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

\+ W.P.(C) 4808/2018

UNION OF INDIA AND ORS. .....Petitioners

Through: Mr. Raj Kumar Yadav, SPC and Ms. Tripti Sinha, Adv. with Mr. Sushil Joshi in person

versus

RAVI SHANKAR KUMAR SINHA .....Respondent

Through: Mr. S.K. Gupta and Mr. Udit Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 06.03.2025

C. HARI SHANKAR, J.

1. While working as Postal Assistant[1] in the IPHO[2], the respondent was served with a charge-sheet dated 6 September 2010, proposing to hold an inquiry against him under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules 1965[3]. There was only one article of charge against him, which was that, while applying for recruitment to the post of PA as a candidate belonging to the OBC[4] category, in response to the advertisement

[1] "PA" hereinafter
[2] Indian Post Head Office
[3] "CCS(CCA) Rules" hereinafter
[4] Other Backward Classes

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released by the Department of Posts[5] in the Employment News of 12-18 December 1998, he had submitted a false and fabricated mark sheet, reflecting his marks as scored in the Intermediate Examination in Science held by the Bihar Intermediate Education Council, Patna[6] as 835/900. Believing the said certificate, the respondent was stated to have been declared successful in the selection process for appointment as PA, following the examination which was held on 22 June, 17 August and 20 August 1999. He was, therefore, appointed as PA. The DOP wrote to the BIEC for verification of the marksheet submitted by the respondent, and the verification reports, received from the BIEC under cover of letters dated 7 May 2002 and 18 November 2002, vouchsafed the marksheet submitted by the respondent along with his application.

2. Seven years later, however, a re-verification of the respondent's mark sheet was initiated which resulted in a communication dated 3 May 2010, written by Om Prakash Sinha, Deputy Secretary, Bihar Examination Board[7] to the Chief Post Master General[8], Bihar Circle, Patna, intimating the actual marks obtained by the respondent to have been 559, and not 835/900. This letter was forward to the DOP by Ms. Aparna Shandilya, officiating Assistant Post Master (Head Quarters).

3. On the basis of these allegations, the respondent was charged with having failed to maintain absolute integrity and acting in a

[5] "DOP" hereinafter
[6] "BIEC" hereinafter
[7] "BEB" hereinafter, which was BIEC rechristened
[8] CPMG

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manner unbecoming of a government servant, thereby violating Rules 3(1)(i) and (iii) of the Central Civil Services (Conduct) Rules 1964[9].

4. The charge-sheet was accompanied by a list of documents, as well as a list of witnesses, on the basis of which the charge against the respondent was proposed to be proved. Among the witnesses was Om Prakash Sinha, Deputy Secretary of the BEB, cited as PW-7.

5. An Inquiry Officer[10] was appointed to inquire into the aforesaid charge against the respondent. The respondent denied the allegation that the initial verification report issued by BIEC was forged or fabricated.

6. The IO submitted his inquiry report dated 10 October 2011, holding that the charge against the respondent had not been proved. Among others, the IO observed that Om Prakash Sinha, who was cited as PW-7, and who alone could prove the veracity and genuineness of the letter dated 3 May 2010, which was cited by the DOP as disproving the original verification report issued by BIEC, never appeared as a witness. As a result, the letter dated 13 May 2011 was never proved in accordance with law. Moreover, the respondent was, thereby, also denied an opportunity of cross examining PW-7. The IO also found discrepancy in the signature of Om Prakash Sinha as it appeared in different documents.

[9] "CCS (Conduct) Rules" hereinafter
[10] "IO" hereinafter

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7. The Senior Superintendent of Post Offices[11], as the Disciplinary Authority[12] of the respondent, chose to disagree with the findings of the IO and, therefore, issued a disagreement note dated 29 February 2012 to the respondent. The disagreement note concluded that, in view of the discussions contained therein, the charges framed against the respondent were "fully proved". The respondent was, therefore, directed to submit his representation, against the disagreement note within fifteen days.

