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(2011) 09 DEL CK 0557

In the Delhi High Court

Case No : WP (C) No. 8072 of 2009

Union of India (UOI) APPELLANT

Vs

Hari Shankar RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 15, 15(2)
Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (2011) 09 DEL CK 0557

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; D.C. Vohra, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner, Union of India through the Foreign Secretary, Government of India, has challenged the order dated 23rd December, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 267/2008 titled as ''Sh.Hari Shankar v. Union of India and Ors.'' allowing the original application of the Respondent and setting aside the punishment orders dated 28th August, 2007 and 5th November, 2007, of compulsorily retiring the Respondent and quashing the same without going into the merits. The Tribunal, thus, remanded the matter back to the Petitioner with the liberty to proceed afresh in the matter from the stage of issuing the disagreement note/show cause notice dated 11th July, 2006 and also held that all consequential benefits to the Respondent shall be subject to the final order which would be passed by the Petitioner.

2. Brief facts to comprehend the disputes are that major penalty proceedings were started against the Respondent under Rule 14 of CCS (CCA) Rules, 1965. The Respondent was an Assistant in Grade IV of the General Cadre of the Indian Foreign Service (Branch-B), Ministry of External Affairs. The allegations against

him were that he absented from duty un-authorizedly for over two years after availing one year ex India leave in Chicago (USA) and did not comply with the Government''s orders directing him to report for duty. These charges were stipulated in the charge memorandum No. Q/Vig/842/04 dated 23rd September, 2004 issued against the Respondent.

3. The Respondent having pleaded not guilty to the charges made against him, an enquiry was held and an enquiry report dated 4th April, 2006 was given holding that the Charge-I was proved with two mitigating factors, i.e., severe illness of his wife and non-availability of valid passport. The enquiry report dated 4th April, 2006 further held that the Charge-II, that the Respondent had not complied with the Government of India''s instructions directing him to report for duty, was not proved as the Respondent had reported for duty at Headquarters on 8th November, 2005.

4. The disciplinary authority disagreed with the findings of the Inquiry Officer and issued a memorandum dated 11th July, 2006 to the Respondent, along with the enquiry report. The disagreement note in the form of memorandum is as under:

Memorandum

It was decided to hold an inquiry against Shri Hari Shankar, Assistant, under Rule 14 of CCS (CCA) Rules 1965 vide our memorandum of even number dated 23rd September, 2004. Forwarded herewith is a copy of the Inquiry Report, submitted by Shri P.C. Thapliyal, Inquiry officer. The Disciplinary Authority disagrees with the findings of IO in respect of Article I and Article II of the charge sheet on following grounds:

(i) The documentary evidence produced by CO to justify his unauthorized absence has already been sympathetically considered by the Ministry. He was not given an extension of leave beyond 7th August, 2003. Therefore, his absence from duty from 8th August, 2003 is unauthorized.

(ii) The Co''s contentions that travelling to India on Emergency Certificate would have made Customs clearance is not tenable as he would have been given a letter by Administration that he was returning to India on transfer. It is the policy of GOI not to renew the passport of relieved officials beyond the approved period of ex-India leave.

(iii) The CO failed to comply with Government orders is true as he did not join back at headquarters as directed by Ministry immediately after expiry of his leave. The fact that he has joined now does not absolve him of his delay, by nearly three years, in joining back to work.

2. Should he decide to represent further against the findings of the Inquiry Officer or Disciplinary Authority''s disagreement, Shri Hari Shankar may do so within 15 days of receipt of this Memorandum.

5. Against the memorandum stipulating the disagreement note, the Respondent

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made representations dated 14th/18th July, 2006 stating that he was forced to stay in USA beyond the period of sanctioned ex-India leave on account of serious illness of his wife and the nonavailability of travel documents.

6. The Petitioner had forwarded the representation dated 14th/18th July, 2006 along with the case records to UPSC for its advice by letter dated 10th August, 2007. Before the matter was sent to the UPSC, Vigilance had raised certain objections. On the directions of the Disciplinary Authority, therefore, the matter was remitted back to the Inquiry Officer and thereafter a supplementary enquiry was conducted. By order dated 19th December, 2006 the enquiry officer directed the Respondent to furnish a statement of defence on the conclusion of the departmental case and a brief dated 24th May, 2006 submitted by the presenting officer was also enclosed and he was directed to be present for additional hearing on 21st December, 2006. The Respondent replied to the communication dated 19th December, 2006 from the Inquiry Officer by his reply dated 21st December, 2006.

