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

+ LPA 741/2024, CM APPL. 43825/2024 & CM APPL. 43826/2024

AIR FORCE GOLDEN JUBILEE INSTITUTEAppellant
Through: Mr. J. Rajesh, Ms. Mannat, Mr.
Md. Arsalan Ahmed, Advs.

versus

RAJESH KUMAR RAVIRespondent
Through: Mr. Rajat Arora, Mr. Niraj
Kumar, Mr. Sourabh Mahla and Mr. Ravi
Ranjan Mishra, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

% **26.11.2024**

C. HARI SHANKAR, J.

1. The respondent joined the services of the Air Force Golden Jubilee Institute, the appellant herein, as Watchman on 23 March 1987. His services were regularized on 1 July 1989.

2. The respondent was placed on suspension on 2 August 1991 on allegations of gross misconduct. This was followed, a little over two months later, by a Memorandum dated 4 October 1991 proposing to institute an inquiry against him.

3. This Memorandum, however, culminated in imposition, on the



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respondent, of the penalties of censure and withholding of two increments, which are not subject matter of challenge.

4. The genesis of the penalty forming subject matter of challenge in these proceedings was a second Memorandum issued to the respondent on 5 August 1992¹ by the Chairman of the Managing Committee of the petitioner, by order and in the name of the Disciplinary Committee. The memorandum proposed to conduct an inquiry against the respondent under Rule 120² of the Delhi School

¹ "the Chargesheet", hereinafter

² 120. Procedure for imposing major penalty. –

(1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:-

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence and also to state whether he desires to be heard in person;

(b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on each of the charges together with the reasons therefore;

(d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall:-

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;

(iii) on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;

(iv) after considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings, and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegations charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made, and the proceedings of the disciplinary authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any minor penalty may prefer an appeal to the Tribunal.



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Education Rules, 1973³.

5. The chargesheet contained three Articles of Charge, all of which alleged criminal intimidation and misbehaviour by the respondent with one Mr. M.L. Saran, OS.

6. Inasmuch as we are in agreement with the decision of the learned Single Judge, in so far as it sets aside the disciplinary proceedings which followed, it is not necessary for us to enter into the intricacies of the allegations in the Article of Charge.

7. Suffice it, therefore, to state that an inquiry was conducted resulting in the submission by the Inquiry Officer⁴ of his Inquiry Report dated 18 August 1992 finding the respondent guilty of all the three Articles of Charge against him.

8. As per the respondent, no copy of the said Inquiry Report was furnished to him. By the following order dated 12 July 1993, the Chairman of the Managing Committee of the Appellant dismissed the respondent from service :

“ REGD A/D

Phone: 3292819

Air Force Golden Jubilee Institute

Subroto Park, New Delhi – 110 010

Ref. No. AFGJI/6/10/Pers
Sh. Rajesh Kumar Ravi
C/o Late Sh Hukam Singh
PO: Mahipalpur
New Delhi – 110 037

³ “DSE Rules”, hereinafter

⁴ “IO”, hereinafter



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ORDER: REMOVAL FROM SERVICE

1. Please refer to the disciplinary case initiated against you vide No. AGFJI/6/10/Pers dated 05 Aug 92 subsequent proceedings of the Disciplinary Authority.

2. The Disciplinary Authority after having considered the complete case, record of Inquiry & statement of your defence, has decided to impose the following penalty in terms of Rule 119(b) iii of DSER 1973

“Removal from service which shall not be a disqualification for further employment in any other recognized private school.”

3. Your services from this school stand terminated wef 12 Jul 93. You are, therefore, advised to come to the Institute and settle your accounts immediately.

(SK Sharma)
Air Cmde
Chairman Managing
Committee”

9. The respondent submitted Appeal 26/1993 challenging the aforesaid order dated 12 July 1993, whereby he was dismissed from service, before the Delhi School Tribunal⁵. By order dated 17 July 2003, the appeal was dismissed by the DST.

10. Aggrieved thereby, the respondent petitioned this Court by way of WP (C) 6899/2003⁶, which has been allowed by a learned Single Judge of this Court by way of the judgment dated 16 April 2024, under challenge herein.

11. The learned Single Judge has held the findings of the IO, in his

⁵ “the DST”, hereinafter

⁶ “Rajesh Kumar Ravi v P.O. Delhi School Tribunal & Anr.



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Inquiry Report, to be cryptic and non-speaking. He has further faulted the appellant for not having adhered to the procedure prescribed by Rule 120 of the DST Rules, particularly clauses 120(1)(d)(i), (ii) and (iv). He has further held that even though the Rule did not say so, it was mandatory for the Disciplinary Authority⁷ to afford an opportunity of hearing to the respondent before proceeding to dismiss him from service. The learned Single Judge further observed with respect to the order of the DST, that none of these aspects was considered by it, while dismissing the respondent's appeal.

