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

\+ W.P.(C) 5271/2021, CM APPLs. 16219/2021 & 16220/2021

UNION OF INDIA .....Petitioner

Through: Ms. Pratima N. Lakra, CGSC with Mr. Chandan Prajapati, Advocate

versus

ANAND MOHAN SHARAN & ANR. .....Respondents

Through: Mr. A.K. Behera, Sr. Advocate with Mr. Amarendra P. Singh, Advocate for R1

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% 08.10.2024

C.HARI SHANKAR, J.

1. Disciplinary proceedings were instituted against the respondent, a 1990 batch IAS Officer belonging to the Haryana Cadre, by issuance of a charge sheet to him on 30 March 2005 under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969[1]. There were two articles of charge against the respondent, the first being that he had received a CDMA mobile phone from one Mr. Dharambir Khattar on 28 February 2003 and the second that he had entered into unauthorised discussion of official matters relating to the Delhi Development Authority, where he was posted on deputation at the time, with the

[1] "AIS (D & A) Rules", hereinafter

said Mr. Khattar.

2. The respondent submitted his reply to the charge sheet. Not satisfied with the reply, Disciplinary Authority[2] appointed an Inquiry Officer[3] to inquire into the charges against the respondent. The IO, in his Inquiry Report dated 13 May 2011, held the allegation of receipt of a CDMA mobile phone from one Mr. Khattar to be partly proved and the allegation of entering into unauthorised discussion with Mr. Khattar with respect to official matters not to be proved.

3. The DA forwarded the Inquiry Report to the Central Vigilance Commission[4] for second stage advice. The CVC tendered its advice *vide* letter dated 26 July 2012, advising dropping of the charges against the respondent, without prejudice to the criminal case pending against him.

4. A copy of the Inquiry Report was thereafter forwarded by the DA to the respondent on 31 August 2012. The respondent submitted his reply to the Inquiry Report on 25 October 2012.

5. Thereafter, the DA remitted the matter to the IO under Rule 9(1)[5] of the AIS (D & A) Rules for a fresh inquiry by the following order dated 23 December 2016, which forms the basis of the entire controversy in the present case:

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[2] "DA", hereinafter
[3] "IO", hereinafter
[4] "CVC", hereinafter
[5] **9. Action on the inquiry report –**
(1) The disciplinary authority may, for reasons to be recorded by it in writing, remit the case to inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 as far as may be.

"ORDER

WHEREAS an inquiry under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 is being held against Shri Anand Mohan Sharan, IAS (HY:90), the then Commissioner (LD), Delhi Development Authority.

AND WHEREAS Smt. Shalini Darbari, Commissioner of Departmental Inquiries, CVC Satarkta Bhawan, GPO Complex, INA, New Delhi, was appointed as the Inquiring Authority to inquire into the charges framed against Shri Anand Mohan Sharan, vide order of even number dated 19.12.2007.

AND WHEREAS the CVC due to some administrative reasons had nominated Shri Ashok Kumar, CDI, CVC as Inquiring Authority to hold an oral inquiry in the case against Shri Anand Mohan Sharan.

AND WHEREAS Shri Ashok Kumar, Commissioner of Departmental Inquiries, CVC Satarkta Bhawan, GPO Complex, INA, New Delhi, was appointed as the Inquiring Authority to inquire into the charges framed against Shri Anand Mohan Sharan, vide order of even number dated 14.10.2008.

AND WHEREAS the Inquiring Authority has submitted the Inquiry Report vide letter dated 02.06.2011 holding article of charge (i) as partly, proven & article of charge (ii) as not proved.

AND WHEREAS, it was observed that non production of crucial piece of evidence has been the material reason for the charges not being provided in the inquiry. Non production of this crucial evidence does go to the root of the inquiry and vitiates the inquiry. Thus, there are sufficient ground for remitting the case to IO for further enquiry.

AND WHEREAS the disciplinary authority has decided to remit the case again to the Inquiring Authority for further inquiry as per under Rule 9(1) of the All India Services (Discipline & Appeal) Rules, 1969 directing further that the disciplinary proceedings be completed expeditiously.

AND WHEREAS, Shri Ashok Kumar, Commissioner of Departmental Inquiries, & Inquiring Authority, CVC who had conducted the inquiry and submitted report on 02.06.2011 has since been repatriated to his parent department.

NOW, THEREFORE, the President in exercise of the powers conferred by Sub-Rule 2 of the Rule 8 of the All India

Services (Discipline & Appeal) Rules, 1969 hereby appoints Shri Arun Kumar Misra, a retired IAS Officer of the UP Cadre, 1976 Batch, as the Inquiring Authority in place of Shri Ashok Kumar to inquire into the charges framed against Shri Anand Mohan Sharan.

