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

+ **Date of Decision: 24.05.2019**

% **W.P.(C) 5787/2019**

VED PRAKASH

..... Petitioner

Through: Mr. Malaya Kumar Chand, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Arun Birbal and Mr. Ajay Birbal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

C.M. No. 25233/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 5787/2019

1. The petitioner has assailed the order dated 30.11.2017 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 307/2016, whereby his said Original Application has been rejected. He also assails the order dated 19.11.2015 passed by the respondent, whereby the punishment imposed upon him of compulsory retirement was enhanced, after grant of opportunity to him, to that of removal from service.

2. The petitioner was criminally charged in Criminal Case No. 188/2007 under the Prevention of Corruption Act and he was convicted under Section 120-B-IPC read with Section 7, 12 and 13(2) read with Section 13(1)(d) of

Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of two years along with a fine of Rs. 20,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month. The petitioner was sentenced under Section 7 of the Prevention of Corruption Act with rigorous imprisonment for three years and a fine of Rs. 40,000/- and in default thereof, to undergo simple imprisonment for a period of three years. He was further sentenced under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act to undergo rigorous imprisonment for a period of three years and a fine of Rs. 40,000/- and in default, to undergo simple imprisonment for a period of three years.

3. The Criminal Appeal of the petitioner i.e. Criminal Appeal No. 540/2011 against his conviction and sentenced is pending consideration before this Court. Vide order dated 19.05.2011, the order of sentence has been suspended and he has been enlarged to bail. However, his conviction remains intact.

4. Consequent upon the petitioner's conviction, he was punished with Compulsory Retirement under Regulation 30 of DDA (Conduct Disciplinary and Appeal) Regulations, 1999 on 09.11.2011.

5. The Hon'ble Lt. Governor of Delhi, who is the Chairman of DDA came across a similar case, in the case of Sh. Mehroz Khan Ex.-JE (C)/DDA, and was of the view that the imposition of the punishment of Compulsory Retirement in such cases was not justified, and he directed that in all such cases of conviction, the penalty should be enhanced.

Consequently, the petitioner was issued a show cause notice dated 29.06.2015 and he was called upon to show cause as to why the penalty imposed upon him should not be enhanced to Removal from service. The petitioner replied to the show cause notice on 16.07.2015.

6. The endeavour of the petitioner to stall the said proceedings before the Tribunal vide O.A. No. 2589/2015, met with failure.

7. The Lt. Governor then passed the order dated 15.10.2015 imposing penalty of removal from service upon the petitioner. Aggrieved thereby, he approached the Tribunal. As aforesaid, the Tribunal has rejected the aforesaid application.

8. The submission of learned counsel for the petitioner is that the power of revision has been exercised by the Lt. Governor by resort to Regulation 32G of the DDA (Conduct Disciplinary and Appeal) Regulations, 1999, which reads as follows:

1. Notwithstanding anything contained in these rules-

(1) the Authority;

(2) the Chairman/Vice Chairman; or

(3) the appellate authority, within six months of the date of the order proposed to be revised; or

(4) any other authority specified in this behalf by the Authority by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of an inquiry and revise any order made under these regulations, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or imposed any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstance of the face; or

(d) pass such other orders as it may deem fit Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (f) to (j) of regulation 23 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an enquiry under regulation 25 has not already been held in the case no such penalty shall be imposed except after an inquiry in the matter laid down in regulation 25 subject to the provisions of regulation 30:”. (emphasis supplied)

9. Learned counsel submits that in the case of the petitioner, the Appellate Authority is also the Chairman of the DDA i.e Lt. Governor and, therefore, his case is covered by Clause 1(3), which enables the Appellate Authority to exercise the power of revision within a period of six months. He submits that the proceedings for revision were initiated much after the expiry of six months in his case and, therefore, the Lt. Governor/ Chairman of the DDA had no power to revise the order of penalty of compulsory retirement.

10. We do not find any merit in this submission of the learned counsel.

11. A perusal of Regulation 32G shows that the authorities who are empowered to exercise the power of Revision are enumerated as: the Authority; the Chairman/ Vice Chairman; or; the Appellate Authority, within six months of the date of the order proposed to be revised or, any other authority specified in this behalf by the Authority by a general or special order, and within such time as may be prescribed in such general or special order.

12. The aforesaid Regulation shows that so far as the Authority and the Chairman/ Vice Chairman are concerned, there is no time limit on their power within which they may exercise the revisional power. Merely because the Appellate Authority in relation to the petitioner happens to be the Chairman i.e. Lt. Governor of Delhi, does not mean that he would lose his character as the Chairman of the DDA and would be divested to his power to exercise his revisional power under Clause 1(2). Clause 1(3) obviously, is in respect of Appellate Authority, other than the “Authority” i.e. the Delhi Development Authority and the Chairman/Vice Chairman. Otherwise, there was no need to separately incorporate them in Clauses 1(1) and 1(2) of Regulation 32G.

13. Since the petitioner stands convicted of a serious offence involving grave moral turpitude, we are ourselves amazed as to how he could be punished with compulsory retirement – which would entail payment of all retiral dues, and let off, in the first place.

14. No injustice has been done to the petitioner.

15. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

MAY 24, 2019

N.Khanna

