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

+ **W.P.(C) 5242/2017**

UNION OF INDIA AND ORS

..... Petitioner

Through: Mr. Sanjeev Narula, CGSC with Ms.
Anumita Chandra, Adv.

versus

DINESH KUMAR PALIWAL

..... Respondent

Through: Mr. Amitesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

12.07.2017

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Cav No.580/2017

Since the caveator has put in appearance, the caveat stands discharged.

W.P.(C) 5242/2017 & C.M. No.22262/2017

We have heard learned counsels, and proceed to dispose of the present writ petition. The petitioner/ UOI has preferred the present petition to assail the order dated 21.02.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1982/2016, whereby the OA preferred by the respondent/ applicant has been allowed, and the petitioner has been directed to allow the respondent/ applicant's request for voluntary retirement from service with effect from the due date.

The respondent had applied to seek voluntary retirement under Rule 48A of the CCS (Pension) Rules, 1972 vide his application on 18.11.2015. The application was returned by the petitioner on 28.01.2016. The respondent then gave a fresh application on 01.02.2016. Since he was not granted permission to voluntarily retire, he preferred the aforesaid O.A.

The tribunal has allowed the O.A. by passing a short order. The operative portion of the said order reads as follows:

4. *I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.*

5. *The Government's "Guidelines for acceptance of notice" given under rule 48-A in the Swamy's Pension Compilation read, inter alia, as under: "Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Government servant concerned."*

6. *Disciplinary proceedings are stated to be contemplated against the applicant, but the other condition that having regard to the circumstances of the case, the disciplinary authority is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, is not fulfilled. That major penalty proceedings are contemplated is not sufficient, because "major penalty", by definition, is not confined to removal or dismissal.*

7. *In the light of the above, I am of the view that the instant OA deserves to succeed. Therefore, the impugned OM (Annexure A-1) is set aside. The respondents are directed to allow the applicant's request for voluntary retirement from service w.e.f. the due date.*

8. *The OA is allowed accordingly. No order as to costs”.*

The impugned order leaves much to be desired. The tribunal is expected to record and deal with all the submissions that the parties may raise before it. A perusal of the impugned order shows that the tribunal has only recorded its findings, but the reasons therefor are conspicuously absent. On this short ground, the impugned order cannot be sustained. Accordingly, we set aside the impugned order and remand the case back to the tribunal for rehearing and reconsideration of the matter afresh. The tribunal shall pass a fresh reasoned order dealing with the submissions of the parties.

We make it clear that we have not expressed any opinion on the merits of the respondents claim. We further direct that the impugned order dated 21.02.2017 shall not influence the tribunal, one way or another, while dealing with the matter afresh.

The parties shall appear before the tribunal on 18.07.2017. The tribunal is requested to expedite the hearing of the case as early as possible.

Dasti.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 12, 2017

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