12. The appellant impugns the said judgment.

13. We have heard Mr. J. Rajesh, learned counsel for the appellant and Mr. Rajat Arora, learned counsel for the respondents at length.

14. Apropos the finding of the learned Single Judge that the decision of the IO was non-speaking, and that no sufficient reasons for arriving at his findings were contained in the Inquiry Report, the appellant's contention is that the respondent absented himself from the inquiry proceedings and failed to lead any evidence in his defence. In that view of the matter, it is sought to be submitted that the IO could do no more than to rely on the material and evidence contained in the chargesheet and return his findings by reference thereto. In as much as he has done so, the appellant seeks to contend that the learned Single Judge was not justified in castigating the Inquiry Report as bereft of reasons or as being non-speaking in nature.

⁷ "the DA", hereinafter
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15. We do not propose to enter into this aspect of the matter as we are in agreement with the findings of the learned Single Judge regarding irremediable breach by the appellant of the provisions of Rule 120 of the DSE Act.

16. The respondent had specifically alleged, in the appeal before the appellate authority as well as before the DST, that no copy of the Inquiry Report had been furnished to him, as required by Rule 120(1)(d)(i), and no show cause notice, intimating the respondent of the action proposed to be taken against him as required by Rule 120(1)(d)(ii), was provided. Regarding this, the findings of the learned Single Judge in para 28 of the impugned order speak eloquently for themselves. The learned Single Judge has noted that the counsel for the appellant had specifically been queried as to whether any copy of the Inquiry Report had been furnished to the respondent and as to whether the respondent had been issued any show cause notice by the DA, intimating him of the action proposed to be taken. The learned counsel for the appellant, it is noted in para 28, acknowledged that no records in that regard were traceable but submitted, somewhat surprisingly, that the Inquiry Report *must have* been furnished and show cause notice *must have* been issued.

17. Mr. Rajesh, who represented the appellant before the learned Single Judge, also represents the appellant before us. We have also queried of Mr. Rajesh as to whether there is anything to indicate that the Inquiry Report was furnished to the respondent as required by Rule 120(1)(d)(i) or whether any show cause notice as required by Rule 120(1)(d)(ii) of the DSE Rules have been issued to him. Mr.



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Rajesh reiterates his contention before the learned Single Judge that though no records were available, these requirements must have been followed.

18. To a query from us as to why the Court should infer compliance, by the appellant with Rules 120(1)(d)(i) and 120(1)(d)(ii), despite no record in that regard being forthcoming, Mr. Rajesh draws our attention to Ground M in WP (C) 6899/2003 filed by the respondent and the reply to the said Ground, by the appellant, in its counter affidavit. These paragraphs read as under :

“Ground M in the writ petition

M. That no show cause notice as required under the Act and Rules, 1973 was ever issued to the Appellant before imposing the punishment of removal from service. No opportunity was given to rebut the Enquiry Report. No show cause proposing punishment was also ever issued to the Appellant. On this ground also the action of removal from service is bad, illegal and violative of Act and Rules, 1973.

Reply to Ground M

M). The contention raised in ground (M) is factually incorrect and baseless. The Appellant was given due notice regarding the proposal of the Disciplinary Authority to impose major penalty. The Appellant duly replied to the notice dated 23.2.93 giving opportunity to the Appellant to represent against the proposal of Disciplinary Authority to remove the Appellant from service. The Appellant submitted his representation to the above notice vide his letter dated 11 March 1993 which was duly considered by the Disciplinary Authority before taking final decision with regard to the major penalty to be imposed on the Appellant. In view of this, it is denied that no opportunity was given to rebut the Enquiry Report or no show cause notice was issued to the Appellant. The contentions raised by the Appellant are baseless and against the records. It is denied that the action of removal from service is illegal or in violation of the Acts and Rules. It is denied that Shri M.L. Saran was biased or made false complaints against the Appellant.”



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Mr. Rajesh submits that, as the respondent had, on 11 March 1993, submitted his reply to the Rule 120(1)(d)(ii) notice purportedly issued by the DA on 23 February 1993, there was no justification for the learned Single Judge to hold that there had been a violation of Rule 120(1)(d)(ii).

19. Taking stock of this submission, we required Mr. Rajesh to take us to the reply dated 11 March 1993 stated to have been submitted by the respondent by way of response to Rule 120(1)(d)(ii) notice dated 23 February 1993 of the DA. He submits that the said reply, too, is also not traceable.

