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

+ **W.P.(C) 11706/2015**

YOGESH KUMAR

..... Petitioner

Through: Mr. Sachin Chauhan, Advocate.

versus

GOVT. OF N.C.T.D. & ORS

..... Respondents

Through: Mr. Anuj Aggarwal, ASC and
Ms. Deboshree Mukherjee & Ms. Niti
Jain, Advocates for respondents No.1
to 4.

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

ORDER
08.08.2017

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1. The petitioner has preferred the present writ petition to assail the order dated 23.09.2015 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No. 4152/2013.

2. The Tribunal has, by the impugned order, rejected the aforesaid Original Application, wherein the petitioner had staked his claim to receive the second financial upgradation under the Modified Assured Career Progression Scheme (MACPS) with effect from 09.10.2010. The respondent had granted the said upgradation to the petitioner with effect

from 16.04.2012 vide order dated 21.11.2012. The reason for denial of the second financial upgradation with effect from 09.10.2010 to the petitioner was that he was inflicted the punishment of 'censure' by the respondent vide order dated 20.10.2011, which, according to the respondent, involved moral turpitude and, therefore, the petitioner's promotion was withheld for five years. In this background, the issue which arose before the Tribunal was whether the censure inflicted upon the petitioner involved moral turpitude, or not. To examine this aspect, we may refer to background facts.

3. The petitioner and co-delinquent HC Manohar Singh were subjected to a joint departmental inquiry on charges of corruption and dereliction of duty. Initially the major penalty of forfeiture of one year's service was imposed.

4. The petitioner and the co-delinquent approached the Tribunal vide O.A. No.156/2008. The same was disposed of on 09.01.2008, setting aside the punishment and reducing the same to that of recordable warning.

5. The respondent assailed the said order of the Tribunal by preferring W.P.(C.) No. 11023/2009. The said writ petition was allowed and the matter was remanded to the Disciplinary Authority to consider imposition of appropriate penalty. Eventually, the punishment of 'censure' was imposed upon the petitioner and the co-delinquent.

6. The submission of learned counsel for the petitioner is that the Tribunal while passing the order in O.A. No. 156/2008 had completely set aside the finding returned in the inquiry and accepted by the Disciplinary Authority relating to integrity of the petitioner and the co-delinquent. In this

regard, he has referred to paragraphs 3 & 4 of the order dated 09.01.2008 passed in O.A. No.156/2008. The same reads as follows:

“3. A reading of the order would indicate that the disciplinary authority was satisfied that there was no clinching evidence. The money was, however, paid on the demand of the applicants which, according to him, would show that there was misconduct, lack of integrity and indulgence in the corrupt activities and dereliction in the discharge of their official duties.

4. In the above circumstances when it is expected that there should be sufficient evidence to establish the guilt against the delinquents and when it is admitted position that there was nothing evidencing acceptance of bribery, a punishment on that score may not be maintainable. But there are circumstances to show that the applicants were not answerable in the duty post. The lapse, therefore, is of a lesser degree alone.”

7. The further submission is that when the respondents preferred the aforesaid writ petition, i.e. W.P.(C.) No.11023/2009 before this Court, it raised only a limited submission on the aspect of propriety of the Tribunal substituting the punishment on its own, rather than requiring the Disciplinary Authority to reconsider the same. The submission is that the respondent, therefore, accepted the findings returned by the Tribunal that there was no evidence of bribery.

8. The further submission of learned counsel for the petitioner is that the penalty of ‘censure’ was passed only on the dereliction of duty, i.e. that the petitioner and co-delinquent were not found to be available on the duty post.

9. The further submission is that in respect of the co-delinquent Manohar Singh, when the respondent sought to treat the same as involving moral

turpitude, he preferred O.A. No. 672/2013, which was allowed by the Tribunal on 26.02.2013. The Tribunal in the said case observed as follows:

“5. We have heard the learned counsel for the applicant Shri Sachin Chauhan and perused all the documents available on record. It is clear from the aforesaid order of this Tribunal dated 09.1.2008 as modified by the Hon’ble High Court vide its order dated 12.7.2010, the corruption charge against the applicant no longer survive. Therefore, stating again in the impugned show cause notice that the applicant was involved in corruption charges is absolutely unwarranted and illegal. Therefore, on the face of the record itself, the impugned show cause notice is found to be unsustainable. We, therefore, allow this Original Application in limine and quash and set aside the impugned Show Cause Notice dated 26.10.2012. However, we make it clear that by this order, the respondents are not restrained from issuing any show cause notice to the Applicant based on actual facts, if so advised.”

