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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 3117 of 2008 & CM 5995/2008

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Date of Decision: 07th May, 2010

**GOVT. OF NCT OF DELHI & ORS.
PETITIONER**

...

Through : Ms. Jyoti Singh, Advocate

VERSUS

SANTOSH DEVI

...RESPONDENT

Through: Mr. M.P. Raju, Advocate

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. This petition is preferred against the order dated 15th February, 2008 passed by the Central Administrative Tribunal in O.A. 356/2007. Vide this order, O.A. preferred by the respondent herein was allowed and the orders dated 11th November, 2003 and 30th January, 2004 passed by the Disciplinary Authority and the Appellate Authority respectively were quashed. At the same time, the Tribunal restored the orders dated 5th October, 1999 and 3rd March, 2000 passed by Disciplinary Authority as well as Appellate Authority respectively. On an earlier occasion punishment of withholding one increment for a period of one years was awarded to the respondent as a result of a Departmental Enquiry conducted against him. The background under which two sets of orders came to be passed against the respondent herein may be capitulated. On a complaint made by one Ashok Mittal and his wife against Constable Chander Bhan and Constable Mohinder Singh (husband of the respondent herein), a Departmental Enquiry was

initiated. After the conclusion of this Departmental Enquiry, orders of removal were passed against Constable Chander Bhan and the husband of the respondent namely Constable Mohinder Singh. Both of them challenged those orders by filing applications under Section 19 of the Administrative Tribunal Act. The Central Administrative Tribunal set aside the orders of removal passed against them and remanded the matter back to the Government of NCT of Delhi (petitioner herein) for reconsideration. The Government had preferred Special Leave Petition against the said order of Tribunal which was, however, rejected. In these circumstances, the petitioner held fresh proceedings against both the Constables namely Chander Bhan as well husband of the respondent Mohinder Singh. They were again found guilty of the charge levelled against them. However, this time the punishment awarded was totally different namely punishment of stoppage of one increment for a period of one year.

2. In so far as Mohinder Singh, husband of the respondent is concerned, he accepted the said punishment and preferred to not to challenge the operational orders. However, Chander Bhan, on the other hand, challenged the orders passed against him by preferring appeal. The Tribunal again directed de-novo enquiry. On the basis of said order, de-novo enquiry was held against Constable Chander Bhan.

3. Though, in so far as punishment awarded to Constable Mohinder Singh is concerned, matter had been given quietus in as much as Constable Mohinder Singh had accepted the punishment as stated above, the Department while holding de-novo enquiry against Constable Chander Bhan pursuant to the directions of the Tribunal started de-novo enquiry against Constable Mohinder Singh as well. There appears to be no reason as to why such an enquiry against Mohinder Singh could have been initiated. In these circumstances, though, Constable Mohinder Singh participated in the enquiry, he took an objection about the maintainability of such Departmental proceedings.

4. Be as it may, enquiry proceeded against both Constables Chander Bhan and Mohinder Singh. After the enquiry, order of dismissal was passed against both of them. Constable Chander Bhan approached the Tribunal once again challenging the order of dismissal. This order was again set aside and the matter was remanded back to the Disciplinary Authority who passed fresh orders thereby reducing the quantum of punishment awarded to Chander Bhan from dismissal to that forfeiture of nine years of service.

5. In the meantime, Constable Mohinder Singh had passed away after the imposition of the punishment. Under these circumstances, it is the respondent herein namely Smt. Santosh Devi, the widow of Constable Mohinder Singh who preferred O.A. before the Tribunal challenging the conduct of de-novo enquiry against Constable Mohinder Singh on the ground that this was an enquiry without jurisdiction as there was already an enquiry held against him which had been taken to its logical conclusion and the punishment of stoppage of an increment for a period of one year was also accepted by him. This plea of the respondent herein has been accepted by the Tribunal and under these circumstances the orders dated 11th November, 2003 inflicting the punishment of dismissal from service by the Disciplinary Authority and orders dated 30th January, 2004 of the Appellate Authority affirming the punishment, have been set aside and original orders dated 5th October, 1999 and 3rd March, 2000 respectively passed by these two authorities whereby the punishment of withholding of one increment for a period of one year was imposed, have been restored.

6. Ms. Jyoti Singh, learned counsel appearing for the petitioner argues that when de-novo enquiry was held against Chander Bhan and Mohinder Singh, albeit on the directions given by the Tribunal in the case of Chander Bhan, Mohinder Singh also participated in the enquiry without any protest and thereby acquiesced into that action of conducting de-novo enquiry against him. Though it is disputed by the learned counsel for the respondent and he submits that his participation was without prejudice to his contention regarding admissibility of such an enquiry. We

are of the opinion that even if no objection was taken, it cannot be held against Mohinder Singh. When the entire proceedings are without jurisdiction and could not be held as it amounted to double jeopardy inasmuch as Mohinder Singh has already been punished in the same enquiry, such an act on the part of the petitioner was clearly against the law. The principle of estoppel was an acquiescence or even waiver in such circumstances would not apply. An act which is without jurisdiction and void would remain so whether an objection was taken at that stage or not.

7. In this writ petition preferred by the Government, the only challenge which is pressed is that while setting aside the dismissal order, the Tribunal could have equated the case of Mohinder Singh with that of Chander Bhan and, therefore, should have maintained the punishment of forfeiture of nine years of service, as done in the case of Chander Bhan instead of stoppage of one increment for a period of one year. This plea cannot be accepted at all. It is stated at the cost of repetition that in so far as Mohinder Singh, husband of the respondent is concerned, he had accepted the penalty of stoppage of one increment. He did not even preferred departmental appeal against the said order. Merely because another co-delinquent namely Chander Bhan had challenged that order by filing O.A. before the Tribunal in which he succeeded and as a result thereof a fresh enquiry was ordered against Chander Bhan, there was no reason to hold de-novo enquiry against Mohinder Singh as well.

8. Insofar as Chander Bhan is concerned, de-novo enquiry was the result of directions given by the Tribunal which were limited to Chander Bhan only and could not have been extended to Mohinder Singh. Holding of such de-novo enquiry would clearly be a double jeopardy and would not be permissible under the law. Such an action of the department was clearly without jurisdiction. Moreover, in the case of Mohinder Singh, there is no order of forfeiture of nine years of service as passed in the case of Chander Bhan. The earlier punishment orders passed against him were limited to the stoppage of one increment for a

period of one year. Therefore, it is not open to the petitioner to argue that while setting aside the order passed against Mohinder Singh, non-existing order of forfeiture of nine years of service should have been passed against Mohinder Singh as well. We thus did not find any merit in the present writ petition and accordingly dismissed the same.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

May 07, 2010.
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