IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19954 of 2014

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K.C. KHANNA, SON OF SRI V.D. KHANNA, SENIOR ACCOUNTS OFFICER (COM) O/O THE PRINCIPAL ACCOUNTANT GENERAL (AUDIT), BIHAR, PATNA.

.... Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH THE COMPTROLLER AND AUDITOR GENERAL OF INDIA, NEW DELHI
2. THE ACCOUNTANT GENERAL (AUDIT) AGCR BUILDING, JP ESTATE, NEW-DELHI.
3. THE PRINCIPAL ACCOUNTANT GENERAL (AUDIT), BIHAR, PATNA-800001.
4. THE DEPUTY COMPTROLLER AND AUDITOR GENERAL (COM) OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA, NEW-DELHI-110002.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Munna Pd Dixit (M.P. Dixit)
Mr. Sanjay Kumar Choubey

For the Respondent/s : Mr. S D Sanjay, Addl. S.G.
Ms. Kanak Verma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 02-05-2016

Challenge in the present writ petition is to an order dated 12th May, 2014, passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A.No. 1009 of 2012. By the aforesaid order, the challenge to the order of punishment of Censure awarded to the petitioner remained unsuccessful.

2. The petitioner was charge-sheeted on 23rd June, 2008 for major penalty under Rule 14 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as CCA Rules). The charge-sheet was on two grounds, viz. non-compliance of the order given by the competent authority and not furnishing the information within the stipulated time and the other was misbehaviour with the D.A.G. (Commercial) on 16.02.2005, when the petitioner was called by the officer in her chamber over the file regarding audit and accounts. The enquiry officer found both the charges were not proved. The finding of the enquiry officer was communicated to the petitioner but without any disagreement note. However, the disciplinary authority passed an order of punishment of stoppage of three increments for three years on 17.04.2009 recording disagreement with the finding of the enquiry officer on the second charge. The petitioner filed an appeal against the order of punishment. The appellate authority dismissed the appeal on 18th August, 2009.

3. The petitioner filed O.A. No. 363 of 2008 before the learned Tribunal challenging the orders of punishment. The Tribunal allowed the application finding that the order of the appellate authority is non-speaking and cryptic and, therefore, the matter was remitted to the Dy. C.A.G. of India to dispose of the appeal. It is thereafter the appellate authority imposed the penalty of Censure. It is the said order dated 12.11.2012, which was challenged by the petitioner before the Tribunal. Such challenge remained unsuccessful.

4. Learned counsel for the petitioner refers to the judgment of the Supreme Court in the case of **Punjab National Bank vs. Kunj Bihari Mishra [1998 (7) SCC 84]** and **U.B.T. Industries vs. U.P. Financial Corporation [2003 (2) SCC 455]** to contend that on account of absence of disagreement recorded by the disciplinary authority the order of punishment is vitiated.

5. We have heard learned counsel for the parties and find no merit in the present writ petition. The order of disciplinary authority disagreeing with the finding of the enquiry officer was passed on 17.04.2009. Such order was affirmed in appeal on 18.08.2009. In a challenge to the order passed by the disciplinary authority and that of the appellate authority, the Tribunal set aside only the order of the appellate authority on the ground that it is non-speaking and cryptic order. The order passed by the disciplinary authority was not interfered with. At that time, the petitioner challenged the order of punishment on the ground that he has been charge-sheeted on similar allegation earlier which resulted into punishment dated 20th November, 2006. The Tribunal did not find any merit in the said argument but interfered with the order of punishment passed by the appellate authority alone. Once the Tribunal has not interfered with the order of punishment, the ground which was available to the petitioner at that time, cannot re-agitated at this stage.

6. Thus, the petitioner is barred to raise that issue constructively. Since the order of the appellate authority was alone set aside and the order of Censure has been passed by the appellate authority after remand, it is the legality of such order which could be examined by the Tribunal. The Tribunal by the order impugned found no merit in the said challenge.

7. The judgment in the cases of **Kunj Bihari Mishra** and **U.B.T. Industries (supra)** referred to by learned counsel for the petitioner, have no application to the facts of the present case in which the challenge to the decision of the disciplinary authority remained unsuccessful in the first round of litigation. Even otherwise, the petitioner is required to prove prejudice, if any, suffered by him on account of the procedure adopted by the disciplinary authority. Since the order of punishment is of Censure, it can only be said that any of the right has been jeopardized by the procedure adopted by the disciplinary authority.

8. Still further, Censure is a minor punishment. Such minor punishment can be imposed even without conducting any regular enquiry. Therefore, even if the disciplinary authority has not communicated reasons of disagreement at earlier stage, but minor punishment stands imposed, it cannot be said that any of the rights of the petitioner has been infringed in conduct of the disciplinary

proceedings.

9. Consequently, we do not find any merit in the present writ petition. The writ petition is accordingly dismissed.

(Hemant Gupta, J)

I agree.
Ahsanuddin Amanullah, J.

mrl

(Ahsanuddin Amanullah, J)

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