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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment reserved on: 04.07.2023**Judgment delivered on: 01.09.2023*+ **W.P.(C) 16059/2022 & CM APPLS. 50120/2022 and 25493/2023****NEERA MEHTA**

..... Petitioner

Through: Mr. Ashok Kumar Chhabra and
Mr. Hemant Kumar, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Ms. Pratima N.Lakra, CGSC with
Mr. Jitendra Kumar Tripathi, G.P. and
Mr. Chandan Prajapati, Ms. Vanya
Bajaj, Advocates for UOI along with
Mr. Dharmendra Shah, PCI, Northern
Railway.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****J U D G M E N T****ANOOP KUMAR MENDIRATTA, J.**

1. The challenge in this petition is to an order dated August 08, 2022 passed by the Central Administrative Tribunal (hereinafter, referred to as the 'Tribunal') in O.A. No.3495/2019, whereby the Tribunal dismissed the O.A. preferred on behalf of the petitioner challenging orders passed by the Disciplinary Authority dated April 30, 2019 and Appellate Authority dated September 27, 2019 dismissing the petitioner from Railway service, on the



charge of having submitted forged Date of Birth Certificate.

2. In brief, petitioner joined the service of Indian Railways as Booking Clerk and was lastly holding the post of Office Superintendent. Apparently, on a complaint, a show-cause notice dated December 29, 2017 was issued to the petitioner informing that education certificate of Higher Secondary (Three Year Course) Examination, 1975 bearing Roll No.77100, Serial No. HSC7532213, in support of the date of birth reflected as May 24, 1959, on verification did not match as per the records of CBSE, in terms of their letter dated December 06, 2017. Further, as per record of CBSE, date of birth of the petitioner is May 24, 1952 instead of May 24, 1959 as claimed by the petitioner.

3. In response to the same, vide letter dated January 12, 2018, petitioner stated that the certificate showing date of birth as May 24, 1959 submitted by her is genuine and the copy of Birth Certificate issued by Christian Hospital reflected that she is the third child of her parents and her date of birth is May 24, 1959. A reference was also made by the petitioner to matrimonial disputes with her husband, which led to filing of false complaints.

4. Petitioner was, thereafter, issued a charge-sheet under Railway Servant Discipline and Appeal Rules, 1968 and the Inquiry Officer held that the charge against the petitioner stood proved. Further, the Disciplinary Authority vide order dated April 30, 2019 imposed a penalty of 'dismissal from service' from Railways. An appeal preferred by the petitioner was rejected by the Appellate Authority vide order dated September 27, 2019 and



order passed by the Disciplinary Authority was accordingly upheld.

5. The O.A. preferred by the petitioner stands dismissed by the Tribunal for the reasons recorded in paragraphs No. 9 to 11, which may be reproduced for reference:

“9. We have heard the learned counsels for the parties at great length and also meticulously gone through the documents on record. In our considered opinion, the report of the inquiry into the article of charges against the applicant has carefully examined and detailed each and every aspect of the case. We are not in agreement with the contention of the learned counsel for the applicant that the said report suffers from any inconsistency. While it is correct that the Original certificate as is said to exist in the records of the CBSE has not been produced during the course of the inquiry, there is absolutely no reason to disbelieve the official communication from CBSE which categorically states that as per the records of the CBSE the applicant's date of birth is 24.05.1952. In our considered view the Enquiry Officer, after going into the each and every aspect has submitted a detailed and meticulous report and it would be incorrect to infer that it suffers to any infirmity or inconsistency.

10. Moreover, the decision of the appellate authority to obtain the certificate from CBSE, prior to passing a final order cannot be termed as an attempt to hold a fresh inquiry into the matter, infact, it should be considered as abundant caution on the part of the appellate authority to reascertain the factual position before affirming the penalty of dismissal imposed upon the applicant. The applicant through the learned counsel is repeatedly drawing attention to the certificate of birth issued by the Jhansi Municipal Corporation and establishing that her date of birth is 27.9.2019 as recorded therein. We find it a bit intriguing that while the applicant has made efforts to procure this certificate from the Municipal Corporation, she has avoided approaching the CBSE to procure her original higher secondary certificate. We are not prepared to accept the argument that since the burden of truth to substantiate the allegation lies on the respondents, it was their responsibility to obtain the said certificate. It is the applicant who is affected by the adverse order, which also happens to be harshest penalty under the disciplinary rules, therefore,



it was in her own interest and could have been her strongest defense to obtain the original certificate from the CBSE. The fact that this certificate was later obtained by the appellate authority and substantiated the allegation against the applicant is a fair pointer to the suspicion that probably the applicant was aware that the original higher secondary certificate of CBSE may expose the true facts.

