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

Date of decision: 04/09/2019

+ **W.P.(C) No.9643/2019**

VINOD KUMAR

..... Petitioner

Through: Mr. M.K. Bhardwaj, Advocate with
Mr. Shubham Gairola, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mrs. Avnish Ahlawat, Advocate with
Mr. N.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. The petitioner is aggrieved by order dated 06.12.2016 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') dismissing the O.A. filed by the petitioner herein.
2. The petitioner was appointed as a Sub-Inspector in Delhi Police in the year 1989. It is submitted that ever since, the petitioner has been performing his duties with devotion and sincerity. On the intervening night of 20/21.03.2011 at the IGI Airport, two passengers were detained as they were travelling on ECR passports without the

required POE stamps. When confronted the aforesaid two passengers informed the immigration officer on duty at that time that two other passengers had been allowed to travel on the same flight without any objection, earlier at the time when the petitioner was working as a C.O. at counter No.17 of departure immigration.

3. This led to initiation of departmental proceedings against the petitioner. The Enquiry Officer submitted his report on 07.10.2011 as per which the charges stood proved. The petitioner thereafter submitted a representation to the Disciplinary Authority in the month of November, 2011.

4. It is the case of the petitioner that the Disciplinary Authority did not apply its mind and imposed a major penalty of withholding increments for a period of five years permanently. The statutory appeal filed before the Appellate Authority also stood rejected which led to filing of the O.A. before the Tribunal.

5. Mr. M.K. Bhardwaj, learned counsel for the petitioner has restricted his submissions to the quantum of punishment awarded to the petitioner. It is submitted that the Disciplinary Authority and the Appellate Authority failed to take note of the fact that it was a case of human error in the dead of the night since there was a large rush of passengers and that there were no *mala fides* in allowing two passengers to pass without ECR clearance. Mr. Bhardwaj further submits that the petitioner has been working in the department for over three decades with an unblemished service record. He further states that in case of identically placed persons, only a simple warning was issued.

6. In short, the submission of Mr. Bhardwaj is that the punishment awarded is not commensurate to the charge made against the petitioner. Counsel prays that the petitioner be permitted to make a representation to the respondent, seeking reduction of the punishment awarded; and that the respondent should consider his case sympathetically and in the light of the punishment awarded to similarly placed persons.

7. Mrs. Avnish Ahlawat, who appears on advance copy, submits that although there is no infirmity in the order passed by the Tribunal, in case a representation is made, the same would be considered sympathetically and would be decided within a period of eight weeks from today.

8. With these observations, the petition stands disposed of, making it clear that rejection of the representation will not give a fresh cause of action to the petitioner.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 04, 2019

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