7. The enquiry officer, after conducting one more hearing on 21st December, 2006, gave the report dated 21st December, 2006 holding that no new facts had come to light and, therefore, the findings remain unchanged. Along with the supplementary report dated 21st December, 2006, the related documents were also submitted to the Disciplinary Authority.

8. The disciplinary authority differed with the report dated 21st December, 2006 and sent another memorandum dated 6th February, 2007 to the Respondent which is as under:

Memorandum

It was decided to hold a supplementary hearing in the case of Shri Hari Shankar, Assistant, in response to our Memorandum of even number dated 14.12.2006. Forwarded herewith a copy of the Supplementary Inquiry Report submitted by Shri P.C. Thapliyal, Inquiry Officer in the disciplinary case against Shri Hari Shankar, Assistant, the charged officer. In view of no new facts coming to light and original findings of the I.O. remaining unchanged as informed by him, the Disciplinary authority still disagrees with the findings of the I.O. in respect of Article I and Article II of the charge sheet on the same grounds as conveyed to the charged Officer vide Vigilance Unit''s Memorandum of even number dated 11.7.2006 viz

(i) The documentary evidence produced by CO to justify his unauthorized absence has already been sympathetically considered by the Ministry. He was not given an extension of leave beyond 7th August, 2003. Therefore his absence from duty from 8th August, 2003 is unauthorized.

(ii) The CO''s contention that travelling to India on Emergency Certificate would have made Customs clearance complicated is not tenable as he would have been given a letter by Administration that he was returning to India on transfer. It is

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the policy of GOI not to renew the passport of relieved officials beyond the approved period of ex-India leave.

(iii) That the CO failed to comply with Government orders is true as he did not join back at headquarters as directed by Ministry immediately after expiry of his leave. The fact that he joined duties subsequently does not absolve him of his misconduct of remaining on unauthorized absence for nearly three years, in joining back to work.

2. Shri Hari Shankar, Assistant, may submit representation, if any, on the report of I.O/findings of Disciplinary Authority, within 15 days of receipt of this Memorandum.

9. A representation dated 9th February, 2007 was made by the Respondent against the disagreement note dated 6th February, 2007. The Petitioner took into consideration the representations made by the Respondent and forwarded the same along with the case records to the UPSC for its advice by letter dated 10th August, 2007. Thereafter, the UPSC advised the imposition of Penalty of compulsory retirement from service on the Respondent.

10. The disciplinary authority took into consideration the representation dated 14th/18th July, 2006 which was made against the memorandum dated 11th July, 2006, the reply dated 21st December, 2006 which was sent by the Respondent to the communication of the enquiry officer dated 19th December, 2006 directing the Respondent to appear on 21st December, 2006 in order to complete the enquiry, as well as the advice of the UPSC dated 10th August, 2007 and held by order dated 28th August, 2007 that the disciplinary authority after considering the full facts and circumstances of the case was of the opinion that the reasons advanced by the charged officer/Respondent were not tenable and that the Respondent is guilty of grave misconduct and, therefore, imposed the penalty of compulsory retirement from the service on the Respondent. The relevant portion of the order of the disciplinary authority dated 28th August, 2007 imposing punishment of compulsory retirement is as under:

6. The CO, in his representations dated 14/18.07.2006 and 21.12.2006, again advanced the arguments regarding illness of his wife and non-availability of travel document as the reasons for his absence from duty.

7. The Disciplinary Authority, considered the full facts and circumstances of the case, and held that the reasons advanced by the CO were not tenable. The CO was well aware of the rules for issue of travel documents which provide for grant of official passport only during the currency of tenure in a Mission/Post abroad and sanctioned leave, if any. In the case of unauthorized absence, the rules provide for issue of emergency certificate for travel to India. The Disciplinary Authority also noted that there was no valid justification for the CO remaining on unauthorized absence from duty in the USA for a long period of two years and three months. The Disciplinary Authority decided on a tentative penalty and referred the matter to UPSC for their advice.

