

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

+ **W.P.(C) NO. 151/2007**

% **Reserved on : 04.02.2009**
Date of decision: 13.02.2009

N.K. TRIPATHI Petitioner

Through Mr. Narender Mukhi, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through Mr. Mukesh Gupta, Advocate

HON'BLE MR. JUSTICE V.K. SHALI

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

V. K. SHALI, J.

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1. This is a third round of litigation initiated by the petitioner. The petitioner, in the instant case, has challenged the order dated 17th November, 2006 passed by the respondent imposing punishment of compulsory retirement on the petitioner. The petitioner has essentially challenged the quantum of punishment as being disproportionate to the proved misconduct of the petitioner.

2. That briefly stated the facts are that petitioner was employed as a Demonstrator in Aditya Solar Show Room under the Delhi Energy Development Agency (hereinafter referred as DEDA) w.e.f. 29th March,

1993. It was alleged that on 8th August, 1996 the petitioner wrote a letter to Director (E), DEDA which reads as under:

“Regarding the matter I beg to say that 4 Nos of AC’s were sanctioned for Aditya Solar Shop. But till date here is only one AC has been installed. It has also heard by some reliable sources that some officers of DEDA using AC in their own residence”

3. As a consequence of this letter, the Director (E), DEDA appointed Deputy Director (DEDA) as an inquiry Officer to find out the truth in the allegations made by the petitioner. After holding a preliminary enquiry the allegations made by the petitioner that out of four Air Conditions only one Air conditioner was installed at Aditya Solar Show Room was found false. The petitioner was, accordingly, departmentally proceeded and a charge sheet dated 28th November, 1996 was given to him for violating Rule 3(i)(iii) in the petition it is mentioned as 3 (d) (iii) of CCS (Conduct), 1964 applicable to the petitioner. The petitioner submitted his defence. The management and the petitioner delinquent adduced the evidence the charge against was held to have been proved.

4. The Disciplinary Authority accepted the report of the inquiry officer and dismissed the petitioner from the services of DEDA on **3rd December, 1998**. The petitioner aggrieved by the said order of dismissal challenged the same by way of writ petition bearing No. **6539/1998** in the High Court of Delhi. However, the said writ petition was dismissed as withdrawn as the petitioner had not availed an alternative efficacious remedy of preferring an appeal to the Chairman, DEDA.

5. The petitioner accordingly, in terms of the said order of High Court of Delhi preferred an appeal against the imposition of punishment to the Chairman, DEDA which did not yield any result. Accordingly the petitioner filed the another writ petition bearing no. 1081 of 2000 challenging his order of dismissal. Apart from the challenge the punishment of dismissal on the ground of proportionality various other challenges with regard to the holding an inquiry were laid in the writ petition. All these challenges made in the petition were negatived by the learned Single Judge of this Court. However, so far as the question of the punishment of dismissal imposed on the petitioner is concerned, it was set aside on the ground of being disproportionate to proved misconduct of the petitioner in making a false complaint to his superior officers on the ground that the said complaint did not involve any moral turpitude and financial irregularity and the action of the petitioner was seen to be a “failed attempt” by self-appointed ‘whistle blower’. Though the learned Single Judge was of the opinion that the conduct of the petitioner was not the one which can be condoned but certainly it did not warrant the dismissal of the petitioner. Accordingly, the learned single Judge vide its judgment dated 22nd September, 2006 set aside the order of dismissal and the remanded the matter back to the Appellate Authority with the directions that the petitioner will be given an opportunity to place all relevant material which may be mitigating factors before the disciplinary authority further that he will be given an oral hearing and then with regard to the quantum of punishment a decision will be taken. The learned Single Judge relied

upon the pronouncements of the Hon'ble Supreme Court in catena of authorities starting from **Union of India Vs. B. C. Chaturvedi** (1995) 6 SCC 497, **Union of India Vs. G. Ganayutham** (1997) 7 SCC 463 and **Om Kumar Vs. Union of India** (2001) 2 SCC 386 and came to the conclusion that instead of substituting the punishment by the Court it would be in line with the aforesaid pronouncements to permit the Appellate Authority to impose the punishment. That is how the petitioner was given an opportunity to place the material before the Appellate Authority and thereafter the impugned order dated 17th November, 2006 has been passed imposing punishment of compulsory retirement on the petitioner instead of dismissal as was done earlier.

