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

+ W.P.(C) 939/2017

NEERAJ SHARMA

..... Petitioner

Through Ms. Geeta Luthra, Senior Advocate
along with Mr. Ujjwal Jha and
Mr. Virendra Huda, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Dr. Ashwani Bhardwaj, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V.KAMESWAR RAO

ORDER

% **06.02.2017**

In this writ petition, the petitioner has challenged an order dated 13.10.2014 passed by the Deputy Inspector General/AP-SX imposing on the petitioner the punishment of reduction to the lower post of Sub Inspector/Exe until he was found fit after a period of two years from the date of receipt of the said order, to be restored to the higher post of Inspector/Exe. By the aforesaid order, it was further ordered that the petitioner would draw

Rs. 16,150/- (Present pay in pay band) + Grade Pay of Rs.4,200/- (corresponding to reduced rank) and normal increment on due date during the period of penalty.

The petitioner has also challenged the revisional order dated 08.01.2016 passed by the Directorate General, CISF dismissing the revision petition. There does not appear to be any challenge to the appellate order dated 20.02.2015, whereby, the appeal from the order dated 13.10.2014 had been rejected.

The main challenge in this writ petition appears to be an order dated 21.04.2016 rejecting the representation of the petitioner for appointment to the post of Assistant Commandant. In this context, it would be pertinent to mention that an enquiry was held against the petitioner on allegation of sexual harassment as made by a lady Constable. In the meanwhile, pending disciplinary proceedings, a Limited Department Competitive Examination was held and the petitioner was considered for promotion as an Assistant Commandant. However, the result was kept in a sealed cover pending completion of disciplinary proceedings.

In the Enquiry, the charges against the petitioner were held to be established. The finding is apparently based on some evidence. It is not for

this Court exercising writ petition under Article 226 of the Constitution of India to sit in appeal over factual findings arrived at in an enquiry.

After conclusion of the enquiry, the order of punishment as stated above was passed. The petitioner appealed. The appeal was rejected. The petitioner filed a revision petition. The revision petition was also rejected.

On perusal of the writ petition, we do not find any allegation of any procedural irregularity in conducting the disciplinary proceedings. The thrust of the challenge is on the merits of the findings in enquiry, which as observed herein above, are based on a complaint and on some evidence. In writ proceedings, it is not for this Court to weigh the evidence or to reanalyse the evidence to ascertain whether the findings have correctly been arrived at, in the absence of perversity. Three authorities have concurred with the findings in enquiry.

The question of law in this writ petition is whether the petitioner could have been denied promotion as an Assistant Commandant, after completion of the punishment period of two years, in terms of the order of punishment.

It would be pertinent to refer to paragraph 8 of the impugned order dated 21.04.2016 extracted herein below for convenience.

*“AND WHEREAS, Insp/Exe (now SI/Exe) Neeraj Sharma was awarded statutory punishment i.e., **“Reduction of lower post of Sub-Inspector/Exe until he is found fit after a period of two years”** before issuance of offer of appointment and his appeal and revision petition had also been rejected by the authority competent, he is not eligible for appointment of AC/Exe through LDCE-2014 as per stipulation contained in Para-03 of Examiantion Rules published vide Gazette Notification dated 01.03.2014, which provides the following inter-alia:-*

*“The candidates should have completed 04 years of regular service as on 01st January, 2014 in the rank of Sub. Inspector (GD)/Inspector (GD) including the period of basic training and should have unblemished record for 04 years **till issue of offer of appointment** and not having any major punishment in the entire service career.”*

It is patently clear that the Gazette Notification dated 01.03.2014 provided that any major punishment in the service career would be a disqualification. Further more, the candidates were required to complete four years of regular service as on 01.01.2014 in the rank of Sub Inspector (GD)/Inspector (GD) including the period of basic training. The candidates were required to have unblemished record for four years till issuance of offer of appointment.

The results of the examination were thus kept in a sealed cover. In the meanwhile, the petitioner was awarded the punishment impugned, which is

a major punishment under Rule 34 of the Central Industrial Security Force, 2001.

Ms. Geeta Luthra, learned Senior Counsel submits that the reduction of regular service was for a period of four years and on completion of the period of two years, all benefits were to be restored. This would include the selection in the Limited Department Competitive Examination for promotion to the post of an Assistant Commandant.

We, however, do not agree with this submission, in view of the Gazette Notification referred to above, which clearly stated that unblemished service record for four years upto the date of order of appointment was the requisite eligibility criteria and / or a condition precedent for promotion. Moreover, any major penalty in the service career would disqualify a candidate. No order of appointment had been issued till the date of imposition of the punishment against the petitioner, which is a major punishment. We have not gone into the question of whether the petitioner would be disqualified for competing/qualifying in examination for promotion in future as that was not in issue in this writ petition.

The writ petition cannot, therefore, be entertained and the same is dismissed.

INDIRA BANERJEE, J

V.KAMESWAR RAO, J

FEBRUARY 06, 2017

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