By order and in the name of the President.

(K.Srinivasan)
Under Secretary to the Government of India."

6. The respondent, at this stage, instituted OA 4263/2017 before the learned Central Administrative Tribunal Principal Bench, New Delhi[6], assailing the order dated 23 December 2016, whereby the DA had remitted the matter to the IO. It was contended that, once the CVC had tendered its advice on the Inquiry Report, the DA had no option but to proceed further on the basis of the advice of the CVC. The DA could not put the clock back and remit the matter to the IO for a fresh inquiry. It was also contended, without prejudice, that no substantial grounds for remitting the matter to the IO for a fresh inquiry, as required by Rule 9(1) of the AIS (D & A) Rules, were forthcoming in the order dated 23 December 2016.

7. The learned Tribunal has accepted the submissions of the respondent and has, by the impugned judgment dated 7 November 2019, quashed and set aside the decision of the DA to remit the matter to the IO for a fresh inquiry, as contained in the order dated 23 December 2016. The learned Tribunal has held that, once the DA had referred the Inquiry Report to the CVC and obtained the advice of the CVC thereon and had further sent a copy of the Inquiry Report to the respondent for his comments thereon, the DA could not fall back on Rule 9(1) and remit the matter to the IO for a fresh inquiry. Besides,

[6] "learned Tribunal", hereinafter

the learned Tribunal has also found that no substantial reason justifying the decision to remit the matter to the IO for a fresh inquiry was forthcoming on the face of the order dated 23 December 2016.

8. Aggrieved thereby, the UOI has petitioned this Court under Article 226 of the Constitution of India.

9. We have heard Ms. Pratima N. Lakra, learned CGSC appearing for the UOI and Mr. A.K. Behera, learned Senior Counsel appearing for the Respondent 1, at length.

10. Ms. Lakra submits that there is no proscription, in Rule 9 of the AIS (D & A) Rules, on the DA exercising powers under Rule 9(1) and remitting the matter to the IO for a fresh inquiry after the second stage advice of the CVC on the Inquiry Report had been obtained or even after a copy of the Inquiry Report had been furnished to the charged officer for his comments thereon. As such, the decision to the contrary, by the learned Tribunal, she submits, is not supported by Rule 9 of the AIS (D & A) Rules and cannot, therefore, sustain.

11. Ms. Lakra further submits that the order dated 23 December 2016 clearly set out the ground on which the DA felt a fresh inquiry into the matter to be necessary. She submits that it was not within the province of jurisdiction of the learned Tribunal, nor would it be within the province of the jurisdiction of this Court, to sit in appeal over the discretion of the DA in that regard. The respondent, she submits, would have every opportunity to defend himself before the IO. No prejudice could, therefore, be said to have resulted to the respondent

merely because the DA choose to exercise discretion under Rule 9 (1) of the AIS (D & A) Rules and remit the matter to the IO for afresh inquiry.

12. Responding to Ms. Lakra's submission, Mr. Behera submits that Rules 8 and 9 envisage a specific scheme of the proceedings. Rule 8 contains the provisions relating to holding of the inquiry. Once an inquiry has been held in accordance with Rule 8, the IO submits an Inquiry Report. The manner in which the Inquiry Report is to be dealt with is contained in Rule 9. The various provisions of Rule 9 have also, he submits, to be followed in sequence. Rule 9 (1) no doubt, enables the DA to refer the matter to the IO for a fresh inquiry, but that has to be done on receipt of the Inquiry Report. Once the DA has forwarded the Inquiry Report to the CVC and obtained the second stage advice of the CVC and, even more importantly, once the Inquiry Report had been provided to the charged officer, and the entire defence of the charged officer to the findings of the IO were revealed to the DA, the DA could not then put the clock back and revert to Rule 9(1) for a fresh inquiry. This would enable the DA, he submits, in every case, to fill up lacunae in the case of the department with a view to somehow "fix" the charged officer. That, he submits, is neither the intent nor the purpose of Rule 9(1) of the AIS (D & A) Rules.

13. Without prejudice, Mr. Behera submits that the order dated 23 December 2016 did not contain any justification worth the name for remitting the matter to the IO for a fresh inquiry. The only justification for doing so, as contained in the said order, is in the following para:

> "AND WHEREAS, it was observed that non production of crucial piece of evidence has been the material reason for the charges not being provided in the inquiry. Non production of this crucial evidence does go to the root of the inquiry and vitiates the inquiry. Thus, there are sufficient ground for remitting the case to IO for further enquiry."

