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

\+ **W.P.(C) 10546/2015**

Date of decision: 14th January, 2016

JAGAT NARAYAN PRASAD ..... Petitioner

Through Mr. P.S. Khare, Advocate.

versus

UNION OF INDIA & ORS ..... Respondent

Through Mr. Jagjit Singh, Sr. Standing Counsel with Mr. Preet Singh and Mr. Pranav Aggarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL)

Petitioner Jagat Narayan Prasad impugns order dated 16th October, 2014 passed by the Central Administrative Tribunal, Principal Bench (Tribunal, for short). The impugned order dismisses OA No.3724/2013 filed by the petitioner for release of Rs.8,01,463/- with interest @ 18% per annum compounded.

2. The petitioner had joined Central Railway on 30th January, 1976 and had retired as an employee of North-Central Railway on 31st July, 2013. Pension order dated 19th July, 2013 was issued. An

amount of Rs.8,01,473/- was withheld and was shown as debited from his total emoluments. The petitioner then filed the aforesaid OA that the aforesaid adjustment was not permissible without issue of show cause notice and there was violation of principles of natural justice.

3. The respondent North-Central Railway in their reply projected a different picture and had pointed out that departmental enquiry was initiated against the petitioner vide charge sheet dated 17th July, 2013, issued prior to the petitioner's retirement. The petitioner had not stated or revealed the said facts in the OA. The allegation in the charge sheet pertains to the Scheduled Tribe certificate, which, it is alleged was found to be fake on enquiry and investigation. The petitioner, it is stated, relying on the certificate had claimed that he belonged to *Kharwar* community, a Scheduled Tribe. However, reports had been received from the Senior Welfare Inspector and Zila Kalyan Padhadhikari stating that the petitioner did not belong to *Kharwar* community (ST) and is *Kamkar* by caste, a backward caste.

4. The contention of the petitioner is that he was never served with the said charge sheet on or before the date of retirement on 31st July, 2013, and, therefore, withholding of Rs.8,01,473/- was

unjustified and contrary to law.

5. This factual position disputed by the respondents, who claim that charge sheet was issued on 17th July, 2013 by sending it to the petitioner through registered post.

6. The impugned order of the Tribunal records the conflicting stand of the parties and records that the charge sheet was issued prior to the date of retirement, but the service was disputed.

7. The Tribunal in the impugned order has relied on the following passage from ***Union of India and Others Vs. Dinanath Shantaram Karekar & Ors.*** JT 1998 (6) SC1:-

> "5. Lastly, in order to save the lost battle, a novel argument was raised by the learned counsel for the appellant. He contended that since the charge sheet as also the show cause notice, at different stages of the departmental proceedings, were despatched and had been sent out of the office so that no control to recall it was retained by the department, the same should be treated to have been served on the respondent. It is contended that it is the communication of the charge sheet and the show cause notice which is material and not its actual service upon the delinquent. For this proposition reliance had been placed on decision of this Court in State of Punjab and others v. Balbir Singh etc., AIR 1977 SC 629.
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> 6. This decision has been misread, misunderstood and is now being misapplied by the counsel for the appellants in the instant case.

7. As would appear from the perusal of that decision, the law with regard to "Communication" and not "Actual Service" was laid down in the context of the order by which services were terminated. It was based on a consideration of the earlier decisions in State of Punjab v. Khemi Ram, AIR 1970; Bachhittar Singh v. State of Punjab, 1962 Supp.(3) SCR 713 = AIR 1963 SC 395; State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313 and S. Pratap Singh v. State of Punjab, (1964) 4 SCR 733 =AIR 1964 SC 72. The following passage was quoted from S. Pratap Singh's Judgment (supra):

> "It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it.
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> (Emphasis supplied)"

The said observations are apposite and in our opinion would conclude the limited issue raised.

8. Learned counsel for the petitioner submits that enquiry may be expedited as retirement benefits have been withheld. Learned counsel

for the respondent, on the other hand, submits that in spite of repeated letters, petitioner has not been appearing and, in fact, the letters have been received back unserved. Learned counsel for the petitioner states that he would appear before the Enquiry Officer B.K. Pateriya, Divisional Commercial Inspector, Divisional Office, Jhansi on 8th February, 2016 at 2.30 p.m.

9. Learned counsel for the petitioner has also drawn our attention to the application for placing on record additional documents, as he seeks to rely on a caste certificate dated 25th October, 1991 and states that he would file this document before the authorities.

10. With the aforesaid observations, the writ petition is dismissed. We clarify that we have not expressed any opinion on the merits of the departmental enquiry and allegations, subject matter of the said inquiry.

SANJIV KHANNA, J.

ASHUTOSH KUMAR, J.

JANUARY 14, 2016
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