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

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Date of Decision: 13.03.2019

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W.P.(C) 2461/2019

THE DELHI TRANSPORT CORPORATION AND ORS.

..... Petitioner

Through: Mr. Manish Vashisht, Standing
Counsel, DTC.

versus

JAGDISH CHANDER

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

C.M. No. 11447/2019 & C.M. No. 11448/2019

Exemptions allowed, subject to all just exceptions. The applications stands disposed of.

W.P.(C) 2461/2019 & C.M. No. 11446/2019

1. The petitioner assails the order dated 28.09.2018, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 3645/2011. By the impugned order, the Tribunal has disposed of the Original Application by reducing the penalty imposed upon the respondent from removal from service to that of Compulsory Retirement. While upholding the finding that the respondent/ original applicant was guilty of misconduct and, therefore, was liable to be punished, the Tribunal

has held that looking to the facts and circumstances of the case, the punishment of removal from service was disproportionate, and substituted the same by a punishment of compulsory retirement from the date on which he was removed from service.

2. The respondent was serving as a driver with the DTC. He remained unauthorizedly absent from duty for a period of 395 days w.e.f. 24.11.2007 to 22.12.2008. He was given a show cause notice, followed by an inquiry in compliance with the procedure and principles of natural justice. He was found guilty of misconduct. His defence was that his wife was ill and he was himself having problem in his eyes. He was removed from service vide order dated 09.02.2010 w.e.f. 10.02.2009. His departmental appeals were rejected vide orders dated 11.01.2011 and 19.04.2011.

3. The background in which the Tribunal has interfered with the punishment imposed upon the respondent is that he had been appointed in January, 1984, and had served for 24 years without any blemish. The infliction of the punishment of removal from service would have the effect of depriving the respondent of his retiral dues such as pension, etc. In the aforesaid circumstances, the Tribunal has substituted the penalty from removal from service to compulsory retirement.

4. The submission of learned counsel for the petitioner is that the misconduct of the respondent was grave. There can be no doubt about the aforesaid proposition. However, the misconduct did not involve moral turpitude, and the respondent was not punished on account of any serious criminal conduct such as corruption or on account of his involvement in a

serious crime. That being the position, the punishment inflicted upon him of removal from service was certainly disproportionate in the context of the facts.

5. It is well settled that pension is not a bounty, and is only deferred payment for service rendered. It is not in dispute that the respondent had qualifying service to entitle him to pension.

6. By a mere stroke of a pen, infliction of punishment of removal from service, had the effect of taking away the respondents hard earned pension over 24 years. Compulsory Retirement is also one of the punishments prescribed under the Disciplinary Rules. Infliction of the said punishment would have the desired effect of reigning in the indiscipline demonstrated by the respondent, as well as not depriving him of his hard earned pension, which he earned by rendering service for more than 24 years without any blemish.

7. Considering the fact that the Tribunal has granted the said balanced relief to the respondent, in exercise of our discretionary jurisdiction under Article 226 of the Constitution, we are not inclined to interfere with the impugned order.

8. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

MARCH 13, 2019

N.Khanna