8. The respondent submitted his representation against the disagreement note, to the DA, on 13 April 2012.

9. Following this, the DA, *vide* order dated 20 April 2012, held that the charges against the respondent had been proved beyond doubt in accordance with the disagreement note dated 29 February 2012, and that, as the charges were serious, the respondent did not deserve to be retained further in government service. Accordingly, she ordered dismissal of the respondent from service with immediate effect.

10. Aggrieved thereby, the respondent preferred an appeal to the Appellate Authority, which was dismissed by order dated 24 January 2013 and a revision petition thereagainst, which was also dismissed by order dated 26 August 2014.

11. Aggrieved, the respondent moved the Central Administrative

[11] "Sr. SPO" hereinafter
[12] "the DA" hereinafter

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Tribunal[13] by way of OA 804/2015.

12. By judgment dated 13 September 2017, the Tribunal disposed of the OA thus:

> "7. In this view of the matter, we find merit in the contention of the applicant. We, therefore, allow this O.A. and quash the disagreement note, orders passed by the DA, AA and RA. Consequently, the applicant shall be reinstated in service forthwith. The respondents shall, however, be at liberty, if so advised, to order further enquiry against the applicant and thereafter proceed according to the rules in the light of observations made above. In case the respondents decide to proceed against the applicant by ordering further enquiry, orders regarding the consequential benefits shall be passed after culmination of proceedings. If the respondents decide not to proceed against the applicant afresh then they shall pass appropriate orders granting consequential benefits like salary and seniority etc. The O.A. is allowed to the extent mentioned above. No costs."

13. In arriving at the aforesaid decision, the Tribunal reasoned as under:

> "6.1 In the instant case, we notice that the DA has issued a detailed disagreement note, which contains the various reasons on the basis of which the DA has disagreed with the EO. The applicant has also been given an opportunity to submit written representation against the same. Extension of time asked by the applicant for submission of such a representation was also allowed. However, we find from the impugned order dated 20.04.2012 passed by the DA that the grounds raised by the applicant have been dismissed summarily. In this connection, the following extract from the penultimate para of the order of the DA is relevant and reads as follows:-
>
> > ".....The defence representation against the disagreement note dtd 09-04-12 was received by this office on 13-04-12. The defence representation was gone through thoroughly which is not at all convincing & the charged official has no

[13] "the Tribunal" hereinafter

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> point to defend other than referring to other case but the merit of case differs from case to case."

From the above, it is evident that although the DA had passed a detailed order, yet the representation of the applicant received against the disagreement note has been dealt with in a cursory manner. The applicant had submitted a detailed representation (pages 95 to 111) in which several issues were raised. However, leave aside considering these issues with an open mind, the DA has dismissed them summarily. It is, therefore, clear that the DA has not applied her mind to the arguments raised by the charged officer against the disagreement note, thereby, revealing that she had already made up her mind to punish the applicant reducing the whole exercise to a mere post decisional formality. The mere omission of the word "tentative" in the disagreement note would not have proved fatal, but the fact that the representation has not been considered by the DA with an open mind vitiates the proceedings as this amounts to denial of opportunity to the applicant and violation of principles of natural justice.

6.2 The next ground taken by the applicant was that the charge against him of securing appointment on the basis of a fake mark sheet was essentially to be sustained on the basis of letters dated 15.02.2011 and 13.05.2011 written by Dy. Secretary of BIEC. These letters were also listed in the documents supplied by the respondents to the applicant. The Dy. Secretary of BIEC, Patna Sh. Om Prakash Sinha also figured in the list of witnesses, who were to be produced in the enquiry to sustain the charge. However, Sh. Sinha was not produced in the enquiry. Sh. Gupta argued on behalf of the applicant that by not producing Sh. Sinha in the enquiry, the respondents deprived the applicant of an opportunity to cross examine him. Consequently, the letters written by him cannot be read as part of evidence in the enquiry. In absence of this vital evidence, no conclusion can be drawn against the applicant regarding furnishing of fake mark sheet. Sh. Gupta submitted that even the EO in its report has observed as follows:-

