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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 798/2017 & CM No.3688/2017**

DELHI JAL BOARD & ANR Petitioners
Through: Ms. Kanika Agnihotri, Advocate

versus

DHARAM PAL DHARRA Respondent
Through

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

ORDER
% **30.01.2017**

Having heard learned counsel for the petitioners, we are not inclined to interfere with the impugned order dated 26.7.2016, whereby OA No.1500/2013 filed by Dharam Pal Dharra has been partly allowed.

In our opinion, the Tribunal was justified in striking down the order dated 19.10.2012 purportedly passed under Rule 19(ii) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [hereinafter referred to as CCS(CCA) Rules]. The said rule was not applicable. The prerequisite condition that it was not reasonably practicable to hold the inquiry, was clearly not satisfied. This was not the ground and reason recorded for passing the order dated 19.10.2012.

The stand of the petitioners is that an inquiry pursuant to directions of the High Court in LPA No.481/2006 was held and therefore, there was no need for any disciplinary inquiry. Our attention was drawn to the order passed by the Division Bench of this Court in LPA No.481/2006, Dharam Pal Dharra v. Delhi Jal Board. This LPA was filed by Dharam Pal Dharra claiming backwages – pursuant to order of reinstatement passed in WP(C) No.1204/1996 passed by the Single Judge. Later on, the said LPA itself was withdrawn. LPA No.481/2006 was not filed by the petitioners, who were not aggrieved by the direction for reinstatement. The verification exercise as directed was not a disciplinary inquiry, nor was this verification exercise a substitute for departmental inquiry.

Article 311 mandates holding of disciplinary inquiry before major penalty of removal/dismissal etc. is imposed. The second proviso to Article 311(2) provides for three exceptions when no inquiry is required to be held. The Tribunal was justified in holding in the present case that clauses (a) to (c) of the second proviso to Article 311(2) are not satisfied. Indeed, no such argument can be raised, for the petitioners accept that the said exceptions or preconditions in clauses (a) to (c) of the second proviso are not satisfied. In fact, if we were to accept the contention of the petitioners we would

incorporate or add a new clause, which is not there in the second proviso to Article 311(2).

The Tribunal, taking notice of the relevant facts and also the seriousness of the charges, has given liberty to the petitioners to take appropriate action against the respondent after following the due procedure. Even on the question of back wages, it has been held that the respondent would not be entitled to back wages on the principle of “no work no pay”.

The relevant portion of the order of the Tribunal reads as under:

“34. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order of dismissal dated 19.10.2012 (Annexure A-1) passed by the Disciplinary Authority and order dated 01.04.2013 (Annexure A-2) passed by the Appellate Authority are hereby set aside with all consequential benefits. However, since the applicant has not actually worked on the post, so he will not be entitled to backwages of that period on the principle of “no work no pay.” However, the parties are left to bear their own costs.

Needless to mention, that the Disciplinary Authority would be at liberty to take fresh appropriate action against the applicant, after following the due procedure of Departmental Enquiry, in accordance with law.”

The aforesaid observations take care of interests of the petitioners.

The petition is dismissed. No order as to costs. CM No.3688/2017 is also disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 30, 2017
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