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

Date of decision: 18/09/2019

+ **W.P.(C) No.10088/2019**

S.K. JASRA

..... Petitioner

Through: **Mr. Setu Niket, Advocate.**

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: **Mr. Sanjeev Uniyal, Senior Panel Counsel with Ms. Sheetal Raghuvanshi, Government Pleader and Mr. Dhawan Uniyal, Advocate for respondent Nos.1 to 3 with Mr. Aditya Singh, Admin Officer, Ministry of Defence.**

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)

C.M. No.41720/2019 (exemption)

Exemption is allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.10088/2019

The present writ petition is directed against the order passed by the Central Administrative Tribunal dated 17.09.2018. The writ petition is being disposed of at the admission stage itself.

2. The case in hand has a long history. A charge-sheet was issued to the petitioner on 24.03.2009 under Rule 3(1)(iii) of CCS (Conduct) Rules, 1965 for allegedly misbehaving with the relatives of a lady peon at places far away from his office. An inquiry was held. The Inquiry Officer submitted his report on 18.12.2009. By order dated 21.09.2010, the Disciplinary Authority imposed a penalty under Rule 11(V) of the CCS (CCA) Rules, 1965 i.e. penalty of reduction of pay by three stages for a period of two years with further orders that the petitioner would not earn increments during these two years and his future increments will remain postponed.
3. This led to filing of O.A. No.654/2011 by the petitioner, which was decided on 28.02.2012. The order of penalty was quashed and set aside.
4. The respondents assailed the aforesaid order by approaching the High Court and filing W.P.(C) No.3820/2012. The order of the Tribunal was not interfered with but a rider was inserted that the Disciplinary Authority will re-look into the matter and pass a speaking and reasoned order without being influenced by any observations contained in the impugned order i.e. the order of the Tribunal.
5. The Disciplinary Authority enhanced the penalty vide order dated 28.09.2012 by reducing the rank of the petitioner from Joint Director to Deputy Director.
6. This order of penalty was assailed by the petitioner by filing O.A. No.3577/2012 before the Tribunal. The Tribunal then remanded the matter back to the Disciplinary Authority on 10.09.2013 directing

the disciplinary authority to review the penalty as the disciplinary authority could not have enhanced the penalty at the stage when the matter was remanded back.

7. This led to filing of W.P.(C) No.7699/2013 by the petitioner. The writ petition was dismissed and the order of the Tribunal dated 10.09.2013 was upheld. The Disciplinary Authority thereafter passed an order on 27.08.2015, which reads as follows:-

“AND WHEREAS in compliance with the Order dated 10 Sep 2013 of the Ld Tribunal, which was upheld by the Hon’ble High Court as well, the penalty imposed vide Order dated 28 Sep 2012 has been reviewed by the Disciplinary Authority. The penalty of ‘Reduction in rank’ imposed vide the Order dated 28 Sep 2012 requires no change, in view of the following grounds,:-

(a) The earlier penalty of “reduction of pay by three stages for a period of two years with further orders that he will not earn increments during these two years and his future increments will remain postponed” had a tenure of two years and its adverse impact was to be felt by the Charged Officer even after expiry of penalty period due to its cumulative effect. Shri SK Jasra was due to retire on 30 Jun 2013. Therefore the same penalty was not implementable on 28 Sep 2012. The charged officer was not entitled to any increment during the period Sep 2012 to Jun 2013. The next increment would have been due only on July 2013, had he been in service. The penalty of ‘reduction in rank’ was imposed by the Disciplinary Authority after deliberation and taking into account the above said position;

(b) Reduction to a lower stage in a time scale is not permissible under the rules for an unspecified period or as a permanent measure. The penalty of ‘Reduction of pay by three stages’, as suggested by the Ld Tribunal in

its Order dated 10 Sep 2013, if imposed, can only be made effective up to 31 May 2013. The gravity of misconduct committed by the officer does not warrant any dilution of the penalty imposed;

(c) The penalty of 'reduction in rank' has been portrayed as a much harsher penalty by the charged officer which is not so in reality. He was a regular Dy Director holding the rank of Jt Director (in-situ) and entrusted with the duties and responsibilities of a Dy Director only. The penalty only resulted in reduction of his grade pay from Rs.7600/- to Rs.6600/-.

(d) The entire proceedings were upheld by both the Courts viz the Ld CAT (PB) as well as Hon'ble High Court; and,

(e) The penalty of 'reduction in rank' has a lesser impact on pay and pensionary entitlement of Shri SK Jasra as against the penalty of 'reduction of pay by three stages' and hence can not be construed as a more severe penalty than the latter one.

NOW, THEREFORE, the President having considered the matter in its entirety hereby orders that the penalty of 'reduction in rank from Jt Director (in situ) to Deputy Director' imposed on Shri SK Jasra vide Order dated 28 Sep 2012 meets the ends of justice and be retained."

8. This order of the Disciplinary Authority was again challenged by the petitioner by filing O.A. No.852/2017. The Tribunal vide order dated 17.09.2018 was pleased to set-aside the order of penalty dated 27.08.2015 and directed that the punishment as imposed in the first penalty order dated 21.09.2010 shall become operative.

9. Accordingly, by order dated 16.01.2019, in compliance with the directions of the Tribunal, the respondents withdrew the

impugned order dated 27.08.2015 and made the first penalty order dated 21.09.2010 operative.

10. The petitioner then filed a review petition under Rule 29A of the CCS (CCA) Rules, 1965 with a prayer that order of penalty be quashed. This review petition has been rejected vide order dated 22.07.2019 and the same has led to filing of the present writ petition.

11. The prayers made in the petition however cannot be accepted for the reason that order dated 28.09.2012 was assailed by the petitioner before the Tribunal and the said order of the Tribunal was upheld by the Division Bench of this court vide order dated 28.05.2015.

12. We accordingly find no infirmity in the view taken by the Tribunal or by the Disciplinary Authority. No grounds are made out to entertain the petition. Dismissed.

C.M. Nos.41718/2019 & 41719/2019

13. In view of the order passed in the writ petition, these applications are also disposed of.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 18, 2019/Ne