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8. UPSC, in their advice dated 10.08.2007 examined the case and came to the conclusion that both the articles of charge stood proved against the Company UPSC has also noted the circumstances leading to non-travel by the CO on 15.08.2003 after expiry of his ex-India leave in the USA. On consideration of full facts and circumstances of the case, UPSC has advised the Disciplinary Authority to impose a penalty of "compulsory retirement'' on the Charged Officer.

9. The Disciplinary Authority has considered full facts and circumstances of the case in their entirety, and has come to the conclusion that the CO is guilty of grave misconducts of remaining on unauthorized absence for a period of over two years in the USA and that he defied orders of the Government directing him to report back for duty. The Disciplinary Authority, in agreement of the advice tendered by UPSC, is of the opinion that the ends of justice in the case would be met if a penalty of compulsory retirement from service was imposed on the CO, and order accordingly.

11. The Respondent filed a review petition against the order of punishment which was also rejected by order dated 5th November, 2007. The Respondent challenged the orders dated 28th August, 2007 and 5th November, 2007 before the Central Administrative Tribunal contenting, inter-alia, that the Petitioner had violated the statutory rules by initiating the disciplinary proceedings on frivolous grounds. Even though the Inquiry Officer had twice given the report absolving him of the charges, however, the disciplinary authority differed with both these reports. It was contended that the Respondent was willing to join his duties as per the orders of the Ministry and his overstay in Chicago was on account of serious illness of his wife and the refusal of the Ministry to issue a valid travel document after his passport had expired. The Respondent also contended that though he had joined the duties at the Headquarter as ordered by the Petitioner, despite this they had subsequently regularized the period of unauthorized absence as a "dies non without break in service". The plea of the Respondent was that the Ministry had insisted that the Respondent travel on an Emergency Certificate which is meant for absconders and criminals and not for serving Government employees, while in similar circumstances when other staff members of the Ministry returned un-authorizedly from abroad, they were still allowed to join their duties and were allowed to travel on their official/diplomatic passport. Thus, according to the Respondent the punishment awarded to the Respondent is harsh, arbitrary, malafide, vindictive, discriminatory and patently in violation of Article 14, 16 and 311 of the Constitution. The Respondent also contended that the memorandum dated 11th July, 2006 issued to him was not tentative in nature and that instead a final decision had been taken against him and the reasonable opportunity to represent against the disagreement note in compliance of Rule 15(2) of CCS (CCA) Rules was not given to him. It was also asserted that the Petitioner had passed the order mechanically without even considering the representations made by the Respondent against the second disagreement note on 6th February, 2007 which was given by the Respondent on 9th February, 2007 which is apparent from the bare reading of the punishment

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order dated 28th August, 2007 and 5th November, 2007. The plea of the Respondent was also that a bare reading of disagreement note dated 11th July, 2006 would show that it was not tentative and a final conclusion had already been drawn by the disciplinary authority and, therefore, the punishment imposed upon the Respondent is vitiated as a reasonable opportunity as contemplated under rules was not given to the Respondent.

12. The Petitioner contested the petition before the Tribunal contending, inter-alia, that the Respondent did not join duty as directed by the Ministry immediately on the expiry of the ex-India leave and there was no valid justification for him to have remained on unauthorized absence from duty in the USA for a long period of 2 years, 3 months and that subsequently joining the duty by the Respondent does not absolve him of his unauthorized absence. According to the Petitioner, the rules provide for grant of official passport only during the tenure in a mission/post abroad and sanctioned leave and that in case of unauthorized absence the rules provide for issuance of an Emergency Certificate for travelling back to India.

13. Before the Tribunal, on behalf of the Petitioner it was also contended that the case of the Disciplinary Authority was not of disagreement with the findings of the Inquiry Officer. It was also contended that the findings of the Disciplinary Authority need not be tentative. The Petitioner had also pleaded that from the memorandum dated 11th July, 2006 it could not be inferred that the final view was expressed by the disciplinary Authority in the said Memorandum. The plea of the Petitioner''s counsel, as raised before the Tribunal and as noted, is as under:

14. The Respondent''s counsel argued before us that this was not a case of disagreement with the findings of the inquiry officer. He also contended that the findings need not be tentative and that in any case no final view was taken in the show cause notice and that it only mentioned the grounds on which the disciplinary authority would decide the issue and that the same were accordingly duly communicated to the charged officer to enable him to reply to these and represent his case.

