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

+ W.P.(C) 13900/2018

SITA RAM

..... Petitioner

Through: Ms. Monika Kapoor, Advocate.
Petitioner in person.

versus

DELHI DEVELOPMENT AUTHORITY

AND ANR.

..... Respondents

Through: Mr.Arun Birbal, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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21.12.2018

C.M. No. 54277/2018 (Exemption)

Allowed, subject to all just exceptions. The application stands disposed of in the aforesaid terms.

W.P.(C) 13900/2018

1. Petitioner has preferred this writ petition to assail the order dated 23.05.2018 passed in O.A. No. 1091/2016 preferred by the petitioner before the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal). The Tribunal has dismissed the said original application preferred by the petitioner wherein he had assailed the punishment of compulsory retirement awarded to him vide order dated 14.06.2013. The petitioner also sought reinstatement to the post of Machine Man Grade-I, or any other post available as per his qualification in the office of Printing Press of the respondent-DDA. He also sought arrears of pay and other benefits. The petitioner was appointed as a Machine Man (MM) Grade-I on 11.09.1989 at

Delhi Development Authority (DDA) Press. On 25.04.1994, the post of Section Holder (SH) , MM Section which is a higher post than MM Grade-I, fell vacant. As per the then prevailing recruitment rules, the post of SH was required to be filled up by way of transfer. However, for providing promotional avenues to the persons working at DDA Press, it was decided to amend the recruitment rules. In the meantime, Sh. S.C. Garg, who was also working as MM Grade I for a longer period than the petitioner, was given look after charge of the post.

2. The petitioner represented to the Vice Chairman, DDA on the premise that he should be considered for the post of SH as a reserved category candidate. His request was turned out on 08.10.1996 on the ground that the recruitment rules for the post in question were under process of amendment, and only after the recruitment rules were amended, his request for promotion against the said post could be examined as per law.

3. The recruitment rules were amended on 22.08.1997 and post of SH was made as a promotional post. A Departmental Promotion Committee (DPC) was held on 27.02.1998, which recommended Sh. S.C.Garg for promotion to said post of SH. S.C. Garg was also much senior to the petitioner. Though the petitioner was also considered by the DPC, he was found unfit on account of adverse entries in his past ACRs. The post being an isolated one, no reservation was granted and it remained a general category post.

4. It appears that on account of the petitioner not being promoted, he literally stopped working. The Competent Authority re-distributed the work at DDA Press vide order dated 28.04.1995. The petitioner

refused to perform his work, and started sitting idle. He was issued three advisories on 08.05.1995, 06.07.1995 and 13.07.1995. With a view to change his working environment, the petitioner was transferred to the office of the Commissioner and Secretary DDA vide order dated 31.07.1995. Yet his working did not improve, and he kept sitting idle at the new office too. Another memo was issued to him on 12.08.1996. He was charge-sheeted, and after holding an inquiry, he was punished with the penalty of 'stoppage of one increment without cumulative effect' vide order dated 28. 01.1998.

5. The petitioner filed a criminal complaint under Section 3 of the SC/ST (Prevention of Atrocities) Act, 1989 against six officers of DDA, including Sh. S.C. Garg and other administrative superiors. The learned Additional Sessions Judge, Delhi vide order dated 28.05.1996, found that there was no substance in the petitioner's complaint and held that the complaint was filed to counter administrative and disciplinary action against him. Pertinently, one other complaint was filed by one Shankar Lal against some officers of DDA under the SC/ST Act, in which the petitioner was cited as a witness. The matter travelled to this court, where the statement of complainant Shankar Lal was recorded. He stated that the complaint was filed only to wreck vengeance against the officers of DDA.

6. On 09.07.1997, the petitioner made a complaint to the Manager, DDA Press that a machine, which was under use of the petitioner, had developed some defects and was not in working order. The petitioner accused Sh. S.C. Garg of damaging the machine at the instance of Deputy Secretary and Press Manager to malign him. The

DDA constituted a fact finding Committee to inquire into the matter. The Committee, in its report, concluded that it was the petitioner himself who was responsible for causing damage to the machine in question. Consequently, he was charge-sheeted on 12.02.1998, following which, a departmental inquiry was held. On the basis of inquiry report, the petitioner was punished with compulsory retirement. He challenged the same before this court in W.P.(C) 2677/1999. In the meantime, the DDA was brought under the jurisdiction of the Tribunal and, accordingly, the said writ petition was transferred to the Tribunal for adjudication after being renumbered as TA No. 69/2007.

7. The Tribunal allowed the said transfer application on 04.12.2007, and set aside the order of compulsory retirement of the petitioner and directed the DDA to reinstate him. The DDA challenged the said order vide W.P.(C) 3305/2008. This court modified the order of the Tribunal and permitted DDA to hold a fresh inquiry in the matter. On Review Petition being preferred, this court clarified that the petitioner would be deemed to be under suspension from the date of his compulsory retirement, and shall continue to remain so. Consequently, the petitioner was placed under deemed suspension vide order dated 01.07.2010 w.e.f. 17.11.1998. The petitioner challenged the said order before the Supreme Court, which failed on 04.12.2009.

8. The DDA, thereafter, initiated a fresh inquiry against the petitioner by issuing memo dated 08.07.2009. The challenge to the same, at the instance of petitioner failed before the Tribunal, and also

before this court with the dismissal of W.P.(C) 5454/2011 on 02.08.2011.

9. The inquiry report dated 25.11.2012 was furnished which held the charges against the petitioner as proved. The disciplinary authority, vide order dated 26.03.2012, after accepting the IOs, report again imposed the penalty of compulsory retirement upon the petitioner.

10. The petitioner challenged the penalty order dated 26.03.2012 passed by the disciplinary authority before the Tribunal in O.A. No. 655/2012. The Tribunal noticed that the statutory appeal of the petitioner was pending, O.A. was disposed of vide order dated 16.01.2013 with a direction to DDA to decide the said statutory appeal.

11. The petitioner's departmental appeal was dismissed on 14.06.2013. The petitioner approached the National Commission for SC/ST, who did not find any merit and, accordingly, vide order dated 31.07.2015, rejected the petitioner's case and ordered closure of the petition.

12. The Tribunal, after examining the entire matter has come to the conclusion that the petitioner has not made out any ground for setting aside the order of compulsory retirement, since it neither found breach of the principles of Natural Justice in the conduct of the disciplinary proceedings; nor non-competence of the authorities which issued charge memo and passed the penalty orders; nor that the order was passed in violation of relevant laws/rules; nor and that the punishment inflicted was disproportionate to the mis-conduct

committed.

13. The submission of learned counsel for the petitioner is that before imposing the punishment upon the petitioner, the second show cause notice was not issued on the quantum of punishment. She further submits that in the present case, the quantum of punishment is disproportionate, since compulsory retirement of the petitioner is as good as his removal from service, since the petitioner had not completed 10 years of regular service and, therefore, he would not be entitled to pension.

14. We do not find any merit in the submission. It was not essential for the respondent to give a second show cause notice to the petitioner on the aspect of quantum of punishment. The punishment inflicted upon the petitioner - of compulsory retirement, in the facts and circumstances taken note of by us, certainly cannot be described as disproportionate to the mis-conduct. The fall out of the said order- that he is not entitled to pension, is a different matter. That is a consequence of his not having qualifying service of 10 years. We, therefore, find no merit in the writ petition.

15. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 21, 2018/j