

(2022) 09 DEL CK 0033

In the Delhi High Court

Case No : Civil Writ Petition No. 12527 Of 2022, Civil Miscellaneous Application No. 37870 Of 2022

Mukesh Singh Bhati

APPELLANT

Vs

Institute Of Human Behaviour And Allied Sciences (IHBAS) &
Ors.

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2022) 09 DEL CK 0033

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Sonia A. Menon, Tushar Sannu, Priyansha Sinha, Avnish Ahlawat, N.K.Singh, Tania Ahlawat, Palak Rohmetra, Laavanya Kaushik, Aliza Alam

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The petitioner, who is working with the respondent no.1 as an Assistant Engineer (Civil) and is facing a departmental inquiry pursuant to the chargesheet dated 16.03.2022 issued by the respondent no.1, has approached this Court seeking the following reliefs:-

"a. Set aside/quash the charge-sheet dated 16.03.2022 as issued by the Respondent to the Petitioner;

b. Set aside/quash the office order dated 24/30.03.2021 constituting the fact-finding committee, for being an arbitrary exercise of power;

C. Set aside/quash order dated 22/29.07.2022 appointing Mr. Hari Pal Singh as the IO to inquire into the charges as mentioned in charge-sheet dated 16.03.2022;

d. Set aside/quash Order dated 12.08.2022 passed by the Respondent rejecting

the request of the Petitioner for the change of the 10.”

2. The petitioner, on 16.02.2015, joined the respondent no.1 as an Assistant Engineer (Civil) on deputation, and was subsequently absorbed on the said post on 01.01.2020. He was, thereafter, on 10.03.2015, given the additional charge of the post of officiating Executive Engineer (Civil).

3. On 06.08.2019, while working as an officiating Executive Engineer (Civil), the petitioner was served with a Show Cause Notice by the respondent no.1, levelling allegations against him for indulging in demolition of RCC water over-head tanks during 2018-19 in contravention of the estimated items/schedule of quality. An explanation was, therefore, sought from him as to why disciplinary action should not be initiated against him under the CCS (CCA) Rules, 1965. On 23.08.2019, the petitioner sent a detailed reply refuting all the charges against him, and stated that action had been taken by him strictly as per the laid down procedure.

4. Being not satisfied with the reply submitted by the petitioner, the respondent no.1 on 24/30.03.2021 initially appointed a two-member Preliminary Fact-Finding Committee (PFFC), which gave its report on 09.12.2021, holding the petitioner, and two other officers, liable for lapses during execution of the work entrusted to them. On the basis of this report, the respondent no.1 issued a charge-sheet dated 16.03.2022 to the petitioner, proposing an inquiry in respect of two Articles of Charges.

5. The petitioner on 18.04.2022, filed his statement of defence refuting both the charges, and alleging therein that the charge-sheet had been mala fide issued at the behest of the erstwhile Director/respondent no.3. As the reply submitted by the petitioner was not found to be satisfactory, the Disciplinary Authority, vide its orders dated 22/29.07.2022, appointed respondent no.4 as Inquiry Authority (IA) and also simultaneously appointed Dr. V.K.S. Gautam as the Presenting Officer (PO) for conducting a departmental inquiry against the petitioner.

6. On 02.08.2022, the petitioner submitted a representation to the respondent no.1 expressing his apprehension regarding the appointment of Dr. Gautam as the Presenting Officer, on the ground that, while working as a Vigilance Officer (VO), he was instrumental in initiating the PFFC against him. The said representation, however, did not illicit any response from the said respondent, and in the meanwhile, on 03.08.2022, the Inquiry Officer/respondent no.4 issued a notice to the petitioner for holding a preliminary hearing on 08.08.2022. The petitioner was also informed that he could either engage a fellow government official or a retired official as his defence assistant during the inquiry proceedings.