10. Mr. Chauhan submits that this decision of the Tribunal rendered in the case of Manohar Lal stands complied and the respondent department did not even assail this order of the Tribunal before this Court. He, therefore, submits that the Tribunal is bound by the decision in the case of Manohar Lal.

11. Last but not least, learned counsel for the petitioner submits that the Tribunal has also accepted in the impugned order, that punishment of ‘censure’ was not inflicted on the petitioner on account of moral turpitude. In this regard, he has referred to paragraph 9 of the impugned order, which reads as follows:

“9. On careful reading of the circular pointed out by both sides, it would be clear that it is not true that only when

charges of corruption and moral turpitude are proved the employee could be debarred for promotion for five years. 'Dereliction of duty' as a cause is not ruled out. Also, on going through the narration of facts, it will appear that the misconduct of the applicant was serious though this Tribunal held that bribery was perhaps not established whereas there were circumstances to show that the applicant was not available at the duty post. We are aware of several cases where, because of dereliction of duty, vehicles with dark tinted glasses go unnoticed resulting in criminals using such vehicles and succeeding in their criminal motives (e.g. Nirbhaya case). Had the Traffic Police been more alert in those cases such heinous crime could have been even avoided."

12. Having heard learned counsel for the parties, perused the impugned order as well as the earlier proceedings above referred to, we find absolutely no merit in the present petition.

13. Firstly, a reading of the order dated 09.01.2008 passed in O.A. No.156/2008 shows that the Tribunal did not hold that the finding returned by the Disciplinary Authority, on the aspect of corrupt activities, was completely misplaced. The Tribunal had affirmed the finding of fact that money was paid to the applicants. All that the Tribunal held was that there was lack of evidence to establish acceptance of bribery. The two, namely payment of money on demand, and acceptance of bribery, in law, have different connotations. The finding returned by the Tribunal clearly was that money had been paid to the petitioner/ applicant on demand. This finding of the Disciplinary Authority was clearly affirmed by the Tribunal. In these circumstances, it was not for the respondent to assail the order dated 09.01.2008 on the aforesaid aspect. If the petitioner was so aggrieved, it was for him to approach this Court to assail the findings of the Tribunal on

the aforesaid aspect, which he did not do. Demand and acceptance of money, most certainly, tantamounts to misconduct which involves moral turpitude.

14. Reliance placed by the petitioner on the order dated 26.02.2013 passed in O.A. No.672/2013 in the case of Manohar Lal is also of no avail. We are little perplexed on a reading of this order. From the order, it appears that the same was passed ex-parte on the very first date of hearing without even granting an opportunity to the respondents to have their say in the matter. We have extracted paragraph 5 of the said order. There is absolutely no application of mind and discussion to support the conclusion drawn by the Tribunal in the said order. In any event, we are not bound by the said order of the Tribunal since we have ourselves examined the purport of the order passed by the Tribunal in O.A. No.156/2008 dated 09.01.2008.

15. The submission of Mr. Chauhan that the Tribunal has also accepted, in the impugned order, in paragraph 9, that the punishment of 'censure' was inflicted not on the grounds of moral turpitude, but only on the ground of dereliction of duty, is also not correct. The Tribunal has observed in the said paragraph that on going through the narration of facts, the misconduct of the petitioner was serious. The Tribunal has consciously observed that in the earlier determination, the Tribunal had held that bribery was perhaps not established. As we have already observed, demand of money and acceptance thereof does not tantamount to bribery in law. The Tribunal was also conscious of this position while making its observations in paragraph 9 of the impugned order. In any event, there is no basis for the petitioner to claim that dereliction of duty could not be a reason to withhold promotion

for a period of five years.

16. For all the aforesaid reasons, we find no merit in this petition. The same is, accordingly, dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 08, 2017

B.S. Rohella