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

+ **Date of Decision: 24.07.2019**

% **W.P.(C) 7464/2019 and C.M. Nos.31079-31080/2019**

DR. MADHU DALELA

..... Petitioner

Through: Mr. Vinay Gupta & Mr. Manish Dua,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Subhash Gosai, Mr. Amit Kumar
Dogra & Mr. Tushar Malik,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The petitioner assails the orders dated 08.10.2018 and 22.02.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in R.A. No.65/2018 and O.A. No.721/2018. The Tribunal has rejected the said RA and Original Application preferred by the petitioner, wherein the petitioner had assailed the orders dated 08.06.2016 and 12.06.2017 imposing penalty upon her consequent upon departmental disciplinary inquiry held against her, and affirming the same. The petitioner also assailed the disciplinary proceedings resulting in imposition of penalty

upon her.

2. The petitioner initially joined the Song & Drama Division of the Ministry of Information & Broadcasting as an Actress and thereafter worked as Manager. The petitioner got elevated to the level of Deputy Director on 01.08.2000 and continued on the said post till her retirement on superannuation on 30.06.2017. While posted at Delhi, she was allotted government accommodation, which she occupied on 12.01.2005. Consequently, she was not entitled to draw HRA since 13.01.2005. At the same time, she was liable to pay license fee for the accommodation allotted to her. As per rules, the same was recoverable from her directly by the Pay & Accounts Officer (IRLA). The petitioner, however, continued to draw HRA even after allotment of official accommodation, and no license fee for the accommodation allotted to her was deducted from her salary. This position continued till 2012, only whereafter recovery of overpaid amount of HRA of Rs.6,37,893/- was ordered. She was placed under suspension on 14.10.2013, and eventually, issued the charge memorandum on 11.10.2013 framing two articles of charge against her for violation of Rule 317-B-13 of the F.R. & S.R. read with Rule 3(1) (i) & (ii) of the CCS (CCA) Rules, 1965. The substance of the charges framed against her read as follows:

“(i) The applicant violated SR 317-B-13 and embezzled the licence fee from 13.01.2005 to 31.05.2012; and

(ii) She concealed the fact relating to occupation of Govt. accommodation with mala fide intention and obtained wrongful gains for illegitimately overdrawing the HRA during the period from 13.01.2005 to 31.05.2012.”

3. In the inquiry proceedings, the Inquiry Officer exonerated the

petitioner. The Disciplinary Authority, however, issued a disagreement note and called for the petitioner's response. It appears that, at that stage, the petitioner sought to seek information under the Right to Information Act (RTI Act) and produced certain correspondence, which she claimed to have addressed to the respondents, informing the respondents that she was not entitled to draw HRA. Pertinently, the documents furnished by the petitioner – as received under the RTI Act, were subsequently withdrawn by the authorities, on the premise that they did not form part of the record. In that respect, a separate inquiry is pending.

4. The Disciplinary Authority then passed the order on 08.08.2016 holding the petitioner guilty of the charges framed against her. The relevant extract from the order passed by the Disciplinary Authority read as follows:

“ WHEREAS Disciplinary Authority decided not to take on record the three letters submitted by Ms. Madhu Dalela along with her representation on their being not found authentic and rejected the representations dated 23.9.2014 and 10.10.2014 of the CO. The Disciplinary Authority held both the articles of charges against the CO as proved and referred the case to UPSC for its advice on 01/02.12.14.

*WHEREAS UPSC vide their letter No. 3/303/14-S-I dated 17.4.2015 tendered their advice. They observed that **there is nothing on record to suggest that the CO ever informed the department/PAO (IRLA) before 13.6.2012 about deducting her License Fee and stopping payment of HRA and concluded that both the charges levelled against the CO Stand proved.** UPSC held that the charges established against the CO constitute grave misconduct on her part and consider that the ends of justice would be met if the penalty of reduction to a lower time scale of pay by one stage for a period of one year, with further directions that she will not earn increments of pay*

during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of her pay is imposed on the CO, Ms. Madhu Dalela.

WHEREAS after further examination of the matter in consultation with UPSC and DOP&T, the Disciplinary Authority observed that the penalty recommended by UPSC cannot be imposed on Ms. Madhu Dalela, being a direct appointee to the post of Deputy Director in substantive capacity. The Disciplinary Authority, therefore, decided tentatively to agree with the views of UPSC that the charges against Ms. Madhu Dalela are established but to disagree with the quantum of penalty recommended by UPSC.