7. The petitioner then, vide his letter dated 05.08.2022, approached the Inquiring Authority/respondent no.4, with a request for rescheduling of the hearing, and 15 days’ time to engage his defence assistant. The petitioner claims that this communication was sent to the respondent no.4 not only through speed post, but also through email. However, on 08.08.2022 the respondent no.4, upon finding that the petitioner had not appeared for the hearing, adjourned the

proceedings to 16.08.2022. Soon thereafter, the respondent no.4, on 09.08.2022, received the petitioner's communication dated 05.08.2022, by which he had sought deferment of hearing.

8. At this stage, the petitioner, vide his letter dated 08.08.2022, approached the Chief Secretary, GNCTD/respondent no.2, expressing his reservations regarding the appointment of Shri Hari Pal/respondent no.4 as the Inquiring Authority, and requested him to set aside the said appointment. In response to this communication addressed to the Chief Secretary, GNCTD, the Disciplinary Authority, vide its letter dated 12.08.2022, while rejecting the request of the petitioner for change of the Inquiry Officer, informed him that his action of directly communicating with the Chief Secretary was in violation of the CCS (Conduct) Rules.

9. On 16.08.2022, when the inquiry proceedings were next held, the respondent no.4, while taking note of the petitioner's letter dated 05.08.2022 received by him through speed post on 09.08.2022, stayed the proceedings on account of the petitioner's pending representation for change of the Inquiry Officer.

10. At this stage, the petitioner again preferred yet another representation to the Chief Secretary on 17.08.2022, and on receiving no reply thereto, has preferred the present petition.

11. In support of the petition, Ms. Menon, learned counsel for the petitioner, submits that the appointment of Shri Hari Pal/the respondent no.4, a retired Joint Secretary of the Union Public Service Commission as the Inquiry Officer, is contrary to orders issued by the Department of Personnel and Training (DoPT) from time to time, and is therefore, liable to be set aside. She submits that as per the Office Memorandums (OM) dated 15.09.2017, 25.01.2022 & 15.03.2022 issued by the DoPT, the Inquiry Officer can either be a serving officer or a retired officer only from the panel maintained by the Government of N.C.T of Delhi (GNCTD) or by the Central Government. However, in important cases a request may be made to the CVC to depute a CDI as an Inquiry Officer. She contends that once it is an admitted position that the respondent no.4 is neither a serving officer nor an officer from amongst the panel of retired officers maintained by the GNCTD or by the Central Government, the respondent no.1 could not have appointed respondent no.4 as the Inquiry Officer.

12. She further submits that the respondent no.4, by virtue of being appointed as the Inquiry Officer, will receive huge financial benefits, by way of remuneration, and therefore, the respondent no.1 could not have, without recording any reasons as to why a serving officer or a retired officer from the panel could not be appointed as the Inquiry Officer, straightaway appointed respondent no.4 as the Inquiry Officer. She, therefore, prays that the appointment of the respondent no.4 as the Inquiry Officer be set aside.

13. The next submission of Ms. Menon is that once the petitioner had made a representation of the Chief Secretary, who is the Appellate Authority, seeking

change of the Inquiry Officer on account of bias on his part, the said representation ought to have been decided by the Chief Secretary, and could not have been rejected by the Disciplinary Authority. In support of her plea, she places reliance on the OM dated 09.11.1972 issued by the Department of Personnel to contend that such a representation is required to be considered by the Appellate Authority.

14. She finally submits that even though on 05.08.2022, the petitioner requested the Inquiry Officer to defer hearing to enable him to engage a defence assistant, for which he required 15 days' time, the respondent no.4, with a biased mind, on the next date of hearing i.e. on 08.08.2022, by ignoring the communication dated 05.08.2022, recorded that none was present on behalf of the petitioner and while adjourning the matter to 16.08.2022, observed that in case the petitioner did not appear on the next date, he would proceed ex parte with the inquiry. She contends that the approach of the Inquiry Officer is evidently biased and, therefore, prays that he be removed, and the petitioner be granted appropriate time to engage a defence assistant.

