* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WP(C) No.7420/2011**

% **Date of Decision: 12.10.2011**

Union of India .... Petitioner

Through Mr.Jitender Ratta, Advocate.

Versus

Dr.M.B.Pahari .... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1.	Whether reporters of Local papers may be allowed to see the judgment?	YES
2.	To be referred to the reporter or not?	NO
3.	Whether the judgment should be reported in the Digest?	NO

ANIL KUMAR, J.
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1. The petitioner, Union of India through the Secretary, Ministry of Information and Broadcasting, has challenged the order dated 8th April, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.2234/2008 titled as 'Dr.M.B.Pahari v. Union of India through Secretary, Ministry of Information and Broadcasting & Anr.' allowing the original application of the respondent and setting aside the order dated 9th September, 2008 imposing the punishment of 25% cut in the monthly pension of the respondent for five years

pursuant to the setting aside of the disagreement note of the Disciplinary Authority. However, the Tribunal granted liberty to the petitioner to proceed against the respondent from the stage of receipt of the Enquiry Report; and in case the Disciplinary Authority tentatively differs from the finding of the Enquiry Report then to communicate the tentative disagreement to the respondent and after hearing the respondent, to pass appropriate orders imposing such punishment as may be deemed appropriate by the petitioner.

2. Brief facts to comprehend the disputes between the parties are that the respondent was posted as DDG at Doordarshan Kendra, New Delhi and retired from service with effect from 31st August, 2004 on attaining the age of superannuation. At the time of his retirement the respondent was under suspension. The respondent was suspended by order dated 31st August, 1999 with effect from 14th September, 1999. Before the respondent superannuated, by order dated 5th February, 2002, disciplinary proceedings were initiated against the respondent under Rule 14 of the CCS (CCA) Rules, 1965. The Articles of Charges against the respondent were that while functioning as Director/DTG, Doordarshan Kendra, Delhi during the year 1997-1998, he did not follow the required norms for the recruitment of stringers as per the provision contained in O.M No.4/4/83-P III dated 4th April, 1983 and he did not utilize the panel of stringers prepared prior to 1994. The imputation was also made against the respondent that while availing

the services of the stringers, he failed to requisition a proper form signed by the Director or Chief Producer (News) of the Doordarshan Kendra containing the details about the location and time of the event to be covered and failed to minimize the expenditure for hiring the stringers. It was also alleged that he was instrumental in allotting the work of royalty based programmes/free lanced programmes to the firms owned by wife, relatives, friends of Sh.S.K.Mathur, Chief Producer, DDK, Delhi though these firms were not empanelled as stringers in terms of the relevant guidelines, and thus the respondent failed to maintain absolute integrity and exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant.

3. In response to this, the respondent submitted a statement dated 19th September, 2002, however, the departmental enquiry was conducted against him. During the enquiry, the Enquiry Officer allowed the copies of 21 documents to be supplied to the respondent. The respondent contended that though the copies of 21 documents were supposed to be allowed, however, he was given only 16 documents and the copies of the remaining 5 documents which were not given to him were relevant for his defense and therefore its non-supply had caused prejudice to him. Thus, it was alleged that the enquiry was held in violation of Rule 14 of the CCS (CCA) Rules, 1965.

4. The Enquiry Officer gave his report on 30th July, 2004 which was forwarded to the Ministry of Information and Broadcasting, who was the Disciplinary Authority in the matter, on 5th August, 2004 and thereafter on 31st August, 2004 the respondent had superannuated.

5. After the respondent retired, he was given provisional pension by order dated 18th October, 2004. According to the respondent, two years after his retirement, on 3rd October, 2006 he received a memorandum dated 7th September, 2006 signed by the Disciplinary Authority along with the Enquiry Report and the copy of advice tendered by the CVC dated 21st July, 2006. Along with the memorandum he also received a disagreement note of the Disciplinary Authority. The respondent made a representation against the disagreement note and categorically contended that the disagreement note communicated to him was an expression of the final opinion by the Disciplinary Authority and was not at all tentative in nature. It was asserted that consequently, he was not given a reasonable opportunity to make his representation and the communication of the Inquiry Report and the Disagreement Note which expressed the final opinion, asking the respondent to make a representation was only illusory and was in denial of the principals of natural justice and in violation of relevant CCS (CCA) Rules.

6. The respondent received another intimation dated 8th February, 2007 asking the respondent to submit his representation. The

respondent, by letter dated 17th February, 2007, intimated the petitioner that he had already submitted his reply on 16th October, 2006 and had also forwarded a copy of the said representation. Thereafter, the respondent received the order dated 9th September, 2008 imposing a penalty of 25% cut in his pension for a period of five years.