WHEREAS in accordance with Rule 15(3)(b) of CCS (CCA) Rules, 1965, a copy of the advice dated 17.4.2015 of UPSC along with the Disciplinary Authority's tentative reasons for disagreement with quantum of penalty proposed, were forwarded to Ms. Madhu Dalela, vide Ministry's Memorandum of even number dated 01.12.2015 for making her written representation/ submission thereon.

WHEREAS Ms. Madhu Dalela submitted interim representations dated 08.12.2015 and 28.12.2015 and final representation dated 27.01.2016. The comments of Disciplinary Authority on main contentions of Ms. Madhu Dalela in her representations dated 08.12.2015, 28.12.2015 and 27.01.2016 are as under:-

- (i) The CO has contended that a reference to UPSC and DOP&T was made by the Ministry to seek further advice from them. The contention of CO is wrong since the matter was referred to UPSC and DOP&T only to seek a clarification about the implementation of penalty advised by UPSC and no further advice was sought. There was no other advice of UPSC except dated 17.4.2015 which was already provided to the CO. Further, Rule 15(3) of CCS (CCA) Rules, 1965 does not provide for the supply*

of additional documents to the charged officer for furnishing submission on the advice of UPSC.

- (ii) The CO has contended that UPSC advice is based on the documents which emerged on the records after conclusion of inquiry. The Disciplinary Authority observed that the CO obtained three documents from CPIO through her application dated 05.9.2014 under the RTI Act, 2005. The CO enclosed these documents along with her representation dated 23.9.2014 made in response to Memo dated 21.8.2014. These documents were subsequently cancelled by CPIO vide his letter dated 29.9.2014. UPSC tendered their advice dated 17.4.2015 after taking into consideration all the relevant facts/ records of departmental proceedings.*
- (iii) The CO has contended that the Ministry suppressed the material facts from UPSC as her supplementary representation dated 10.10.2014 was not sent along with the reference dated 10.10.2014, which resulted in incomplete analysis of facts by UPSC while tendering their advice dated 17.4.2015. She has further claimed that the advice given by UPSC is not sustainable and valid in law. The contention of CO is not tenable in view of the fact that a copy of supplementary representation dated 10.10.2014 were forwarded to UPSC along with the reference dated 02.12.2014.*
- (iv) The CO has contended that the letter dated 29.9.2014 from CPIO was an extraneous document which cannot be used against her. The contention of CO is not acceptable. The CO vide her representation dated 23.9.2014 submitted three documents, in reply to Memo dated 21.8.2014. The CPIO vide his letter dated 29.9.2014, cancelled these documents. Thus, CPIO's letter dated 29.9.2014 became a part of the disciplinary proceedings and was rightly relied upon for giving advice by UPSC.*

- (v) *The CO has made a contention that it was unfair to reject her request for furnishing of documents vide Memo dated 22.12.2015 and not to consider and dispose of her representation dated 28.12.2015. It was clearly stated in the Ministry's Memo dated 22.12.2015 sent to CO that Rule 15(3) (b) of CCS (CCA) Rules 1965 does not provide supply of additional document to the CO for furnishing submission on the advice of UPSC.*
- (vi) *The CO has contended that the Memorandum dated 15.01.2016 is silent about her representation dated 28.01.2015, which is unfair and unreasonable. It is observed that since her reply on the Memorandum dated 01.12.2015 in compliance of direction dated 04.01.2016 of the Hon'ble Tribunal was not coming forward, the charged officer was reminded vide letter dated 15.01.2016 to submit her representation as per the aforesaid directions of Hon'ble Tribunal. It is clear from the Order dated 04.01.2016 of the Hon'ble Tribunal that the CO had to submit her reply to the Memorandum dated 01.12.2015 and no other course of action was available to her.*
- (vii) *The CO has contended that it is improper to conclude that there is no record in PAO (IRLA) to show that she had ever informed the Department about deduction of license fees and stop payment of HRA. The contention of CO cannot be accepted as **during the inquiry, the PW-I (official from PAO IRLA) confirmed, on the basis of records available in PAO (IRLA) that the bill of License fee and other charges dated 12.01.2015 for PAO (IRLA) by Directorate of Estate was not received by them. Moreover the CO had herself admitted during her General Examination by IA (at the time of inquiry) that prior to 13.6.2012, she had not informed PAO (IRLA) directly in writing.***
- (viii) *The CO has made contention against the advice of UPSC that there is nothing on record to support that the CO*

