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

Reserved on: 11.02.2019

Pronounced on: 13.03.2019

+ W.P.(C) 3102/2017

PUSHPENDRA KUMAR JAIN

..... Petitioner

Through: Mr. Anil Kaushik, Mr. Abhishek
Mishra and Mr. Aakash Bhardwaj,
Advocates.

versus

CENTRAL WAREHOUSING CORPORATION & ANR

..... Respondents

Through: Mr. K. K. Tyagi and Mr. Iftexhar
Ahmad, Advocates for R-1.
Mr. Abhisb Tiwari, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The Petitioner has filed the present petition challenging the punishment order dated 28.10.2015 passed by the Disciplinary Authority ("Respondent No.1) whereby he was demoted by one grade from Executive Engineer to the Assistant Engineer (AE) grade(Civil) and the order dated 04.08.2016 passed by the Appellate Authority whereby the said authority has rejected the Appeal of the Petitioner against the punishment order dated 28.10.2015.

2. The brief facts of the case are that the Petitioner joined the Respondent No.1 as Assistant Engineer (Civil) and thereafter, was promoted as Executive Engineer (Civil) around the year 1998-1999. As per the Central Warehouse Corporation (Staff) Regulation, 1986, an assistant engineer is eligible to promotion as Executive Engineer after 6 years, however, the petitioner was promoted after a long period of 16 years. In the year 2007, the petitioner was posted on deputation to Central Railside Warehouse Company (hereinafter referred as “CRWC” or “Respondent No.2”) as Superintending Engineer for implementation of projects for CRWC, which was a newly formed company. The mandate of which was to be a lean organization, having limited number of officers, so as to have a competitive edge. The Petitioner was responsible for planning, designing and construction of CRWC projects and implement the same with a limited staff. The respondent No. 2 entered into a Memorandum of Understanding (MoU) dated 09.10.2013 with All India Management Association (AIMA), whereby AIMA was entrusted with the responsibility of carrying out the recruitment process on behalf of CRWC for the posts of Executive Engineers (Civil & Electrical), Executive (Finance & Accounts), Executive (Marketing & Logistic Operations) Executive (HR). The Petitioner was

appointed as the Nodal Officer by the Respondent No.2 to interact with the officials of AIMA for execution of the MoU dated 09.10.2013. The recruitment process was initiated by AIMA on 26.10.2013 and was to be completed by 30.01.2014. The policy decision was taken by the then MD of the Respondent No.2 Vide Office Memorandum Dated 09.12.2013, to increase the ratio of candidates to be called for interview for the recruitment process conducted by AIMA from 1:5 to 1:10 to increase the talent pool. The Petitioner on the directions of the then Managing Director of the Respondent No.2 had prepared the office memorandum dated 09.12.2013, based upon the office noting made by the MD of the Respondent No.2 which is reproduced below-

“ We should try to get good officers at the middle management level. As this is only interview, we may call more candidates for interview as indicated above”

3. The Respondent No.2 vide letter dated 21.01.2014 informed AIMA that the ratio of candidates to be called for interview has been increased from 1:5 to 1:10. Subsequently, the successful candidates were selected on the basis of the recruitment process and appointed by Respondent No.2. However, between 08.05.2014 to 31.10.2014, the Vigilance Department of the Respondent No.1 issued various communications to the petitioner in the

form of questionnaires which were duly replied to by the Petitioner in respect of the recruitment process and other alleged irregularities which were not in respect of the recruitment process. On 31.10.2014, the Sr. Assistant Manager (Vigilance) of Respondent No. 1, vide letter dated 31.10.2014 informed the Petitioner of investigation being carried out on a complaint against the Petitioner. In the said letter dated 31.10.2014, the Petitioner was also asked to furnish a reply to a questionnaire with regard to payment of bills to a service provider for hiring of vehicles and approval of negotiating with the said service provider.

4. On 07.11.2014, the Respondent No.2 issued a show cause notice to AIMA seeking a response as to why AIMA should not be blacklisted in view of the irregularities which had occurred, due to the negligent manner in which the recruitment process was carried out by AIMA. In response to the said show cause notice dated 17.11.2014, AIMA shifted the blame squarely on the Petitioner and the said response was contrary to the terms of MoU dated 09.10.2013. The petitioner vide officer memorandum No. 46 dated 02.01.2015 was informed by the Disciplinary Authority of Respondent No.1 that an enquiry against him is being initiated under regulation 61 read with regulations 53 & 59 of the Central Warehousing Corporation (Staff)

Regulations, 1986. The inquiry was being conducted in respect of the alleged irregularities which had occurred during the recruitment process conducted by AIMA. The chargesheet dated 02.01.2015 contained the following charges against the Petitioner; (a) The Petitioner extended undue favor to Ms. Ritu Bhatia who was selected as Company Secretary by increasing the ratio of candidates to be called for the interview process from 1:5 to 1:10. (b) The Petitioner did not put in public domain about the increase in ratio for the interview. (c) Not deputing a representative during the selection process to scrutinize the application. (d) Not verifying the documents of the eligible candidates.

