

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

+ **WP(C) No.1776/2010**

% **Date of Decision: 18.03.2010**

Sh.Chotte Lal Petitioner
Through Mr.Siddharth Joshi, Advocate.

Versus

DDA & Ors Respondent
Through Ms.Anusuya Salwan, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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.

*

The petitioner has challenged the order dated 18th August, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2246/2009, titled as Sh. Chhotey Lal v. Delhi Development Authority and other, dismissing his original application seeking setting aside of the order dated 11th December, 1996 imposing penalty by the disciplinary authority pursuant to an enquiry conducted against him.

Brief facts to comprehend the dispute raised by the petitioner are that after his retirement he challenged the punishment order dated 11th December, 1996, which was imposed pursuant to the departmental enquiry and the punishment of stoppage of increment with cumulative effect of one year was imposed.

The order of punishment was not implemented for quite some time, and at the time of promotion of the applicant as Assistant Director (Horticulture) w.e.f. 1st January, 2008, it transpired that the order of penalty had not been implemented. The petitioner, therefore, on his volition, agreed to deposit the amount on account of loss of increment in lump sum, and consequently, on 24th December, 2007 the petitioner deposited an amount of Rs.16,780/-.

Before depositing the amount of Rs.16,780/-, by letter dated 27th November, 2007 the petitioner had rather sought implementation of penalty dated 11th December, 1996 and had requested for order for lump sum recovery. The letter dated 27th November, 2007 written by the petitioner to the respondents is as under:-

“To
The Director (Vigilance)
DDA, Vikas Sadan,
New Delhi,

Sub: implementation of penalty order dated 11.12.1996

Sir,

I have not pass the department account examination which is to be passed within two year from the date of appointment. Due to this may annual increment was withhold after completing the age of 50 years. The arrear of increment w.e.f. 01.10.96 to 31.08.99 amount to Rs.13,060/- has paid to me by DDO that is DDH vide his Vr.No.373 dated 13.09.99. It is come to my notice that a penalty dated 11.12.1996 was impose upon me to withhold an increment with out cumulative effect by DD (Vig) III, DDA.

In this connection it is humbly submitted that I am going to be retired 31.10.2008 (11 month service period) it is further submitted that I am also on the vergus of promotion as Assistant Director (Hort) very soon. My ACP and high pay scale are also due.

You are therefore requested to kindly order for lumsum recovery against the vigilance order No.485/Vig/96/13636 dated 11.12.96. The photocopy of order and payment voucher dated 13.09.99 are also enclosed herewith.

An early action in the matter is highly appreciated.

Thanking you

Yours faithfully,

(chhotay Lal)
S.O.(Hort.) Div. II
DDA Rama Market,
Pitampura, Delhi."

Perusal of the said letter reveals that the petitioner had no intention to challenge the penalty order dated 11th December, 1996 and consequently he himself had sought implementation of that order and consequent thereto the penalty amount was deposited by him on 24th December, 2007 without reserving any right to challenge the punishment order. After depositing the penalty amount, the petitioner

got the promotion and till he attained the age of superannuation, the petitioner did not challenge the penalty order. The petitioner while seeking implementation of the penalty order, did not reserve his right to deposit the amount subject to outcome of the appeal, which is alleged to have been decided on 5th May, 2009.

The Tribunal after considering the facts and circumstances, declined to interfere with the penalty order dated 11th December, 1996 holding that merely because the order was not implemented for some time will not be a ground to get it set aside on this ground. The petitioner not only did not challenge the order before superannuating, rather complied with the order and has challenged the same only after superannuating.

Learned counsel for the petitioner has raised similar pleas and contentions which were raised before the Tribunal contending that since his appeal was decided on 5th May, 2009, therefore, on the ground of delay, his plea cannot be declined. Learned counsel for the petitioner has also contended that the petitioner has also claimed grant of first ACP w.e.f. 9th August, 1999 and second ACP w.e.f. 31st October, 2004, which have not been considered by the Tribunal.

From the impugned order, it is apparent that the plea regarding grant of consequential benefit and first ACP and second ACP were not considered by the Tribunal. Apparently, the grant of benefit under ACP was not agitated before the Tribunal as from the grounds in the revision petition, it is apparent that no ground has been taken that despite the petitioner raising and arguing his entitlement, the same has not been considered by the Tribunal. No affidavit has also been filed along with the petition that the ground for grant of ACP was argued by the counsel for the petitioner before the Tribunal, however, the same has not been considered.

In the circumstances, this Court declines to consider the same as the same was not argued before the Tribunal though the petitioner has raised it in his original application before the Tribunal. It is not unusual for parties and Counsel to raise innumerable grounds in the petitions and memoranda of appeal etc. but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or Counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. Apparently

no such application was filed by the petitioner before the Tribunal. Constitution bench of Supreme Court in Daman Singh Vs State of Punjab (1985) 2 SCC 670 at page 682 had held:

13. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and Counsel to raise innumerable grounds in the petitions and memoranda of appeal etc. but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or Counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not?

In the circumstances, the plea of the petitioner for grant of benefit under the ACP scheme cannot be considered now in the writ petition as it was not raised before the Tribunal.

The penalty order dated 11th December, 1996 inflicting punishment of stoppage of increment as cumulative effect for one year which was got implemented by the petitioner pursuant to his communication at the time of his promotion and thereafter penalty amount was voluntarily paid without reserving the right to challenge the order. Therefore, the petitioner will not be entitle to challenge the

same after a period of almost 13 years after attaining the age of superannuation and this Court is not inclined to interfere with the order of the Tribunal in the facts and circumstances.

In the circumstances and the foregoing reasons, there is no such illegality or irregularity in the order dated 18th August, 2009 which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is, therefore, without any merit, and it is dismissed.

ANIL KUMAR, J.

MARCH 18, 2010
'VK'

MOOL CHAND GARG, J.