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

+ **W.P.(C) 9716/2009 & CM APPL.27830/2018**

VED PRAKASH

..... Petitioner

Through: Mr.Ajay Veer Singh, Ms.Divya Garg,
Mr.U.R.Bokadia & Mr.Daksh Arora,
Advocates

versus

UOI & ORS.

..... Respondent

Through: Ms.Anjana Gosain, Ms.Shalini Nair
& Ms.Rabiya Thakur, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

30.11.2018

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1. The petitioner is aggrieved by the order of the Central Administrative Tribunal [hereafter referred to as "CAT"], which rejected its application questioning the initiation of the disciplinary proceedings after his superannuation.

2. The brief facts of the case are that the petitioner superannuated from the Central Government service on 30.11.2006. Later on invoking its power and jurisdiction under Rule 9 of the Central Civil Services (Pension) Rules, 1972 [hereafter referred to as "Pension Rules"], the President acting through the Ministry of Defence, Union of India, sought to initiate disciplinary proceedings. Upon unsuccessful attempts made to serve the petitioner,

including postal communication at his village address, the respondent, Ministry of Defence deputed an officer Mr.R.S.Sharma, who visited the concerned village in District Bijnor (Uttar Pradesh). The petitioner was not there, but according to the report of Mr.R.S.Sharma, he was contacted; the attempt of Mr.R.S.Sharma to serve the petitioner's relative was not successful. He claimed, however, to have spoken to the petitioner from landline to the mobile number, furnished by the sister-in-law of the petitioner.

3. The petitioner contended before CAT that the service of notice under Rule 9(6)(a) of the Pension Rules was not effective and therefore, when he became aware of the proceeding – pursuant to the receipt of charges on 14.05.2008, the issue had become time barred, on account of lapse of four years prescribed by the Rules. He also cited the ruling of the Supreme Court of India in *Union of India Vs. S.P.Singh* (2008) 5 SCC 438 in support of his contention that the Show Cause Notice necessarily had to be communicated if it had to conform with the stipulation in the Rule that it was duly “issued” to him.

4. The Tribunal declined the application. In doing so, it first examined the decision in *S.P.Singh's* case (supra) and was of the opinion that on a plain interpretation of the ruling, the petitioner's argument was merited. However, it proceeded to analyse the facts of the case and held that the report of Mr.R.S.Sharma, which was annexed to the pleadings, unequivocally pointed to the fact that the petitioner had knowledge of the communication that could not be served and consequently the intimation was issued to him within the time prescribed.

5. Learned counsel relied highly upon *S.P.Singh* (supra) and submitted that it gave the categorical declaration of law that in the absence of any proof of actual service, the petitioner's contention had to prevail. It was pointed out that the report of Mr.R.S.Sharma could not have been given the credence that was in fact done by the CAT in the impugned order.

6. It was also submitted that the petitioner had intimated about the change of address on 26.02.2007 and had given a Delhi address to the Ministry of Defence. This Court is of the opinion that mere intimation about a new address does not *per se* signify change of permanent address. The Court previously had also examined the service book, which continued to reflect the petitioner's address in District Bijnor (UP), even after retirement.

7. This Court is of the opinion that the CAT's impugned order is sound and based upon valid conclusions. The report of Mr.R.S.Sharma, which is part of the record, states importantly, two things – that firstly upon that officer visiting the concerned village, which he found with some difficulty, he was able to contact the petitioner's relative who furnished him the cell phone number. It was then stated in the report that he (Mr.R.S.Sharma) spoke to the petitioner on the given cell phone number. In the rejoinder filed by the petitioner, which is part of the record, the relevant pleading i.e. para 4.6 contains a general denial, but we note, no specific denial about the facts narrated by Mr.R.S.Sharma in the report, which was annexed to the counter affidavit. More specifically there was no denial of the fact that Mr.Sharma spoke on the number that he claimed that he did in the report and that the petitioner conversed with him with respect to the communication. This in the opinion of the Court sufficiently points to the fact that the petitioner was aware that his parent department, from which he superannuated the previous

year, had specially sent a messenger, and a communication with respect to the initiation of the departmental proceedings.

8. During the course of these proceedings the Court had directed the respondents not to give effect to the final orders/final findings of the inquiry officer. They were kept in a sealed cover, which was made available to the Court. This Court has proceeded to open the sealed cover. The report exonerates the petitioner of the charges levelled against him. Given these facts, the Court is of the opinion that in the peculiar circumstances of the case, the respondent authorities may consider whether to proceed with the matter, particularly having regard to the circumstance that the petitioner superannuated more than twelve years back.

9. The writ petition is accordingly disposed of.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 30, 2018

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