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

\+ **WP(C) No.1417/2014**

Date of Decision: 24th August, 2017.

PREM PRAKASH GUPTA .... Petitioner
Through: Mr.Sanjeet Kumar, Adv.

Versus

UNION OF INDIA & ORS. ....Respondents
Through Mr.Ruchir Mishra, Adv. with Mr.Mukesh K. Tiwari, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI , J (ORAL)

1. The petitioner has preferred the present petition to assail the order dated 5th July, 2013 passed by the Principal Bench, Central Administrative Tribunal, New Delhi in Original Application No.375/2011. The said Original Application (OA) preferred by the petitioner/applicant, to assail the disciplinary proceedings initiated against him and the consequential order passed thereof, has been dismissed. The petitioner has also sought a declaration that the period

under suspension from 9th August, 2005 to 27th December, 2005 be treated as spent on duty for all purposes.

2. The petitioner, at the relevant time, was serving as a Public Relation Officer with the respondents at Meerut. During the course of his functioning, he was required to submit a verification report in respect of a firm called M/s Silver Stone Communication, Jai Devi Nagar, Meerut, verifying the authenticity of the said firm. The petitioner, accordingly, gave his verification report. On the basis of the said verification, during the period 21st June, 2005 to 21st July, 2005, a sum of Rs.98,100/- for 109 V.P. Money Orders was paid to the said firm. However, subsequently, it was found that the said firm was fake. Consequently, disciplinary proceedings were initiated against the petitioner for submitting a false report.

3. The petitioner was initially placed under suspension on 9th August, 2005. The suspension of the petitioner was revoked on 27th December, 2005. In the meantime, on 19th October, 2005, the petitioner was issued a charge-sheet by the disciplinary authority. The Article of Charge, as translated, reads as follows:-

> "**Article-I** While working as PRI (P) Meerut City HPO during 28-04-2005 to 21-07-2005 verified the so called firm M/S Silver Stone communication, Jai Devi Nagar, Meerut only on the basis of rent receipt

of shop No.01 dated 25-04-2005 for Rs 800/- a deposit slip of advance of Dena Bank for Rs.3000/- and a ration card issued on address:- 130-Sharma Nagar, while the proprietor of the firm named Sh.Rakesh Bhasin stated on 29-07-2005 before Sh.SS. Negi O/S % the SS Pos Meerut. That the pass book of the firm is not yet prepared and the deposited amount has been returned to him and even the registration of the Firm is not made while under the mail orders system from business customers willing to do, could have been completed in prescribed Questionire Form under which the Firm Regn. Certificate, Details of Bank A/C Number, PAN of Income tax, Sales Tax PAN No, nature of business etc. and obtained other some requisite informations could have been verified from concerned offices. Therefore the verification of the firm could not be done properly resulting which to the firm which was found Fake in the enquiry a sum of Rs.98100/- for 109VP MOs was paid during 21-06-05 to 21-07-05.

It is therefore alleged that while working afore said capacity Sh. PP Gupta failed to maintain devotion to duty and worked as non becoming of a Govt. servant and there by violated rule 3(1) (ii) and 3(I) (iii) of CCS (Conduct)."

4. Pursuant to the departmental inquiry the inquiry officer vide report dated 1st March, 2008 found the petitioner guilty of the misconduct. Consequently, the disciplinary authority-after duly complying with the requirements of law and granting an opportunity to the petitioner to make his representation, accepted the inquiry report and punished the petitioner with the penalty of withholding of his next one increment without cumulative

effect for a period of four years. He also directed that the suspension period between 9th August, 2005 and 27th December, 2005 be treated as *dies non* for the purpose of increment, leave, pension etc.

5. The petitioner, then preferred an appeal before the Appellate Authority. The Appellate Authority upon perusal of the appeal and the order passed by the disciplinary authority, issued a show cause notice to the petitioner proposing to enhance the punishment. The said show cause notice was issued on 22nd August, 2008. To the said show cause notice, the petitioner submitted his reply on 4th September, 2008. The appellate authority considered the said reply of the petitioner and by a detailed order, rejected the representation made by the petitioner and enhanced the punishment to reduction of basic pay of the petitioner by four stages from Rs.6350/- to Rs.5750/- for a period of two years with cumulative effect. He maintained the order of the disciplinary authority to the effect that the period of suspension from 9th August, 2005 to 27th December, 2005 be treated as *dies non* for all purposes i.e. for the purposes of increment, leave and pension. Further appeal preferred by the petitioner was rejected by the Post Master General, Bareilly Region vide detailed order passed on 5th August, 2010. Consequently, the petitioner preferred the aforesaid

Original Application. The Tribunal did not find any merit therein and dismissed the same. However, the Tribunal has directed that a separate order be passed regarding the manner of treatment of the suspension period by the competent authority, after giving show cause notice to the petitioner.

