted that the act by the officer of the respondent's authority withholding the petitioner's increment was not in accordance with the rules of the authority. The respondent subjected the petitioner to undue hardship by punishing him before the completion of the trial and establishing his guilt, which was in violation of principles of natural justice. It is further submitted that the petitioner made a detail representation as final brief of the charge officer pleading that his absence from his duty during the stated period was not by intentional.

8. It is submitted that the petitioner made his request to appoint one Mr. O.P. Dixit as his Defence Assistant, however, the respondent authority denied his request, without stating any reason.

9. It is further submitted that during the course of the proceedings, the respondent changed the Inquiry Officer as well as the Presenting Officer, which was contrary to the procedures of departmental inquiry proceedings and amounted to interference in the proceedings prejudicial to the interest of the petitioner in terms of loss of time and efforts in proving his innocence.

10. Learned counsel for the petitioner submitted that upon appreciating the evidence adduced by the petition and application of mind, the Inquiry Officer submitted his report dated 27th August, 2007, indicating that the petitioner abstained from his duties due to circumstances such as poor health and acute depression and found that he was not guilty of misconduct.

11. It is submitted that the disciplinary authority has accepted the inquiry report and the respondent authority, vide communication dated 22nd October, 2007, sought additional information from the petitioner, whereupon, the petitioner submitted his representation against the seeking of documents which was not available and unwarranted as per the provisions and procedures of conduct of departmental inquiry proceedings. It is submitted that thereafter, the Disciplinary Authority without application of mind and contrary to the inquiry report passed the following order on 17th December 2007 directing the withholding of the next increment of the petitioner for a period of one year without cumulative effect.

12. Learned counsel for the petitioner submitted that the said order was passed contrary to the findings of the Inquiry report dated 27th August, 2007 exonerating the petitioner from the charges levelled against him. It is submitted that the petitioner filed an appeal against the order of the Disciplinary Authority under Regulation 38 of the Airports Authority of India Employees (CDA) Regulations, 2003, wherein the Appellate Authority passed the impugned order dismissing the appeal and upholding the order passed by the Disciplinary Authority.

13. Thus, by way of the instant petition, the petitioner is challenging the order dated 17th December 2007 passed by the Disciplinary Authority whereby withholding the next increment of the petitioner for a period of one year without cumulative effect pursuant to the order dated 19th September 2007 passed by the Inquiry Officer

contrary to the findings of the Inquiry report dated 27th August 2007 exonerating the petitioner from the charges levelled against him and also the order dated 29th July 2008 passed by the Appellate Authority whereby dismissing the Appeal filed by the petitioner is absolutely illegal, unjust, untenable and violative of the provisions of the Act.

14. *Per contra*, learned counsel for the respondent submitted that the petitioner herein while being posted at CSI Airport, Mumbai was charge sheeted on 23.11.2004 under major penalty clause. It is submitted that the petitioner remained absent from duty without prior information/ sanctioning of leave.

15. It is submitted that the Disciplinary Authority, after duly considering the findings of the Inquiry Officer in the Inquiry Report regarding the misconduct of the petitioner observed that the petitioner had displayed an irresponsible attitude in the matter of his long absence which has been substantially proved in the departmental inquiry and therefore ordered that the next increment of the petitioner be withheld for a period of one year without cumulative effect vide order dated 17.12.2007. The said order was affirmed in appeal by the Appellate Authority in its rejection order dated 29.7.2008.

16. It is submitted that the punishment was inflicted on the petitioner after following the due process and after giving reasonable opportunity of being heard to the petitioner. Therefore, the orders passed by the answering respondent are neither perverse nor discriminatory and hence the instant petition be dismissed as being devoid of merits.

17. Heard learned counsel for the parties and perused the record.
18. For proper adjudication of the instant matter, it is necessary to refer to the findings of the Inquiry Officer as made in the Inquiry Report, which are reproduced hereunder:

“Charged Officer has been pleading for his ill health, acute depression and severe mental condition of depression which he was undergoing during the period for which he was absent from duty and also his wife was able to intimate the office about his health condition. After giving due consideration to the health problem of CO and the facts emerged out in the course of disciplinary proceedings, intentional absenteeism by the CO not proved. IO is of the view that CO Sh Avinash Chander although having vast experience of service in AAI did not take due care in informing office of his bad health and remaining absent from duties for a considerable period, however, considering the anxiety of shifting and settling the family at Mumbai consequent to his transfer from Delhi and CO undergoing severe bouts of depression so much so his wife having taken the responsibility of sending written communications through UPC although not properly addressed. The absence of CO is not considered intentional. His bad health and undergoing acute depression during period of absence should be viewed in correct perspective on humanitarian grounds.”

