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

\+ W.P.(C) 10807/2017

MANDAN LAL ..... Petitioner

Through: Mr. Rameshwar Singh Malik, Sr. Adv. with Ms. Beena, Advocate.

versus

UNION OF INDIA AND ANR ..... Respondents

Through: Mr. Rajesh Kumar, Advocate for UOI

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% 22.11.2018

The petitioner assails the order dated 23.03.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('the Tribunal') in OA No.3403/2013. The said original application had been filed to raise a challenge to the charge-sheet dated 24.02.2004; the inquiry report dated 13.12.2015; CVC's advice dated 26.10.2006; and, the penalty order dated 17.04.2009. The OA was preferred on 23.09.2013. As noticed above, the penalty order was dated 17.04.2009. Since the original application was barred by limitation, the petitioner preferred MA No.2580/2013 to seek condonation of delay. The reason furnished by him to explain the delay was that he was not aware of passing of the penalty order since he was not served with the same. He claimed to have made repeated representations to which he received no response. It was only on 20.06.2013 he states, he learnt about his dismissal from service on 17.04.2009. The application was contested by the respondents. It was stated that the penalty order was served on the petitioner by affixation on 26.03.2010 at his home address in Gurgaon. The penalty order also contained the advise dated 07.01.2009 of the UPSC as an enclosure. Initially, the same could not be served on the petitioner due to unavailability of the address and then due to refusal of the petitioner to receive the order on 26.02.2010. The Tribunal takes note of the fact that the petitioner himself states that some papers were affixed at his ancestral residence at Rajasthan but allegedly were torn by the children playing around. In that regard, the petitioner also sent a representation dated 29.08.2009. The Tribunal found no merit in the application seeking condonation of delay and dismissed the same. Consequently, the Tribunal dismissed the original application as well. In the impugned order of the Tribunal takes note of the fact that the petitioner stands convicted by the Special Judge, CBI Court vide judgment dated 30.11.2007 under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2,000/- under Section 7 of the said Act. He has also been sentenced to undergo rigorous imprisonment for a period of one year and fine of Rs.3,000/- under Section 13(1)(b) read with Section 13(2) of the said Act. The appeal of the petitioner is however, pending before the High Court.

The submission of learned senior counsel for the petitioner is that the petitioner had nothing to gain by dodging the order of penalty and not accepting the same. The further submission is that the penalty order was passed about 2½ years after conclusion of the disciplinary proceedings and it was never served on the petitioner.

Vide order dated 19.03.2018 this Court required the respondents to produce the record. The original record has been produced and perused by us. The original record shows that the Additional Commissioner of Income Tax, Gurgaon, communicated to the Chief Commissioner of Income Tax, Panchkula that an Inspector was deputed to serve the penalty order along with enclosures upon the petitioner who refused to receive the same. Along with this communication dated 26.02.2010, the report prepared by the Inspector D.R.S. Yadav recording refusal of the petitioner to accept the penalty order, was enclosed. The said communication dated 26.02.2010 was followed up by the communication dated 09.03.2010 sent to the Chief Commissioner of Income Tax, NWR, Chandigarh, which conveys the refusal of the petitioner to accept the penalty order. Consequently, the penalty order was served through affixation on 26.03.2010 by Inspector D.R.S. Yadav and Inspector J.R. Meena in the presence of two witnesses Mr. Rakesh Kumar s/o Mr. Radhe Shyam and Mr.Arun Kumar s/o Mr. Vijay Singh, whose signatures and complete particulars are recorded in the affixation proceedings. The original record shows that the service of the impugned order through affixation was also reported on 19.08.2010 in the communication issued by the Deputy Commissioner of Income Tax, Hq. (DIG), Chandigarh to the Under Secretary to the Government of India D&R Section, Central Board of Direct Taxes, Delhi. The reply filed by the respondent before the Tribunal with regard to the refusal of the petitioner to accept the penalty order and the subsequent service through affixation is therefore based on record.

The reason why the petitioner played hide and seek and did not accept the service of the order of penalty is not for this Court to find. However, we may observe that since the petitioner stood convicted by the CBI Court, the petitioner apparently saw the writing on the wall and, therefore, dodged the service of the penalty order upon him. It also appears to us to be rather unusual that a suspended employee, who is facing an inquiry, would sit quite and will not agitate even with regard to non-payment of subsistence allowance. If he had taken any steps in this regard, he would have learnt of the reason why the subsistence allowance was not paid to him atleast for the period after the date of his dismissal from service. Pertinently, the petitioner accepts that some documents were pasted at his ancestral place in Rajasthan. Even then, he did not approach the respondent personally to inquire as to what were the documents pasted and to obtain copies thereof. The record shows that he merely kept writing letters with the obvious object of creating record to be used later.

We find no merit in this writ petition. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 22, 2018
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