> "....But since the said state witness Sh. Om Prakash Sinha Dy Sec BSES Patna did not attend the inquiry in person to confirm the genuineness/contents of this letter and no opportunity whatsoever was provided to the CO to cross-examine the ibid SW in the inquiry, then it will be against the interest of Justice to consider such statement of state witness/document and also will be prejudice to the fundamental principle of inquiry to consider the statement of any witness without providing an opportunity to CO to cross-examine the said state witness in his defence. Therefore, the ibid letters/statements/documents were not

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considered as part/record of inquiry. Moreover, the signature of Sh. Om Prakash Sinha Dy Sec BSES Patna available on both ibid letters were also quite distinct from the one available on SD-1 & SD-12. Therefore, the presence of the prosecution witness, Sh Om Prakash Sinha becomes very crucial and material to confirm the credibility of the ibid letters as well to through light on the clear facts of the case, but the prosecution failed to do so. And, in light of above, the case looses its strength in absence of material witness/documental to establish the charges leveled against the charged official."

6.3 In response Sh. Chaurasiya submitted on behalf of the respondents that the letter written by Dy. Secretary, BIEC was collected by Smt. Aparna Sandilya by hand from the office of Bihar Vidyalaya Shiksha Samiti, Patna. Smt. Aparna Sandilya was produced as a witness in the enquiry and in her deposition had confirmed this fact. Thus, there is no merit in the applicant's contention that letters received from BIEC do not form part of the evidence.

6.4 We have considered the submissions of both sides. There is no denial that Smt. Aparna Sandilya had collected the aforesaid letters from Bihar Vidyalaya Shiksha Samiti, Patna. However, Smt. Sandilya can only certify to the genuineness of those letters but not to their content. It was the content of those letters, which was important and material. Since Sh. Sinha did not appear as a witness, the content of the aforesaid letters remains unproved. Consequently, the applicant is right in asserting that these letters cannot be read as part of evidence. If these letters are excluded from evidence, the conclusion drawn by the DA regarding the guilt of the applicant could not have been drawn."

14. The UOI and DOP have challenged the aforesaid judgment dated 13 September 2017, passed by the Tribunal, before us, by way of the present writ petition.

15. We have heard Mr. Raj Kumar Yadav, learned Counsel for the petitioners and Mr. S.K. Gupta, learned Counsel for the respondent.

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Analysis

16. We find the impugned judgment of Tribunal to be worthy of acceptance for two simple reasons.

17. The first is that the Tribunal has correctly found the disagreement note not to be tentative, but final in nature. We have, in a recent decision in ***EDCIL v GL Sagar***[14], specifically held, following the judgments of the Supreme Court in ***Punjab National Bank v Kunj Behari Misra***[15] and ***Yoginath D Bagde v State of Maharashtra***[16], that a disagreement note has to be tentative. The purpose of a disagreement note is not to arrive at a finding of guilt against the officer. The DA, while issuing the disagreement note has, to be alive to the fact that the officer has an inquiry report in his favour, by the IO. Even if the DA has some difference of opinion with respect to the findings of the IO, they can only be tentative at that stage. The purpose of issuing a disagreement note to the officer is only to obtain the comments of the charged officer, so that the DA could be satisfied that his disagreement with the findings of the IO is justified, *or otherwise*. If the disagreement note reflects a conclusive opinion, on the part of the DA, regarding the guilt of the charged officer, the disagreement note becomes an order of punishment in disguise, and is *ipso facto* vitiated.

18. A reading of the disagreement note dated 29 February 2012, in

[14] **2025 SCC OnLine Del 1572**
[15] **(1998) 7 SCC 84**
[16] **(1999) 7 SCC 739**

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the present case, particularly, the penultimate paragraphs thereof which hold that the charge against the respondent stood fully proved by the discussions contained in the disagreement note, indicate that the DA had already made her mind regarding the guilt of the respondent. Once the DA had already held that the charge against the respondent stood fully proved, the exercise of calling for a response from the respondent was reduced to a paper formality.

