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***IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C)No.7717/2009

Date of Decision : 15th July, 2010

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SARABJEET SINGH Petitioner
Through : Mr. S.P. Kalra, Sr. Adv. with
Mr. Arvind Sharma and
Mr. Sanjay Kalra, Advs.
versus

UOI & ORS. Respondents
Through : Mr. Ankur Chhiber, Adv.

CORAM :-
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

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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? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J. (Oral)

1. The present writ petition manifests completely unnecessary litigation which has been necessitated on account of the failure of the respondents to comply with an order dated 31st March, 2008 passed by this Court in WP(C)No.4560/1993 filed by the petitioner. To the extent necessary, the facts are briefly noted hereafter.

2. A disciplinary inquiry was held against the petitioner on the following charges:-

“ARTICLE - I

That the said SI Sarbjit Singh (U/S) while attached with Central Basket Ball Team as a player during the period from March to September 1990, committed an offence of misconduct in his capacity as a member of the force under Section 11(1) of the CRPF Act, 1949 in that he after having been relieved from the Central Basket Ball team overstayed from leave w.e.f 23/5/90 to 7/9/90 (108) days without any permission and sufficient cause.

ARTICLE – II

That during the aforesaid period the said SI Sarabjit Singh (U/S) committed an offence of misconduct in his capacity as a member of the force under section 11(1) of the CRPF Act, 1949 in that he suppressed the facts regarding his involvement in a criminal case on 27/6/90 which had been registered at Police Station Prasad Nagar, New Delhi vide FIR No.164 dated 27/6/90 under section 307/452/506/427/323/34 of IPC and section 27/54/59 of Arms Act.

ARTICLE III

That during the aforesaid period the said SI Sarabjit Singh (U/S) committed an offence of misconduct and misbehavior in his capacity as a member of the force under section 11(1) of CRPF Act 1949 in that he was found involved in a criminal case

on 27/6/90 which has been registered at Police Station Prasad Nagar, New Delhi vide FIR No.164 dated 27/6/90 under section 307/452/506/427/323/34 of IPC and section 27/54/59 of Arms Act.”

3. The D.I.G.P., Central Reserve Police Force, Rampur, the Disciplinary Authority accepted the inquiry report by an order passed on 25th June, 1991 imposing upon the petitioner the punishment of removal from service. The petitioner’s appeal assailing this order was rejected by the I.G.P. C/S of the C.R.P.F. by an order passed on 10th December, 1991 holding that the same was devoid of merit.

4. Aggrieved by these two orders against him, the petitioner had filed WP(C) No.4560/1993 in this Court assailing the findings of the Inquiry Officer and the conclusions of the Disciplinary and appellate authority as well as his removal from service. This writ petition remained pending in this Court for a long period of almost fifteen years. In the final judgment dated 31st March, 2008, this Court recorded several observations with regard to the discussions and findings of the Inquiry Officer on the evidence which was placed before him in relation to the specific charges. It was also found that the Appellate order was cryptic and non-speaking and that none of the contentions raised by the petitioner had been dealt with in a proper manner.

5. In this background, this Court had disposed of WP(C)No.4560/1993 by a judgment dated 31st March, 2008

directing as follows:-

“7. Having regard to the judgment of this court in WP(C)No.9427/2005 Constable Hansraj Singh Vs. UOI dated 16.1.2006 followed by another Division Bench judgment of this court in WP(C)No.3935/1995 titled Brij Mohan Sharma Vs. UOI. While setting aside the order of the Appellate Authority, we direct the Appellate Authority to decide the appeal of the petitioner on merits, particularly, keeping in view the infirmities as pointed out by the petitioner in the Enquiry Report as noted above. The appellate Authority shall give personal hearing to the petitioner as well before deciding the appeal and passing the speaking order. Appeal shall be decided within three months from today.”