7. The respondent, therefore, challenged the order imposing the punishment of 25% cut in his pension for five years contenting, *inter-alia,* that the Inquiry Officer had not furnished all the copies of the relevant documents as had been sought by the respondent, which he was entitled to receive, and he was also not permitted to summon the relevant documents for his defense, which resulted in the violation of the principles of natural justice and thus the entire departmental proceeding was vitiated against the respondent.

8. The respondent categorically asserted that the chargesheet was issued to him on 5th September, 2002 two years after the receipt of the CVC advice dated 22nd September, 2000 and thus the delay was deliberate in order to give benefit to the main accused Sh.S.K.Mathur, Chief Producer (Retd.), DDK who had retired in the meantime and against whom an FIR had also been lodged.

9. The respondent also asserted that according to the Enquiry Officer the single charge against him as stipulated in Article 1 was not proved, however, contrary to the findings of the Enquiry Officer, a disagreement note which was not even signed by the concerned Disciplinary Authority, was sent to him. The disagreement note sent to him was also not tentative but a final expression of the opinion already formed by the petitioner. The respondent also raised the plea of limitation contending that the penalty could not be imposed upon him as the copy of the Inquiry Report with the disagreement note communicating the final opinion was issued to him only after two years of the receipt of the Enquiry Report by a memo dated 7th September, 2006 which was received on 3rd October, 2006. According to the respondent, this delay has not been explained by the petitioner, thereby vitiating the entire enquiry and imposition of punishment of reduction of 25% of his pension for five years, in the facts and circumstances.

10. Regarding the disagreement note, the respondent specifically stated that the reason given in the disagreement note was without any locus standi as the Guidelines dated 4th April, 1983 relating to stringers had ceased to operate in respect of DDK, Delhi as the "News and Current Affairs" Department was separated from the main Kendra, DDK, Delhi and was transferred to "DD-News", a separate office by order of 1993 issued by the then Director General, Doordarshan. The said document, according to the respondent was produced before the

enquiry officer and was duly proved as Exhibit D3. According to the respondent, the reasoning of the Disciplinary Authority that though the DDK, Delhi does not produce any News Bulletin, but since the Kendra produces Current Affairs Programme, therefore, the respondent was supposed to follow the guidelines for empanelment and hiring of stringers as circulated to all DDKs in 1993, was based on pure conjectures and surmises. It was asserted that no evidence had been produced in support of this reasoning nor could this reasoning be substantiated from the 44 documents produced by the petitioner. The respondent emphasized that after 1993, with the set up of a separate office "DD News", DDK, Delhi had not produced any Current Affairs Programmes and the Director General DD's guidelines of 1993 relating to stringers were not applicable to DDK, Delhi. Regarding the programmes by three firms namely M/s.Blue Chip Video Creations, M/s.Pulse-Impulse Communications and M/s.Decent Productions, it was contended that the programmes were not in the category of Current Affairs Programme but in the category of Royalty Programmes and that it was clear from the payments made that DDK, Delhi did not use stringer services for production of any programmes after 1993 and had therefore, not paid any amount from the budget sub-headed as 'OC-Nonplan, Payment To Stringers'. All the payments for the programmes of the abovementioned three firms were made from the budget headed as 'Royalty'. Therefore, the services of the stringers were not required for production of 'Royalty' and 'OC-Nonplan' programmes. Regarding the

production of Current Affairs Programmes by DDK, Delhi it was contended that the said fact had not been deposed and was not supported by any of the eight witnesses SW1 to SW8, rather all the witnesses had certified that the programmes produced by the three firms and telecast from DDK, Delhi fell in the category of Current Affairs Programmes.

11. Referring to the report of the Enquiry Officer, it was contended that it is apparent that the Article of Charge was not proved against him and the disagreement note against the Enquiry Report was not tentative but was a final expression of the opinion of the Disciplinary Authority. According to the petitioner, the Under Secretary, I & B Ministry to the Government of India, was neither the authority nor did he have the jurisdiction to act on behalf of the President. Since no order was passed by the President to continue the proceedings against the respondent after his retirement, consequently no penalty as contemplated under Rule 9 of the CCS (Pension) Rules, 1972 could be imposed on him.

