

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

+ **WP(C) No.3484/2010**

% **Date of Decision: 20.05.2010**

UOI Petitioner
Through Mr. R.V. Sinha, Advocate

Versus

Sh. R.S. Saun & Anr. Respondent
Through Mr. Naresh Kaushik, and Ms. Amita
Kalkal Chaudhary, Advocates for
respondent No. 2

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 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.

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The petitioner, UOI has challenged the order dated 1st February, 2010 passed by the Central Administrative Tribunal, Principal Bench in OA 2704/2009 titled as R.S. Saun Vs. Union of India through Secretary, Government of India, partly allowing the application of the respondent and setting aside the order of dismissal of the respondent from service and compulsorily retiring him from the service from 28th August, 2009 pursuant to notice dated 26th August, 2008 and also granting liberty to the petitioner to withdraw the notice dated 26th

August, 2008, if permissible under law and to issue fresh notice to the respondent dismissing or removing him from service, and pass fresh orders on the said notice.

Brief facts to comprehend the controversies are that the respondent was found guilty under Section 7 & 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988 and had been convicted and sentenced to undergo rigorous imprisonment of three years and to pay fine of Rs. 10,000/- for the offence under Section 13(2) r/w Section 13(1) (d) and in default of payment of fine, simple imprisonment of three months. The respondent was also sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 5,000/- for the offence under Section 7 of the Prevention of Corruption Act, 1988 and in default of payment of fine, simple imprisonment of one and a half months.

The petitioner took action against the respondent under Rule 19 of the CCS (CCA) Rules, 1965 and gave a notice to retire him compulsorily from the service. However later on, contrary to notice to compulsorily retire him, dismissed him from service.

The respondent challenged his dismissal on the ground that since the show cause notice was given only to compulsorily retire him from the service, he could not be dismissed. The respondent contended

that the punishment more than the proposed in the show cause notice, to him, dated 26th August, 2008, could not be awarded by order dated 28th August, 2009, i.e., of dismissal from service.

The plea of the respondent was contested on behalf of the petitioner relying on proviso to Rule 11 of CCS (CCA) Rules, 1965. It was contended that in every case in which the charge of possession of assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification as a motive or reward for doing any official act is established, the penalty from removal from service or dismissal from service shall be imposed and therefore, the petitioner was justified in awarding the penalty of dismissal from service, though the show cause notice dated 26th August, 2008 was given for compulsorily retiring the respondent.

The Tribunal after considering the pleas and contentions of the parties held that there could be mistake in the notice dated 26th August, 2008, but it was for the petitioner to correct it, if permissible under Rules and therefore, the only punishment which could be awarded under Rule 11 of CCS (CCA) Rules was of compulsorily retiring the respondent and therefore, the order of dismissal dated 28th August, 2009 dismissing the respondent from service was set aside and instead, it was held that the respondent is compulsorily retired from service w.e.f. 28th August, 2009. The Tribunal also held that the petitioner

shall be at liberty to withdraw the notice dated 26th August, 2008, if permissible under law and then issue fresh notice to the respondent dismissing or removing him from service in accordance with Rules and pass fresh orders on the said notice.

The learned counsel for the petitioner has vehemently argued that penalty other than as provided in Clause (viii) or (ix) only could be imposed under Rule 11 of CCS(CCA) Rules and therefore, the Tribunal has erred in setting aside the order of dismissal though, the notice for show cause was given only for compulsorily retiring the respondent.

Perusal of Rule 11 of CCS (CCA) Rules, however reflects that in exceptional cases and for reasons in writing, any other penalty could be imposed by the petitioner. The petitioner has not produced any noting or any other writing to show that before giving the notice dated 26th August, 2008, it was not decided to impose the penalty of compulsorily retiring the respondent. If the petitioner had given the notice for compulsorily retiring the respondent as a special penalty which is provided under proviso to Rule 11 of CCS(CCA) Rules, 1965, it was for petitioner to produce the relevant record to show that it was a mistake and not on account of a conscious decision taken by them.

Rule 11 of the CCS (CCA) Rules is as under:-

PENALTIES AND DISCIPLINARY AUTHORITIES

11. Penalties

“The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor Penalties-

(i). -----

Major Penalties

(v).

(vi).

vii) compulsory retirement;

viii) removal from service which shall not be a disqualification for future employment under the Government.

ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which [the charge of possession of assets disproportionate to known sources of income or the charge of acceptance] from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in Clause (viii) or Clause (ix) shall be imposed:

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.”

The learned counsel for the petitioner, however could not refute that since the President provisionally came to the conclusion that the applicant is not a fit person to be retained in service and should be compulsorily retired, the punishment proposed by notice dated 26th August, 2008 only could be imposed and the punishment of dismissal of service by order dated 28th August, 2009 could not be passed.

In the circumstances, the decision of the Tribunal partly allowing the original application and holding that the respondent has been compulsorily retired from service w.e.f. 28th August, 2009 pursuant to show cause notice/memorandum dated 26th August, 2008 seeking compulsorily retiring the respondent cannot be faulted.

In the facts and circumstances, the learned counsel for the petitioner has not challenged the decision of the Tribunal permitting the petitioner to withdraw the notice dated 26th August, 2008, if permissible under law and to issue fresh notice to the respondent dismissing or removing him from service and pass fresh order on the said notice. Rather the petitioner wanted that this Court should reiterate the order passed by the Tribunal. Since the Tribunal has given liberty to the petitioner to withdraw the notice, if permissible under law and give the fresh notice, no such further directions are required from this Court.

In the entirety of the facts and circumstances, the petitioner has failed to make out a case of illegality or irregularity or any perversity in the order of the Tribunal dated 1st February, 2010, which will 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.

MAY 20, 2010

‘rs’

MOOL CHAND GARG, J.