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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (C) Nos. 1384/2014 & 1385/2014**

Date of decision : 28th November, 2016

MAHITAP SINGH BISHT Petitioner

Through Mr. M.K. Bhardwaj & Ms. Ankita
Bhadauriya, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through Mr. Amit Mahajan, CGSC & Mr.
Krishanu Barua, Advocate for UOI.
Mr. Anuj Aggarwal, ASC for GNCTD & Mr.
Deboshree Mukherjee, Advocate for respondent
Nos. 3, 4 and 5.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The petitioner-Mahitap Singh Bisht was initially appointed as Sub-Inspector in Delhi Police on 7th April, 1977 and was promoted as Assistant Commissioner of Police on 19th September, 2009. In 1986, the petitioner was sent on deputation to Central Bureau of Investigation where he had remained till 21st August, 2008.

2. After the petitioner had rejoined his parent department and was working as Assistant Commissioner of Police, he was demoted to the rank of Inspector vide order dated 3rd January, 2013.

3. The petitioner challenged the order dated 3rd January, 2013 reverting

him to the post of Inspector and order dated 8th January, 2013 by which he was posted as an Inspector in OA Nos. 82/2013 and 274/2013 before the Principal Bench of the Central Administrative Tribunal (Tribunal, for short).

4. The Tribunal by the impugned order dated 29th January, 2014 has held that the aforesaid orders cannot be sustained because there was violation of principles of natural justice. The respondents have been directed to comply with the principles of natural justice and after giving an opportunity to the petitioner to respond to the show cause and hearing, orders should be passed. The operative portion of the impugned order reads:-

“44. Having given our thoughtful considerations to the submissions advanced before us and also keeping in view the facts of the case and the legal position as enunciated by the Apex Court as well as different High Courts, and also keeping in view the DOP&T OM dated 09.08.1988 noticed above, we are of the considered view that in the instant case principles of natural justice do attract and, therefore, the impugned order suffers from the vice of violation of principles of natural justice. We, therefore, in the facts and circumstances of the case, dispose of both the OAs with the directions to the respondents to comply with the principles of natural justice by affording the applicant an opportunity of showing cause and hearing, if necessary. We accordingly provide that the respondents shall issue show cause notice to the applicant within two weeks from the date of pronouncement of the order. The applicant shall submit his reply to the show cause notice within two weeks thereafter. The respondents shall thereafter examine and consider the reply so filed by

the applicant and dispose of the same by a reasoned order expeditiously within a period of three weeks from the date of filing of reply. The impugned orders dated 03.01.2013 and 08.01.2013, in the meanwhile, shall be kept in abeyance and would abide by the decision taken by the respondents after considering the reply to the show cause filed by the applicant. We make it clear that our order may not be construed to have expressed any opinion on the merit of the case. The respondents, therefore, while considering the reply/show cause filed by the applicant, should not be prejudiced or influenced by the observations made in this order.”

5. The factual matrix reveals that while the petitioner on deputation in the CBI, a complaint dated 20th October, 2005 was made against him by an *ad hoc* stenographer alleging sexual harassment. Sexual Harassment Committee headed by Smt. S. Sundari Nanda, the then DIG, CBI was constituted and witnesses were examined. Their report dated 21st December, 2005 indicts the petitioner as the allegations were found to be substantiated and correct. This report has been treated as a report under proviso to sub-Rule (2) to Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and made available to the petitioner, who had submitted his representation/response dated 31st August, 2006. Taking into account the report dated 21st December, 2005, and the response/representation of the petitioner dated 31st August, 2006 and the remarks or comments of the Director, CBI, the disciplinary authority took a tentative decision to impose penalty and the case records

