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

+ W.P.(C) 2890/2014

% *Judgment dated 30th September, 2015*

UNION OF INDIA AND ORS Petitioners

Through : Mr.A.S. Dater, Adv.

versus

RAMAN KAPOOR Respondent

Through : Mr.Suddeep Singh and Mr.Vaibhav
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL. 6002/2014

1. By the present application, the petitioners seek condonation of five days' delay in re-filing the present petition.
2. Heard and for the reasons stated in the application, the same is allowed. Delay in re-filing the petition is condoned. Let writ petition be taken on record.
3. Application stands disposed of.

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4. Present writ petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India seeking a direction to quash the Order

dated 28.1.2014 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*') by which the OA filed by the respondent (since deceased) was allowed and the petitioners were directed to reinstate the respondent herein with all consequential benefits and 50% back wages from the date of compulsory retirement from service, keeping in view the peculiar facts and circumstances of the case.

5. It may be noticed that before the Tribunal the respondent had assailed the Order dated 19.7.2014 passed by the disciplinary authority whereby the penalty of removal from service was imposed upon the respondent. In the first round of litigation, the Tribunal, vide its order dated 1.5.2008, set aside the aforesaid order of penalty of reduction to lower stage of pay scale, cumulative for a period of three years. The petitioners herein were also directed to reinstate him in service within a period of one month. The order dated 1.5.2008 was challenged by the respondents by filing W.P.(C)No.7575/2008 in the Delhi High Court wherein the Order dated 1.5.2008 passed by the Tribunal was stayed. While disposing of the said writ petition on 18.3.2013 the High Court held that 'substituting a penalty by factoring in a Rule being breached by the inquiry officer would not be permissible by law'. The Court has also held that unless the penalty imposed upon a Government employee shocks the judicial conscious, it cannot be interdicted and it has to be left to the domain of the executive.

The O.A. was restored for fresh adjudication by the Tribunal.

6. The brief facts of this case, as noticed by the learned Tribunal, are that pursuant to the Memorandum dated 8.6.2001 issued by the Divisional Commercial Manager, Bikaner Division, Northern Railways, an inquiry was held against the respondent herein. The sum and substance, on which the inquiry is based, is that the respondent did not surrender Government accommodation while he remained on transfer on different stations during the period September, 1987 to 30th April, 2001, despite notice of vacation served upon him. During a check conducted on 6.12.2000 at DEC it was found that the respondent was running a shop in the covered verandah of the said quarter and about 40 loose tyres were found kept. The inquiry officer conduct a detailed enquiry and held that charge no.1 stood proved to the extent that quarter, T-48B, DCM Colony, was under unauthorized occupation of the respondent from the date of starting of his penal rent till the date of inquiry. The inquiry officer also held that as far as charge no.2 is concerned, it was not proved. The disciplinary authority also agreed with the report of the inquiry officer qua charge no.1 only but did not agree with charge no.2. The respondent thereafter made a representation to the disciplinary authority. The disciplinary authority, after considering the report of the inquiry officer and the representation of the applicant on the disagreement note, vide its order dated 19.7.2004 imposed upon him

the punishment of penalty of removal from service with immediate effect. The respondent thereafter filed an appeal, which was rejected by the Divisional Commissioner, Manager BKN, vide his letter dated 20.12.2004. The Revision Petition filed by the respondent also met with the same fate, which led to the respondent herein to file O.A. before the Tribunal.

7. Learned counsel for the petitioners submits that the Tribunal has failed to take into consideration the disagreement note wherein it has categorically been stated that the deceased had sublet part of his Official Government accommodation. Moreover the deceased had not vacated the official Government accommodation despite the fact that he had been transferred. Counsel further submits that the Tribunal has failed to examine the evidence minutely but has relied upon the evidence of the defence witnesses.
8. We have heard learned counsel for the parties and also perused the impugned order dated 28.1.2014 passed by the Tribunal. We are informed that during the pendency of the writ petition, the respondent has died. We are also informed that during his life time, the deceased has paid all the charges levied upon him for unauthorised use of the Government accommodation, as demanded.

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10. In our view, no case for judicial review is made out for the reason that the Tribunal has dealt with the matter in a reasonable manner and taken all the submissions into consideration. We are also of the view that the Tribunal has correctly moulded the relief by converting the punishment of dismissal from service into compulsory retirement with 50% backwages in the peculiar facts and circumstances of the case. Even otherwise, respondent has died and he is only survived by his wife, son and a married daughter.

11. For the reasons aforesaid, we do not find any grounds to interfere in the impugned order dated 28.1.2014 passed by the Tribunal. The writ petition is accordingly dismissed.

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12. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 30, 2015 msr