
(2013) 03 DEL CK 0038
In the Delhi High Court
Case No : WP (C) No. 642 of 1994

Ram Avtar Singh

APPELLANT

Vs

The Chairman and Managing Director, The CWC and Another

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0038

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Manoj Swarup with Ms. Latika Kohli and Mr. Abhishek Swarup, for the Appellant; K.K. Tyagi, Advocate with Mr. Iftekhar Ahmed, for the Respondent

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner challenges the impugned orders of the disciplinary authority and the appellate authority dated 3.6.1982 and 8.2.1985 respectively whereby the petitioner has been visited the penalty of termination from services. Learned counsel for the petitioner argues for setting aside of orders of the disciplinary authority and the appellate authority on the ground that at the stage of passing of the order by the disciplinary authority, the petitioner was not given any personal hearing and nor was given any show cause notice by the disciplinary authority before passing of the order dated 3.6.1982.

2. Though counsel for the respondents had sought to place reliance upon the Constitution Bench judgment of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., to argue that the copy of the enquiry report need not be furnished to the petitioner, in this case, however, though that undoubtedly is the legal position that the enquiry report need not be given to the petitioner as the order of the disciplinary authority has been passed on 3.6.1982 i.e. before the judgment of the Constitution Bench in the case of B. Karunakar (supra) was passed, however, the issue is not that copy of the enquiry officer's report was not given to the petitioner leading to violation of principles of natural justice, but violation of principles of natural justice is alleged on the basis of the admitted position on record that the petitioner was not issued any show

cause notice for him to personally appear before the disciplinary authority nor was any personal hearing given to the petitioner by the disciplinary authority before the impugned order dated 3.6.1982 was passed. Giving of personal hearing is a sine qua non and a necessary facet of the principle of audi alteram partem. The fact that the report of the enquiry officer need not be given is an aspect totally different from the petitioner being denied the personal hearing and an opportunity to show as to how no punishment can be imposed upon the petitioner on the basis of the enquiry officer's proceedings. The Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, has held that with respect to the principles of natural justice there are two aspects, one being total non-compliance thereof and the other being non-compliance of a facet thereof. It has been held by the Supreme Court in the case of State Bank of Patiala (supra), that once it is a question of not following the principles of natural justice, then, that itself is good enough for setting aside of the impugned order. In the present case, since no hearing whatsoever was granted by the disciplinary authority to the petitioner before passing of the impugned order dated 3.6.1982, the impugned order cannot stand in view of the ratio of the judgment in the case of State Bank of Patiala (supra).

3. It is however agreed by the petitioner that since the impugned orders are set aside on a technical ground of not following the principles of natural justice, though the orders of the disciplinary authority and appellate authority dated 3.6.1982 and 8.2.1985 respectively be set aside, however, the same will not mean that the petitioner is automatically reinstated in services and what has to follow will depend upon the orders which now will be passed by the disciplinary authority and the appellate authority. Of course, I may further clarify that if the petitioner is exonerated or given a lesser penalty, then, that consequence will follow, and in case the petitioner is however ordered to be terminated from services, appropriate consequences will follow. Whatever is the consequence which will now flow will be in terms of the orders which will now be passed by the disciplinary authority and the appellate authority. I may also take on record that counsel for the petitioner states that question of reinstatement does not arise because the petitioner has superannuated and therefore the issue will be of monetary benefits in terms of fresh orders to be passed by the disciplinary authority and the appellate authority. Ordered accordingly.

4. In view of the above, though the writ petition is allowed by setting aside the impugned orders, and directions are given to the disciplinary authority to pass orders in accordance with law after giving personal hearing to the petitioner, however the effect of the impugned orders will remain till passing of fresh orders by the disciplinary authority and appellate authority and which new orders will substitute the existing orders.

5. Counsel for the petitioner also rightly urges that in view of the delay taken with the advanced age of the petitioner the respondent No. 2 be given time bound directions to complete the personal hearing and pass a speaking order.

Accordingly, it is directed that within a period of four months from today the appropriate disciplinary authority will give personal hearing and pass a speaking order thereafter in accordance with law. I may note that speaking order is required in view of Constitution Bench judgment of the Supreme Court in the case of S.N. Mukherjee Vs. Union of India, . The appellate authority, if the situation so arises, is directed to expeditiously dispose of the appeal in the spirit of the present order.

Writ petition is partly allowed and disposed of subject to the aforesaid observations.