ever informed the Department/ PAO (IRLA) before 13.06.2012 regarding deduction of License fee and stopping of payment of HRA. She has further contended against the advice of UPSC that her actions clearly indicates that she calculatingly withheld the information from the office. The contention of CO is not acceptable as CO was fully aware that her salary accounts as well as those of employees of attached/ subordinate offices of this Ministry are centrally maintained by PAO (IRLA). Therefore, she had to intimate PAO (IRLA) for stopping payment of HRA and deduction of License fee, which she never did deliberately. She approached PAO (IRLA) for change in bank accounts details on 13.6.2012, but never approached PAO(IRLA) for stopping payment of HRA and deduction of License fee. Moreover, she could not produce any documents/ evidence that she had even informed DFP either.

- (ix) *The contention of CO that the basis for observation by Internal Audit on the issue of overdrawl of HRA is either the letters submitted by her or the bill received by PAO directly from Directorate of Estate, is not acceptable. The CO in her letter dated 13.6.2012 to PAO (IRLA) intimated about opening of new bank account and requested to deposit her salary in the new Bank Account from the month, June, 2012. At the bottom the same letter, she wrote a “Note” and stated that HRA and license fee may be deducted from her salary. The Internal Audit came across the letter dated 13.6.2012 of CO along with a copy of ‘Bill for License fee and other charges’ issued by the Dte. Of Estates to PAO (IRLA) and found that she received HRA from January, 2005 to May, 2012 and license fee was also not deducted during the said period.*
- (x) *The CO’s contention that all her defense pleas made in her representation dated 23.9.2014 were not taken into consideration by UPSC is denied. UPSC’s advice is well reasoned and has been tendered after taking into*

consideration all the evidences and facts and circumstances the case brought on records during the inquiry.

- (xi) *The contention of CO that quantum of penalty as advised by UPSC is misread and misrepresented by the Ministry with a view to enhance the penalty to compulsory retirement, which is unfair and untenable, is wrong. The penalty recommended by UPSC was clearly for reduction to a lower time scale and not merely reduction of increment. Since she was appointed to the post of Deputy Director as a Direct Recruit, penalty advised by UPSC could not be imposed on her. As the penalty advised by UPSC would not be imposed on her and any penalty lower to that advised by UPSC would not commensurate with the gravity of charges established against her, a tentative decision to impose the penalty i.e. compulsory retirement was taken by the Disciplinary Authority.*

WHEREAS the Disciplinary Authority rejected the representations dated 08.12.2015, 28.12.2015 and final representation dated 27.01.2016 made by Ms. Madhu Dalela and accepted the advice of UPSC tendered vide letter dated 17.04.2015 with disagreement on quantum penalty recommended by them in accordance with reasons for disagreement as communicated to the charged officer vide Memorandum dated 01.12.2015.

WHEREAS the Disciplinary Authority referred the case to DOP&T for their advice as the decision involved disagreement with the advice of UPSC.

WHEREAS DOP&T after examining the case, stated vide their Note dated 28.4.2016 that penalty suggested by UPSC is not implementable and advised to take up the matter with UPSC.

WHEREAS, the case was, therefore, referred to UPSC vide letter of even number dated 06.5.2016 for reconsideration and to tender their advice regarding quantum of penalty to be imposed on Ms. Madhu Dalela, in view of the fact that quantum

of penalty advised by them vide letter dated 17.4.2015 is not implementable.

WHEREAS UPSC vide their letter No. 3/304/14-S.I dated 01.6.2016 conveyed that the penalty advised in para 7 of their advice dated 17.4.2016 may now be read as 'reduction to a lower stage in the time scale of pay by one stage for a period of one year, with further directions that she will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of her pay'.

WHEREAS the Disciplinary Authority tentatively accepted the penalty recommended by UPSC vide their letter dated 01.6.2016 and forwarded a copy of the advice dated 01.6.2016 tendered by UPSC to Ms. Madhu Dalela vide Memorandum dated 29.6.2016 for her representation/ submission, if any.