14. After considering the pleas and contentions of the parties, the Tribunal rejected the pleas of the Petitioner that there was no disagreement between the report of the Inquiry Officer and the Disciplinary Authority as the memorandum dated 11th July, 2006 categorically stipulated that "the disciplinary authority disagrees with the findings of the IO in respect of Article I and Article 2 of the chargesheet on the following grounds:"

15. The Tribunal, considering Rule 15 of the CCS (CCA) Rules, 1965, held that it is apparent that the disciplinary authority after differing from the Inquiry Officer should form only a "tentative" view and communicate to the charged officer the reasons for his tentative disagreement and only if the charged officer responds to the reasons given, the disciplinary authority, after carefully evaluating the entire evidence of the case including the pleas raised by the charged officer in his

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representation, should come to a final view in the matter. Relying on Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, State of Assam and Another Vs. Bimal Kumar Pandit, ; Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., Ram Kishan Vs. Union of India and others, and Yoginath D. Bagde Vs. State of Maharashtra and Another, , the Tribunal held that it is clear that the requirement of natural justice requires that the disciplinary authority should form only a tentative view when he disagrees with the findings of the Inquiry Officer and then give a fair opportunity to the charged officer to explain his case. Also, the Disciplinary Authority should form a final opinion only after receipt of the reply of the charged official to the show cause notice about the disagreement note. The Tribunal considered the memorandum dated 11th July, 2006 and held that the contention of the counsel for the Petitioner, that while disagreeing with the Inquiry Officer''s findings the disciplinary authority''s findings need not be tentative, cannot be accepted. The Tribunal also declined the plea of the Petitioner''s counsel that the final view was not taken in the show cause notice/ memorandum dated 11th July, 2006 and that only the grounds had been mentioned on the basis of which the disciplinary authority was to decide the issue, which was communicated to the Respondent in order to enable him to make a representation regarding the alleged tentative view of the disciplinary authority.

16. The Tribunal held that there has not been a whisper or suggestion that the disagreement note, which was a memorandum dated 11th July, 2006, was tentative and not final as no words such as "prima facie" or "it appears" had been used in the said memorandum, rather there had been categorical assertions in clear, explicit and unambiguous terms that "his absence from duty was unauthorized" and that "the fact that he had joined now does not absolve him of his delay of nearly three years in joining back to work." In the circumstances, the Tribunal held that the Disciplinary Authority had already come to the final conclusion in the matter that the charges against the Respondent had been established. In the facts and circumstances, the issuance of the notices tantamounts to merely being empty formalities, the action of the Petitioner suffers from the vice of non compliance of the doctrine of natural justice. Therefore, the Tribunal, without going to the merits of the case on account of technical infirmity, set aside the punishment orders dated 28th August, 2007 and 5th November, 2007 of compulsorily retiring the Respondent. The order passed by the Tribunal in paragraphs 18 and 19 is as under:

18. Therefore, without going into the merits of the case, on account of this technical infirmity alone, the OA has to be allowed. Accordingly, the punishment orders dated 28.08.2007 and 5.11.2007 compulsorily retiring the applicant from service are quashed and set aside and the matter is remitted back to the Respondents who shall be at liberty, if so advised, to proceed afresh in the matter from the stage the technical infirmity crept in, i.e., show cause notice dated 11.07.2006, and in that event we direct that the fresh proceedings shall be

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completed within a period of two months from the date of receipt of a copy of this order. As the punishment orders dated 28.08.2007 and 5.11.2007 have been set aside only on ground of a technical infirmity, consequential benefits to the applicant shall abide the final order passed by the competent authority.