Mr. Behera submits that the reason for remitting the matter to the IO for a fresh inquiry is completely vague. It is devoid of any particulars whatsoever. All that the DA says is that there was some evidence which had not been placed before the IO and that it was because the said evidence was not placed that the IO opined partly in favour of the respondent. Had the said evidence been before the IO, the order dated 23 December 2016 presumes that the IO may have decided differently. There is no disclosure of the nature of the evidence or of the basis for the surmise that the decision of the IO might have been different if the said evidence was on record.

14. Besides, Mr. Behera submits that the exercise that DA seeks to undertake is clearly prohibited by Rule 8(16)[7] of the AIS (D & A) Rules. Even for this reason, Mr. Behera submits that the decision to remit the matter to the IO for a fresh inquiry, purportedly taken under Rule 9(1) of the AIS (D & A) Rules, cannot sustain in law.

[7] (16) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the member of the Service or may itself call for new evidence or recall and re-examine any witness and, in such case, the member of the Service shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give to the member of the Service an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the member of the Service to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

NOTE.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

15. Ms. Lakra was given an opportunity, in rejoinder, to answer Mr. Behera's submission that the reasoning contained in the order dated 23 December 2016, for remitting the matter to the IO for a fresh inquiry, was completely vague. She has no substantial submission to make in that regard.

Analysis

16. The learned Tribunal has, in allowing the respondent's OA, proceeded on two considerations. The first is that, having referred the matter to the CVC for its advice and also provided a copy of the Inquiry Report to the respondent, the DA could not thereafter invoke Rule 9(1) and remit the matter to the IO for further enquiry. The second is that the grounds for remitting the matter for further enquiry cannot be said to satisfy the requirement of Rule 9(1).

17. Whether, after obtaining the CVC advice and the comments of the charged officer on the Inquiry Report, the DA cannot invoke Rule 9(1)

We are somewhat hesitant to accept the first ground on which the learned Tribunal has proceeded. We are not able to find any statutory proscription in the rules on the DA remitting the matter to the IO for a fresh inquiry under Rule 9(1) after the copy of the enquiry report has been provided to the Charged Officer or after the matter had been referred to the CVC and the advice of the DVC had been obtained. To the extent that the learned Tribunal has observed that the DA exhausts its right to remit the matter to the IO under rule 9(1) after he has

proceeded to Rule 9(2), we are unable to express our agreement with the impugned judgment of the learned Tribunal.

18. On the second aspect of the matter, however, the respondent has, according to us, a much stronger case. Mr. Behera has highlighted three aspects of the matter, which in our view are substantial. We proceed to deal with each of them.

19. Rule 9(1) – "reasons to be recorded in writing"

19.1 The first submission of Mr. Behera is that the invocation of Rule 9(1) by the IO is not in terms of the Rule itself. We cannot but agree. Having perused the order dated 23 December 2016 whereby the DA remitted the matter to the IO, we are unable to find any substantial reasons for remitting the matter as is required by Rule 9(1). Rule 9(1) specifically states that the DA, if he chooses to remit the matter to the IO for further enquiry can do so only for reasons to be recorded in writing.

19.2 Where a Rule requires reasons to be recorded in writing, they have to be meaningful and self speaking reasons. They cannot be left in the realm of conjectures and surmise. In the present case, the sole paragraph in the communication dated 23 December 2016, which purports to justify the decision to remit the matter to the IO, reads thus:

> "AND WHEREAS, it was observed that non production of crucial piece of evidence has been the material reason for the charges not being provided in the inquiry. Non production of this crucial

> evidence does go to the root of the inquiry and vitiates the inquiry. Thus, there are sufficient ground for remitting the case to IO for further enquiry."

The aforesaid passage can hardly be said to constitute reasons in writing, justifying the decision of the DA to remit the matter to the IO. There is no reference to the nature of the "crucial piece of evidence". The basis of the further observation, that the material reason for the charges against the respondent not having been found by the IO not to have been proved was because of the none production of the said "crucial piece of evidence", is also not forthcoming. The reasoning is, at the highest, mere lip service to the requirement of Rule 9(1) and is left delightfully in the realm of conjecture.

19.3 Amplifying on what constitutes "reasons", the Supreme Court, in ***UOI v Mohan Lal Capoor***[8] held:

> "Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

Reasons which do not enable the link to be drawn between the material on which the conclusion is to be drawn and the actual conclusion are not, therefore, reasons at all. It cannot be said that, from the paragraph from the letter dated 23 December 2016 extracted *supra*, it is at all possible to discern, or even derive, the reason for seeking a revisitation, by the IO, of the Inquiry Report, or the

[8] **(1973) 2 SCC 836**

provocation for directing a fresh enquiry. They do not, therefore, constitute reasons at all, as understood in law.