6. The first submission of learned counsel for the petitioner is that he has been subjected to two different punishments for the same misconduct. Not only has his pay been reduced as directed by the Appellate Authority but the period spent on suspension between 9^{th} August, 2005 & 27^{th} December, 2005, has been directed to be treated as *dies non*.

7. We do not find any merit in this submission of counsel for the petitioner. It is for the competent authority to pass an order directing the manner in which the suspension period has to be treated by resort to Rule 54-B of the Fundamental Rules. An order directing the period spent on suspension as *dies non* is not punitive. There is no question of double jeopardy, as claimed by the Petitioner.

8. Since the suspension of the petitioner was revoked, pending finalization of the disciplinary proceedings, sub-rule (6) of FR 54-B is attracted. The competent authority was, therefore, entitled to review

on its own motion, after conclusion of the proceedings, as to how the said period should be treated under sub-Rule (3), or sub-rule (5), as the case may be. Since the petitioner has been found guilty, sub-rule (3) of FR 54-B is not attracted. The competent authority was, therefore, required to follow the procedure prescribed in FR 54-B (5). Rule 54-B (5) reads as under:-

> "F.R. 54-B (5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which In no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice."

9. The Tribunal has, accordingly, directed that the show cause notice be issued to the petitioner on the aspect of treatment of the suspension period. The eventual order that may be passed on this aspect cannot be considered to be a penalty arising out of the disciplinary proceedings. The aforesaid submission of the petitioner is, accordingly, rejected.

10. The next submission of learned counsel for the petitioner is that the Appellate Authority, while enhancing the penalty imposed upon the petitioner by the disciplinary authority, has not provided any justification thereof. He further submits that the order passed by the appellate authority is bereft of any reasons as to why the penalty has been enhanced. The appellate order, inter alia, states as under:-

> "8. On the basis of above facts and after assessment of arguments in appeal it is clear that the Appellant in his appeal has not mentioned any fact which may be admitted.
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> In the representation dated 04-09-08 also the Appellant has not offered any new fact by which the allegations leveled against him could be disproved. ***The allegations are of grave nature which are proved as True in the enquiry. I do feel that the Punishment awarded by the disciplinary Authority is not commensurate with the allegations and is much less that the justification. Therefore I issue the modified orders as follows***:-
>
> ORDER
>
> I therefore enhance the punishment given by the Disciplinary Authority and order the reduction of pay in the basic pay of the official for four stages from Rs.6350/- to Rs.5750/- for two years with cumulative effect and the period of suspension from 09-08-05 to 27-12-05 be treated as Dies non for the purpose of increment, leave and pension. This order will be effective from the date of original punishment order. Accordingly I

> disposed of the Appeal of Shri Prem Prakash Gupta APM (SB) Meerut Cantt."
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> (Emphasis supplied)

11. Learned counsel for the petitioner has also placed reliance on the decision of the Supreme Court in ***R.P. Bhatt Vs. Union of India & Others (1986) 2 Supreme Court Cases 651***, to submit that the Appellate Authority is bound to apply its mind on the appeal preferred by the delinquent employee and he cannot summarily dismiss the same. The Appellate Authority should state its reasons for confirming the order passed by the disciplinary authority and should have stated the reasons as to why the penalty has been enhanced.

12. Having heard learned counsel for the petitioner, we do not find any merit in the aforesaid submission as well. A perusal of the order dated 26th June, 2009 passed by the Appellate Authority shows that the submissions advanced by the petitioner in response to the show cause notice issued to him, have been dealt with, one by one. We have perused the said order and do not find any infirmity in the same. The appellate authority has observed that the punishment awarded by the disciplinary authority was not commensurate with the allegations and was much less than what was justified in view of the proven misconduct of the petitioner.