6. Mr. S.P. Kalra, learned Senior Counsel appearing for the petitioner has submitted that after passing of the aforesaid judgment of this Court dated 31st March, 2008, the petitioner had approached the Inspector General, CRPF, Central Sector, Gomti Nagar (Lucknow) with a copy of the order under the cover of a letter dated 21st April, 2008. It is submitted that the sole purpose of this communication was to put the respondents to notice with regard to the passing of the judgment and to seek personal hearing in the matter as directed. Learned Senior Counsel has contended that on the date when the petitioner presented this representation and copy of the order, the Inspector General, who was also the appellate authority, did not have the record of the petitioner's appeal before him and that other than service of the communication dated 21st April, 2008 and the copy of the order, no hearing at all of any kind was afforded by the appellate authority to him.

7. It is pointed out that despite the directions of this Court dated 31st March, 2008 without hearing the petitioner, the appellate authority passed an order afresh on 30th June, 2008. Our attention is drawn to the last para of the order dated 30th June, 2008 wherein the appellate authority has recorded as follows:-

“20. It is further certified that as per the orders of the Hon’ble High Court, I had heard the appellant in person on 21.4.2008, the date he presented the papers and the orders of the court before me.”

The learned Senior Counsel for the petitioner assails this certification of a hearing on 24th April, 2008 in the aforementioned circumstances.

8. Aggrieved by the order dated 30th June, 2008 which was passed by the appellate authority, the petitioner filed WP(C)No.7817/2008 in this Court inter alia challenging the same on the ground that the respondent had failed to comply with the clear directives made in the previous order and had not afforded a hearing in accordance therewith. This writ petition came to be disposed of by order dated 5th November, 2008 wherein the Court noticed that the petitioner’s grievance against the appellate authority was capable of being remedied by filing a Revision Petition in terms of Rule 29 of the CRPF Rules 1955. In this background, the court disposed of WP(C)No.7817/2008 by an order passed on 5th November, 2008 directing that the pleading in the writ petition be treated by the Competent Authority as a Revision Petition and the decision be

taken on the same on merits within the maximum period of three months from the date of passing of that order. We may notice that the court had waived the objection of limitation so far as maintainability of the revision is concerned.

9. Our attention is drawn to a legal notice dated 11th November, 2008 issued by learned counsel for the petitioner to the Director General of CRPF who was the Revisional Authority specifically requesting him to give a personal hearing on a suitably convenient date so that the matter could be disposed of on merits. However, no hearing was afforded and the revision of the petitioner was dismissed by an order dated 12th January, 2009 which has been assailed before us by way of present writ petition. Apart from the several grounds on which the orders of the appellate authority and the Revisional Authority are challenged in the present writ petition, the primary ground of challenge which has been pressed today is the failure of the appellate authority to give a hearing in terms of the order of this court dated 31st March, 2008 in WP(C)No.4560/1993. Learned Senior Counsel has urged that the non compliance thereof is not only in violation of principles of natural justice but also the failure to consider the various aspects pointed out in the order dated 31st March, 2008 on merits of the matter has worked tremendous injustice to the petitioner. It is urged that having regard to the delay which has occurred since 1990, when the charges were framed, this court heard the objection of the petitioner relating to the merits

of the disciplinary proceedings and the conclusions and findings drawn by the disciplinary, appellate and revisional authorities.

10. On the other hand, Mr. Ankur Chhiber, learned counsel appearing for the respondents has vehemently urged that the respondents have complied with the directions made by this Court on 31st March, 2008 and reliance is placed on the original record of the appellate authority to urge that the personal hearing has been afforded to the petitioner on 21st April, 2008.

11. Having regard to the fact that the order passed by the appellate authority was set aside by this Court on 31st March, 2008 and a hearing in terms directed on this date, we are of the view that the contention of the petitioner that he was not afforded a hearing goes to the root of the matter and deserves to be considered first. We have for this reason examined the record of the appellate authority which has been placed before us by Mr. Ankur Chhiber, learned counsel for the respondents. It is not disputed that the copy of the order dated 31st March, 2008 was brought to the notice of the appellate authority for the first time only when the petitioner had tendered the communication dated 21st April, 2008 enclosing the same. This communication along with the copy of the order was served by the petitioner on the ADIG(ADM), O/o The IGP, C/S, CRPF who was working in the office of Inspector General of Police in the Central Secretariat of the C.R.P.F. in Lucknow. The record which has been placed before us contains a slip with the

following noting recorded by the ADIG(ADM):-

"I.G. may like to see him in view of the Court
judgment at flag (A)

