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

+ W.P.(C) 4047/2015

NARENDER SINGH

..... Petitioner

Through Mr. Lalta Prasad, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Santosh Kumar Tripathi, ASC for
GNCTD- respondent Nos. 1 to 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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18.03.2016

The petitioner ex-Constable Narender Singh impugns order dated 20th January, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal, for short) in OA No. 170/2012. The order dated 10th May, 2012 passed in the Review Application No. 114/2012 is also under challenge.

2. The petitioner was appointed as Constable (Driver) in Delhi Police on 5th May, 1989. He was dismissed from service by order dated 4th August, 1998 for having knowingly concealed the fact of his involvement in a criminal case, which it was observed, amounted to gross misconduct, remissness and an act unbecoming of a police officer. The order of

dismissal was upheld in appeal by order dated 18th November, 1998 and in revision by order dated 31st May, 2000.

3. The petitioner had challenged the aforesaid orders and the penalty of dismissal in OA No. 1134/2001 before the Tribunal, but the same was also dismissed by order dated 23rd October, 2002. Thereafter, the petitioner filed Writ Petition (C) No. 13222/2005, which was dismissed for non-prosecution and default by order dated 17th August, 2007 in the presence of the counsel for the Delhi Police. The said order reads as under:-

“This petition was filed in the year 2005 against the order of the Tribunal. On 30.9.2005, after hearing counsel for the parties, the Court noted that particulars of certain persons, who had allegedly been granted reinstatement by this Court, have not been given, in the absence of which, it was not possible for the respondents to identify the persons and make an effective reply. In these circumstances, the Court directed the petitioner to place on record, within two weeks, full particulars of the persons mentioned in para 5.4 at page 46 of the petition. Till date, no such particulars are furnished. We may also note that on 13.1.2006, this petition was dismissed in default. Thereafter, on application filed by the petitioner, said order was recalled on 23.1.2007 and the petition restored to its original number. However, while restoring the petition, the Court made it clear that in case the order dated 30.9.2005 is not complied with before the next date, the petition shall be liable to be dismissed. In spite of this clear order directing the petitioner to furnish the particulars, as aforesaid, needful has not been done. Nobody is present on behalf of the petitioner either. This petition is accordingly dismissed.”

4. The petitioner thereupon had the option to move an application for restoration of the writ petition. However, no such application was filed and thus the order of dismissal attained finality.

5. After waiting for a period of five years, the petitioner filed a fresh OA No. 170/2012, which stands rejected by the impugned order. The petitioner seeks to rely on the order dated 23rd August, 2001 passed by the Additional Sessions Judge in the criminal case in which the petitioner was facing prosecution. This order records that the petitioner along with others had suffered/undergone trial for sixteen years and all of them not being previous convicts, were entitled to benefit of probation. They were released on probation.

6. In our opinion, the Tribunal in the impugned order dated 20th January, 2012 has rightly observed that the petitioner could not have started a second round of litigation having challenged the penalty of dismissal in OA No. 1134/2001. The challenge to the penalty of dismissal attained finality after the Writ Petition (C) No. 13222/2005 was dismissed on 17th August, 2007. No doubt, the said dismissal was for non-prosecution, but the petitioner had the option to file an application for restoration. Disputes or issues made subject matter of litigation, and that have attained finality, cannot be re-agitated and raised in another litigation (see Section 12 read with Order IX of the Code of Civil Procedure, 1908). Further, the penalty was on account of concealment of the criminal case. Outcome of the criminal case, is another aspect.

The writ petition accordingly has no merit and is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 18, 2016
VKR