15. On the other hand, Mr.Sannu, learned counsel for the respondent no.1 defends the rejection of the petitioner's request for change of the Inquiry Officer and submits that neither Rule 14 of the CCS (CCA) Rules, nor any of the OMs relied upon by the petitioner, mandate that only a serving officer or any retired officer from the panel should be appointed as an Inquiry Officer. He submits that there is no provision or circular which prohibits the Disciplinary Authority from appointing any competent retired officer as an Inquiry Officer. Insofar as the petitioner's request to defer the hearing to enable him to engage a defence assistant is concerned, neither the respondent no.4 nor the Disciplinary Authority have any objection to the said request. He submits that merely because in the order sheet dated 08.08.2022 no reference was made to the petitioner's email communication dated 05.08.2022, it cannot be said that the Inquiry Officer was acting in a biased manner. Moreover, as is evident from the order dated 16.08.2022, the Inquiry Officer duly referred to this request of the petitioner for grant of 15 days' time to engage a defence assistant, and stayed the proceedings to await the outcome of the representations made by him. The petitioner has however, not engaged a defence assistant till now, even though the inquiry proceedings will now recommence as the petitioner's request for change of the Inquiry Officer stands rejected by the Disciplinary Authority on 24.08.2022.

16. He submits that similarly, the petitioner's insistence that his representation addressed to the Chief Secretary, GNCTD/respondent no.2 regarding changing the Inquiry Officer should have been decided by the said respondent itself, and not by the Disciplinary Authority, is also without any basis. The Chief Secretary is the Appellate Authority and is not required to deal with issues which the Disciplinary Authority is competent to deal with. In the present case, the petitioner's grievance is against the Inquiry Officer and, therefore, the same has been considered by the Disciplinary Authority who has, after considering the

matter, rightly rejected the same. He contends that the petitioner's reliance on OM dated 09.11.1972 to contend that a request for change of Inquiry Officer must be considered by the Appellate Authority, is also meritless, and, therefore, prays that the writ petition be dismissed.

17. Having considered the submissions of the learned counsel for the parties, I find absolutely no merit in any of the submissions of the learned counsel for the petitioner. In order to appreciate the first plea of the petitioner that the Inquiry Officer must be a serving officer or a retired officer from the panel maintained by the GNCTD or by the Central Government, it would be apposite to note the relevant extracts of the OMs dated 15.09.2017, 25.01.2022 and 15.03.2022 relied upon by the petitioner. I may first note the OM dated 15.09.2017, which reads as under:

F.No.142/40/2015-AVD.I

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

New Delhi Dated, the 15th September, 2017

OFFICE MEMORANDUM

Subject: Procedure for empanelment of retired officers as the Inquiry Officers for conducting Departmental Inquiries- reg.

The undersigned is directed to state that the issue of utilizing the services of retired officers for conducting departmental inquiries had been under consideration of the Department. It has now been decided that panels of retired officers from the Ministries/Departments under Government of India and PSUs would be created and maintained by the respective Cadre Controlling Authorities for conducting Departmental Inquiries against the delinquent officials.

2. Procedure for empanelment of retired officers as the Inquiry Officers-Panels of retired officers not below the rank of Deputy Secretary in Central Government and equivalent officer in the State Governments/PSUs to be appointed as the Inquiry Officer for the purpose of conducting departmental inquiries would be maintained level/rank wise and place-specific by each cadre controlling authority where its offices are located.

3. Validity of the panel- The panel of the retired officers created for the purpose of appointing Inquiry Officers for conducting departmental inquiry will be valid for a period of three years. The respective Cadre Controlling Authority will ensure that a panel of retired Inquiry Officers is available with them.

4. Following are the eligibility conditions for appointment of willing retired officers as the Inquiry Officers to conduct departmental inquiries:

- (i) Retired officers who are willing to serve as Inquiry Officer.
- (ii) He/she should not have been penalized in a Disciplinary Proceeding case
(no penalty in DP or prosecution in criminal case)

5. The respective Cadre Controlling Authority will immediately take necessary action for inviting applications from willing and eligible retired officers to serve as the Inquiry Officer for conducting departmental inquiry. In this regard, a format for inviting applications is annexed.