WHEREAS Ms. Madhu Dalela submitted her representation dated 20.7.2016 on the advice dated 01.6.2016 of UPSC. She requested for certain additional documents. Earlier also, she had requested vide her letter dated 08.12.2015 for certain documents to make her submission on the advice dated 17.4.2015 of UPSC and the tentative reasons of disagreement of Disciplinary Authority with the quantum of penalty proposed by UPSC. She was informed vide Memorandum dated 22.12.2015 that there is no provision of providing documents under Rule 15(3)(b) of CCS (CCA) Rules, 1965. The Disciplinary Authority further considered her representation/ submission dated 20.7.2016. The Disciplinary Authority observed that the grounds mentioned by Ms. Madhu Dalela in her representation dated 20.7.2016 are similar to those submitted in her representation dated 27.01.2016 to the earlier advice dated 17.4.2015 of UPSC, which was rejected by the Disciplinary Authority. The Disciplinary Authority has, therefore, decided to reject the representation dated 20.7.2016 of Ms. Madhu Dalela and accepted the advice of UPSC tendered vide their letter dated 01.6.2016.

WHEREAS the Disciplinary Authority, after careful consideration of the relevant records brought on records, the advice tendered by the UPSC and the facts and circumstances of the case, has come to the conclusion that the article of charges leveled against Ms. Madhu Dalela, Deputy Director, S&DD vide Memorandum No. C-13011/6/2013-Vig. Dated 11.10.2013 stands fully proved and justice would be met if the penalty of "reduction to a lower stage in the time scale of pay by one stage for a period of one year, with further directions that she will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of her pay" is imposed on her." (emphasis supplied)

5. The aforesaid order dated 08.08.2016 was affirmed by the order dated 12.06.2017. The said orders were assailed by the petitioner before the Tribunal which, as aforesaid, has rejected the Original Application.

6. The submission of learned counsel for the petitioner is that the Disciplinary Authority has wrongly rejected the petitioner's reliance placed on the three letters that she placed before him along with her representation on the ground that the same were not authentic. She submits that the authenticity of the said letters is a matter which is still under examination, and till that is decided, the Disciplinary Authority was not justified in rejecting consideration thereof.

7. We have perused the record, including the order passed by the Disciplinary Authority. Firstly, the conduct of the petitioner shows that she did not place reliance on the said three communications which she claims to have subsequently obtained under the RTI Act. There is no explanation as to why she did not place reliance on those communications earlier in the inquiry. If she sent them to the respondents/ concerned authorities, she

would have been aware of them and those letters – or at least the fact that she sent them (even if she did not retain copies of them) would have been her primary defence. On the contrary, it appears that she admitted in the inquiry that she did not inform the PAO (IRLA) that she was not entitled to HRA, and was liable to pay license fee for the first time only on 13.06.2012. Secondly, even if for the sake of arguments the said communications were to be looked into in the petitioner's defence, the same do not absolve the petitioner of her guilt of accepting the HRA and not getting the license fee deducted. The petitioner was a senior officer and could have refunded the HRA on her own, without awaiting for recovery to be effected. However, she continued to draw the same for about seven years. Similarly, nothing prevented her from proceeding to deposit the license fee, even if the same was not deducted from her salary. However, she failed to do so.

8. In these circumstances, we are of the view that there is no error either in the order passed by the Disciplinary Authority dated 08.08.2016, or in the order passed by the Tribunal rejecting her Original Application.

9. Lastly, learned counsel for the petitioner has also submitted that the Member (Administrative) Sh. Uday Kumar Varma, should not have heard the Original Application and should not have delivered the judgment, since he had administratively dealt with the case of the petitioner in respect of her transfer and the preliminary inquiry which led to issuance of charge-sheet. We do not find any merit in this submission. The petitioner did not raise any such objection before the Tribunal. It is not clearly stated what role the said member had in the inquiry conducted against her. In fact the petitioner was asked in the review proceedings to produce material to establish that the

Member (Administrative) had dealt with her case, but nothing was produced by her. Assuming that the Member (Administrative) may have, at some stage, dealt with the aforesaid aspects was no ground for him to recuse from the matter on his own. Even according to learned counsel for the petitioner, the said preliminary inquiry was conducted in 2013, i.e. nearly 5 years before the bench of the Tribunal took up the matter and decided the same. Looking to the passage of time, it could well be that the learned Member (Administrative) may not have even had recollection of what had transpired in the matter when he had administratively dealt with it. Unless there was a specific plea for recusal with substantive reasons, there was no cause for the Member (Administrative) to recuse in the matter. The action against the petitioner is entirely based on record.

10. We have ourselves also examined the matter, and we do not find any merit in the petition.

11. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 24, 2019

B.S. Rohella