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

Date of Decision:- 02.04.2019

+ **W.P.(C) 3209/2019 & C.M. Nos.14733-14734/2019**

D K DAS Petitioner

Through: Mr.Asish Nischal, Adv.

versus

UNION OF INDIA Respondent

Through: Mr.Arun Bharwaj, CGSC with
Mr.Prateek Rai, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. Vide the present petition under Article 226 of the Constitution of India, the petitioner assails the order dated 04.12.2018 passed by the Central Administrative Tribunal (Tribunal) dismissing OA No.100/3667/2015, preferred by the petitioner to challenge the order of penalty passed against him by the respondent. The petitioner also assails the disciplinary proceedings initiated against him and the consequent penalty imposed on him.

2. The petitioner joined the service of the CPWD as a Junior Engineer. He was promoted to the post of Assistant Engineer. At that stage, a charge-sheet was issued against him on 04.04.2003 wherein

four Articles of Charge were framed against him. The principal allegation against the petitioner was that he had split the works assigned by him in such a way, that they came within the financial limits applicable to him, but in actuality, exceeded the said limits in a surreptitious manner. After considering his explanation, with which the disciplinary authority was not satisfied, the disciplinary authority appointed an Inquiry Officer (I.O.) and a Presenting Officer (P.O.). The I.O. held Charges I and IV as proved, and Charges II and III as not proved. The disciplinary authority, tentatively disagreed with the findings of the I.O. on Charges II and III, and issued a disagreement note to the petitioner. Upon considering the reply of the petitioner, those two charges were also held to be proved. Resultantly, vide order dated 10.04.2006, the punishment of reduction in the time scale of pay by three stages for a period of three years was imposed on the petitioner.

3. The petitioner's departmental appeal against the penalty order dated 10.04.2006 was also rejected. Aggrieved thereby, he preferred OA No.238/2008. The Tribunal accepted the petitioner's plea that the respondent had failed to comply with Rule 14(18) of the CCS (CCA) Rules, 1965 and, consequently, set aside the penalty order dated 10.04.2006. The matter was thereafter remitted to the disciplinary authority for fresh consideration. At this stage, it may be noted that the order passed by the Tribunal setting aside the penalty order dated 10.04.2006 attained finality, since the writ petition preferred by the respondent impugning the same, was dismissed by this Court on 28.09.2010.

4. Pursuant to the aforesaid orders passed by the Tribunal, the disciplinary authority appointed another I.O. to proceed with the matter afresh. The petitioner, thereafter, preferred OA No.1076/2012 complaining of the delay in the completion of the fresh inquiry, which was disposed of with a direction to the respondent to complete the proceedings within three months. On 26.04.2012, yet another I.O. was appointed by the respondent as also another P.O. The petitioner, therefore, preferred OA No.1538/2013 complaining that the respondent had taken steps to conduct a *de novo* inquiry instead of completing the proceedings from the stage of Rule 14(18) of the CCS(CCA) Rules. This O.A. was disposed of on 19.09.2014 with certain directions.

5. Ultimately, the I.O. submitted his report on 22.08.2013 holding Articles I and III as partially proved, and Articles II and IV as not proved. Once again, the disciplinary authority issued a disagreement note to the petitioner, to which the petitioner responded. The advice of the UPSC was then obtained, whereafter, an order was passed on 18.08.2015 imposing on the petitioner the penalty of reduction in the time scale of pay by three stages for a period of three years with cumulative effect. It is this order dated 18.08.2015 which was challenged by the petitioner in the original application in question.

6. The argument raised by the petitioner before the Tribunal was that the appointment of the I.O. and the P.O. vide order dated 26.04.2012 was untenable in law, since it was done by an authority not competent to do so. It was also claimed that the order of penalty did not have the approval of the disciplinary authority, namely the

President of India.

7. The Tribunal rejected the first submission of the petitioner - with regard to the appointment of the I.O. and the P.O. not being done by the competent authority, by holding that the said argument was barred by *res judicata*. So far as the second argument is concerned, the Tribunal took note of the fact that the penalty order had been issued in the name of the President of India.

8. The submission of the learned counsel for the petitioner is that the petitioner could not have raised the issue of the competence of the I.O. and the P.O. when OA No.238/2008 was preferred, since the I.O. and P.O. were appointed on 26.04.2012, i.e., only after the disposal of the said O.A. We do not find any merit in this submission. As taken note of hereinabove, after the appointment of the I.O. and the P.O. on 26.04.2012, the petitioner had approached the Tribunal by preferring OA No.1538/2013. If he wanted to, he could have pursued the said plea before the Tribunal. In fact, the order dated 19.09.2014 passed in OA No.1538/2013 shows that he had raised the said plea, but given it up. The pleas available to the petitioner having been raised by him in the first instance itself and given up, on application of the principles of constructive *res judicata*, he is prevented from doing so now. Therefore, he could not now raise it in the present O.A.

9. Even otherwise, we do not find any merit in the said plea of the petitioner. The order dated 11.06.2013 appointing a fresh IO clearly shows that it has been issued in the name of the President in exercise of powers conferred by Sub rule 2 read with Rule 14 of the CCS (CCA) Rules.

10. The second plea of the petitioner is equally meritless. The penalty order dated 18.08.2015, after considering in detail the Articles of Charge framed against the petitioner; the findings returned by the IO in the inquiry proceedings, and; the further developments which took place from time to time, proceeds to state as under:-

*“17. **The President has carefully considered** the records of the inquiry, the findings of the Inquiring Authority, the submissions made by Shri D.K. Das, the advice tendered by the UPSC, and all other facts and circumstances relevant to this case. Considering the circumstances in totality and an objective assessment of the entire case, **the President, in acceptance of the advice tendered by the UPSC; and accordingly, hereby imposes the penalty of** “reduction of pay by three stages in the time scale of pay for period of three years with further direction that he will earn increments of pay during the period of such reduction and on the expiry of such period that the reduction will not have the effect of postponing the future increments of his pay” on the said Shri D.K. Das, Executive Engineer (Civil), CPWD.”* (emphasis supplied)

11. Therefore, the penalty order has, evidently, been issued in the name of the President of India. The petitioner appears to be under the impression that every order has to be cast personally by the President, since the President is the appointing authority/disciplinary authority in respect of the petitioner. This argument of the petitioner needs to be only stated, to be rejected. The President functions on the aid and advice of the Council of Ministers. The petitioner himself has filed file notings, which show that the concerned Minister had approved the action taken against the petitioner.

12. We do not find any merit in the present petition and the same is hereby dismissed.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 02, 2019

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