13. The order dated 5th August, 2010 passed on further appeal by the petitioner, also deals with the submissions of the petitioner point-wise. The said order, inter alia, states as under:-

> "6. The points raised by the appellant in his appeal dated 03.11.2008 are discussed ad seriatim below.
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> 6.1 The assertions/sequences narrated by the appellant are not convincing. That the order passed by disciplinary authority and reviewing appellate authority are based upon the gravity of misconduct committed by the petitioner.
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> 6.2 The assertion/sequence narrated by the appellant is not admitted. That the charge sheet issued to the appellant is clean, specific and liable to be proved. These cannot be quashed merely due to omission of quoting relevant Departmental rules in any case.
>
> 6.3 The assertion/sequence narrated by the appellant is not admitted. The verification of the said fake firm was carried out by the appellant deceitfully and insincerely. Sri Rakesh Bhasin, proprietor of the firm, in his statement dated 29.07.05, has clearly stated that deposit slip for Rs.3000/- for opening of account at Dena bank Meerut with a/c No.52110 and application form No.148710 a/t Labour office, Meerut was shown to the appellant during the course of verification. This reveals that neither the relevant PB was issued by Dena Bank nor Reg. No. was issued by the Labout

office, Meerut. Hence the firm was not in existence and was fake one.

6.4 The main charge against the appellant was verification of fake firm. As mentioned in previous para, this firm was verified by the appellant mainly on the basis of these documents i.e., deposit receipt & application form. Based on these & verification report of appellant, payment of VPMOs & delivery of VP articles were released to the proprietor of the fake firm. Besides, as per statement of proprietor dtd 29.07.05, neither the account was opened in Bank nor registration No. issued by Labour office, Meerut. Thus the assertion/sequence narrated by the applicant is not admitted.

6.5 The charges leveled against the appellant are specific and confirmed one and based on documentary proof. Disciplinary authority and reviewing appellate authority had passed their orders after thorough examination & relevant documents and gravity of misconduct. Thus the assertion/sequence narrated by the applicant is not admitted.

6.6 The available additional documents, as required by the appellant, were supplied through the PO concerned on 24.05.07 for the purpose of providing full opportunity to the appellant. Hence plea is not acceptable.

6.7 On receipt of defence statement of appellant dtd 07.11.05 in which he did not admit the charges, procedure was followed by the then disciplinary authority by appointing IO & PO and initiated inquiry. As such the version of appellant is totally wrong.

6.8 Full opportunity was provided by the IO to the appellant during the course of enquiry. Hence the plea taken by the appellant is not acceptable.

6.9 By verifying bogus firm, the appellant had not paid devotion to his duty and acted as unbecoming a Govt. servant. As such he violated Rule 3.1(ii) and 3.1(iii) of CCS(CCS) Rules,1964."

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"7. Keeping in view of the above facts, it is clear that the appellant has not put forth any convincing reason to accept in his defence. As such it is obvious that due to deceitful verification of the fake firm by the appellant, a sum of `.98,100/- was paid to the owner of the fake firm, for which the appellant was fully responsible. The reviewing Appellate authority has considered all the aspects of the case and decided as per Departmental rules and procedures. Hence, I am of the opinion that the punishment awarded by the Reviewing Appellate Authority is perfectly commensurate with the allegations leveled against the appellant. As such, I hereby reject the appeal and confirm the punishment imposed to the appellant by the Reviewing/Appellate authority. The appeal dated 14.08.09 preferred by Sh.Prem Praksh Gupta, BCR PA. Meerut Cantt. Is accordingly disposed of."

14. The aforesaid provides more than the adequate justification for enhancing the punishment eventually awarded to the petitioner. The

Appellate Authority has found, and rightly so, that the conduct of the petitioner was fraudulent and deceitful. He was the person responsible for conducting the process for verification of the firm M/s Silver Stone Communication. He was the one who had verified the authenticity of the said firm. On that basis, large amount of money was released to the said firm, and the firm was subsequently found to be fake. The petitioner could not explain in the course of the inquiry, as to how the said had happened. If he had genuinely verified the credentials of the said firm, the same would not have happened.

15. In our view, even the punishment awarded by the Appellate Authority is less and the same could have been much higher, since retention of such employee in the department, in our view, is not desirable. However, since the Appellate Authority has taken the final decision in the matter, we need not say more. The decision relied upon by the petitioner in ***R.P. Bhatt case (supra)*** is of no avail.

16. For the reasons stated hereinabove, in our view, the two appellate orders passed in the present case are very well reasoned and they point-wise discuss all the submissions advanced by the petitioner. It cannot be said that they suffer from non-application of mind.

17. In view of the aforesaid, we do not find any merit in the petition and the same is dismissed.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 24, 2017/aa- -