were forwarded to Union Public Service Commission for statutory advice. The Commission by their letter dated 9th January, 2008 had submitted their advice, recommending penalty of reduction to a lower stage by one stage in the time scale of pay for a period of one year with a further direction that the petitioner would not earn increment of pay during the period of reduction of pay and on expiry, the punishment will have the effect of postponing future increments of pay. The competent authority in the Department of Personnel and Training on examining the facts decided to go by the advice of the Commission. As per the mandate of Rule 21(2)(ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the competent authority in the Department of Personnel and Training decided that the petitioner should be repatriated to its lending department, i.e., Delhi Police, for such action as it deemed necessary. The lending authority was accordingly informed through Ministry of Home Affairs vide ID note dated 20th July, 2007 and the petitioner was repatriated on 10th October, 2008 and taken on strength of the Delhi Police on 5th February, 2009. The Vigilance Branch of Delhi Police was informed earlier on 23rd July, 2008.

6. Unaware of the said facts, the Ministry of Home Affairs vide letter dated 3rd December, 2008 had asked for service particulars of Inspectors in Delhi Police for appointment to entry grade of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Police

Service (DANIPS). Service particulars of the petitioner were forwarded alongwith others, without noting the enquiry report dated 21st December, 2005 and the subsequent proceedings. Erroneously, therefore, the petitioner was promoted as Assistant Commissioner of Police. However, when the factual position, including the report dated 21st December, 2005 and the proceedings thereafter came to light, the Ministry of Home Affairs vide their letter dated 3rd January, 2013 took decision to revert the petitioner to his original post in the Inspector grade and to finalise the disciplinary case against the petitioner. Accordingly, the appointment of the petitioner in the entry grade of DANIPS was withdrawn vide notification dated 16th October, 2009. As noticed above, the two orders dated 3rd January, 2013 and posting order dated 8th January, 2013 have been quashed by the Tribunal for violation of principals of natural justice, but with a direction that show cause notice would be issued, reply could be filed and thereafter a reasoned order would be passed.

7. Pursuant to the aforesaid order, the respondents had issued show cause notice vide memorandum dated 21st February, 2014, to which the petitioner has filed a reply.

8. In the given factual position, there is no reason and ground to interfere with the directions given by the Tribunal. We are not impressed with the contention of the petitioner that the aforesaid direction should not have been issued for the inquiry report dated 21st December, 2005 was only

a fact finding inquiry and not a “departmental inquiry” and, therefore, it should be construed and held that charge sheet had not been issued. This would not be the correct position in the present case. The Tribunal had examined the said aspect in detail and has also examined the report dated 21st December, 2005. Pertinently, advice from UPSC and Ministry of Home Affairs, etc. have been received. Thus, it would not be correct to hold that “charge sheet” had not been issued or was only under contemplation. Whether or not principles of natural justice were complied with by Sexual Harassment Committee before they had submitted their report dated 21st December, 2005, are all matters, which will be examined by the disciplinary authority. What should be done, or whether remedial or other action is required, is again for the authorities to examine and decide.

9. Counsel for the petitioner submits that he had asked for the report dated 21st December, 2005 and the same has not been supplied. In his written submissions he has relied upon information furnished to him under the Right to Information Act. We are not impressed with the said contention for the factual assertion does not appear to be correct. Be that as it may, the aforesaid pleas and aspect can be raised before the disciplinary authority.

10. The petitioner, it is stated, has retired. This would again not be a ground to close the matter and set aside the directions given by the Tribunal. This fact obviously will be known to the disciplinary authority.

11. Lastly, we clarify that the observations made by the Tribunal or by us in this order would not be construed as final and binding findings on merits. Merits, etc. would be examined by the disciplinary authority and in case the petitioner is aggrieved by the final order, he would be at liberty to challenge and question same in accordance with law.

12. Counsel for the petitioner also submitted that pension and retirement benefits have not been paid. These are aspects, which do not emanate out of the impugned order. It is open to the petitioner to raise the said grievance with the authorities in accordance with law.

The writ petitions are accordingly disposed of with no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

**NOVEMBER 28, 2016
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