6. I have heard the learned counsel for the petitioner on the quantum of sentence. It was urged by the learned counsel for the petitioner that the imposition of punishment of compulsory retirement in the instant case by the Appellate Authority by the impugned order dated 17th November, 2006, in fact, tantamounted to imposition of punishment of dismissal. This on account of the fact that even by passing an order of compulsory retirement the petitioner will not be benefited because he will not be able to get the pensionary benefits because the total number of years of service which has been rendered by the petitioner with the respondent organization is only about five years or so.

7. As none was present on behalf of the respondents, therefore, the Court did not have the advantage of hearing the submissions on behalf

of the respondent in support of its imposition of punishment vide impugned order dated 17th November, 2006.

8. I have perused the record and considered thoughtfully the submissions made by the learned counsel for the petitioner. The impugned order dated 17th November, 2006 shows that in compliance to the earlier decision given by the learned Single Judge dated 22nd September, 2006, the petitioner was given an opportunity of placing documentary evidence on record with regard to the question of quantum of sentence yet not even a single document has been placed by the petitioner before the Appellate Authority. The petitioner was also given a personal hearing by the Appellate Authority and it is only after considering the relevant record the petitioner was visited with the punishment of compulsory retirement in place of dismissal.

9. There is no dispute about the fact that the compulsory retirement is the punishment different then the dismissal. Admittedly dismissal carries with it not only a stigma to take up further employment but also results in forfeiture of pensionary and other benefits while as in the case of compulsory retirement there is no such disability suffered by the incumbent. The learned counsel's submissions that the compulsory retirement in the instant case amounts to the dismissal is on account of assumption that the petitioner despite being compulsorily retired will not be able to get the pensionary or other benefits. But this assumption or analogy is fallacious on account of the fact that there is a distinction between compulsory retirement which is imposed by way of punishment and which is visited on an incumbent in public exigency

of service under FR 56 where the incumbent ought to have either entered of the service before 35 years of age and attained an age of 50 years or in other cases attained the age of 55 years so as to enable him to get the pensionary benefits. In the instant case, merely on account of the fact that the petitioner has served the organization only for a period of five years and as a consequence of this compulsory retirement the petitioner will not be able to earn the pensionary benefits, on account of not having served the minimum tenure of service, does not make the Court to draw an inference that the punishment of compulsory retirement becomes punishment of dismissal.

10. Therefore, I feel that there is no merit in this submission of the learned counsel for the petitioner that the punishment of compulsory retirement in fact in the instant case tantamount to punishment of dismissal. So far as the questions of proportionality of punishment is concerned I feel that the certain amount of leeway has to be given to the Appellate Authority to run its own business so as to maintain proper discipline of the organization.

11. It is vehemently urged by the learned counsel for the petitioner he ought to have been visited with a punishment of stoppage of increment with cumulative effect or reduction in rank or something of the like nature so that his job could have been saved. The Apex Court has not been approving the practice of the High Court substituting the punishment and has been advocating the remand of the matter for imposition of punishment in case it comes to the conclusion that the

punishment in a given case is disproportionate to the proved misconduct.

12. In the instant case, imposition of a punishment lesser than compulsory retirement would have also been of no consequence because it has come on record that the organization itself has been wound up, therefore, even if the punishment lesser than the compulsory retirement is imposed, the organization having been wound up it would be hardly being any succor to the petitioner.

13. For the reasons mentioned above, I am of the considered opinion that the punishment which has been imposed on the petitioner cannot by any stretch of imagination be said to be disproportionate to his proven misconduct or tantamounts to the punishment of dismissal. The writ petition of the petitioner is totally misconceived and accordingly the same is dismissed. No order as to costs.

FEBRUARY 13, 2009
KP

V.K. SHALI, J.