12. Learned counsel for the petitioner submitted that the petitioner submitted his written statement against the first chargesheet dated 02.01.2015 stating that the increase in ratio of candidates to be called for interview was with due approval of the MD of the Respondent No.2. He did not have any role in selection of the said candidates. The Petitioner was not part of the interview board to influence the selection of any candidate. The disseminating information in the public domain was the responsibility of AIMA as per the MoU dated 09.10.2013.

13. Further submitted, after submission of the written statement, a revised

chargesheet was served upon the Petitioner on 10.08.2015. He was charged with extending undue favour to Ms. Ritu Bhatia and Mr. Abhishek Faujdar who were selected as Company Secretary and Dy. Manager (IT) respectively. He was also accused of not checking the eligibility criteria of Ms. Preeti Gupta who was selected as Manager (Finance), along with various accusations pertaining to irregularities in the recruitment drive conducted in association with AIMA. In response to the revised chargesheet dated 10.08.2015, the petitioner stated that he was of Engineering cadre and carried out the duties as entrusted for the recruitment process despite not having the required expertise in HR. In addition to the reply already filed to the First Charge Sheet dated 02.01.2015, the petitioner further submitted that the purported merit list dated 27.11.2013 was a preliminary list and the candidates were not listed in the order of merit. Even if the same was considered a merit list, a bare perusal of the same would make it clear that the Petitioner did not extend any undue favour to the said candidates as the names were in serial numbers which were beyond the ratio of 1:10. However, the Disciplinary Authority vide order dated 28.10.2015, illegally demoted the Petitioner to two grades lower from his existing grade i.e. from Executive Engineer to Assistant Engineer. Thereafter, the Petitioner made a

representation dated 18.11.2015 to the Disciplinary Authority for review of the order dated 28.10.2015 on the ground that the punishment meted out to the Petitioner was very harsh and there were no malafides on the part of the Petitioner during the conduct of the recruitment process. Since no reply was received, the Petitioner filed an appeal with the Executive Committee against the order dated 28.10.2015 passed by the Disciplinary Authority. However, on 04.08.2016, the Petitioner received reply from the Disciplinary Authority whereby he was informed that his appeal dated 19.07.2016 has been dismissed vide order dated 04.08.2016 on account of being time-barred. Thereafter, the punishment as meted out by order dated 28.10.2015 passed by the Disciplinary Authority was implemented vide office order dated 09.08.2016. Being aggrieved, the petitioner made representation dated 11.08.2016 to the Chairman of the respondent No.1.

14. Learned counsel appearing on behalf of petitioner submitted that written statements dated 23.01.2015 and 28.08.2015 were neither an unequivocal admission of guilt nor an unequivocal admission of facts as the petitioner had made the specific averments against the charges levelled at him. Mere admission of charges cannot be admission of guilt. An admission has to be unambiguous and free from any doubt. It is further submitted that

the alleged admission and waiver of enquiry was obtained from the petitioner by the Vigilance officer by representing that a lenient view would be taken by the Disciplinary Authority. The petitioner was on the verge of superannuation, thus made certain admission of facts and made specific submissions against the charges.

15. To strengthen his arguments, learned counsel appearing on behalf of petitioner had relied upon the case of ***Jagdish Prasad Saxena vs. State of M.B. AIR 1961 SC 1071*** whereby held that even if the appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would constitute a serious infirmity. The above position has been reiterated by this Court in ***D.T.C. vs. Krishan Kumar 2008 1 AD (DELHI) 341***.

16. Learned counsel for the petitioner further submitted that there was no negligence on the part of the petitioner and it was the recruitment agency i.e. AIMA. Even assuming, that there was alleged negligence on the part of the

petitioner, mere omission or negligence does not constitute misconduct as per the law laid down by this Court in case of *Union of India vs. J. Ahmed* (1979) 2 SCC 286.

17. Thus, learned counsel for the petitioner submits that in view of the above submissions and legal position, the present petition deserves to be allowed.

18. On the other hand, learned counsel for the respondents submits that there were serious charges against the petitioner being nodal officer for recruitment process of CRWC Ltd. He had tried to extend undue favour to Miss Ritu Bhatia, Sh. Abhishek Faujdar and Smt. Preeti Gupta in selection for the post of Company Secretary, Deputy Manager (IT) and Manager (F&A) respectively. The petitioner being the head of Estt. and Admn and Nodal Officer for recruitment process failed to place in public domain, alteration in initial term of advertisement i.e. enhance ratio of calling candidates for interview from 1:5 to 1:10. The petitioner also failed to detail/ depute a competent representative to AIMA to guide them in scrutiny of received application due to which ineligible candidate's mentioned above were placed in the merit list prepared by AIMA for calling them for interview. The petitioner also failed to depute a competent representative to

verify the documents of candidates called for interview along with AIMA representative at interview venue which led to selection of ineligible candidates mentioned above.

