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

+ W.P.(C) 1890/2017

B.S. YADAV

..... Petitioner

Through Mr. O.P. Gehlaut, Advocate

versus

UNION OF INDIA & ANR

..... Respondents

Through Mr. Peeyoosh Kalra, ASC with
Ms. Sona Babbar, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **03.03.2017**

The petitioner- B.S. Yadav in the present writ petition impugns the order dated 30.09.2016 passed by the Central Administrative Tribunal in OA No. 4076/2012.

2. The petitioner vide said OA had challenged the order passed by the Disciplinary Authority dated 16th July, 2011 read with Corrigendum dated 17th July, 2012. The petitioner has also prayed for setting aside of the disciplinary proceedings in entirety.

3. The Tribunal, in the impugned order, noticing certain technical lapses, has passed the order of remand observing as under:-

“8. We further observe that a copy of the UPSC’s advice was not made available to the applicant before the impugned Annexure A-1 order was passed by the DA. Thus, the ratio of law laid down by the Hon’ble Apex Court in S.K. Kapoor (supra) has not been followed and thus the principles of natural justice have

not been observed. For this reason, the matter is required to be remitted back to the DA for following the principles laid down by the Hon'ble Apex Court in S.K. Kapoor (supra).

9. In view of the discussions in the pre-paragraphs and without commenting on the merits of this case, we pass the following order:

i) The Annexure A-1 punishment order passed by respondent no. 1 is quashed and the case is remitted to the DA.

ii) The respondent no. 1 shall make send a copy of the UPSC advice to the applicant within 04 weeks from the date of receipt of a certified copy of this order.

iii) The applicant shall submit his representation, if any, to respondent no. 1 within 04 weeks thereafter.

iv) The respondent no. 1 shall pass a fresh order under Rule 9 of the CCS (Pension) Rules, 1972 after giving due consideration to the representation of the applicant within 03 months thereafter.”

4. On the question of remand, we do not find any ground or reason to interfere with the discretion exercised by the Tribunal. The petitioner, a DANICS officer, was posted as Superintendent, Jail No. 1, Tihar, New Delhi during the years 2003-04 when an under trial prisoner Sher Singh Rana who was lodged in this Jail in FIR No. 253/2001 under Sections 303/307/201/120B/34 of the Indian Penal Code, registered at Police Station Parliament Street, New Delhi, had escaped in a dramatic manner. This FIR was relates to the murder of Phulan Devi.

5. Learned counsel for the petitioner submits that paragraph 9 of the impugned order would indicate that the Tribunal has made observations on merits, which would prejudice and adversely affect the petitioner in putting his defence or stand before the Disciplinary Authority or in future litigation.

Paragraph 9 of the impugned order reads:-

“9. In view of the discussion in the pre-paragraphs, and without commenting on the merits of this case, we pass the following order:

- (i) The Annexure A-1 punishment order passed by respondent no. 1 is quashed and the case is remitted to the DA.
- (ii) The respondent no. 1 shall make send **(sic.)** a copy of the UPSC advice to the applicant within 04 weeks from the date of receipt of a certified copy of this order.
- (iii) The applicant shall submit his representations, if any, to respondent no. 1 within 04 weeks thereafter.
- (iv) The respondent no. 1 shall pass a fresh order under Rule-9 of the CCS (Pension) Rules, 1972 after giving due consideration to the representation of the applicant within 03 months thereafter.”

6. We do not find that the Tribunal has decided or made any observation on merits in paragraph 9. The said plea of the petitioner is rejected.

7. Learned counsel for the petitioner has drawn our attention to paragraph 7 of the said impugned order. We would like to reproduce not only para 7 but also para 7.1, which records as under:-

“7. Regarding the powers of the Chief Secretary, GNCTD, with regard to his Annexure A-3 order whereby further enquiry from the stage of evidence was ordered by him, suffice to state that the Chief Secretary, GNCTD has been delegated the powers of DA by the competent authority. The Annexure A-2 charge memo was issued by the Chief Secretary in that capacity and, therefore, he is also having

powers to order fresh enquiry for valid reasons. In his annexure A-3 order dated 25.07.2007, the Chief Secretary has given the reasons as could be seen in para 2.4 supra.

7.1 We, therefore, hold that no illegality has been committed by the Chief Secretary in ordering further enquiry.”

8. The aforesaid finding of the Tribunal refers to and relies on the order dated 25th July, 2007 passed by the Chief Secretary, Delhi after receiving the enquiry report. Paragraph 7.1 clearly records that the Chief Secretary had ordered further enquiry. The contention of the petitioner is that in paragraph 7 of the impugned order, the Tribunal has made a wrong observation that the Chief Secretary has the power to order fresh enquiry. At best he could have ordered further inquiry. On harmonious reading of the paragraphs 7 and 7.1 of the impugned order and in particular, the order dated 25th July, 2007, it appears that the Chief Secretary had direction “further enquiry” and not “fresh enquiry”. If required and necessary, the issue “fresh enquiry” or “further enquiry” can be examined and considered in the next round.

9. Learned counsel for the petitioner submits that the Chief Secretary was not the competent authority and could not have acted as the disciplinary authority and therefore, the order dated 25th July, 2007 is illegal and invalid. The plea is that the petitioner having retired, the Joint Secretary, Ministry of Home Affairs is the competent Disciplinary Authority that can impose major penalties.

10. Learned counsel for the respondent no. 2 submits that the Tribunal has not finally decided the said issue or question.

11. In view of this statement made by learned counsel for respondent no.2, we clarify that the impugned order does not decide the said issue and it

will be open for the petitioner to raise the said issue/question before disciplinary authority and if required and necessary challenge the decision after the order of remand is passed.

12. With the above observations, the writ petition is dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 03, 2017
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