6. A three-member committee consisting of Joint Secretary level officers including CVO of the concerned Ministry/Departments/PSUs would be constituted by the respective cadre controlling authority. The other two members can be from the same Ministry/Department or from the attached or sub ordinate office. After receipt of willingness of the retired officers, names of the officers will be screened by the committee so constituted. The formation of panel will be a continuous and ongoing process. The DA will decide on the appointment of the IO based on willingness for a case, experience in the sector and status of residence. Committee constituted for making panels of retired officers as the Inquiry Officer has to keep in mind that applications of retired officers willing to serve as an Inquiry Officer should be scrutinized carefully to ensure that the applicant meets the eligibility criteria.

7. The number of disciplinary cases assigned to an Inquiry Officer may be restricted to 8 cases in a year, with not more than 4 cases at a time.

8. Terms and conditions for appointment of retired officers as the Inquiry Officer.

The designated Inquiry Officer shall require to give an undertaking as follows:

(i) that he/she is not a witness or a complainant in the matter to be inquired into or a close relative or a known friend of the delinquent Government officer. A certificate to this effect will be obtained from the Inquiry Officer with respect to every inquiry and placed on record.

(ii) shall maintain strict secrecy in relation to the documents he/she receives or information/data collected by him/her in connection with the inquiry and utilize the same only for the purpose of inquiry in the case entrusted to him/her.

9. No such documents/information or data shall be divulged to anyone during the Inquiry or after presentation of the Inquiry Report. All the records, reports etc. available with the Inquiry Officer shall be duly returned to the authority which appointed him/her as such, at the time of presentation of the Inquiry Report.

10. The Inquiry Officer shall conduct the inquiry proceedings at a location taking into account the availability of records, station/place where the misconduct occurred as well as the convenience of the witnesses/ PO etc. Video Conferencing should be utilized to the maximum extent possible to minimize travel undertaken by the IO/PO/CO. The cadre controlling authorities will facilitate necessary

arrangements for the Video Conferencing.

11. The Inquiry Officer shall undertake travel for conducting inquiry unavoidable (in circumstances) with the approval of an authority as may be nominated by the concerned Ministry/Department.

12. The Inquiry Officer shall submit the inquiry report after completing the inquiry within 180 days from the date of his/her appointment as the Inquiry Officer. Extension of time beyond 180 days can be granted only by the Authority as may be prescribed.

13. The rates of honorarium and other allowances payable to the Inquiry Officer will be as under:-

Items

Category

Time taken to complete

the inquiry proceedings

Rate per case (in rupees)

Honorarium

'I'

Where the number of witnesses cited in the charge sheet is more than 10

80% of monthly basic pension drawn

'II'

Where the number of witnesses cited in the charge sheet are between 6-10

60% of monthly basic pension drawn

'III'

Where the number of witnesses cited in the charge sheet is less than 6

50% of monthly basic pension drawn

Transport Allowance

Rs. 40,000/- per case

Subject to the condition that for outstation journey, the actual expenses for Air/Railway AC I will be reimbursed in addition. (subject to the approval of the

competent authority and for outstation journey by Air journey will be performed by Air India in the cheapest of the entitled class as per their status before retirement and tickets will have to be arranged through authorized /permissible sources as per MoF's guidelines;,. If journey is not performed by Air India, prior approval for travelling in airlines other than Air India would be required as per the prescribed procedure; Similarly traveling by train would also be permissible/restricted as per the far of class entitled to the officer before retirement.

Secretarial Assistance

'I'

Where the number of witnesses cited in the charge sheet is more than 10

Rs.40,000/-

'II'

Where the number of witnesses cited in the charge sheet are between 6-10

Rs.30,000/-

'III'

Where the number of witnesses cited in the charge sheet is less than 6

Rs.20,000/-

50% will be paid on submission of the Inquiry Report. Remaining amount will be paid within 45 days. In case it is not possible to proceed with the matter due to stay by courts etc., the Inquiry Officer may be discharged from his/her duties and payment of honorarium and other allowances will be made on pro rata basis.

