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

+ W.P.(C) 5547/2002

COMPTROLLER & AUDITOR GENERAL OF INDIA

..... Petitioner

Through Mr. Aman Bakshi and Ms. Biji
Rajesh, Advs.

versus

B.S.NEGI & ORS.

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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16.10.2018

The respondent faced disciplinary proceedings and by an order was removed from service. He approached the Central Administrative Tribunal (CAT) which by its impugned order, allowed the application to the extent that the order of removal was modified to compulsory retirement.

Learned counsel for the Controller Auditor General/writ petitioner contends that once the guilt of the employee/official was established and remained as a matter of record, interference with penalty, except in rare circumstances in judicial review was not justified. Reliance has been placed upon the judgment in *B.C. Chaturvedi vs. Union of India*, JT 1995(8) SC 65 and *Diwan Singh vs. Life Insurance Corporation of India*, 2015 (2) SCC 341.

The court notices that the respondent employee entered the public employment in 1992 and was charge-sheeted in 1999. It was

urged that he duped or misappropriated amounts from other senior officials and this formed the subject matter of the enquiry. The employee's defence was that the amounts which he had obtained from other officials were stolen – disbelieved during the course of enquiry. This led to his removal. All that the CAT did in this case was to substitute the order of removal with an order of compulsory retirement.

Ordinarily, the courts in judicial review are not expected to weigh the merits of the facts and arrive at contrary findings; the same case is even for a penalty. In the present case, the employee/respondent had worked for seven years; the record nowhere discloses that the employees, who claimed having duped by the respondent, had approached police authorities. In these circumstances, the fact that the respondent did not file a complaint to the police authorities *per se* could not have been held against him at least to visit him with drastic penalty of removal. Given that no prejudice in the form of any continued liability has been shown to the court, we are of the opinion that this is not an appropriate case for interference with the order of CAT – after 16 years. The writ petition is consequently dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 16, 2018

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