

\$~27.

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

+ **W.P.(C) 3366/2018 and CM APPL. Nos.13270-71/2018**

VIRENDER SINGH LAKRA

..... Petitioner

Through: Mr. Ashok Kumar Sharma, Advocate
With Mr. Kshitij Mudgal, Mrs. Bandana Singh and
Mr. Pankaj Singh, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vinod Diwakar, CGSC with
Mr. Sanajay Pal, for R1 to R3.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

06.04.2018

1. The petitioner is aggrieved by the order dated 09.02.2018 passed by the Central Administrative Tribunal disposing of O.A. No.636/2018 filed by him for seeking quashment of the notice dated 29.11.2017, issued by the respondent No.2/Office of the Chief Postmaster General, who is the Revisional Authority in this case and has expressed a tentative view that the penalty imposed on him by the Disciplinary Authority of reduction of rank to the postman cadre with immediate effect for a period of three 3 years, must be enhanced to a penalty of compulsory retirement from service.

2. Learned counsel for the petitioner submits that the petitioner had joined the service as a Postman in the GPO, New Delhi on 17.05.1982. On 01.01.2009, he was issued a charge-sheet under Rule 14 of the CCS (CCA)

Rules, 1965, levelling a charge that he had forged the signature of a MIS Account holder at the GPO in connivance with a third party, who was the beneficiary of six MIS accounts. After the inquiry proceedings were concluded, the Inquiry Officer had submitted a report dated 07.08.2009 to the effect that no evidence had been placed before him to prove the charge levelled against the petitioner.

3. Vide order dated 23.12.2009, the Disciplinary Authority had issued a disagreement note in respect of the Inquiry Report and had afforded the petitioner an opportunity to submit a representation against the said note. After the petitioner had submitted a representation, the Disciplinary Authority examined the same and issued an order dated 26.02.2010, imposing on him the penalty of reduction to the cadre of Postman for a period of three years, with a further order that he would not be promoted or earn any increment during that period.

4. Aggrieved by the said order, on 28.04.2010, the petitioner filed a revision petition before the Revisional Authority. In less than one week therefrom, he received a notice to show cause dated 30.04.2010, addressed by the Office of the Director, GPO, New Delhi proposing to enhance the punishment imposed on him by the Disciplinary Authority to that of compulsory retirement. After considering the reply of the petitioner, the Director, GPO passed an order dated 06.08.2010, imposing the penalty of compulsory retirement on the petitioner.

5. Aggrieved by the said order, the petitioner approached the Tribunal by filing O.A. No.796/2011. Vide order dated 28.10.2016, the Tribunal disposed of the captioned O.A. on the following terms:-

“12. Having held the impugned order dated 06.08.2010 as illegal

and also violative of principles of natural justice, this OA is disposed of with the following directions:

- (1) Impugned order dated 06.08.2010 passed by the respondent No.5 is hereby set aside.*
- (2) The revisional authority, i.e., respondent No.2, who is seized of the revision petition filed by the applicant is directed to decide the revision within a period of two months from the date of receipt of copy of this order.*
- (3) As a consequence of setting aside the order passed by the respondent No.5, the applicant is entitled to be reinstated in service immediately.*
- (4) In view of the setting aside of the order of compulsory retirement, the competent authority shall also decide about the payment of emoluments and other consequential benefits to the applicant in terms of Fundamental Rule 54-A within a period of two months."*

6. Pursuant to the aforesaid order, the petitioner submitted a representation dated 21.11.2016 before the Revisional Authority seeking reinstatement into service and payment of emoluments and consequential benefits. On 31.07.2017, the respondents complied with the judgment dated 28.10.2016, passed by the Tribunal and issued a letter dated 28.07.2017 reinstating the petitioner to the post of Postman. Thereafter, vide letter dated 16.08.2017 certain queries were raised by the respondents on the petitioner to which he had submitted a reply on 29.08.2017.

7. Within one month reckoned therefrom, the petitioner received a notice to show cause dated 27.9.2017/03.10.2017 from the respondents proposing that only 50% of the pay and allowances would be liable to be paid to him from the date of relieving him i.e. from 17.08.2010, to the date of his joining in the PA cadre, i.e. 30.07.2017. The petitioner submitted a reply to the aforesaid notice on 10.10.2017. Thereafter, the respondent No.2 proceeded to issue a fresh notice dated 29.11.2017 to the petitioner stating as follows:-

*“5. **AND WHEREAS**, The undersigned being the Revisionary Authority has carefully considered the revision petition filed by Sh. V.S. Lakra and gone through all connected papers to the case and prima-facie considering the alleged misconduct exhibited by Sh. Lakra and totality of facts and circumstances of the case, come to the tentative conclusion that the penalty imposed by Disciplinary Authority is not adequate and is not commensurate with the gravity of misconduct exhibited. Thus I tentatively propose to enhance the penalty from “**Reduction to Postman cadre with immediate effect for three years to that of compulsory retirement from service**”.*

6. Now therefore, V.S. Lakra, the then PA, New Delhi GPO, presently working in Lodhi Road HO is hereby given an opportunity of making representation (if any) on the penalty proposed above. Any representation which he may wish to make against the penalty proposed above shall be duly considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 15 days from the date of receipt of this memorandum.”

8. Learned counsel for the petitioner contends that on the one hand, the respondents have failed to comply with the order dated 28.10.2016 passed by the Tribunal in O.A. No.796/2011, by taking a decision on his pending Revision Petition and on the other hand, the Revisional Authority has proceeded to issue him a fresh notice to show cause dated 29.11.2017, contemplating an action that was considered and quashed vide order dated 28.10.2016 passed in O.A No.796/2011.

9. Aggrieved by the aforesaid action on the part of the respondents, the petitioner filed a contempt petition (CP No.13/2018) before the Tribunal, on which notice was issued on 09.01.2018, returnable on 12.04.2018. Contemporaneously, the petitioner filed a fresh Original Application (O.A.

No.636/2018) before the Tribunal assailing the latest notice to show cause dated 29.11.2017, issued by the respondent No.2, proposing to enhance the penalty awarded to him from reduction to postman cadre with immediate effect for three years, to that of compulsory retirement. The said OA has been disposed of by the Tribunal vide order dated 09.02.2018 with directions issued to the Revisional Authority to take a final decision on the show cause notice dated 29.11.2017, issued to the petitioner.

10. Learned counsel for the petitioner states that while passing the aforesaid order, the Tribunal has failed to return any finding on the issue raised by the petitioner in O.A. 636/2018, to the effect that the respondent No.2 cannot be permitted to review the judgment dated 28.10.2016, passed in the earlier O.A. filed by him and nor is the Revisional Authority empowered to issue a tentative disagreement note when the mandate of the order dated 28.10.2016 passed by the Tribunal was for it to decide the pending revision petition filed by the petitioner challenging the penalty of reduction of cadre on him.

11. A perusal of the impugned order bears out the submissions made by the learned counsel for the petitioner. There is no discussion whatsoever therein on the aforesaid pleas taken by the petitioner.

12. In view of the above facts and circumstances, we deem it appropriate to quash and set aside the impugned order dated 09.02.2018 and revive O.A. No. 636/2018 for fresh adjudication before the Tribunal on the grounds raised by the petitioner therein. The parties are directed to appear before the Registrar, Central Administrative Tribunal on 08.05.2018, for a date to be fixed for final hearing in the matter before the concerned bench.

13. The present petition is disposed of in *limine*, alongwith the pending applications.

HIMA KOHLI, J

PRATIBHA RANI, J

APRIL 06, 2018

na