19.4 The afore-extracted paragraph from the order dated 23 December 2016 does not, therefore, in our view constitute "reasons to be recorded in writing" as envisaged by Rule 9(1). We agree with Mr. Behera that the order dated 23 December 2016 does no conform to the requirement of Rule 9(1) of the AIS (D & A) Rules.

20 Re. Rule 8(16) of the AIS (D & A) Rules

20.4 The second contention of Mr. Behera, which appeals to us, is predicated on Rule 8(16) of the AIS (D & A) Rules. Rule 8(16), particularly the note below the said sub-rule, specifically proscribes the production of new evidence to fill up any gap in the existing evidence during the inquiry proceedings before the IO. Such new evidence is permitted to be produced only where there is an inherent lacuna or defect in the evidence which was originally produced.

20.5 The order dated 23 December 2016, while remitting the matter to the IO for a fresh inquiry, does not state that there was any lacuna in the evidence which was produced before the IO. Rule 8(16) makes it apparent that there is a subjective distinction between lacunae in the existing evidence and evidence which is altogether new. The order dated 23 December 2016 manifests the intent of the DA to produce new evidence before the IO which, in the opinion of the DA, might have altered the final findings of the IO, were to have been produced in the first instance. Such an exercise is completely proscribed by

Rule 8(16) of the AIS (D & A) Rules.

20.6 We agree with Mr Behera, therefore, that the justification for remitting the matter for a fresh inquiry, as contained in the order dated 23 December 2016, is not permissible in law, in view of the proscription contained in the Note below Rule 8(16) of the AIS (D & A) Rules.

21 The sequence of events

21.1 Mr Behera has also emphasized, as his third contention, the sequence of events, and communications, leading up to the issuance of the order dated 23 December 2016 as reflecting a want of *bona fides*, and we confess that we are inclined to agree with him.

21.2 The IO had originally submitted its Inquiry Report on 13 May 2011. The said Inquiry Report was forwarded to the CVC for its second stage advice. The CVC, in its second stage advice dated 26 July 2012, observed as under:

> "OFFICE MEMORANDUM
>
> Sub: Case against Shri Anand Mohan Sharan, IAS the then Commissioner (P)/DDA.
>
> *****
>
> DoPT may refer to their note dated 23.05.2012 in file No. 106/4/2005-ABD-I on the subject cited above.
>
> 2. The reference made by DoPT has been examined by the Commission. Commission has observed that since DoPT is of the view that part 1 of the charges is not conclusively established during the course of enquiry and part II is also held as not proved,

> the Commission would, therefore, advise for dropping of the charges against him without prejudicing the outcome of criminal case against him.
>
> 3. DoPT's case files are returned herewith. The receipt of the same may please be acknowledged."

Thus, the CVC, in its Memorandum dated 26 July 2012, tendered its second stage advice, advising dropping of the charges against the respondent, without prejudicing the outcome of the criminal case registered against him.

21.3 Following this, a copy of the Inquiry report was forwarded by the DA to the respondent on 31 August 2012. The respondent submitted its response to the Inquiry Report on 25 October 2012.

21.4 Instead of taking any action on the petitioner's response, the DA proceeded by the order dated 23 December 2016, to remit the matter to the IO for a fresh enquiry.

21.5 Given the sequence of events, there is substance in Mr. Behera's contention that, by remitting the matter to the IO for a fresh enquiry, the DA was intending to fill in the gaps in the earlier inquiry report and ensure that a case to proceed against the respondent was made out. This, in our view, could never have been the intent of Rule 9(1) of the AIS (D & A) Rules.

21.6 This presumption is supported by the fact that the order dated 23 December 2016 also changed the IO. Mr. Behera submits that there is no justification for the respondent having changed the earlier IO

while remitting the matter for a fresh consideration. As against this, Ms. Lakra, learned counsel for the petitioner, submits that the appointment of the fresh IO was *bona fide* as the earlier IO stood repatriated to his parent department.

21.7 We are not intending to enter in detail into the motive for appointing a fresh IO.

21.8 We are, however, satisfied that the events which preceded the issuance of order dated 23 December 2016 cast a cloud on its *bona fides* and seem to make out a case in which the DA was intent on ensuring that the charges against the petitioner were proved.

22 We, therefore, concur with the learned Tribunal in its finding that the justification provided in the order dated 23 December 2016 for remitting the matter to the IO was not sustainable in law.

23 For this reason, therefore, we do not find any cause to interfere with the ultimate decision of the learned Tribunal.

24 The petition is, therefore, dismissed with no orders as to costs.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 8, 2024*/yg/aky*

Click here to check corrigendum, if any