Submitted Sir

(Sd/-)

21/4"

12. This slip was marked to the Inspector General. The endorsement recorded by the Inspector General would reflect what had transpired when the petitioner was called before the Inspector General of Police on 21st April, 2008. The same reads as follows:-

"ADIG ADM

Please open file & put up.

The SI appeared before me and gave me his version of events. Please get the punishment file from 8th Bn (if not weeded out) and put up so that the orders of the Court can be complied with in the stipulated time.

(sd/-)

21/4/08"

13. We may at this stage also extract the representation dated 21st April, 2008 submitted by the petitioner which was to the following effect:-

"Inspector General,

C.R.P.F.

Central Sector,

Gomti Nagar (Lucknow)

Dated 21-04-2008

SUBJECT:- REPRESENTATION OF SARABJIT
SINGH SUB. INSPECTOR
NO.861680114

SIR,

This is to humbly submit and inform that I am Sarabjit Singh S.I.No.861680114 was removed from service on 25-06-91. There

were 3 charges leveled against me at the time of my removal. My appeal against the order of removal from service too was rejected. I challenged the said order of removal by filling a writ petition in the High Court of Delhi in the year 1993. The Justices of Delhi High Court Sh. A.K. Sikri and J.M. Malik on 31-03-08 while allowing the Writ Petition and setting aside the order of the Appellate Authority of CRPF was pleased to request you're good self to reconsider my appeal and decide it afresh in the light of the observation made by the High Court of Delhi in the said judgment dated 31-03-08 by passing a speaking order after giving me a personal hearing and deciding the appeal within a period of three months.

The copy of the writ petition along with judgment/order of the High Court in the writ petition 4560/93 and the acquittal order of the applicant from the criminal court, copy of the appeal are attached herewith.

Requested accordingly
Thanking you

Yours faithfully

Sarabjit Singh
S.I. No.861680114
R/o AB-209, Shalimar Bagh
Delhi-110088
Mobile 09910179522
Resi-No-011-27485546"

14. The above noting of the appellate authority clearly manifests that the record of the appeal filed by the petitioner or the Disciplinary Authority was not before the Inspector General of Police when the petitioner was presented before him on 21st April, 2008. The sole purpose of the petitioner's visit to the office of the appellate authority was to serve a copy of the order and to seek compliance with the directions made by the

court.

15. We have examined the record of the authorities. It does not disclose any opportunity of hearing to the petitioner. The direction by the Court was specifically relating to the objections of the petitioner on merits including submissions on the documents which had been filed by him in support of his defence. The observations of this court in the order dated 31st March, 2008 reflect several issues including those relating to the validity and authenticity of medical records including OPD slips which had been produced before him. Hearing in the true sense as envisaged by the order dated 31st March, 2008 would require submissions to be made by the petitioner when the record of the inquiry of the Disciplinary Authority was placed before the appellate authority so that the petitioner's objections with regard to the findings recorded could be pointed out by him. The noting which has been endorsed on 21st April, 2008 by the appellate authority does not disclose that any hearing was conducted by him or any objections were placed by the petitioner. We remain in dark as to whether the version of events relating to the proceedings which had been taken by the petitioner were informed to the Inspector General or there were any submissions on the merits of the matter. The fact of the matter, as is manifested by the note of the Inspector General, is that no record was before him when the petitioner went to tender the copy of the court order. The appellate authority was admittedly not even aware of the

directions by the court. In this background, the authority was in no position to consider the various objections of the petitioner on merits especially those noted in the court order. In the given circumstances, we are unable to agree with the contention of learned counsel for the respondents that any meaningful or appropriate hearing as envisaged by the order dated 31st March, 2008 could have been or was afforded to the petitioner when he went to serve the copy of the order.

