

(2006) 09 DEL CK 0162

In the Delhi High Court

Case No : Writ Petition (Civil) No. 19114 of 2004

K.L. Sehgal

APPELLANT

Vs

Lt. Governor and Another

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11

Citation : (2006) 09 DEL CK 0162

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : V.S.R. Krishna, for the Appellant; Jyoti Singh and Ankur Chibber, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—Admit.

2. The petitioner was inflicted with a penalty of withholding of promotion till he remains due for his next promotion or for four years whichever is later. As per Rule 11 of the CCS (CCA) Conduct Rules this is a minor penalty. Admittedly the petitioner has gone through the procedure prescribed for imposition of minor penalty. The plea of the petitioner that a major penalty has been imposed on the petitioner cannot be granted in view of the rule position.

3. The petitioner says that the preliminary inquiry report was considered by the disciplinary authority and this was vocative of the principles of natural justice because the petitioner himself did not get a copy of the preliminary inquiry report.

4. It is stated in the order of the disciplinary authority that it has perused the inquiry report in detail. It is contended that there was no inquiry report other than the preliminary inquiry report and the inquiry report mentioned in the penultimate paragraph of the order of punishment was only the preliminary inquiry report. The petitioner filed an appeal against the order of punishment.

The appellate authority, namely, Lt. Governor, has examined the question of non-supply of the preliminary inquiry report. The appellate order says that the preliminary inquiry report has no bearing on the charge. The fact remains that the petitioner has not been given the preliminary inquiry report and the same has been taken into consideration by the disciplinary authority. Two judgments relied upon by the petitioner in support are Krishna Chandra Tandon Vs. The Union of India (UOI), and State Bank of India and Ors. v. D.C. Aggarwal and Anr. 1993 SCC (L& S) 109.

5. The respondent is relying upon the judgment of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . As per the procedure suggested by this judgment if a copy of the report has not been provided before the imposition of punishment the copy can be given in court while the order is under challenge and the court can thereafter consider whether the non-supply of the copy has caused any prejudice. However, the judgment in the case of Karunakar (Supra) came when the order in question was one of dismissal and the court's interference could have led to reinstatement. In the present case if the order is reconsidered by the respondent there will be no prejudice to the respondents.

6. In the circumstances mentioned above, it will be appropriate that the appellate authority reconsider its order after hearing the petitioner again who will now be given the copy of the inquiry report mentioned in the order of disciplinary authority and the appellate authority. The writ petition is accordingly allowed and the respondents are directed to give a copy of the said report within fifteen days and thereafter consider the appeal of the petitioner. In the process of reconsideration the petitioner will have a right to further represent in person and in writing. The fresh order of the appellate authority will be passed within two months of the supply of the copy of the inquiry report. Till the fresh order of punishment is passed, the impugned order will continue to be valid.