11. Since the article of charge against the applicant, in our view, has been conclusively established, we do not find any illegality or irregularity in the orders passed by the disciplinary authority and the subsequent by the appellate authority. Both the orders may be brief, but are fairly reasoned orders in the light of the facts and circumstances of the case. We do not find any sufficient or reasonable cause to interfere in the present Original Application, which is, accordingly, dismissed. No order as to costs.”

6. Learned counsel for the petitioner assails the order passed by the Tribunal and submits that inquiry was conducted in violation of principles of Natural Justice, since the show-cause notice dated December 29, 2017 assumed that the letter dated December 06, 2017 issued by CBSE pointing out the discrepancy in the date of birth is truthful. Further, witness was not examined from CBSE to ascertain the correct factual position in inquiry proceedings.

It was urged that during the course of inquiry, petitioner had requested for supply of nine additional documents, out of which only six were supplied. It was vehemently contended that the order passed by the Disciplinary Authority does not reflect the reasons for non-consideration of the Birth Certificate from Jhansi, produced by the petitioner, which correctly reflects her date of birth as May 24, 1959. It was pointed out that Inquiry Officer was from Vigilance Branch of Railways and as such the petitioner



stood prejudiced. Learned counsel for the petitioner further urged that petitioner was suffering from cancer and the inquiry was initiated at the fag end of her career. The copy of certificate verified from CBSE by the Department was also disputed on the ground that it did not relate to the petitioner and reflects her father's name as Om Prakash Mehta, while the name of petitioner's father is Om Mehta. The Serial Number of the certificate obtained from CBSE was also claimed to be reflecting a different number.

Learned counsel for the petitioner further contended that the judgments referred by the petitioner before the Appellate Authority reported as *M/s Kranti Associates Pvt. Ltd. & Anr. vs. Masood Ahmed Khan & Ors.*, 2010 (9) SCC 496, *A. K. Kraipak & Ors. vs. Union of India & Ors*, AIR 1970 SC 150 and *Siemens Engineering & Manufacturing Co. of India Ltd. vs. Union of India & Anr.*, AIR 1976 SCC 1785 were not considered. The order passed by the Disciplinary Authority was also stated to be bereft of reasons in support of the findings and was passed without application of mind.

Reliance was further placed upon *D.G.M. (Appellate Authority), State Bank of India and Others vs. Ajai Kumar Srivastava*, 2018 SCC OnLine Allahabad 5987 and *D.P. Sharma vs. M/s BSES Rajdhani Power Limited & Anr.*, 265 (2019) DLT 664. The punishment of removal from service imposed against the petitioner at the fag end of the career was stated to be disproportionate and harsh, as the petitioner was retiring in the same month.



Written submissions were also filed on record.

7. On the other hand, learned counsel for the respondents justified the order passed by the Tribunal and submitted that inquiry had been conducted after duly following the principles of Natural Justice and the burden to produce the correct educational documents reflecting the date of birth, lay on the petitioner. It was urged that petitioner submitted a forged higher secondary certificate of CBSE, showing her date of birth as May 25, 1959, which upon verification from CBSE was found to be May 24, 1952, as per record. The order for 'dismissal from service' is, therefore, stated to have been passed in accordance with law. Reliance was further placed upon *M/s India Oil Corporation Ltd. v. Shri Rajendra D. Harmalkar*, 2022 SCC OnLine SC 486 and *Kiran Thakur v. Resident Commissioner, Bihar Bhavan*, W.P.(C) 1668/2014 decided on May 18, 2023 by this Court.

Learned counsel for the respondents further urged that the petitioner neither requested the Inquiry Officer to summon CBSE Officials or Officials of the school where she had studied, nor raised any objection in this regard. She pointed out that the charge against the petitioner related to submitting of fake and fabricated certificate of Higher Secondary and the same was not related to certificate from Jhansi Municipal Corporation relied by the petitioner to claim her date of birth as May 24, 1959.

