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

\+ **W.P.(C) 11014/2015**

Date of decision: 10th March, 2017

DEEP CHAND ..... Petitioner

Through Mr. M.K. Bharwaj, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondent

Through Ms. Saroj Bidawat, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The petitioner-Deep Chand, in this writ petition, impugns the order dated 18th March, 2015 of the Principal Bench of the Central Administrative Tribunal (Tribunal, for short), whereby OA No.1623/2013 filed by him has been dismissed.

2. The petitioner was compulsorily retired with effect from 21st September, 2004. However, vide judgment dated 26th March, 2009, in W.P. (C) No.8635/2008, the Revisionary Authority was directed to consider the petitioner's representation and look into the matter once again insofar as the quantum of punishment was concerned.

3. The Revisionary Authority vide order dated 4th June, 2010 held as under:-

> "And whereas the President after considering the aforesaid representation of Shri Deep Chand in the light of various mitigating factors, precedent cases and principle of

equity and justice to re-examine the Penalty of "Compulsory Retirement" vis-a-vis gravity of offence find the following:-

(a) That the salary in respect of Shri Deep Chand was never attached as a result of recovery proceedings by his lenders so long as he was in service prior to his compulsory retirement.

(b) That he has already liquidated the entire loan amount.

(c) That as far as second charge of forging signature of Shri MK Jain on irrevocable letter of authority is concerned. It is on record that the individual contended that initial copy of irrevocable letter of authority dated 07 Feb 2002 does not bear the signature of the borrower at the left hand side at the bottom of the letter, but in the Xerox copy of the same letter signature of the borrower is reflected. It is indicated in Para 8 b(ii) of the Inquiry Report that the CO himself agreed that he has signed the irrevocable letter of authority blank and handed over to the bank agent, but this inference of the Inquiring Authority accepted subsequently by the disciplinary action does not clarify as to whether original letter bore signatures of the borrower or not. However, it is a fact that this undertaking was unauthorized.

(d) That it is a fact that Shri Deep Chand is having liabilities towards his family consisting of his old mother, wife and two minor children.

And whereas the President, after having considered all the relevant facts and circumstances decides that the ends of equity and justice would be met with the award of the punishment of reduction by three stages of pay from the pay drawn by him immediately before imposition of penalty of compulsory retirement on 21 Sep 2004 for a period of three years with further direction that he will not earn increments

> during this period of three years and the reduction will have the effect of postponing future increments of his pay. Consequently, the punishment awarded vide Order dated 21 Sep 2004 is cancelled. Shri Deep Chand is hereby reinstated in service with effect from the date of Compulsory Retirement. Since he has been found guilty of the charges and has not performed any duty during the period from Compulsory Retirement to the date of reinstatement, it is ordered that the period from the date of his compulsory retirement to the date of his reinstatement should be treated as "dies non"."

4. This order dated 4th June, 2010 was accepted by the petitioner and he re-joined the service. After rejoining, the petitioner also challenged the order dated 4th June, 2010 in the OA No. 1623 of 2013 primarily on the ground that the period between 21st September, 2004 and the order dated 4th June, 2010, should not have been treated as dies-non. The prayer made in the OA was that the annual increments should be given to the petitioner with effect from September, 2005 with arrears of pay and the effective date of rejoining should be the date of compulsory retirement i.e. 21st September, 2004.

5. However, before us, the petitioner has accepted and not argued that the period between 21st September, 2004 till 4th June, 2010 should not be treated as "dies non" or that increments should be paid for this period. The petitioner has not challenged and argued against the punishment imposed vide order dated 4th June, 2010 or that the period between 21st September, 2004 and 4th June, 2010 should not be treated as "dies non".

6. The petitioner, however, submits that the order dated 4th June, 2010 has not been correctly implemented as the pay of the petitioner, upon reinstatement, was fixed without including increments which he would have

earned after he had rejoined.

7. Thus, the only question, which arises for consideration, relates to implementation or interpretation of the order dated 4th June, 2010. We are not required to go behind the said order or examine the merits thereof.

8. The period between 21st September, 2004 till 4th June, 2010 has been treated as "dies non" in the said order. This being the position, the petitioner would not have earned increments during this period, for he had not worked. The petitioner has also to suffer reduction by three stages of pay from the pay drawn by him immediately before imposition of penalty of compulsory retirement on 21st September 2004 for a period of three years. Further, he would not earn increments during this period of three years and the reduction will have the effect of postponing future increments of his pay. Full effect has been given to the penalty order.

9. Counsel for the petitioner submits that the aforesaid punishment would indicate that the petitioner would lose benefit of three increments, which he had earned and would also not earn three increments for three years. Further, no increments would be payable to the petitioner for the period from 21st September, 2004 till the order dated 4th June, 2010 was passed. In other words, counsel submits that the petitioner would lose increments for about 12 years, and 9 years after three years of rejoining. Counsel for the petitioner has drawn our attention to paragraph A of the grounds raised in the writ petition. The relevant portion of paragraph A reads as under:-

> "The punishment order of compulsory retirement dated 21.09.2004 was substituted with penalty of reduction by 3 stage with further direction that he will not earn increments for 3 years during this period of 3 years and reduction will

> have effect of postponing future increments, how could the increments be withheld till 2014 and the period from 2004 till 2010 be treated as "dies non"."

10. We have already reproduced the order dated 4th June, 2010 imposing punishment. We would now like to reproduce the relevant portion of the order dated 1st October, 2012, which was also challenged before the Tribunal on the question of increments. The relevant portion reads as under:-

> "(b) Release of next increments: The penalty imposed vide order dated 04 Jun 2010 can take effect only after the date of issue and cannot be enforced retrospectively. Further the period from 21 Sep 2004 to 11 Jul 2010 is treated as "dies non" as per the order dated 04 Jun 2010 and as per FR 54 the period is not be counted as the qualifying service for the purpose of increment. The service qualifying for pay and increment to which the penalty can be applied commenced only on his reinstatement wef 12 Jul 2010. In this connection QAE (WE) Pune Part II order dated 10 Nov 2010 regarding pay fixation as approved by PCDA Pune also refers. "

11. In our opinion, the effect of the punishment order in the present case is that the period between 21st September, 2004 till 4th June, 2010 would be treated as "dies non". The petitioner would not earn any increment during this period. On rejoining, the petitioner's pay would be fixed on the basis of the punishment of reduction by three stages of pay drawn by him immediately before the penalty of compulsory retirement on 21st September, 2004. In other words, the pay on reinstatement would be reduced by three stages i.e. increments earned during the last three years before order dated 21st September, 2004 was passed. This reduction would be effective for 3

years. Further, it would be treated that the petitioner has not earned any increment in this period of three years prior to 21st September, 2004.

12. Therefore, if the authorities have not paid or granted increments to the petitioner after he had rejoined in 2010, the same would be paid to him. However, while calculating arrears payable, if any, the authorities will take into account the fact that the petitioner's pay on rejoining should be fixed or re-fixed in terms of the directions given above.

13. With the aforesaid observations, we dispose of the writ petition, without any order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 10, 2017
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