12. The original application was contested by the petitioner contending, *inter-alia,* that the respondent had been awarded punishment under Section 9 of the CCS (Pension) Rules, 1972 and consequently after his superannuation, the grant of provisional pension to the respondent was in consonance with the relevant provisions and rules. Regarding the dissenting note, it was contended that it was

forwarded to the respondent by memorandum dated 7th September, 2006 which was duly signed and so it could not be alleged by the respondent that the dissenting note had not been signed by anybody. The petitioner asserted that the Central Bureau of Investigation, Delhi in PE-DAI-1998-A0019 recommended regular departmental action for major penalty against the respondent and by CVC vide UO No.99/I&B/002 dated 22nd September, 2000 advised the initiation of regular departmental enquiry for major penalty against the respondent as well as Sh.S.K.Mathur, Chief Producer (Retd.), DG:DD. The allegations made by the respondent were refuted and it was reiterated that the respondent failed to ensure that the services of the stringers were requisitioned only through a form signed by the Director or Chief Producer (News) of Doordarshan Kendra containing details about the location and time of the event to be covered and he failed to minimize the expenditure of hiring the stringers. It was also alleged that the respondent was instrumental in allotting work of royalty based programmes/freelanced programmes to the firms owned by wife, relatives and friends of Sh.S.K.Mathur, Chief Producer, DDK, Delhi. The petitioner admitted that on the basis of the testimonies recorded before the Enquiry Officer and the documents proved, the Enquiry Officer had submitted his report by letter dated 5th August, 2004 holding that the charge against the respondent was partly proved. A second stage CVC advice was sought which was tendered by the CVC vide OM No.99/I&B/002 dated 21st July, 2006 to impose a suitable cut in the

pension of the respondent which advice and the copy of disagreement note along with the Enquiry Report and the reasons for the disagreement were communicated to the respondent by memo dated 7th September, 2006.

13. The petitioner categorically pleaded that the respondent did not sent any reply to memo dated 7th September, 2006. According to the petitioner, the respondent had submitted only his representation dated 16th October, 2006 on the Enquiry Report and the CVC second stage advice. The pleas and contentions raised by the respondent were duly considered by the Disciplinary Authority and his representation was rejected and thereafter it was tentatively decided to impose the penalty of cut in the pension. Subsequently, the matter was referred to the UPSC for their advice which was rendered by the UPSC letter No.F.3/135/2007-S1 dated 26th May, 2008 holding that all the three components of charges against the respondent were substantiated and the UPSC advice to cut 25% of the monthly pension for a period of five years and thereafter the final order No.C-15013/3/98-Vig (Vol-II) dated 9th September, 2008 was passed and communicated to the respondent. Regarding Mr.S.K.Mathur it was also disclosed that he was placed under suspension by order dated 28th August, 2000, however, he retired while under suspension and therefore the proceeding for reduction of his pension was duly initiated and as of now the departmental enquiry is still pending against him.

14. The Tribunal, after considering the pleas and contentions of the parties and considering the report of the Enquiry Officer, observed that the Enquiry Report unequivocally reflected that the charge against the respondent was not fully proved. The Tribunal also considered the disagreement note dated 7th September, 2006 and took note of the reasons for the disagreement. From the language of the disagreement note and considering all the facts and circumstances, it was held that the disagreement note clearly indicates that it was a final expression of the opinion by the Disciplinary Authority and that the disagreement note was not tentative and thus the respondent was denied a reasonable opportunity of making a representation against the disagreement note. Thus, it was held that the procedure adopted by the petitioner was not in consonance with Rule 15(2) of the Central Services (Classification, Control and Appeal) Rules, 1965. Relying on the decision of the Supreme Court in Lav Nigam v. Chairman and MD, ITI Ltd. and Anr., (2006) 9 SCC 440 it was held that the final expression of the opinion by the Disciplinary Authority while disagreeing with some of the components of the charge is against the mandate of the provision contained in Rule 15(2) of the Rules of 1965 as also against the principles of natural justice. Since the disagreement note was not tentative it was set aside and consequently all further proceedings including the order dated 9th September, 2008 was also set aside. However, liberty was given to the petitioner to proceed from the stage of

receipt of the Enquiry Report and it was clarified that if the Disciplinary Authority is still of a tentative opinion to disagree with the Enquiry Report then a tentative disagreement ought to be communicated and proceeded thereafter in accordance with law. The findings of the Tribunal as stipulated in the impugned order are as under:-

> 3. Final expression of opinion by the disciplinary authority while disagreeing with some components of the charge as not proved by the enquiry officer, is against the mandate of the provisions contained in Rule 15(2) of the Rules of 1965, as also against the principles of natural justice. The same has to be set aside. Once, disagreement note is set aside, all further proceedings culminating into order dated 9.9.2008 have also to be set aside. So ordered. The disciplinary authority, however, would be at liberty to proceed against the applicant from the stage of receipt of enquiry report by it. If the said authority may still be of the opinion that the report of the enquiry officer does not merit acceptance in toto and that all components of the charge against the applicant stood proved, the opinion of the disciplinary authority would be tentative even though, supported by reasons and final decision would be arrived at by the said authority only after taking into consideration the view-point of the applicant, as he may express on the note of dissent. The applicant will be restored his full pension. Surely, if the applicant is again visited with some penalty, it would always be open for the disciplinary authority to impose a cut in his pension for whatever period it may deem appropriate from the future pension of the applicant."