19. Considering the aforementioned Report of the Inquiry Officer, the Disciplinary Authority passed the following order on 17th

December 2007:-

"WHEREAS Shri Avinash Chander. Manager (ATC) was charge sheeted under Regulation 29 of AAI Employees (CDA) Regulations. 2003 vide Memorandum No.C.14011/09/04-Disc dated 23rd November 2004;

AND WHEREAS Shri Shiv Pujan Pandey. Dy. General Manager (Comn.) was appointed as inquiring Authority to inquire into the charges framed against Shri Avinash Chander:

AND WHEREAS, the Inquiring Authority submitted the inquiry report vide letter dated 27th August 2007 & 19th September 2007 after holding the proceedings in accordance with the regulations, wherein he had concluded that the charges leveled against the Charged Officer are not fully proved:

AND WHEREAS, the Disciplinary Authority accepted the Inquiry Report and accordingly a copy of the Inquiry Report was provided to Shri Avinash Chander vide Memorandum dated 22nd October 2007 with a view to giving him an opportunity to submit his representation to the Disciplinary Authority to enable the latter to take a final view in the matter. Shri Avinash Chander accordingly submitted his representation dated 14th November 2007 to the Disciplinary Authority

AND WHEREAS, the undersigned has carefully considered the findings in the Inquiry Report and representation dated 14.11.07 submitted by Shri Avinash Chander concerning the circumstances of the misconduct committed by him. The undersigned has observed that Shri Avinash Chander has displayed an irresponsible attitude in

the matter of his long absence which has been substantially proved in the departmental inquiry and is therefore of the considered opinion that the ends of justice would be met if one of the penalties under Airports Authority of India Employees (CDA) Regulations 2003 is imposed on Shri Avinash Chander. Manager (ATC).

NOW THEREFORE, the undersigned as the Disciplinary Authority imposes the penalty of 'withholding of the next increment of Shri Avinash Chander for a period of one year without cumulative effect'. It is further ordered that his period of absence be treated as 'dies-non without break in service'."

20. The same was affirmed by the Appellate Authority in its dismissal order dated 29th July 2008 in the appeal filed by the petitioner.

21. In the instant case, it is *prima facie* evident that the Inquiry Officer was of the view that the absence of the petitioner was not intentional rather it was borne out of the ill health and depression caused to the petitioner and which was communicated by his wife by written communications through UPC. Despite this finding by the Inquiry Officer, the Disciplinary Authority vide its Order observed that the petitioner had displayed irresponsible behaviour by his long absence and imposed the penalty of withholding of the next increment of the petitioner for a period of one year without cumulative effect.

22. The finding of the Disciplinary Authority is in stark contradiction to the finding of the Inquiry Officer. Although an opportunity was granted to the petitioner to file his representation

before the Disciplinary Authority, the said Order by the Authority has however been passed without giving cogent reasons for differing with the Inquiry Report.

23. Reference is also made to Rule no. 30 (2) of the Regulations which clearly states that the Disciplinary Authority shall record reasons for disagreement with the Inquiry Report.

24. It is also an established principle of law and has been held in a catena of judgments that the Disciplinary Authority while differing from the findings of the Inquiry Officer must pass a speaking and reasoned order.

25. According to the Constitution Bench decision in the case of *Managing Director, ECIL v. B. Karunakar*, (1993) 4 SCC 727, an accused officer is entitled to represent to the disciplinary authority where the findings in the inquiry report are against him. It will not therefore stand to reason that when the findings are in favor of the accused officer, but they are proposed to be overturned by the Disciplinary Authority then no opportunity should be granted. According to the *Karunakar's* case, disciplinary enquiry is divided into two stages. The first stage ends when the Disciplinary Authority arrives at its conclusions based on evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the Disciplinary Authority decides to impose penalty based on its conclusions.

26. The principles of natural justice would warrant that the

authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved then that report must 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 enquiry report is in favor of the delinquent officer, but the Disciplinary Authority differs from such conclusions then that authority must give him an opportunity of being heard, for otherwise he would be condemned unheard. Furthermore, the final order of the Disciplinary Authority must pass a reasoned judgment.

27. In the case of ***Punjab National Bank v. Kunj Behari Misra*** as reported in (1998) 7 SCC 84, it was held 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 enquiry 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....”

28. The Hon'ble Supreme Court held in ***Deputy General Manager (Appellate Authority) & Others. v. Ajai Kumar Srivastava***, 2021 SCC OnLine SC 4, as under:

“26. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine: (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.”

29. Further, in the same judgement the Hon’ble Apex Court *qua* the duty of Disciplinary Authority held as under:

“27. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.”

30. Thus, whenever the disciplinary authority disagrees with the inquiring authority on any article of charge then before it records its 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.

31. The principles of natural justice 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 it and must record its findings on the charges

framed against the officer. And whenever such findings are made contrary to the inquiry report, it must be backed by cogent reasons.

32. Further, in the instant case, as is evident from the material on record, the absence of the petitioner being reasonably explained and not caused due to his own volition, the punishment inflicted is untenable in the eyes of law.

33. In the instant case, the order passed by the Disciplinary Authority penalizing the petitioner, being skeletal and devoid of sufficient reasoning, is thus liable to be set aside. The learned counsel for respondent, on instructions, stated that the amount in question that was withheld pursuant to the Orders of the Disciplinary Authority, if ordered to be released in favor of the petitioner, would be economically feasible for the Airports Authority of India.

34. Therefore, in light of the reasons stated above, the Impugned Order and punishment is set aside, and the concerned authority is directed to forthwith release the increments of the petitioner withheld in accordance with due process.

35. Accordingly, the instant petition is allowed and disposed of.

CHANDRA DHARI SINGH, J

MAY 19, 2022

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