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

\+ LPA 174/2016 and CM Nos. 9418-9419/2016

PRADEEP KUMAR SHARMA ..... Appellant

Through: Mr Vishwendra Verma and Ms Shivali, Advs.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD (DUSIB) &ORS ..... Respondents

Through: Mr Amandeep Joshi, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 16.03.2016

Issue notice. Mr.Amandeep Joshi, Advocate accepts notice on behalf of the respondents.

The controversy is whether the learned Single Judge erred in rejecting the appellant's contention about disproportionality of the penalty imposed upon him.

The appellant was issued a charge-memo on 15.11.2010 alleging that he had failed to obtain the permission of the prescribed/Competent Authority before his wife acquired immovable property. The norm, i.e., Rule 18(2) of the Central Civil Service (Conduct) Rules required prior permission of the prescribed authority before the acquisition or disposal of any immovable property by a public servant "*in his one name or in the name of any member of his* *family*". In this case, the appellant's wife had acquired property some time in 2006. He intimated this on 12.02.2010. The Authority is apparently looked into the matter and went into the question of adequacy of finances of the appellant and his wife at the time the property was acquired and thereafter issued the charge-sheet. This culminated with the imposition of minor penalty—withholding of three annual increments without cumulative effect. The learned Single Judge held that the appellant had violated Rule 18(2). On the question of proportionality, learned Single Judge was of the opinion that the penalty could not be termed as "shockingly disproportionate". The appellant contends that the learned Single Judge fell into error in holding that the penalty was not disproportionate. It was submitted that the transgression was an omission established by the fact that the appellant himself disclosed the acquisition—by his wife of the property, though late. Counsel for the respondent submits that once the misconduct stood proved, the penalty in the given circumstances could not be faulted. It was submitted that withholding of three increments with cumulative effect is also a listed minor penalty.

This Court has considered the submissions. It is a matter of record that the respondent/employer was intimated though, belatedly by the appellant; it conducted the necessary investigations into the availability of funds and finances for the acquisition of the property. It was undoubtedly satisfied that the appellant and his family had the requisite means to acquire the property. It was, thereafter, that the appellant was issued with a charge-memo.

While we agree with the respondent's contention that the conduct rules undoubtedly cast an obligation on the public servant to intimate the proposal to acquire property and obtain prior permission in the facts of this case, the appellant himself volunteered with the information although belatedly.

On the other hand, having regard to the fact that the respondent/employer conducted the necessary investigations and was satisfied that the appellant had the means to acquire the property, its decision to proceed and hold an enquiry too cannot be faulted. However, we notice that the penalty imposed, i.e., withholding of three increments is of the severest kind in the class of minor penalties. Considering the circumstances, the lighter penalty was called for as no other allegation was levelled against the petitioner. The Court is of the opinion that in the circumstances of the case, the penalty of withholding of three increments (without cumulative effect) was shockingly disproportionate. It is hereby modified to withholding of one increment without cumulative effect.

The writ petition is partly allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 16, 2016
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