16. It has been pointed out by the learned Senior Counsel appearing for the petitioner that the discussion and findings in the order dated 30th June, 2008 are reiteration of the order dated 10th December, 1991 which was set aside by this Court on 31st March, 2008. It is urged that the same reflects no application of mind to the various objections of the petitioner which were noticed by this Court in the order dated 31st March, 2008.

17. Our attention is also drawn to the order dated 12th January, 2009 whereby the revision of the petitioner has been dismissed. It is pointed out that revisional authority has returned a finding that on 21st April, 2008, the appellate authority had heard the petitioner in person. In our view, this finding is erroneous and is not sustainable.

18. We have held hereinabove that the appellate authority could not have and had not afforded a hearing to the petitioner as was envisaged by the order dated 31st March, 2008. We find force in the submission of learned Senior Counsel for the

petitioner that in case the petitioner was afforded the hearing in the true sense, he may have been able to persuade the appellate authority to arrive at a conclusion different from what has been reached by him. We see no reason as to why the specific directions made by the Court in the order dated 31st March, 2008 have not been complied with. We also find that the several observations made in the merits of the matter specially relating to the documentary evidence have not been considered in the order dated 30th June, 2008 and 12th June, 2009.

19. In this background, it now becomes necessary to consider as to the appropriate directions which would be required to be made. Undoubtedly, there is an extreme delay in finalization of the matter. The charges against the petitioner relate to allegations pertaining to the year 1990 and thereafter. The order made by the Disciplinary Authority directing the removal of the petitioner from service was passed as back as on 25th June, 1991. This Court had passed order on 31st March, 2008 remanding the matter for hearing afresh by the appellate authority. We have found today that the hearing as directed was not afforded to the petitioner. In this background, we are not inclined to hear the objections of the petitioner on merits for the reasons that the same deserves to be placed and considered by the appellate authority in accordance with law.

In view of the above, the order dated 30th June, 2008 passed by the appellate authority and order dated 12th January,

2009 passed by the Revisional Authority cannot stand as being violative of principles of natural justice.

20. Accordingly, in view of foregoing discussion, we direct as follows:-

- (i) The order dated 30th June, 2008 by the appellate authority and the order dated 12th January, 2009 by the revisional authority are hereby set aside. The matter is remanded for hearing and consideration afresh by the appellate authority who shall ensure the compliance of the directions made by this Court on 31st March, 2008 before taking a considered view and passing a reasoned order on the appeal of the petitioner.
- (ii) In order to obviate any ambiguity and delay in the matter, we direct that the petitioner shall appear before the Inspector General, Central Sector, Lucknow on 10th August, 2010 at 11:00 a.m. for the hearing in terms of the order dated 31st March, 2008. The respondents shall ensure that the record of the case including the appeal is placed before him.
- (iii) In case the Inspector General, Central Sector, Lucknow is unable to hear the matter due to some prior commitment and a date is given on that date or the hearing is not completed on 10th August, 2010, the petitioner shall be intimated with notice in

writing.

- (iv) In order to facilitate the hearing, we permit the petitioner to file written submissions and copies of any judicial precedents which he relies upon in support of his objections before the appellate authority when he appears before him.
- (v) The appellate authority shall pass a reasoned and considered order on the appeal of the petitioner within a period of four weeks from the date of conclusion of the hearing(s) in terms of the order dated 31st March, 2008 and the present order.

We also make it clear that the appellate authority shall pass an order afresh uninfluenced by the previous orders of the appellate authority or the revisional authority.

- (vi) The order which is passed shall be positively communicated forthwith to the petitioner upon its passing.
- (vii) Needless to say, it shall be open to the petitioner, if still aggrieved by the order passed, he can assail the same by proper legal proceedings and in accordance with the applicable law.

21. This writ petition is allowed in the above terms.

CM No.3940/2009

In view of the orders passed in the writ petition, this application does not survive for consideration and is disposed of.

DASTI.

GITA MITTAL, J

JULY 15, 2010
mk

J.R. MIDHA, J