19. Besides, it is a time-honoured adage, as old as the hills, that justice should not only be done, but should be seen to have been done[17]. Equally, the administration of justice, whether judicial or quasi-judicial, has be such as to infuse confidence, in the person or persons concerned, that justice is indeed being done. The "opportunity" granted to the respondent to put forward his stand, after the disagreement note conclusively held the charge against him to be proved – contrary to the finding of the IO, which was in his favour – infracts both these stellar principles. The respondent could justifiably query – "Once you have held the charge against me to be proved, for what are you hearing me?" If such a question can justifiably be posed, the exercise undertaken by the DA is rendered unsustainable in law.

20. We, therefore, are in agreement with the view of the Tribunal that the disagreement note dated 29 February 2012 was vitiated, as it reflected a conclusive determination of guilt of the respondent and, therefore, was not a disagreement note at all.

[17] **Mohan Lal Aggarwal v. Atinder Mohan Khosla, (2004) 3 SCC 437, Suneetha Narreddy v. CBI, (2023) 11 SCC 755**

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21. The second ground on which we are inclined to accept the decision of the Tribunal, is that PW-7 never turned up in the witness box. In ***Roop Singh Negi v Punjab National Bank***[18], the Supreme Court clearly held, in the following passage, that documents, relied upon to support the allegations against a charged officer, were required to be proved in accordance with law, failing which, no reliance could be placed on them in disciplinary proceedings:

> "14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. *The charges levelled against the delinquent officer must be found to have been proved.* The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. *The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof*. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."
>
> (Emphasis supplied)

22. We have also, in our recent decision in ***UOI v Sumit***[19], cited the default, on the part of the department, in producing any witness who could prove the documents relied upon, against the charged officer, as a factor which vitiated the findings of the DA.

23. In the present case, the very inclusion, of Om Prakash Sinha as PW-5 in the list of witnesses annexed to the charge-sheet indicates that the DOP was alive to the fact that the letter dated 3 May 2010, which constituted the basis of the charge-sheet, had to be proved by an

[18] **(2009) 2 SCC 570**
[19] **2025 SCC OnLine Del 1244**

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officer of the BIEC/BEB, failing which the letter could not constitute a basis to hold against the respondent. It has to be remembered, in this context, that the respondent had, with him, a marksheet as well as a verification report from the BIEC, testifying to the genuineness of the marksheet. If the DOP wanted to rely on the subsequent letter dated 3 May 2010, to disbelieve the verification report, the author of the letter or, at the very least, an officer of the BIEC who was legally competent to testify to the truth of the contents thereof, had necessarily to be called into the witness box. This is especially as the respondent did not, at any point of time, admit the said letter or its contents.

24. The production of Ms. Aparna Sandilya as a witness was clearly not sufficient to cure this lacuna. Ms. Aparna Sandilya was only the emissary who carried the letter to the DOP. She could, therefore, only testify to the existence of the letter, and not to the correctness of its contents.

25. The Tribunal is, therefore, correct in law in agreeing with the IOs view that the default, on the part of the DOP, in producing PW-7 Om Prakash Sinha in the witness box resulted in the letter dated 3 May 2010 not being proved in accordance with law. The inexorable sequitur would be that the DOP had failed to bring home the charge against the respondent.

26. The Tribunal has while, in the result, setting aside the disagreement note dated 29 February 2012 and the punishment appellate and revisional orders dated 26 August 2014 passed against

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the respondent, granted liberty to the DOP to proceed with the inquiry in accordance with law, if it so chose. We are of the opinion that the Tribunal has been eminently fair in the view that it has taken, which is in sync with the applicable law.

27. We, therefore, find no occasion to interfere with the impugned judgment of the Tribunal, which is affirmed.

28. The writ petition is accordingly dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 6, 2025 *dsn/*ar

Click here to check corrigendum, if any

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