14. Before the payment is received by the Inquiry Officer, it will be his/her responsibility to ensure that:-

(a) All case records and inquiry report (two ink signed copies) properly documented and arranged is handed over to the office of Disciplinary Authority.

(b) The report returns findings on each of the Articles of Charge which has been enquired into should specifically deal and address each of the procedural objections, if any, raised by the charged officers as per the extant rules and instructions.

(c) There should not be any ambiguity in the inquiry report and therefore every care should be taken to ensure that all procedures for conducting departmental inquiries have been followed in accordance with the relevant rules/instructions of disciplinary and appeal Rules to which the delinquent Government officials are governed.

15. Letter regarding engaging a retired officer as the Inquiry Officer will only be issued with the approval of the Disciplinary Authority of the Ministry/Department/Office concerned.

16. A review of every empanelled Inquiry Officer will be done after receipt of 2 inquiry reports where adherence to time lines and the procedure and quality of work will be assessed by the concerned Ministry. Subsequent allocation of work may be done only after such evaluation. The services of Inquiry Officers whose performance is not upto the mark will be terminated with the approval of appointing authority.

17. Any issue arising out of this O.M. between the Inquiring Officer and the Disciplinary Authority will be decided by the Secretary, DoPT whose decisions shall be final and binding on both parties.

18. These guidelines are issued for internal use of DoPT and other Cadre controlling authorities may adopt the same with suitable amendments.

Sd/-

Under Secretary to the Govt. of India

18. The relevant extract of OM dated 25.01.2022 may now be noted:-

No. 142/01/2021-AVD.I.C.I

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

North Block, New Delhi

Dated the 25 January, 2022

OFFICE MEMORANDUM

Sub: Inviting panel of officers to be nominated for appointment of Inquiry Officer for conducting departmental inquiries against the delinquent officials in the Ministry of Health & Family Welfare (MoHFW) - reg.

The undersigned is directed to circulate OM No.C-14017/03/2016-Vig. dated 03rd January, 2021 received from Ministry of Health & Family Welfare regarding inviting panel of officers to be nominated for appointment of Inquiry Officer for conducting departmental inquiries against the delinquent officials in the Ministry of Health & Family Welfare (MoHFW). The last date of receipt of application has now been extended to 15th February, 2022.

2. In case of any further clarification, applicants are requested to contact the concerned Ministry/Department which has advertised the circular.

Sd/-

Under Secretary to the Govt. of India

19. The OM dated 15.03.2022 reads as under:

No.142/40/2015-AVD.I

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

Room No.222D, North Block,

New Delhi, dated February, 2022

15th March 2022

OFFICE MEMORANDUM

Sub: Empanelment of retired officers as the Inquiry Officers for conducting Departmental inquiries against the delinquent officials -reg.

The undersigned is directed to state that Department of Personnel & Training is in the process of constituting a panel of Inquiry Officers for conducting Departmental Inquiries against officers whose Cadre Controlling Authority is Department of Personnel & Training, based on the terms and conditions prescribed vide this Department's OM of even number dated 15th September, 2017 (copy attached) and subsequent amendments, if any.

2. The eligible retired officers (not below the rank of Deputy Secretary) from the Ministries/Departments under the Government of India, who are willing to be empaneled as Inquiry Officers, may apply in the format annexed in the said OM dated 15th September, 2017 and send their applications to the Under Secretary. (AVD.IC.I), Department of Personnel & Training, Room No.222-D, North Block, New Delhi - 110001 latest by 30th April, 2022.

Sd/-

Under Secretary to the Govt. of India

20. From a perusal of the aforesaid OMs, what emerges is that panels of retired officers willing to serve as Inquiry Officers are required to be maintained by all the Cadre Controlling Authorities, and for this purpose applications are to be invited on a regular basis from retired officers. However, neither these OMs nor Rule 14 of the CCS (CCA) Rules in any manner suggest that the department must in all cases engage only a serving officer or a retired officer from the panel maintained by the GNCTD or by the Central Government. The fact that such panels of retired government officers exist, and could have been used by the respondent no.2 is not in dispute. In my view, the creation of the panel is only

meant to assist the Disciplinary Authority to appoint a suitable retired officer but cannot be, in any manner be treated as an embargo on the right of the Disciplinary Authority to appoint an officer other than that of these panels. I am therefore unable to accept the petitioner's plea that these OM's require only serving officers or retired officers from these panels to be appointed as Inquiry Officers for conducting departmental inquiries.

