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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: 9th February 2015.

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W.P.(C) 6755/2013

UNION OF INDIA & ORS

..... Petitioners

Through: Ms. Archana Gaur, Advocate

versus

MS. SURENDER KUMAR SAINI

..... Respondent

Through: Mr.V.S. R.Krishna, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

By the present Writ Petition filed under article 226 of the Constitution of India, the petitioners question the tenability of the order dated 02.04.2013 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No. 799/2012.

The limited grievance raised by the petitioners is that the learned Tribunal erred in not appreciating the fact that the petitioners had only amended the earlier order on compulsory retirement adding cut in entitlement in pension and gratuity of the respondent as per the CCS (Pension) Rules, 1972, which was inadvertently omitted earlier by the department.

Ms. Archana Gaur, Advocate counsel representing the petitioners submits that vide order dated 5th July 2005, the Disciplinary Authority had

W.P. (C) No. 6755/2013

imposed a penalty of compulsory retirement upon the respondent with immediate effect but when the case of the respondent was sent to CDA for computing his pension then it was pointed out by the CDA that cases of compulsory retirement are dealt with under Rule 40(1) of CCS (Pension) Rules, 1972. However, in the case of the respondent, the quantum of cut in the pension was not indicated therefore his matter was again processed and a fresh order dated 5.9.2011 was passed after consulting the DoPT as well as the UPSC and such an order was passed strictly in accordance with Rule 40(1) of the CCS (Pension) Rules, 1972 and therefore, no fault or illegality can be traced with the fresh order passed by the petitioners. Though the learned Tribunal in so far as the challenge raised by the respondent to the punishment dated 5.7.2005 and Inquiry Officer's report dated 12.10.2004 agreed with him however it found the O.A. to be barred by limitation. However, apropos the challenge raised by the respondent on the amended order dated 5.9.2011, the learned Tribunal found the said order to be illegal and not tenable primarily on two grounds; the first being that the petitioners failed to make available the UPSC's advice to the respondent and no opportunity of hearing was afforded to the respondent before a cut in his pension and gratuity was imposed by the amendment order dated 5.9.2011; and secondly the learned Tribunal found that the Disciplinary Authority

having once passed the punishment order vide order dated 5.7.2005 became functus officio and therefore the said punishment order could not have been modified by the petitioners.

We find no tangible ground to interfere with the order passed by the learned Tribunal which in our considered view is a well reasoned order. Finding no merit in the present petition, we dismiss the petition filed by the petitioners. Consequently, we direct the petitioners to implement the directions given by the learned Tribunal in the impugned order dated 02.04.2013 apropos the computation of pension of the respondent and to release the gratuity amount within a period of two months from the date of this order. We also direct the petitioners to comply with the direction given by learned Tribunal apropos the release of retiral benefits and also award the penal interest as is applicable, in favour of the respondent within the said period.

With aforesaid directions, the present petition stands disposed of.

KAILASH GAMBHIR, J

I.S. MEHTA, J

FEBRUARY 09, 2015
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