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

+ W.P.(C) 8303/2018

HARI OM SHARMA Petitioner
Through Mr.Ashok Bhalla, Adv.

versus

BANK OF BARODA AND ORS. Respondent
Through Mr.Arun Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER
% **08.08.2018**

CM No. 31894/2018 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of accordingly.

W.P.(C) 8303/2018 and CM No. 31895/2018 (Stay)

The present writ petition has been filed by the petitioner with the request that he may be permitted to withdraw the departmental appeal dated 27.06.2017. It has been submitted by the counsel for the petitioner that the petitioner was punished by the competent authority vide order dated 03.05.2017 and the punishment of the compulsory retirement by the disciplinary authority was passed. Subsequently, aggrieved by the same, the petitioner filed a statutory appeal before the appellate authority dated 27.06.2017. The matter came up for hearing before this Court on 03.11.2017 where this Court observed as under:

“4. At the appellate stage, the Appellate Authority has to first return a finding by giving adequate reasons as to whether the finding of petitioner’s guilt is justified or not and thereafter only a tentative opinion is to be expressed regarding enhancement of punishment.

5. In view of the aforesaid, the impugned show cause notice is set aside with a direction to the Appellate Authority to first return a categoric finding on the petitioner’s appeal while dealing with the pleas raised therein and by passing a speaking order and thereafter only call upon the petitioner, if a case for enhancement of punishment is made out. It is made clear that this Court has not commented upon the aspect of enhancement of punishment and it is left open to the Appellate Authority to make up its mind after forming an opinion on merits of the appeal.

6. This order shall not preclude the Appellate Authority from giving a notice for enhancement of punishment if it comes to a conclusion that such a course is to be adopted.”

The present writ petition has been filed by the petitioner with the prayer that he wishes to withdraw the departmental appeal dated 27.06.2017. Undisputedly, the punishment has been awarded vide order dated 03.05.2017 and the consequence of withdrawal of appeal would tantamount to non exercising of his right to file the statutory appeal and further withdrawal of the appeal would tantamount to dismissal of the appeal.

It is an admitted fact that till the date, after passing the order by this Court, no notice for the enhancement of punishment has been issued by the Appellate Authority to the petitioner. In such a scenario mentioned above, apparently, it is the appeal of the appellant against the order of the punishment dated 03.05.2017 awarding punishment of compulsory retirement is pending and no proceedings for the enhancement of the punishment are pending before the appellate authority.

This Court is of the considered opinion that the petitioner is always at the liberty to withdraw the statutory appeal seeking the benefit, modification or reversal of order of punishment passed by the punishing authority. It is open for the employee not to press the appeal seeking any benefit against the order of the punishment. Admittedly, the prayer made by the petitioner for the withdrawal of the appeal would tantamount to exercise his statutory right to file the appeal and dismissal of the same culminates into upholding the orders passed by the punishing authority dated 03.05.2017.

In such a scenario, the present writ petition is disposed of with the direction that the appeal dated 27.06.2017 filed by the petitioner stands dismissed as withdrawn today itself.

Pending application, if any, is also disposed of.

P.S.TEJI, J

AUGUST 08, 2018
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