20. As we have had an occasion to observe in an earlier case, albeit in a different context, zero, in all its multiples, is zero. There is nothing to indicate that the Inquiry Report was ever furnished to the respondent as required by Rule 120(1)(d)(i). There is nothing to indicate that a show cause notice, as required under Rule 120(1)(d)(ii) was issued either. There is also nothing to indicate that the respondent ever replied to the said show cause notice.

21. If this was indeed the position, it defeats comprehension as to why the said notice dated 23 February 1993 and reply dated 11 March 1993 were not placed on record by the appellant with its counter affidavit to the writ petition. We would have imagined that, given the specific ground taken by the respondent in his writ petition – indeed even from the stage of his appeal to the Appellate Authority – the appellant would, in his response to the writ petition, have first placed



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the said documents on record. That, however, was never done.

22. We are unable to accept the contention that the records being old are not traceable. Penalty was imposed on the respondent on 12 July 1993. The respondent immediately moved the DST by way of Appeal 26/1993, the very same year. Since then the matter was *sub judice* before the DST and later before this Court, which was also moved immediately consequent on the judgment of the DST rendered on 17 July 2003. The dispute has, therefore, continuously being *sub judice*, and the respondent has been duly ventilating his cause of action with all due expedition. It was incumbent on the appellant, in such circumstances, to maintain its records and, if the appellant has chosen to do away with the records despite the lis remaining alive before statutorily available fora, the appellant has only itself to blame.

23. In this context, we are also in agreement with the observation, of the learned Single Judge in para 31 of the impugned judgment, that, had the Rule 120(1)(d)(ii) notice actually been issued by the DA, and had the respondent submitted his reply thereto, reference to these documents would have found place in the dismissal order dated 12 July 1993. There is complete silence, however, in the said order, with respect to any such documents. In view thereof, we are in agreement with the learned Single Judge that the Court had no option but to infer, adversely against the appellant, that, in fact, no Rule 120(1)(d)(ii) notice had been issued by the respondent.

24. Further, we may note, all throughout, there has never ever been an averment, by the appellant, that it was in compliance with Rule



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120(1)(d)(i), which required a copy of the Inquiry Report to be provided to the respondent. The issuance of a show cause notice under Article 120(1)(d)(ii) follows only after compliance with Rule 120(1)(d)(i). Apropos Rule 120(1)(d)(i), Mr. Rajesh is unable to even contend that there was compliance, with the said rule, by the appellant.

25. Mr. Rajesh also sought to place reliance on the words “as far as may be”, as contained in Rule 120(1) of the DSE Rules. The reliance has been held by the learned Single Judge to be misguided, and we agree. We entirely endorse the observations and finding of the learned Single Judge, in this context, as contained in para 22 of the impugned judgment. It is obvious that the words “as far as may be” only provide elbow room to the authorities – in this case, the appellant – in a case in which overarching or extenuating circumstances or exigencies exist as would render it impossible, or at the least highly impracticable, to follow the protocol envisaged in the various clauses of Rule 120(1). In *Amish Jain v ICICI Bank Ltd*⁸, this Court has held that the expression “as far as may be” still means “to the extent necessary and practical”.

26. Inasmuch as the provisions of Rule 120(1)(d)(i) and Rule 120(1)(d)(ii) of the DSE Rules are intended to ensure compliance with the basic principles of natural justice and fair play, they have to be treated as mandatory. The learned Single Judge has correctly held that Rule 120(1)(d) uses the expression “shall”, not once but twice. The expression “shall” is ordinarily to be treated as mandatory, especially



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where it has been employed to ensure fair play to the citizen. Though, in exceptional cases, “shall” may be read as “may”, that is the exception, not the rule. Regarding the manner in which the expression “shall” is to be interpreted, no less a legal luminary than Chief Justice K. Subba Rao expounded the law classically, in the following passage from *Khub Chand v State of Rajasthan*⁹.

“7. This argument was not accepted by the High Court, and in our view rightly. The provisions of a statute conferring power on the Government to compulsorily acquire lands shall be strictly construed. Section 4 in clear terms says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. *The provision is mandatory in terms. Doubtless, under certain circumstances, the expression “shall” is construed as “may”. The term “shall” in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations.*”

(Emphasis supplied)

Ordinarily, therefore, unless the context of its usage and the intent and purpose of the statute in which it figures requires it to be interpreted as directory, the connotation of use of the word “shall” is to be treated as mandatory.

27. Where the procedure stipulated, conditioned by the use of the word “shall”, is to ensure compliance with the principles of natural justice and fair play, the word “shall”, has, in all cases, to be treated as

⁸ AIR 2013 Del 172

⁹ AIR 1967 SC 1074



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mandatory.