It was further urged that as per instructions contained in Railway Service Pension Rules, 1993, the railway servant who is dismissed or removed from service, shall forfeit his/her pension and gratuity and is not



entitled to any leave encashment. Further, payment towards Provident Fund and Group Insurance Scheme is stated to have already been released to the petitioner.

8. We have given considered thought to the contentions raised.

The scope and power of judicial review in disciplinary proceedings has been noticed by this Court in paragraph Nos. 15 and 16 of *Union of India and Ors. v. Surender Kumar*, 2023 SCC OnLine Del 3414, wherein reference was made to *Union of India v. P. Gunasekaran*, AIR 2015 SC 545 and *Pravin Kumar v. Union of India & Others*, (2020) 9 SCC 471.

The issue in relation to jurisdiction of the case in the judicial review also fell for consideration before the Hon'ble Supreme Court in *M.V. Bijlani v. Union of India and Others*, (2006) 5 SCC 88 and the observations in para 25 in this regard are apt to be noticed:-

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”



There is no dispute as to the proposition of law as referred in the judgments cited by learned counsel for the parties. The vitiation of disciplinary proceedings cannot be put up in a straitjacket formula and facts and circumstances of each case need to be duly analysed.

9. Apparently, the show-cause notice was issued to the petitioner and disciplinary proceedings initiated on receipt of a complaint. It is important to notice that the petitioner in her statement on September 14, 2016, which is a part of the inquiry proceedings and stands duly referred in the statement of imputation misconduct, claimed that her date of birth is May 24, 1959 and she studied at Netaji Nagar Govt. Higher Secondary School. She further stated that she would produce the documentary proof of the same within fifteen days of recording her statement and denied having studied in Govt. Girls Higher Secondary School, Moti Bagh, Delhi, wherein date of birth was reflected as May 25, 1952.

Pursuant to the same, petitioner further submitted and relied upon a Birth Certificate issued by Jhansi Municipal Corporation.

10. It may be noticed that there is nothing on record to dispute the aforesaid Birth Certificate issued by Jhansi Municipal Corporation, which was produced by the petitioner and is duly supported by certificate issued by Christian Hospital, Jhokan Bagh, Jhansi, U.P. The same could not have been ignored merely on the ground that the same was got issued on February 07, 2018. Obviously, since the inquiry proceedings were initiated, the petitioner in order to get her best evidence in support of date of birth got the same



issued from the competent authorities, since her claim is that her original documents had been left at her matrimonial house and the disciplinary proceedings had been initiated on account of matrimonial differences and complaints at behest of her spouse.

11. It is pertinent to observe that petitioner for the purpose of her defence had requested for supply of photocopy of record, on the basis of which the Section Officer (M&M), CBSE, Ajmer had replied to Shri Nardev Kumar, Deputy CPO/HQ/BHouse/NDLS in his letter No.CBSE/RO(AJM)Verfi/2015-16 dated December 06, 2017 confirming the date of birth as May 24, 1952 instead of May 24, 1959. However, the same was not provided by Inquiry Officer as no such document was stated to be on record. Even during the course of inquiry proceedings, reference is only made to the letter received from CBSE conveying the mismatch but copy of certificate, on the basis of which mismatch is stated to have been established was neither summoned nor provided to the petitioner.

It is well settled that inquiry proceedings are of *quasi* judicial character and, therefore, it is necessary that conclusions should be arrived on the basis of evidence which has some degree of definiteness pointing to the guilt of the delinquent and does not leave the matter in a suspicious state, as mere suspicion cannot take place of proof even in domestic inquiries.

It appears that only at the stage of Appellate proceedings, vide letter dated August 08, 2019, at the request of Appellate Authority, photocopy of Higher Secondary Certificate on the basis of which the mismatch was



mentioned by CBSE, Ajmer vide letter dated December 06, 2017 was forwarded but the fact remains that said document was neither provided to the petitioner, nor taken into consideration during the course of disciplinary proceedings, in order to enable the petitioner to meet out the proceedings against her.

In the facts and circumstances, we are of the considered opinion that the Inquiry Officer was obligated to summon the witness from CBSE with relevant record for giving a fair opportunity to the petitioner to explain/meet out the charge *qua* mismatch in date of birth. Moreso, the case of the petitioner is that even the copy of CBSE certificate relied by the respondents reflects the father's name as Om Prakash Mehta, while the name of petitioner's father is Om Mehta and the Serial Number of the certificate obtained from CBSE is different.