19. Learned counsel further submitted that in charge sheet itself, it was made clear that enquiry would be held only in respect of those articles of charges which are not admitted. The petitioner vide his written statement of defence dated 23.01.2015 and 28.08.2015 specifically admitted all the charges mentioned in the charge sheets and further requested not to hold any enquiry and further requested for taking a lenient view. The Disciplinary Authority on consideration of the material on record and the reply of the petitioner passed an order dated 28.10.2015 whereby a penalty of demotion from EE (Civil) to a lower grade AE (Civil) was awarded. The appeal filed by the petitioner dated 19.07.2016 has been rightly rejected being barred by limitation as in terms of Regulation 68 of CWC (Staff) Regulation 1986 the appeal is to be filed within a period of 30 days from the impugned order.

20. It is further submitted that the Writ Petition is liable to be dismissed having without merit.

21. I have heard the learned counsel for the parties.

22. In case of ***Railway Board vs. Niranjan Singh 1969 (1) SCC 502***, it is

held that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding.

23. In case of ***State of A.P. vs. Chitra Venkata Rao 1975 (2) SCC 557***

whereby observed as under:-

“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. vs. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a Court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the

statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.”

24. In case of ***Union of India vs. P. Gunasekaran***, (2015) 2 SCC – 610

whereby held as under:-

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:-

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

25. It is not in dispute that the petitioner was served with the charge sheet dated 02.01.2015 and a revised charge sheet dated 10.08.2015 wherein serious charges were levelled against the petitioner being nodal officer for

recruitment process of CRWC Ltd. The petitioner himself prepared a note and by misrepresentation got the approval from MD of Respondent No. 2 due to which ineligible candidates were selected by increasing the scope of 1:5 to 1:10. Moreover, the petitioner has admitted all the charges mentioned in the charge sheet and request not to hold any department enquiry and also requested for taking a lenient view. Since, the petitioner himself admitted all the charges with request to take lenient view, the disciplinary authority on consideration of material on record, the penalty of demotion from Executive Engineer to Lower grade Assistant Engineer (Civil) was awarded. It is pertinent to mention here that in his reply dated 23.01.2015, the petitioner stated as under:-

“In view of the submission which is final submission and being an officer of engineering cadre. I carried out duties entrusted by the Competent Authority as an obedient officer even the recruitment process of HR was not my field. I don't want any further enquiry to be set up in the matter. During my 33 years of career in CWC I never performed the duties/responsibilities of recruitment/establishment etc. There might be some unintentional deviations during the process for which I admit the charges levelled to the extent of unintentional omissions. I humbly request disciplinary authority to take a lenient view in the matter.”

26. Accordingly, the Disciplinary Authority while considering material on record and the reply of the petitioner was pleased to pass an order that

Terms and conditions for recruitment in CRWC Ltd. was violated by enhancing the ratio of calling the candidates from 1:5 to 1:10 after advertisement of recruitment of posts in CRWC and after receipt of applications from candidates. It indicates undue favour given to Ms. Ritu Bhatia and Sh. Abhishek Fauzdar. AIMA has pointed out short comings in respect of qualification/ experience/ documents required along with application for the concerned post as per advertisement in the initial list of candidates prepared with scrutiny remarks vide letter dated 27.11.2013. Documents received from AIMA indicate that Sh. P. K. Jain, SE (E&A) and Sh. Vinod Asthana, the then MD, CRWC Ltd. was in contact of AIMA & examined/seen the list of candidates on 26.11.2013. As per letter dated 27.11.2013 dated 06.12.2013 and as per e-mail message dated 10.12.2013 then postwise list of provisional eligible candidate in the order of merit on the basis of marks obtained in qualifying degree prepared and submitted to SE(E&A) vide letter dated 18.12.2013. The representative of CRWC was not deputed during screening of applications and also during verification of documents at interview venue so as to give more liberty to recruiting agency i.e. AIMA. Accordingly, ineligible candidates required to be rejected at the time of screening of applications of candidates and

verification of documents before interview. It was the duty of the petitioner being nodal officer to issue specific instructions to M/s AIMA to place in Public domain, alterations in initial term of advertisement i.e. enhanced ratio of calling candidates for interview from 1:5 to 1:10. Therefore, very purpose of having transparency in selection by specifying the ratio for calling the candidates for interview in advertisement itself was defeated.

27. The cases relied upon by the petitioner *Jagdish Prasad Saxena (supra)* and *Krishan Kumar (Supra)* are not applicable in the facts and circumstances of the present case for the reasons that in case of *Jagdish Prasad Saxena (supra)*, the appellant therein was dismissed from the service whereas in the present case, the Disciplinary Authority has taken a lenient view by down grading from one stage i.e. Executive Engineer to Assistant Engineer (Civil).

28. Accordingly, in view of above discussion and settled position of law, I find no merit in the present petition.

29. The petition is, accordingly, dismissed as no order as to costs.

(SURESH KUMAR KAIT)
JUDGE

MARCH 13, 2019/ rd