19. The OA is disposed of as above. No costs.

17. The order is impugned by the Petitioner contending, inter-alia, that the disagreement note dated 11th July, 2006 and 6th February, 2007 did not reflect the final opinion/decision of the Disciplinary Authority and that what had been stated were only the grounds for disagreeing with the report of the Inquiry Officer. It was contended that merely because the words "prima facie" or "it appears" have not been used, it does not reflect that the disagreement note was not tentative. According to the Petitioner, what has to be seen is that the disagreement note has to be in its entirety and whether sufficient time was given to the Respondent to make a representation against the disagreement note and whether the representation had been considered or not. According to the Petitioner, construing the disagreement notes dated 11th July, 2006 and 6th February, 2007 it cannot be held that there is clear, explicit and unanimous terms showing the final opinion of the disciplinary authority regarding the absence of the Respondent from the duty being un-authorised and the Respondent not being absolved of his unauthorized absence on account of joining the duties three years later.

18. On behalf of the Petitioner it was very emphatically contended that the disagreement note which was in the form of a memorandum clearly stipulated the terms of disagreement and in terms of Rule 15 of CCS (CCA) Rules, 1965, the disagreement notes were forwarded to the Respondent to make representations within reasonable time which were duly considered before the punishment order was passed against the Respondent. In the circumstances it is contended that the memorandums dated 11th July, 2006 and 6th February, 2007 cannot be construed to be empty formalities nor can it be held that all the acts done by the Petitioner pursuant thereto suffers from the vice of non compliance of the doctrine of natural justice.

19. The learned Counsel for the Petitioner, however, did not raise the pleas before this Court that in this case the Disciplinary Authority had not disagreed with the findings of the Inquiry Officer, as was contended before the Tribunal, nor was it contended that while disagreeing with the findings of the Inquiry Officer the opinion of the Disciplinary Authority need not be tentative. The learned Counsel, Mr. Sinha, categorically asserted that the main contention on behalf of the Petitioner is that the disagreement notes in the form of memorandums dated 11th July, 2006 and 6th February, 2007 were tentative and that sufficient time was given by the Petitioner to the Respondent to make the representations and also that the punishment order has been passed after taking into consideration the representations made by the Respondent and, therefore, the proceedings are not vitiated and there are no technical infirmities, as has been held by the

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Tribunal, and consequently, the punishment orders dated 28th August, 2007 and 5th November, 2007 could not be set aside.

20. The pleas and contentions of the Petitioner are very emphatically refuted by the learned Counsel, Mr. Vohra, appearing on behalf of the Respondent. Mr. Vohra has contended that during the pendency of his case he has retired from service. Mr. Vohra reiterated the plea that the memorandum dated 11th July, 2006 unequivocally reflects that the final opinion was formed by the Disciplinary Authority, while disagreeing with the findings of the Inquiry Officer and that directing the Respondent to file a representation against the same was a mere formality. The learned Counsel has also pointed out that pursuant to the supplementary enquiry conducted by the Petitioner, a notice dated 19th November, 2006 was received from the Inquiry Officer to appear on 21st December, 2006. The Respondent had appeared on 21st December, 2006 and had also submitted supplementary facts by representation dated 21st December, 2006 pursuant to which the supplementary report dated 21st December, 2006 was issued in order to comply with the requirements of Vigilance Unit No. Q/Vig/842/03/2004 dated 14th December, 2006.

21. The learned Counsel, Mr. Vohra, has also emphasized that pursuant to the supplementary enquiry report dated 21st December, 2006 another memorandum disagreeing with the findings of the Inquiry Officer in the supplementary report dated 21st December, 2006 was conveyed by memorandum dated 6th February, 2007 which was almost repetitive of the findings arrived at in the disagreement note dated 11th July, 2006 except for the change in the language of para 2 giving 15 days time to the Respondent to make the representation. The counsel pointed out that pursuant to the memorandum dated 6th February, 2007 a representation dated 9th February, 2007 was made by the Respondent which had not at all been considered by the Petitioner, which is apparent from the punishment order dated 28th August, 2007 which has only considered the representations dated 14th/18th July, 2006 and 21st December, 2006, while the representation dated 9th February, 2007 has not been considered at all and in the circumstances the findings of the Tribunal that there had been technical violation and the proceedings imposing punishment by order dated 28th August, 2007 and 5th November, 2007 are vitiated cannot be faulted.