12. In view of above, the failure of Inquiry Officer to seek the copy of certificate from CBSE, Ajmer on the basis of which the conclusion was drawn as to mismatch in date of birth and in the alternative to summon the witness from CBSE with record, has prejudiced the petitioner and vitiates the inquiry proceedings. In the facts and circumstances, the conclusion drawn by the Inquiry Officer with regard to submission of forged certificate by the petitioner, cannot be inferred to be conclusive.

13. Hon'ble Apex Court in *Roop Singh Negi v. Punjab National Bank*, (2009) 1 SCC L&S 398 and *State of U.P. v. Saroj Kumar Sinha*, 2010 (3) SCALE 42 has also held that mere production of documents is not enough



and the contents of the documentary evidence have to be proved by examining the relevant witnesses.

The summoning of the concerned witnesses from CBSE would have ensured a proper opportunity to the petitioner for furnishing her defence/explanation in respect of discrepancies in date of birth. We do not concur with the findings of the Tribunal and are of the considered view that the petitioner, who is stated to be a cancer patient and has been dismissed only at the fag end of her career, needs to be given a fair and reasonable opportunity to meet out the case of the respondents since the document/record of CBSE relied by respondents was never produced or summoned during the course of inquiry proceedings.

14. Consequently, the next question for consideration is, if the petitioner be directed to be reinstated and would be entitled to consequential benefits in accordance with relevant rules. **The settled legal position is that if the court sets aside an order of punishment on the ground that the inquiry was not properly conducted, the Disciplinary Authority is to conduct the inquiry from the point it stood vitiated and cannot be reinstated.**

Reliance in this regard may be placed upon *The Inspector of Panchayats and District Collector, Salem v. S. Arichandran & Ors.*, Civil Appeal No. 6776/2022, wherein after referring to *Chairman, Life Insurance Corporation of India and Ors. v. A. Masilamani*, (2013) 6 SCC 530 and *State of Uttar Pradesh and Ors. v. Rajit Singh*, 2022 SCC OnLine SC 341, the Hon'ble Apex Court remitted the case back to the Disciplinary



Authority to conduct the inquiry from the point it stood vitiated. The observations of the Hon'ble Apex Court in paragraphs 6 and 7 may be beneficially reproduced:

***“6. At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Enquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Enquiry Officer's Report. It is to be noted that the respondent –delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.*”**

6.1 At this stage, a recent decision of this Court in the case of Rajit Singh (*supra*), in which this Court had considered its earlier decision in the case of A. Masilamani (*supra*) is required to be referred to. In paragraph 15, it is observed and held as under:-

“15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the 5 delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India v. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:—

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the



enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]).”

6.2 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Enquiry Officer’s Report.

7. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment(s) and order(s) passed by the Division Bench as well as learned Single Judge of the High Court ordering reinstatement with back wages are hereby quashed and set aside. The case concerned is remitted to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Enquiry Officer’s Report and after giving an opportunity to the delinquent to submit his comments on the Enquiry Officer’s Report. The aforesaid exercise be completed within a period of six months from today. However, at the same time, considering the fact that earlier also the dismissal order was set aside on the ground that the same was found to be in breach of principles of Natural Justice and the matter was remitted back and thereafter again when the fresh order of dismissal has been passed, which is again found to be in violation of principles of Natural Justice and again the matter is to be remitted back, we allow the present appeal with costs to be paid by the appellant to the respondent - delinquent quantified at Rs. 50,000/-, which shall be paid to the respondent – delinquent within a period of six weeks from today.

Present appeal is accordingly allowed to the aforesaid extent.”

15. Accordingly, the impugned order passed by the Tribunal dated August 08, 2022, order passed by the Appellate Authority dated September 27, 2019



and the Disciplinary Authority dated April 30, 2019, are set aside and the matter is remitted back to the Disciplinary Authority to conduct the inquiry proceedings from the point it stood vitiated (i.e. after supplying her with a copy of Higher Secondary Certificate obtained from CBSE, Ajmer on the basis of which the mismatch in date of birth is stated to have been inferred) and with a direction to conclude the same within a period of six months from the date of passing of this order.

The writ petition is accordingly disposed of. No orders as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

SEPTEMBER 01, 2023/R/sd