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

\+ W.P.(C) 2643/2017 and C.M. No.11482/2017

UNION OF INDIA AND ANR ..... Petitioners

Through: Mr. Vijay Joshi & Ms. Rashi, Advocates along with Mr. R.P. Pareekh, Consultant.

versus

GANGA SINGH ..... Respondent

Through: Mr. B.L. Wanchoo, Advocate.

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

<u>O R D E R</u>

% **10.10.2017**

1. The petitioners have preferred the present petition to assail the order dated 05.01.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.3451/2012. The Tribunal has allowed the said application preferred by the respondent, wherein he had assailed the penalty of reduction of monthly pension to the minimum admissible pension of Rs.3,500/- per month for a period of three years and the permanent withholding of the gratuity of the respondent.

2. The respondent was serving as a Receptionist in the office of the Director, National Gallery of Modern Art, Ministry of Culture, Jaipur House, New Delhi. He was in-charge of sale of paintings, souvenir items to

the public at the reception. It appears that a surprise check was conducted on 20.05.2005 & 21.05.2005 and substantial amount of shortages were found in the stocks and souvenir items which were entrusted to the respondent. Consequently, he was placed under suspension on 17.06.2005, and disciplinary proceedings were initiated against him.

3. The Disciplinary Authority appointed one Mr. A.V. R. Pillai, formerly Administrative Officer (NGMA) as the Inquiry Officer. The respondent/ delinquent was examined in the inquiry proceedings. The questions put to the respondent and the answers given by him are placed on record. A perusal of the same shows that upon being confronted with the shortages in the publications and souvenirs, the respondent did not deny the same. A perusal of the responses shows that the respondent sought to shift the responsibility upon his subordinate one Mr. Brij Pal by stating that he was the one who was undertaking the sale of the souvenir items and publications and was in-charge of raising the bills.

4. Pertinently, the respondent did not deny that there was a computer system in place in relation to inventorisation of the items received for sale, and the items which were sold at the counter, under his supervision. The respondent also did not deny the fact that he was the one in-charge of the articles and souvenirs entrusted to him for sale and it was the respondent who had to account for the same.

5. We may observe that the charges not only related to shortage of inventory to the tune of Rs. 2,37,625/- but also to misappropriation of monies to the tune of Rs. 1,33,508/-, since sales to the tune of Rs. 3,31,630/-

had been made but only Rs. 1,98,122/- had been deposited with the departmental cashier. The respondent was also found in possession of certain publications which have not been accounted for in the computerised inventory system when physical verification was undertaken on 20.05.2005 & 21.05.2005. He was, therefore, charged with not accounting for the publications received by him.

6. In view of the nature of replies given by the respondent, the Inquiry Officer made his report dated 18.01.2009 holding the respondent guilty of the charges levelled against him.

7. The Disciplinary Authority accepted the said report, and after following due procedure, issued the punishment order imposing the punishment, as aforesaid. Since the respondent had superannuated, he assailed the penalty imposed upon him directly before the Tribunal.

8. Before the Tribunal, one of the submissions raised by the respondent was that the Inquiry Officer was biased against him, since he was the one at whose instance the respondent had, from time to time, issued the souvenirs and publications to be distributed on complimentary basis. He claimed that the articles were missing on account of the same being requisitioned for complimentary distribution, and not on account of any misappropriation or negligence on his part.

9. The Tribunal has allowed the Original Application primarily by accepting the aforesaid submission of the respondent. Pertinently, the Tribunal has omitted to notice that no such plea was raised by the respondent when the Inquiry Officer was appointed, or when the inquiry

proceedings were underway. The respondent did not raise any grievance in relation to the identity of the Inquiry Officer before the Disciplinary Authority, by disclosing any reason whatsoever. Even in the inquiry proceedings when the respondent was put to question, he did not cast any aspersion on the Inquiry Officer. Thus, there was absolutely no basis for the Tribunal to conclude that the inquiry proceedings were vitiated on account of bias of the Inquiry Officer.

10. It is well-settled that bias has not only to be properly pleaded, but also substantiated. In the present case, without any basis the respondent apparently raised the issue of bias in the Original Application with no foundation whatsoever.

11. Pertinently, the Inquiry Officer, against whom allegations of bias were raised, was not even personally impleaded as a party respondent in the Original Application, which was imperative for the respondent to do.

12. The Tribunal has also proceeded on the basis that no witnesses were examined in the inquiry proceedings by the petitioner in support of the charges. In our view, the same was not called for in the facts & circumstances of the case. This is for the reason that the respondent practically admitted to the shortages as well as to the misappropriation of the amounts. His only explanation was that his subordinate Brij Pal was responsible.

13. In case the defence of the respondent was that it was Mr. Brij Pal, who was responsible, it was for the respondent/ delinquent to make a complaint against Mr. Brij Pal contemporaneously when the shortages took

place. It was the respondent who was responsible to account for the articles of souvenirs and publications, and he could not have shifted his responsibility on to his subordinate when such large-scale irregularities were detected upon a surprise check. Even if his subordinate was involved in any wrongdoing, it was the respondent who was responsible for the same.

14. In these circumstances, in our view, the impugned order cannot be sustained. The same is, accordingly, set aside leaving the parties to bear their respective costs.

15. We may at this stage observe that on 27.03.2017 this Court had observed that the direction for payment of back wages till the date of retirement was not being interfered with. The back wages have already been released to the respondent. To that extent, the impugned order passed by the Tribunal is not being interfered with.

VIPIN SANGHI, J

REKHA PALLI, J

OCTOBER 10, 2017

B.S. Rohella