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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5049/2017**
JATA SHANKAR MISHRA Petitioner

Through: Mr. Saurabh Sharma, Advocate.

versus

UNION OF INDIA AND ANR Respondents

Through: Mr. Sanjeev Uniyal, Advocate along
with Mr. Dhawal Uniyal, Advocate for
R.1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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31.05.2017

The petitioner has preferred the present writ petition to assail the order dated 23.03.2016 passed by the Central Administrative Tribunal ('the Tribunal') in O.A. No. 1849/2012. By impugned order, the Tribunal has dismissed the petitioner's said Original Application, wherein he assailed the disciplinary proceedings and the resulting punishment imposed upon him.

The petitioner joined as a Assistant Executive Engineer in the Council of Scientific and Industrial Research (CSIR) on 20.07.1990. He was issued the Charge Sheet vide memorandum dated 21.05.1997. The substance of the allegation against him was that, in collusion with one of the tenderers M/s Satinder Mahajan, the petitioner changed the rates of certain items in the tender papers of the said Contractor, which resulted in undue pecuniary benefit to the Contractor to the extent of Rs. 2,33,520/-.

The disciplinary enquiry was held against the petitioner and the Director General, CSIR vide order dated 14.01.2004 imposed the following penalty upon him:-

“Reduction of pay by three stages for a period of three years with cumulative effect with further stipulations that during the period of reduction, increments will not be drawn and on expiry of the period of penalty, the reduction will have the effect of postponing the future increment of pay upon Shri. J.S. Mishra. “

The petitioner preferred a departmental appeal on 13.04.2004 before the Appellate Authority (AA), namely, Vice President, CSIR, who dismissed the said appeal on 01.07.2005 and confirmed the penalty imposed upon the petitioner. The petitioner then preferred a review petition before the Appellate Authority who, vide its order dated 18.02.2008, found that there had been an infirmity in the proceedings as regards the authority who had considered the Inquiry Report. Consequently, the Appellate Authority directed that the Inquiry Report needs to be submitted again to the correct disciplinary authority i.e. Joint Secretary (Admn.). Accordingly, the matter was placed before the J.A. (Admn.), who passed the penalty order dated 28.01.2009. The operative part of the penalty order reads as under:-

*“Now, therefore, on careful consideration of the submissions made by Shri Mishra in his representation dated 01.10.2003, the report of Inquiry Officer and other records of the case the undersigned feels that ends of justice would be sufficiently met if **penalty of reduction of pay by three stages for a period of three years with cumulative effect and with the stipulation that during the period of the reduction increments will not be drawn and on expiry of the period of the penalty, the reduction will***

have the effect of postponing the future increments of pay, is imposed on Shri. Mishra.” (emphasis supplied)

The petitioner again preferred a departmental appeal before the DG, CSIR, and the penalty was modified vide order dated 05.01.2010 as follows:-

*“However, it cannot be denied that the appellant has undergone suffering owing to this case. I, therefore, modify the aforesaid penalty to that of **reduction of pay by three stages for a period of three years without cumulative effect and for the period of reduction he will not earn increments of pay and on expiry of the period of penalty, the reduction will not have the effect of postponing the future increments of pay.**”* (emphasis supplied)

The petitioner then preferred a revision petition under Rule 29 of the CCS (CCA) Rules, 1965 before the Revisional Authority, i.e. V.P., CSIR, who, vide order dated 14.07.2011 further reduced the penalty to mere ‘**Censure**’. The petitioner then approached Tribunal.

The Tribunal, after examining the challenge to the enquiry proceedings and the orders passed, did not find any merit in the petitioner’s submissions.

We may observe that a perusal of the impugned order shows the thrust and focus of the impugned order is consideration of the petitioner’s plea that the penalty of ‘**Censure**’ has resulted in heavy financial losses to him, on account of his not getting the financial benefits in terms of the revised Merit and Normal Assessment Scheme (MANAS). In the impugned order, the Tribunal has also quoted the relevant extract of clause 6.10 (30) of MANAS which reads as under:-

“3. In case the disciplinary proceedings result in imposition of penalty of “censure” or “recovery from pay of the whole or part of any pecuniary loss caused by the official’s negligence or breach of orders” to the Council the case would be placed before the same Assessment Committee(s) for the relevant year(s), as far as possible, which will review it with reference to the original recommendations kept in the sealed cover(s), the circumstances leading to the disciplinary action and the penalty imposed; and after taking into consideration all the aspects, give specific recommendations for promotion or otherwise from the due date(s). Even if the employee is recommended for assessment promotion from his due date, his pay on promotion will be fixed notionally from the due date but actual monetary benefit shall accrue to him only from the date following the date of imposition of any of these penalties.”

However, the perusal of the Original Application, even after its amendment, shows that there were absolutely no pleadings made by the petitioner in relation to his rights emerging from the imposition of penalty of ‘Censure’ and , in particular, in relation to the MANAS.

The submission of learned counsel for the petitioner before us is, firstly, that one Dr. P.S. Ahuja, Scientist ‘E’ IHBT was cited as a departmental witness. Learned counsel refers to the order dated 15.05.1998 passed by the same Dr. P.S Ahuja – in his capacity as Director, wherein he directed that the enquiry against the petitioner and other officers should be held ‘simultaneously’ and not as a ‘common proceeding’. The petitioner claims that this shows that the inquiry was vitiated with bias, as a departmental witness was also acting administratively in respect of the same inquiry. We are not impressed by this submission of the learned counsel for the petitioner. Merely

because, during the course of the enquiry, Dr. P.S. Ahuja had earned a promotion as a Director and, in that capacity, he passed the order dated 15.05.1998 as aforesaid, no prejudice can be said to have been caused to the petitioner. Pertinently, it is not Dr. P.S. Ahuja, who acted as the disciplinary authority of the petitioner. Initially Dr. P.S. Ahuja acted as the disciplinary authority, and after the first order of the Appellate Authority, it is JS (A) who acted as a disciplinary authority.

Learned counsel for the petitioner next submitted that the petitioner suffered losses on account of the punishment of ‘*Censure*’ being inflicted upon him. Merely because the petitioner has suffered losses, such as denial or delay in grant of promotion, is no reason to set aside the punishment imposed upon the petitioner, which has been imposed after a detailed enquiry against him wherein he has been found guilty, and which has gone through the entire hierarchy, as we have already noticed hereinabove. If the finding of guilt and imposition of penalty has had its fall out, so be it.

So far as the submission with regard to the non-compliance of the MANAS is concerned, since there were no pleadings made by the petitioner in Original Application, really speaking, the Tribunal need not have been gone into the said issue. Even the prayers made in the amended OA related only to the quashing of the penalty orders and the other orders passed in the disciplinary proceedings against the petitioner. The other prayer made by the petitioner was for “*payment of the arrear with interest as applicable in GPF*”, which was not sufficient to warrant examination of any other aspect de hors the pleadings.

In these circumstances, while dismissing this petition, we leave it open to the petitioner to raise all his grievances in an appropriate petition before the Tribunal.

Dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 31, 2017/ss