28. Clauses (i) to (iv) of Rule 120(1)(d) of the DSE Rules are immediately preceded by the word “shall”. Implicit compliance with these clauses is, therefore, mandatory, and any decision taken in breach of such compliance stands *ipso facto* vitiated.

29. The above considerations, individually and holistically considered, have been correctly held by the learned Single Judge to vitiate the dismissal of the respondent from service.

30. The learned Single Judge has also correctly set aside the order dated 17 July 2003 of the DST as it did not take into account these issues.

31. We also agree with the view of the learned Single Judge that, after the dispute had remained pending with the DST for 10 years and, thereafter, before this Court for 21 years, no purpose would be served in remanding the enquiry proceedings to the appellant. The learned Single Judge has correctly relied, in this context, on the judgment of the Supreme Court in *Allahabad Bank v Krishna Narayan Tewari*¹⁰.

32. To the extent, therefore, the learned Single Judge has set aside the order of dismissal of the respondent from service and the decision of the DST rejecting the appeal preferred thereagainst, we entirely endorse and affirm the impugned judgment of the learned Single Judge.

¹⁰ (2017) 2 SCC 308



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33. Mr. Rajesh, however, advances, as a further submission, the plea that the learned Single Judge has, without any clear reasons, straightaway directed payment, to the respondent, of 50% of his back wages from 1993 onwards. He submits that this amount would work out to a colossal sum, as it covers a span of over 31 years. He also submits that there is no absolute right of an employee to entitlement to full, or even part, back wages, even if the order of dismissal is set aside. Mr. Rajesh relies on the judgments in *UP State Brassware Corpn Ltd v Uday Narain Pandey*¹¹ and *State of MP v Arjunlal Rajak*¹² to contend that an order of reinstatement does not automatically entitle an employee to back wages, in the absence of any plea by the employee that he was not gainfully employed during the period after his termination or dismissal from service after his disengagement and on *UP State Brassware Corpn*, further for the proposition that back wages, whether in full or in part, cannot be awarded for the entire period during which the employee remained disengaged from service, where the period during which the employee served the organisation is short. He submits that, as the respondent was dismissed from service a mere three and half years after he had joined the appellant, the learned Single Judge ought not to have awarded the respondent 50% back wages for a period spanning 31 years.

34. We do not deem it necessary to return any findings on these submissions, as we find that the learned Single Judge has directed payment of 50% back wages without any specific findings regarding

¹¹ (2006) 1 SCC 479

¹² (2006) 2 SCC 711



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the entitlement of the respondent thereto. At the same time, we also notice that the submissions advanced by Mr. Rajesh, before this Court, and the judgments cited by him in that regard, do not appear to have been cited before the learned Single Judge.

35. We cannot, therefore, fault the learned Single Judge for not having examined this aspect in detail.

36. Nonetheless, as the back wages awarded, although to the extent of 50%, span of period of 31 years, without expressing any opinion on the entitlement, or otherwise, of the respondent to the said back wages in whole or in part, we deem it appropriate, in the interests of justice, to allow the appellant one opportunity to argue this point before the learned Single Judge.

37. We clarify that we have not examined, even peremptorily, the merits of the submissions of Mr. Rajesh on the aspect of the entitlement of the respondent to back wages. We have also not applied our mind to the extent to which the direction of the learned Single Judge awarding 50% back wages to the respondent does, or does not, merit interference in the light of the decisions cited by Mr. Rajesh. The entire issue would be open for consideration in argument before the learned Single Judge.

Conclusion

38. For the aforesaid reasons, while we are not inclined to interfere with the impugned judgment of the learned Single Judge in so far as it



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sets aside the termination of the respondent from service, we feel that both parties should be allowed to address arguments on the aspect of back wages, especially in view of the decisions which have been cited at the Bar by learned Counsel for the appellant.

39. We, however, do not express any opinion on the said aspect and leave it to the learned Single Judge to, after hearing both sides, consider whether to maintain the order of 50% back wages or reduce or enhance it. The discretion with the learned Single Judge, in that regard, shall remain completely open. Needless to say, both sides are at liberty to advance their respective submissions.

40. In order to expedite matters, let the matter be listed before the learned Single Judge on 9 December 2024.

41. Insofar as the aspect of reinstatement is concerned, let the order be complied within a period of two weeks from the date of uploading of this judgment on the website of this Court.

42. In order to ensure compliance, the Registry is directed to email a copy of this judgment to learned Counsel for both sides as soon as it is uploaded.

43. This appeal stands disposed of in the aforesaid terms.



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44. Miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 26, 2024

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Click here to check corrigendum, if any