

\$~33.

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

+ **W.P.(C) 5658/2017**

RAJENDRA SINGH

..... Petitioner

Through: Dr. L.S. Chaudhary, Viresh
Chaudhary and Manoj Kr Bhagat,
Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Ms. Ruchi Jain for R-1, 3, & 4
Mr. Naresh Kaushik and Devik Singh
for R-2/UPSC

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

ORDER
10.07.2017

%

C.M. No. 23667/2017

Exemption allowed, subject to all just exceptions. The application stands disposed of.

C.M. No. 23668/2017

For the reasons stated in the application, the additional documents filed are taken on record. The application stands disposed of.

W.P.(C) 5658/2017

The petitioner has preferred the present petition to assail the order dated

22.02.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.2423/2014. By the impugned order, the tribunal has dismissed the said O.A. preferred by the petitioner.

The petitioner was departmentally charge sheeted on 25.08.2005. Six charges were levelled against him. In the departmental inquiry vide report dated 05.03.2012, four out of the six charges levelled against the petitioner were proved, while the two others were not proved. The disciplinary authority accepted the findings of the inquiry officer in respect of five charges but gave a disagreement note in respect of one charge. The petitioner was, accordingly, given the disagreement note to make his representation which he did on 29.06.2012. The competent authority after consulting the UPSC and considering the representations of the petitioner came to a tentative decision for imposition of a suitable major penalty and after receiving advice of UPSC, imposed the penalty of *“Reduction in pay to the next lower grade with salary being fixed at the bottom of his lower grade for a period of 3 (three) years with further directions that he will not earn increments of pay during the period of such reduction and with further directions that his original seniority will be regained in the higher grade after the expiry of the period of reduction”*.

Before the said penalty was imposed upon the petitioner, on account of the inquiry not being completed by the respondents, the petitioner had preferred O.A. No. 675/2013, which was disposed of by the tribunal on 01.05.2014. The direction issued by the tribunal was in the following terms:

“We direct that the said disciplinary proceedings be concluded and the order of the disciplinary authority be issued within a period of six weeks from the date of receipt of a copy of this order. Let this be done accordingly. There should be no

further delay failing which we further direct that the proceedings shall abate after the expiry of the aforementioned the stipulated time for disposal of the proceedings”.

Since the aforesaid direction had not been strictly complied with inasmuch, as, the final order had not been passed within a period of six weeks granted by the tribunal, the petitioner preferred the aforesaid O.A. No. 2423/2014. During pendency of the proceedings before the tribunal, the competent authority realised that the order of penalty issued on 07.07.2014 was incorrect inasmuch, as, the petitioner occupied the induction post and he had not actually been promoted from the lower post. Consequently, the penalty imposed on the petitioner could not have been implemented and the same required to be reconsidered.

The submission of the petitioner before the tribunal was that on account of non compliance of the earlier direction issued by the tribunal while disposing of O.A. No. 675/2013, the later part of the said direction had taken effect – which meant that the inquiry proceedings stood abated. The tribunal has rejected this submission of the petitioner by holding that the order has been passed “practically within six weeks”.

The submission of the petitioner is that the earlier order of the tribunal in O.A. No. 675/2013 had been served on the DoPT on 15.05.2014. The period of six weeks expired on 26.06.2014, whereas the penalty order of penalty was issued only on 07.07.2014. Therefore, there was a delay of 11 days in passing the penalty order.

Counsel for the petitioner has sought to place reliance on the judgment of the Supreme Court in ***State of Punjab & Ors. v. Chaman Lal Goyal***, JT 1995 (2) SC 18, wherein the Supreme Court issued a similar

direction in relation to departmental proceedings.

Having heard counsel for the petitioner and perused the record, we do not find any merit in this petition. First and foremost, the directions issued by the tribunal cannot be read as, and did not attain the status of a statute. The kind of direction issued by the tribunal – that is to say that the departmental proceedings shall abate if the proceedings are not finalised within a particular period, in our view, should not be issued. Even if the tribunal, in a given case, feels that the departmental proceedings are unduly delayed and the tribunal makes a direction that the same should be completed in a time bound manner, the directions should be couched in such language as to not vest the delinquent with a right, which even a statute does not vest in him. There are other ways and means for the tribunal to ensure strict compliance of its directions. Such unintended benefit cannot be accorded to a delinquent employee, whose conduct is under examination. The tribunal has itself not viewed its earlier direction issued on 01.05.2014 as peremptory and, in our view, rightly so.

The spirit and purport of the order passed by the tribunal in O.A. No. 675/2013 is only that the respondents should act expeditiously and, so far as possible, conclude the disciplinary proceedings within six weeks from the date of receipt of the order. There is substantial compliance of the said direction inasmuch, as, the order imposing penalty was issued on 07.07.2014. The intent of the Disciplinary Authority to conclude the proceedings urgently cannot be doubted, since the order of penalty was passed on 07.07.2014. In our view, that was sufficient compliance and on account of the so-called delay of 11 days in passing the said order, the proceedings against the petitioner could not have been abated. Since the

penalty imposed upon the petitioner vide order dated 07.07.2014 is premised on a wrong assumption with regard to his induction in the present posting, the same can obviously be corrected.

When it comes to directions issued by the Supreme Court, entirely different considerations come into play. Article 142 of the Constitution of India expressly provides that the orders passed by the Supreme Court shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament. Reliance placed by *Chaman Lal Goyal* (supra) is, therefore, misplaced.

Learned counsel for the respondent, who appears on advance notice, states that the corrected order of penalty has already been passed and communicated to the petitioner.

Accordingly, the present petition is dismissed.

It goes without saying that it shall be open to the petitioner to assail the order of penalty passed against him in independent proceedings on its own merits.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 10, 2017

sr