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

+ **W.P.(C) 8207/2017**

PRADEEP KUMAR GUPTA Petitioner

Through: **Mr.Ranjit Sharma, Advocate.**

versus

UNION OF INDIA AND ORS Respondents

Through: **Mr.Prasanta Varma, Sr. Central Govt.
Counsel & Ms.Amrita Prakash,
Central Government Counsel for R-1.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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18.09.2017

C.M. No.33735/2017 (Exemption)

Exemption allowed, subject to all just exception.

The application stands disposed of.

C.M. No.33736/2017 (condonation of delay)

For the reasons given in the application, 25 days delay in re-filing the petition is allowed.

The application stands disposed of.

W.P.(C) 8207/2017

The petitioner has preferred the present writ petition to assail the order dated 08.02.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1136/2014 whereby

the petitioner's Original Application assailing the disciplinary proceedings taken against him and consequential order of dismissal passed against him was dismissed.

The petitioner, at the relevant time was functioning as Regional Representative & Member Convenor in Regional Committee (RC), Bhubaneswar i.e. during the period from June 2009 to April 2010. During the course of this official function, he dealt with the file relating to the organisation namely, Universal Progressive Study and Cultural Forum, Cooch Behar, West Bengal. The petitioner was charge-sheeted with a charge memo dated 21.03.2012. The charge against the petitioner was that the petitioner released an amount of Rs.4,96,500/- as first instalment to the said organisation on 10.07.2009 out of the total sanctioned amount of Rs. 9,93,000/- towards organising Gram Shree Mela and demanded and accepted a sum of Rs.50,000/- from the Secretary and Ex Officio Director of the said Voluntary Organisation Shri Sukhamay Paul for releasing balance amount of total sanctioned amount. The petitioner was caught by the CBI in the trap which was laid on the basis of a complaint made by the Voluntary Organisation. We are informed that the petitioner is being prosecuted by the CBI and the trial is in progress. Meanwhile, in the Departmental Enquiry the Enquiry Officer submitted his report on 17.07.2013 holding that the charges against the petitioner were not proven. The Disciplinary Authority, however, disagreed with the findings of the Enquiry Officer and issued a disagreement note to the petitioner. The petitioner made his

representation whereafter the Disciplinary Authority passed the order dated 23.09.2013 imposing the penalty of dismissal from service on the petitioner with immediate effect. The departmental appeal preferred by the appellant was also dismissed by the Hon'ble Minister of Rural Development vide order dated 13.01.2014. Consequently, he preferred the aforesaid Original Application. The Tribunal examined the arguments advanced before it on behalf of the petitioner and did not find any merit in the same. Consequently, the Original Application was dismissed.

The submission of learned counsel for the petitioner is that the two material and relevant witnesses namely, Shri Amitav Ghosh, Inspector, CBI, ACB, Kolkata and Shri S. Gangopadhyay, Inspector, CBI, ACB, Kolkata who were also named as witnesses in the departmental proceedings were not examined. His submission is that it was a case of no evidence against the petitioner. According to the petitioner, there were contradictions in the statement made by the complainant who appeared as a witness. He, therefore, contends that the same could not be relied upon to hold the petitioner guilty. He further submits that even the statement of two officers who were examined as PW-3 and PW-4, does not incriminate the petitioner in any manner.

The further submission of learned counsel for the petitioner is that the notings made in the relevant file and the communications issued by the petitioner to the Voluntary Organisation would show that the petitioner did not favour the Voluntary Organisation and

repeatedly called upon the Voluntary Organisation to establish the utilisation of the first instalment of Rs.4,96,500/- released in July 2009 to organise the Gram Shree Mela at Kolkata. The petitioner, in fact, sought compliance by the said Voluntary Organisation which would not be the case had the petitioner intended to favour the Voluntary Organisation.

The further submission is that the Voluntary Organisation, therefore, made a false complaint against the petitioner with a view to trap the petitioner. Learned counsel further submits that in the statement of the complainant, he has not stated that there was a demand made by the petitioner on the date when the amount of Rs.50,000/- is alleged to have been paid to the petitioner.

Learned counsel for the petitioner has also sought to urge the submission with regard to the order of dismissal not having been placed before the Executive Committee of the respondents-department. We find that the said plea was not taken in the Original Application and it was not even argued before the Tribunal. In these circumstances, we do not find any justification to permit the petitioner to raise the said plea at this stage, since this Court is sitting in judicial review of the order passed by the Tribunal, and is not the Court of First Instance.