21. Now coming to the petitioner's next plea that his representation for change of Inquiry Officer addressed to the Chief Secretary, GNCTD was required to be considered not by the Disciplinary Authority, but by the Chief Secretary himself as the Appellate Authority. Since the petitioner in support of this plea has relied on OM dated 09.11.1972, issued by the Department of Personnel, it would be apposite to note the relevant extracts of this OM. The same read as under:

(No.39/40/70-Est ...)

Government of India/Bharat Sarkar Cabinet Secretariat/Mantrimandal
Sachivalaya Department of Personnel/Karmik Vibhag

115 DELHI-110001, the 9th November, 1972

18 Karka, 1894

OFFICE MEMORANDUM

Subject:-Departmental Inquiries against Government servants appointment of Inquiring Authority.

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3. A suggestion was made by the Staff Side that when a representation by the delinquent official against the appointment of a particular Inquiry Officer on grounds of bias, is rejected by the Disciplinary Authority, it should be open to the delinquent official, to prefer an appeal to the Appellate Authority. It was pointed out that though there was no provision in the CCS (CCA) Rules for filling an appeal against an order appointing a person as Inquiry officer in a disciplinary proceeding, such an order could, nevertheless, be reviewed under the said Rules, The Staff Side desired that in view of this position, the Inquiry officer should stay the proceedings if an application for review is filed by the delinquent official. It was agreed that obviously this should be done and the attention of the competent authorities could be drawn to the need for staying the proceedings once a review petition was submitted in such cases.

4. It has accordingly been decided that whenever an application is moved by a Government servant against whom disciplinary proceedings are initiated under the CCS (CA) Rules against the inquiry officer on grounds of bias, the proceedings should be stayed and the application referred, alongwith the relevant material, to the appropriate reviewing authority for considering the application and passing appropriate orders there on. It has also been decided to reemphasize to all Ministries/ Departments the following instructions contained in

paragraph 5 of H.H.A. O.M. No. 39/40/52-Ests, dated the 4th October, 1952, on the subject to expeditious and better disposal of departmental proceedings against Government servants:

i) In each Ministry or Department specified officer or officers of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental inquiries arising within that Ministry/ Department.

ii) As soon as occasion arises for taking up such an inquiry, the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiries and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officers.

5. The Ministry of Finance etc. are accordingly requested to bring to the notice of the various disciplinary authorities the need for staying the proceedings till such time as the review petition, if any, submitted by a Government servant against the appointment of the Inquiry Officer is disposed of, as agreed to in the Committee of the National Council vide paragraph 3 above. They are also requested to keep in view the instructions contained in the Ministry of Home Affairs (now Department of Personnel) O.M.io. 6/26/60-Ests (A) dated 16th February, 1961 and No. 39/40/52-Ests dated the 4th October, 1952 referred to the appointment of Inquiry officers in disciplinary proceedings.

22. A bare perusal of the aforesaid OM shows that the petitioner's plea that a representation for change of Inquiry Officer must be decided by Appellate Authority, is wholly without any basis. The said OM only records a suggestion made by the staff representative that, even though there is no such provision in the CCS (CCA) Rules, whenever a request for change of Inquiry Officer on account of bias is rejected by the Disciplinary Authority, it should be open to the charged employee to prefer an appeal to the Appellate Authority. This suggestion was however, not accepted as is apparent from paragraphs 4 and 5 of the OM. On the other hand, what the OM envisages is that when a request for change of Inquiry Officer is considered by the Disciplinary Authority, the inquiry proceedings must necessarily be stayed. In the present case, it is not the petitioner's case that inquiry proceedings were not stayed by the Inquiring Authority during the pendency of his representations before the Disciplinary Authority. I am therefore, unable to accept the petitioner's plea that the decision was taken by the Department of Personnel that a request for change of the Inquiry Officer must always be dealt with by the Appellate Authority. Even otherwise, there is no gainsaying that it is both in the interest of the employee and the employer, that the proceedings in the departmental inquiry are conducted with promptitude and no undue delays are caused. If every application made by delinquent officials were to be decided by the Appellate Authority, it would lead to unnecessary delay in the conclusion of the departmental proceedings, and would in fact be counterproductive to the very purpose of holding a departmental inquiry. I, therefore, do not find any merit in the

