

\$~8.

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

+ **W.P.(C) 4952/2016 & CM APPL. 20590/2016**

UNION OF INDIA & ORS

..... Petitioner

Through: Mr. Satpal Singh, Standing Counsel

versus

P.S. BISHT

..... Respondent

Through: Ms. Kittu Bajaj and Mr. C. Mathpal,
Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

16.11.2018

%

1. The petitioner has preferred the present writ petition to assail the order dated 22.07.2015 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1651/2013. The petitioner also assails the order dated 30.03.2016 passed in R.A. No.234/2015 – preferred by the petitioner, which too was dismissed.

2. The respondent was issued a charge memorandum on 26.06.2000. A departmental inquiry was held, which eventually led to his dismissal from service on 24.03.2004. His departmental appeal was also rejected on 28.09.2004. His revision was rejected in May 2006. Consequently, he

preferred O.A. No. 2156/2006 before the tribunal to assail the departmental proceedings and his dismissal from service. There was a difference of opinion between the two members of the Bench and, consequently, the matter was referred to the third learned Member. It is the order of the third learned Member, which became the majority opinion.

3. The tribunal found the inquiry proceedings against the respondent to be good except to the extent that the right of the respondent to cross examine one witness Sh. Mukesh Chaturvedi had been denied. Consequently, the tribunal directed that the respondent be put under suspension for purpose of completion of the procedure of examination of Sh. Mukesh Chaturvedi. The petitioner was granted liberty to proceed from the stage the examination of Mukesh Chaturvedi in the inquiry in the presence of the respondents and after granting him opportunity, whereafter fresh orders were required to be passed in accordance with the rules.

4. The inquiry proceedings were reopened. On this occasion, the respondent was not made payment of subsistence allowance during the course of holding the inquiry proceedings. They were paid belatedly after the close of the inquiry proceedings. The respondent did not participate on the ground that he had no means to participate in the proceedings on account of subsistence allowance not being paid.

5. The petitioner proceeded to once again punish the respondent and dismissed him from service. Consequently, he preferred the present O.A. No.1651/2013. On this occasion, the tribunal while allowing the O.A. has quashed the inquiry proceedings in *toto*.

6. The limited submission of the petitioner is that even if the latter part

of the inquiry proceedings were held to be vitiated on account of non payment of subsistence allowance when the same was due, the tribunal should have directed reopening of the said inquiry proceedings and could not have quashed the entire proceedings keeping in view the fact that in the earlier round the proceedings till the stage of cross examination of Mukesh Chaturvedi were found to be in order. Learned counsel has submitted that the respondent was paid the subsistence allowance, though belatedly.

7. Learned counsel for the respondent has not been able to meet this argument of learned counsel for the petitioner. We find the plea of the petitioner to be justified. As a result of non payment of subsistence allowance during the course of the inquiry proceedings held after the remand by the tribunal, the entire inquiry proceedings could not have vitiated. The charge against the respondent being a serious one, the tribunal should not have quashed the entire proceedings and given a clean chit to the respondent.

8. Accordingly, we set aside the impugned order. We direct that the respondent shall be deemed to be under suspension from the date of his dismissal from service i.e. 22.12.2009, and the inquiry proceedings shall be reopened from the stage of cross examination of Mukesh Chaturvedi. The respondent shall be granted an opportunity to cross examine Mukesh Chaturvedi by the inquiry officer. After the inquiry is completed, a fresh report shall be submitted by the enquiry officer and the Disciplinary Authority may proceed with the matter in accordance with law.

9. The petitioner should ensure that subsistence allowance is paid to the respondent from the date of his deemed suspension i.e. 29.12.2009 onwards

till the completion of the inquiry proceedings or till his suspension is continued, whichever is later. The arrears of subsistence allowance shall be paid within two months. However, the subsistence allowance for the current period should be paid punctually.

10. The petitioner claims to have made payment of excess amount to the respondent towards subsistence allowance in the past. The petitioner shall, however, not, at this stage, make any adjustment from the arrears of subsistence allowance or the subsistence allowance payable for the current period, and accounting of the excess amount, if any, shall be postponed till after the inquiry proceedings are completed.

11. The inquiry proceedings should be completed positively within the next six months as prayed for by the petitioner. The respondent is directed to cooperate and shall not seek adjournment in the inquiry proceedings.

12. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 16, 2018

sr