15. The petitioner has challenged the order of the Tribunal contending inter-alia that since an opportunity was given to the respondent to make a representation against the disagreement note, it necessarily has to be inferred that the disagreement note was tentative and not final and thus a proper opportunity was given to the

respondent. The petitioners also contended that the Tribunal failed to appreciate that the respondent had nowhere pleaded that prejudice had been caused to him by order dated 9th September, 2008 whereby the penalty of 25% cut in pension for a period of 5 years was imposed on the respondent. According to the petitioner, the Tribunal failed to appreciate that the Disciplinary Authority was in agreement with the findings of the Enquiry Report.

16. This Court has heard the learned counsel for the petitioner in detail and has also perused the copies of the record of the Tribunal produced along with the writ petition. The disagreement note dated 7th September, 2006 submitted by the disciplinary authority is as under:-

> "A copy each of the Inquiry Report submitted by the Inquiring authority and the advice of CVC tendered thereon vide their O.M No.99/I&B/002 dated 21.07.06 is enclosed.
>
> 2. The disciplinary authority (i.e The President) has **decided** to disagree with the findings contained in Inquiring Authority's report in respect of ingredient (1) of the Article of Charge and to agree with the findings of the IO in respect of the ingredients (2) & (3) of the Article of Charge.
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> 3. Reasons for disagreement of the Disciplinary Authority with the findings of inquiry officer in respect of the ingredient 91) of the Article of Charge are also enclosed. Dr.M.B.Pahari is hereby given an opportunity to make such representation or submission as he may wish to make, in writing to the disciplinary authority within fifteen days from the date of receipt of this office Memorandum. If no representation is received from Dr.Pahari, within stipulated time, it will be presumed that he has no submissions to make and the case will be processed further as per rules."

17. Perusal of the disagreement note, especially para 2, specifically and categorically stipulates that the Disciplinary Authority had decided to disagree with the findings contained in the Enquiry Report in respect of ingredient 1 of the Article of Charge. In the reasons for disagreement of the Disciplinary Authority with the findings of Enquiry Authority in respect of ingredient 1 of the Article of Charge, in para 3 it is categorically stated that the ingredients of the Articles of Charge had been found to be proved against Dr.Pahari. Para 3 of the reasons for the disagreement is as under:-

> "3. In view of the above, this ingredient of Article of Charge **has been found to be proved** against Dr.Pahari. Thus there is disagreement in respect of ingredient (1) of Article of Charge with the findings of inquiring authority."

18. This is no more *res integra* that if the inquiry officer gives an adverse finding, the first stage requires an opportunity to be given to the charged officer (CO.) to represent to the Disciplinary Authority, even when an earlier opportunity is granted to the charged officer by the Inquiry Officer, consequently, even if the finding in favour of the charged officer is proposed to be overturned by the Disciplinary Authority, an opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings.

19. Principal of natural justice demands that the authority which proposes to decide against the charged officer must give him a hearing. When the inquiry officer holds the charge to be proved then that report is to be given to the charged officer who can make a representation before the Disciplinary Authority takes further action which may be prejudicial to the charged officer. Where the inquiry report is, however, in favour of the charged officer and the disciplinary authority proposes to differ with such conclusion then, before the Disciplinary Authority finally decides against the charged officer, he must be given an opportunity of being heard because otherwise it would be condemning the charged officer unheard in case a final opinion is formed by the Disciplinary Authority, though an opportunity of being heard is given to the charged officer before the enquiry officer. In departmental proceedings what is of ultimate importance is the finding of the Disciplinary Authority.

20. Consequently, whenever the Disciplinary Authority disagrees with the Inquiry Authority on any article of charge or a component of article of charge, then before it records its own finding on such charge or part of the charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.