petitioner's submission that his representation for change of Inquiry Officer must have been decided by the Chief Secretary, GNCTD/respondent no.2, being the Appellate Authority

23. Now coming to the petitioner's final plea that he has not been granted extension of time to engage a defence assistant. In order to appreciate this stand of the petitioner, it would be apposite to first note the relevant extracts of the order dated 16.08.2022 passed by the Inquiring Authority on the petitioner's request for being granted more time to engage a defence assistant. The same reads as under:

"DAILY ORDER SHEET.NO.2

OFFICE OF THE INQUIRING AUTHORITY, IMBAS, DELHI-110095

DATE: 16.8.2022

DAILY ORDER SHEET

Sub- Departmental Inquiry proceedings into the charges framed against Shri MS Bhati, Asstt Engineer (Civil), IHBAS, under Rule 14 of CCS CCA Rules, 1965.

In response to the Notice dated 8.8.2022 to Shri MS Bhati, CO, as also in accordance with the Daily Order Sheet dated 8.8.2022, the Preliminary Hearing proceedings were held by the undersigned on 16.8.2022 10.30 AM in the room adjacent to the Room of PS to Director/HBAS, Academic Block. The CO Shri MS Bhati did not present himself in the preliminary hearing despite a telephonic call around 11 AM from PS to Director regarding today's hearing of the case.

It is hereby brought on record that the CO has sent the following two written communications to the undersigned by speed post/mail:

1. Letter dated 5.8.22 addressed to me seeking 15 days time so as to enable him to appoint a defence assistant on his behalf and reschedule the preliminary hearing accordingly. This letter was received by the undersigned on 9.8.22 through speed post whereas the first preliminary hearing was held already on 8.8.22 fixing next date of hearing at 10.30 AM on 16.8.2022.

2. Letter dated 8.8.22 addressed to the Chief Secretary, GNCT Delhi endorsing a copies thereof to Director/HBAS and the undersigned regarding removal of the undersigned as Inquiring authority. This letter was received by the undersigned on 10.8.22 wherein he has stated that he has no faith in the undersigned and has stated that some other officer from the panel of retired government officers as inquiry officers maintained by GNCT Delhi may be appointed as inquiring authority.

In view of the above two written communications from the CO, Director/HBAS being the competent Disciplinary Authority in the case may like to take a view on the same and issue directions in the matter and consider passing appropriate orders thereon. The Inquiry is therefore stayed by the undersigned for the time

being till receipt of further orders/ directions from the Disciplinary/ Reviewing Authority in terms of Rule 14(22) of CCS CCA Rules, 1965.”

24. A perusal of the aforesaid order shows that the Inquiry Officer has in fact been absolutely fair and the moment he learnt about the representation made by the petitioner, as was expected from him, the inquiry proceedings were duly stayed by him. It is only after 24.08.2022, when the Disciplinary Authority rejected the petitioner’s request for change of the Inquiry Officer, that the inquiry proceedings are, as stated by learned counsel for the respondent, once again being revived. By adjourning the proceedings on 08.08.2022, the Inquiring Authority has, therefore, effectively granted more time to the petitioner to engage a defence assistant, than what he had prayed for by him. The petitioner has however, instead of engaging a defence assistant, filed this petition only with a purpose of somehow delaying the proceedings.

25. The writ petition being meritless is dismissed, with no order as to costs.