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

+ LPA 464/2017

PARVEEN KUMAR Appellant

Through: Appellant in person.

versus

EXPORT INSPECTION COUNCIL & ORS Respondents

Through: Mr. L.R. Khatana, Advocate for
respondents No.1 to 4.

Mr. Anil Panwar, Advocate for
respondent No.5.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

14.07.2017

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C.M. No. 24213/2017

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

C.M. No. 24214/2017

3. By this application, the appellant seeks condonation of 20 days delay in filing the present appeal.
4. For the reasons stated in the application, the same is allowed.

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5. The appellant assails the order dated 15.05.2017 passed by the learned Single Judge in W.P. (C) No. 4157/2017.

6. The learned Single Judge has dismissed the writ petition preferred by the appellant to assail the letter/ order dated 27.05.2014, whereby his application to seek voluntary retirement under Section 48A of the CCS (Pension) Rules was rejected on the ground that he was facing a major penalty charge. The writ petition was dismissed by the learned Single Judge by observing that the same had been preferred after three years of the issuance of the impugned communication dated 27.05.2014 and that the appellant had not acted with promptitude. He also took note of the fact that, in the meantime, an order dated 17.02.2016 had been passed imposing penalty of reduction in rank against the appellant in the disciplinary proceedings referred to in the impugned order dated 27.05.2014, and that he had been dismissed from service in respect of another proceeding on 05.04.2016.

7. We may note that the appellant has preferred a separate writ petition being W.P. (C) No. 3940/2017 to assail the penalty order dated 17.02.2016, whereby he was reduced in rank. The appellant states that he has filed yet another writ petition to assail the order of his dismissal from service on 05.04.2016, which is also pending.

8. The submission of the appellant is that the order dated 27.05.2014 is illegal inasmuch as in respect of the disciplinary proceedings mentioned in the said order, eventually, the appellant was only reduced in rank vide order dated 17.02.2016, and not dismissed or removed from service. Consequently, Rule 48A could not be invoked against the appellant.

9. We do not find any merit in this submission. When a major penalty

proceeding is initiated against a delinquent employee, the Disciplinary Authority, obviously, would not have made up his mind and would not be aware as to what would be the extent of major penalty that may eventually be imposed upon the delinquent, if at all. Dismissal and removal from service are amongst the most severe major penalties. However, reduction in rank is also one of the major penalties defined in the Discipline Rules. Therefore, when the order dated 27.05.2014 was passed, since the major penalty proceedings against the appellant were pending, it could not be said that his application for voluntary retirement was incorrectly rejected. Merely because the eventual penalty of reduction in rank, and not dismissal or removal from service has been imposed, it cannot be said that the order dated 27.05.2014 stood vitiated. The rationale behind denial of request for voluntary retirement – when major penalty proceedings are pending or contemplated, is that the delinquent employee should not get away with his misconduct and escape penalty by getting voluntarily relieved from service before disciplinary action is brought to its logical conclusion, and he should not secure pension and other retiral benefits, to which he may not be entitled, if found guilty of misconduct. Thus, the petitioner's application for voluntary retirement was justifiably rejected.

10. Even otherwise, we are of the view that the learned Single Judge was right in dismissing the writ petition on the ground of delay and laches. In case the contention of the appellant was that the impugned order dated 27.05.2014 was illegal, on the ground that the appellant's dismissal/ removal from service could not be resorted to, then it was open to him to prefer his remedy when the impugned order was passed, rejecting his application for

voluntary retirement. There was no justification for the appellant to have waited for passing of the order dated 17.05.2016 or 05.04.2016.

11. We do not find any merit in the appeal. Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 14, 2017
B.S. Rohella