22. This Court has heard the learned Counsel for the parties in detail and has perused the records and the pleadings and the documents which were before the Tribunal, which were filed with the writ petition. Though there is no specific format for the disagreement note, however, from the memorandum dated 11th July, 2006 it bears that the disciplinary authority has made up its mind that the charges were made out against the Respondent. This is apparent from the language in para 2 of the said memorandum stipulating that should the Respondent decide to represent further against the findings of the Inquiry Officer or Disciplinary Authority''s disagreement, he may do so within 15 days of the receipt of the memorandum. This is not disputed that the reply to the

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memorandum dated 11th July, 2006 was made by the Respondent by representation dated 14th/18th July, 2006. In the punishment order dated 28th August, 2007, what is stipulated is that the representations dated 14th/18th July, 2006 was considered along with the representation dated 21st December, 2006. By representation dated 21st December, 2006 additional facts were brought to the notice of the Inquiry Officer pursuant to the supplementary enquiry conducted by him for which the notice dated 19th December, 2006 was issued directing the Respondent to appear on 21st December, 2006. This is not disputed that the supplementary enquiry was conducted in order to fulfill the requirements of vigilance Unit No. Q/Vig/842/03/2004 dated 14th December, 2006 and the representation dated 21st December, 2006 was not against the second disagreement note dated 6th February, 2007.

23. The second disagreement note in the form of a memorandum also stipulated that the supplementary hearing was conducted on 21st December, 2006 in response to memorandum of even number dated 14th December, 2006. A copy of the supplementary enquiry report of Sh. P.C. Thapliyal was forwarded to the Respondent, however, the Disciplinary Authority disagreed with the supplementary enquiry and asked the Respondent to submit a representation against the second disagreement note/memorandum dated 6th February, 2007 which was submitted by the Respondent by representation dated 9th February, 2007 which had not been considered by the Petitioner.

24. The learned Counsel for the Petitioner is unable to show any document or any other record on the basis of which it can be inferred that the representation dated 9th February, 2007 made by the Respondent against the second disagreement note dated 6th February, 2007 was considered by the Disciplinary Authority before passing the punishment order dated 28th August, 2007. In the circumstances, the learned Counsel for the Petitioner is unable to satisfy this Court that there has not been any technical infirmity in the procedure adopted by the Petitioner while imposing the punishment orders dated 28th August, 2007 and the appellate order dated 5th November, 2007. Though the facts in the representation dated 14th/18th July, 2006 and in the representation dated 9th February, 2007 had overlapped to a considerable extend, however, if there was need to conduct a supplementary enquiry, which was conducted, and the Disciplinary Authority differed from the report of the supplementary enquiry also and communicated the disagreement note to the Respondent, then the representation against the second disagreement note dated 6th February, 2007 ought to have been considered by the Petitioner before imposing any punishment on the Respondent.

25. In exercise of its jurisdiction, it has always been in the discretion of the High Court to interfere or not depending upon the facts and circumstances of the case. In Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, the Supreme Court had held that "the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take

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cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play". The Tribunal has held that there had been technical infirmity in the matter as the supplementary enquiry had been necessitated and the disciplinary authority had also differed with the supplementary enquiry report and a memorandum dated 6th February, 2007 was issued against which a representation was made which had not been considered while passing the punishment order. In the circumstances, it cannot be held that there had not been technical infirmity and the High Court should exercise its jurisdiction and set aside the order of the Tribunal remanding the matter to the disciplinary authority to pass appropriate orders, if so advised.

26. In the totality of the facts and circumstances of the case and for the foregoing reasons, this Court does not find any material illegality or irregularity or such perversity in the order of the Tribunal of setting aside the punishment orders dated 28th August, 2007 and 5th November, 2007 without going into the merits of the matter and setting aside the compulsory retirement of the Respondent and remitting the matter back to the Petitioner with liberty to proceed afresh from the stage the technical infirmities were committed by the Petitioner. No other grounds have been pressed by the learned Counsel for the Petitioner except those which have been considered and discussed hereinabove.

27. In the circumstances, there are no merits in the writ petition and the writ petition under Article 226 of the Constitution of India is, therefore, dismissed. Parties are, however, left to bear their own cost.

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