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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 436/2009 & CM APPL. 23566/2018 (for early hearing)

DILBAGH SINGH

..... Petitioner

Through

Mr.S.C.Sagar

and

Mr.Pradeep

Sehrawat, Advocates.

versus

COMMISSIONER OF POLICE & ORS.

..... Respondents

Through

Mr.Naushad Ahmed, ASC (Civil) for
GNCTD with Mr.Zahid Hanief,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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25.10.2018

1. The petitioner is aggrieved by an order of the Central Administrative Tribunal (CAT) which rejected his application challenging the penalty of forfeiture of four increments. The petitioner was charged – along with three others – for misconduct in the reporting of the recovery of only 79 out of 143 cartons of IMF liquor that were intercepted. The petitioner was a driver of the vehicle which was positioned at the point where the

incident occurred. Based upon the reports and complaints an inquiry was initiated. Charges were framed against all the four delinquent employees.

2. The impugned order records that the inquiry led to findings of guilt which the disciplinary authority concurred with and inflicted a penalty of forfeiture of four increments vis-à-vis the petitioner. The joint charges were framed and culminated in the finding of guilt in respect of all the delinquent employees. This order was challenged before the CAT previously in OA No.1557/2001 which was rejected. On review, the matter was disposed of; as a consequence, the other delinquent employees made a representation which was apparently treated as an appeal, which resulted in their exoneration. Basing his challenge on this detail, the petitioner approached the CAT once again complaining of discrimination on the ground that the co-delinquents were exonerated and similar treatment ought to be meted out to him.

3. The CAT, by the impugned order, formed the opinion that its earlier review order did not in any way authorize the revisiting of the penalty in the manner which was actually undertaken by the superior officer (Dr.Aditya Arya, Joint Commissioner). It was of the opinion that in the absence of appeal, the said officials could not have reviewed the order, especially given the background that the CAT had refused to intervene in the proceedings.

4. On the basis of this reasoning, the petitioner's application was rejected and the penalty imposed upon him, upheld. Likewise, the

ground of discrimination was negated. Learned counsel for the petitioner urged, that in all fairness, the CAT ought to have applied the principle of parity. The other co-delinquents for whatever reasons were exonerated; the orders of exoneration were on the record and not set aside. In these circumstances, the conclusions recorded by the CAT, could not be sustained.

5. This Court is of the opinion that the petitioner's grievance is unmerited. It is undisputed that the petitioner was one among the four applicants who had approached the Tribunal previously in OA No.1557/2001. That application was rejected. The representation of the others – which led to unwarranted intervention with the penalty order could not in the circumstances have resulted in any benefit or any equity under the rules. The petitioner's argument that the others were meted out treatment different from him and that he merits the same or identical treatment by the department is unsubstantial. It is settled law, that if an authority acts outside the bounds of law which confers any advantage upon an individual or entity, that instance or precedence cannot be cited in support of another individual against whom the law or rule is enforced correctly. There is no concept of "negative" discrimination as is being urged.

6. The petitioner's reliance upon the judgment in *Man Singh Vs. State of Haryana and Ors.* (2008) 12 SCC 331 is inapt, for the reason that, in the present case he never impugned the order of the CAT rejecting his earlier application; there is no material on record to suggest that he has approached in a properly authorized appeal as is

understood under the Rules framed under the Delhi Police Act. In these circumstances, for the foregoing reasons, the Court holds that there is no merit in the present petition.

7. It is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

OCTOBER 25, 2018

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