21. The requirement of "hearing", in consonance with the principal of natural justice, contemplates that before the Disciplinary Authority finally disagrees with the finding of the Inquiry Authority, it would give an opportunity of hearing to the charged officer so that he may have an opportunity to indicate that the finding recorded by the inquiry authority do not suffer from any error and there was no occasion to take a different view. However, the Disciplinary Authority, at the same time, has to communicate to the charged officer "tentative" reason for disagreeing with the findings of the inquiry authority so that the charged officer may indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiry Authority are not germane and the finding of `not guilty' or `not proved' already recorded by the Inquiry Authority shall not be liable to be interfered with. In Yoginath D. Bagde Vs. State of Maharashtra and Anr., AIR 1999 SC 3734, the Supreme Court had held that even though the show cause notice was given to the charged officers along with reasons on the basis of which the Disciplinary Authority had disagreed with the findings of the inquiry authority but the disciplinary authority, instead of forming a tentative opinion, had come to a final conclusion that the charge against the charged officer was established. The Supreme Court had held so because the disciplinary committee had held while communicating the disagreement note that the charge against the charged officer had been proved and it was not communicated to the charged officer that the disciplinary

committee had come only to a "tentative" decision. In the facts and circumstances, it was held that a reasonable opportunity of hearing was not given to the charged officer before taking a final decision in the matter relating the findings on the charges framed against the charged officer. It was also held that the principles of natural justice as laid down by a three judges bench in Punjab National bank and ors. Vs. Kunj Bihari Misra, Manu/SC/0531/1998, were violated.

22. Similarly, if one peruses the disagreement note, relevant portion of which is also reproduced hereinabove, which stipulates that the 'article of charge has been found to be proved' against the respondent, Dr. Pahari. Merely not using the word "tentative' will not make the disagreement note final and similarly using the word "tentative" will also not make the opinion in the disagreement note as 'tentative', as whether the opinion of the Disciplinary Authority disagreeing with the finding of the inquiry officer is tentative or not depends on the entirety of the disagreement note and the tenor of the language. Perusal of the disagreement note in the instant case, unequivocally, however, reflects that the Disciplinary Authority had formed an opinion that the article of charge had been found to be proved against Dr. Pahari, respondent, and it was not a tentative opinion formed by the Disciplinary Authority. In the circumstances, merely asking the respondent to make representation against the disagreement note will not make the opinion formed by the Disciplinary Authority as "tentative" and to that extent

this Court is in agreement with the findings of the Tribunal that the disagreement note is not tentative and the charge against the respondent had been held to be established before putting the respondent to notice with reasons for disagreement by the Disciplinary Authority.

23. The Tribunal has relied on Rule 15(2) of CCS (CCA) Rules, 1960 and the decision of the Supreme Court in Lav Nigam Vs. Chairman and MD ITI Limited and Anr. (2006) 9 SCC 440 holding as under:-

> "10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to given notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt…."

24. The Tribunal has also held that the final expression of opinion by the Disciplinary Authority while disagreeing with some components of the charge as not proved by the inquiry officer, is against the mandate of the provisions contained in Rule 15(2) of the Rules of 1965, as also against the principles of natural justice and thus, set aside the disagreement note and consequently, the punishment order dated 9th September, 2008 was passed.

25. The learned counsel for the petitioner, in the facts and circumstances, is unable to demonstrate that the disagreement note

was tentative and not a final expression of the opinion regarding the guilt of the respondent. In para-3 of the disagreement note, it has been categorically recorded that the ingredients of article of charge has been found to be proved against Dr. Pahari, taking it from any point.

26. This court is not satisfied with the plea raised by the petitioner that since the respondent was given an opportunity to represent against the disagreement note, it has to be construed as tentative and not final. This plea is to be rejected for the reasons as detailed hereinabove and it cannot be held that the finding of the Tribunal suffers from any illegality, irregularity or any perversity.

27. In any case, the Tribunal has set aside the disagreement note, which was a final expression of the guilt of the respondent and the penalty imposed pursuant thereto. The Tribunal has, however, given the liberty to the petitioner to proceed against the respondent from the stage of receipt of inquiry report by the Disciplinary Authority and to form a tentative opinion, if any, that the report of the inquiry officer does not merit acceptance and that all the components of charge against the respondent has been tentatively made out and in that case to convey a tentative disagreement note to the respondent and after giving him an opportunity to make a representation and considering the same to pass an appropriate order.

28. In totality of the facts and circumstances and for the foregoing reasons, there are no grounds to interfere with the order of the Tribunal dated 8th April, 2010, passed in the original application bearing OA No. 2234/2008 titled as Dr. M.B. Pahari Vs. UOI and Anr. The writ petition is without any merit and it is, therefore, dismissed. All the pending applications are also disposed of. Considering the facts and circumstances, no cost is imposed on the petitioner.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

OCTOBER 12, 2011.
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