Having considered the submissions of the petitioner in the light of the impugned order and the evidence read over and referred to by the petitioner, we are of the view that there is absolutely no merit in the present petition. Firstly, we may observe that what the petitioner

wishes us to undertake, is an exercise of re-appreciation of evidence, and it certainly cannot be said that there is no evidence against the petitioner for holding him guilty of the charges levelled against him.

The complainant himself appeared in the enquiry and graphically described the manner in which the bribe was demanded and accepted by the petitioner. Some of the questions posed to the complainant, and the answers given by him may be taken note of in this regard.

“Q. Have you invited vide your letter dated 01.04.2010 to Shri P.K. Gupta RR & MC as a Chief Guest in the inaugural function of the GSM held on 10.4.2010 at Kolkata?

A. I have already admitted.

Q. In your complaint dated 21.04.2010 it is mentioned that “Shri Gupta, the RR & MC, RC Bhubneswar came down to Kolkata on 10.04.2010 while the fair was going on in Kolkata? Why have you not mentioned your investigation letter dated 01.04.2010 inviting to Shri Gupta as a Chief Guest in the said Gram Shree Mela?

A. My complaint is specific and I did not consider it relevant.

Q. Have you received Shri Gupta around 5.30 a.m. on 10.04.2010 at Howrah Railway Station?

A. Yes

Q. In your complaint dated 21.04.2010 you have mentioned that “Shri Gupta called me at hotel Inox International near Moulali Kolkata where he was staying. When I met him at the said hotel, he demanded from me a bribe of Rs.50,000/- for

releasing the balance amount of the sanctioned amount” why yesterday you stated “on 11.04.2010 I met Shri Gupta at Hotel Inox, he told me that once a positive report was given by him, then only the organization can get 2nd instalment”. Whether Shri Gupta stated for releasing the balance amount or the 2nd instalment of the sanctioned amount.

A. Balance means the rest amount out of the received amount. Shri Gupta asked money as bribe to release the balance amount – it may either be 2nd or final.

Q. Why you have stated 2nd instalment repeatedly in your statement yesterday?

A. As we have already received the first instalment, balance comes from the 2nd.

Q. Have you any proof/evidence like in writing etc. demanding bribe by Shri Gupta during his visit to Kolkata on 10th & 11th April, 2010.

A. Bribe is never asked in writing.

Q. Why have you not mentioned the exact date and time in your complaint dated 21.04.2010 when Shri Gupta demanded bribe of Rs.50,000/- during his visit on 10th & 11th April to Kolkata from you?

A. I have already mentioned the period when he was staying in Kolkata and asked me for bribe.

Q. If Shri Gupta demanded bribe of Rs.50,000/- on 10.04.2010 then why have you not publically announced at the time of inauguration of the GSM at Kolkata, when Shri Gupta was sitting as the Chief Guest on the Dias that we (NGO) have invited Shri Gupta to honour him as Chief but he was demanded bribe?

A. Such a thing is never announced publically and in

such an inaugural function.

Q. If Shri Gupta demanded bribe on 10th/11th April, 2010, why no such complaint was made with the local police or CBI immediately rather making complaint after 10 days i.e. on 21.04.2010 to CBI.

A. Whatever we have done as per the rule of Anti Corruption Branch (CBI).

Q. Have you gone to Howrah Railway Wtation on 11.04.2010 in the evening to see off Shri Gupta when was returning to Bhubaneswar despite of his demand of bribe of Rs.50,000/-.

A. I do not remember.”

Reliance placed by the petitioner on the letters written by the petitioner to the Voluntary Organisation regarding submission of reports in relation to utilisation of the first instalment, in no manner, can be said to be communications which conveyed any adverse stance on the part of the petitioner against the Voluntary Organisation. If that was so, there was no question of the petitioner going as a Chief Guest to the function organised by the Voluntary Organisation at Kolkata. Therefore, his plea that he was falsely implicated because of his adverse reports is liable to be rejected.

The Petitioner cannot dispute the fact of his having accepted the amount of Rs50,000/- during the trap laid by the CBI, and the fact that he was apprehended at the spot upon conclusion of the trap proceedings. Thus, there was cogent evidence available for the Disciplinary Authority to establish the guilt of the Petitioner. The

submission that it was a case of no evidence has absolutely no merit.

In these circumstances, we find absolutely no merit in the writ petition and the same is accordingly, dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 18, 2017/gm