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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3423/2014**

ROOP NARAIN

.....Petitioner

Through: In person.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr.M.K.Tiwari and Mr.R.Mishra,
Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
01.10.2019

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1. This is a writ petition against two orders of the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi dated 20th February, 2014 in O.A. No.267/2014 and 16th April, 2014 in Review Petition No. 49/2014 both filed by the present Petitioner.

2. The Petitioner was working as an Executive Engineer (Civil) in Central Public Works Department. By an Office Order No.65/2011 dated 1st April, 2011 he was posted at Kabul in Afghanistan in connection with execution of works relating to the construction of the Afghanistan Parliament and the Indian Chancery Building in Kabul. By subsequent office orders his stay

was extended twice up to 23rd July, 2014 in connection with the same construction work.

3. By an order dated 17th January, 2014, the extension up to 23rd July, 2014 was cancelled and he was asked to report for duty at the Directorate in New Delhi for further posting. Aggrieved by the above Office Order No. 5/2014 dated 17th January, 2014, the Petitioner approached the CAT with O.A. No.267/2014.

4. The CAT has noted in the impugned order that in his Annual Performance Appraisal Report ('APAR') for the period 23rd July, 2011 to 31st March, 2012 his performance was rated as 'outstanding'. He also filed a copy of a letter dated 10th May, 2013 written by the Ambassador of India in Kabul who stated, while seeking extension of the Petitioner's stay there, that he is impressed with the Petitioner's commitment to pushing the pace of work. On the above grounds, it was contended by the Petitioner that there could be no reason for the abrupt termination of his tenure in Kabul.

5. The Petitioner alleged that his transfer order was issued on account of his writing a letter dated 10th January, 2014 to the Director General ('DG') of CPWD about the 'irregular working and involvement in corruption' of his superior, Mr. G.S. Pant, Director (PM), CPWD, Kabul. The Petitioner contended that as a result Mr. Pant had issued a letter dated 13th January, 2014 asking the Petitioner to be sent back to India after handing over his complete charge to one Mr. Ahmed, AE (Civil). It appears that the Petitioner wrote a letter to Mr. Pant on the same date stating that he would not follow

the repatriation order since it had not been passed by a competent authority, and he would not hand over charge without knowing the outcome of his representation before the DG.

6. Nevertheless, the fact remains that the Petitioner did return to India. Initially, it appears that the CAT had stayed the Petitioner's repatriation by an interim order dated 28th January, 2014. However, on the subsequent date i.e. 20th February, 2014 by the first impugned order the CAT dismissed the petition.

7. The counter affidavit filed by the Respondents before the CAT alluded to the projects being undertaken by the CPWD in Kabul being 'very prestigious' and that 'the image of the country' was 'also at stake'. It referred to the fact that in view of the complaints made by the Petitioner against his superior and a counter complaint by his superior against the Petitioner the cohesiveness of the CPWD team in Kabul was being disturbed. Meanwhile, another person, Mr. G. R. Sangwan, Executive Engineer (Civil) was sought to be sent to Kabul in connection with the same work and once the political clearance for that move was received on 9th January, 2014 it was decided that the Petitioner be repatriated. The counter affidavit acknowledged that the Petitioner was due to retire on 30th November, 2014 and by the time of his repatriation he had already served for two and a half years. The CAT concluded that this was a case of 'a routine transfer of an official within the department'.

8. The CAT, however, did not stop there. It proceeded to state that the

Petitioner's attempt to convince the CAT that he was a 'whistle blower' and hence is being victimised was 'certainly not true'. While not commenting on the allegations made by the Petitioner against his superior and vice versa, the CAT nevertheless proceeded to characterise this 'utter lack of patriotism in both these officers who have stooped to such low levels as to stall such a prestigious work due to their cat fight and never even bothered that in the process they were harming the image of the country'. It then proceeded to state that 'the ideal thing would perhaps be to remove both of them and to start departmental proceedings against them'. The impugned order then proceeds in the same vein and ends with actually directing the Respondents 'to start departmental proceedings against the Applicant on the charge of damaging the image of the country on the foreign land as well as other charges that have been levelled against him'.

9. In the considered view of the Court, the CAT far exceeded its jurisdiction in not stopping with pronouncing on the validity of the order dated 17th January, 2014 transferring the Petitioner back to India. It was certainly not within the domain of the CAT to castigate, in the manner it has, not only the Petitioner but also his superior as lacking in patriotism and directing that both of them should be 'removed' and as a precursor thereto to order that a departmental proceeding should be initiated. The direction to the Petitioner to pay a cost of Rs.25,000/- was also as a result of the above gratuitous observations of the CAT which also in the considered view of this Court was uncalled for. The CAT also needlessly commented on the Respondents' 'complete insensitivity' in handling 'this matter'. In travelling beyond the scope of the petition before it, the CAT appears to have unnecessarily

engaged in matters which would properly fall within the domain of the Respondents who at that stage had not contemplated any disciplinary action.

10. Not surprisingly, the Petitioner filed a Review Petition before the CAT for recall of the above directions to the Respondents. It appears that the Petitioner, who appeared in person, used language in the review petition which was not appropriate and that appears to have invited further observations from the CAT when it dismissed the Review Application No. 49/2014 by the second impugned order dated 16th April, 2014. The CAT stopped sort of punishing the Petitioner for contempt.

11. The Court notices that when this petition was first heard before this Court on 26th May, 2014 the direction issued by the CAT to the Petitioner to deposit Rs.25,000/- was stayed. Perhaps on account of the Court not staying the remaining part of the directions issued by the CAT, the Respondent appears to have duly issued to the Petitioner a charge-sheet dated 16th October, 2014. When this was brought to the notice of the Court at the hearing on 12th November, 2014, the operation of the said charge-sheet was stayed.

12. It appears that during the pendency of the present petition a second charge-sheet was issued. Noting this, on 21st November, 2016 the Court passed the following order:

“1. It is pointed out that second charge sheet has already been issued.

2. Learned counsel for the petitioner, without prejudice to his

rights and contentions, submits that the present writ petition can be disposed of recording that the observations and the findings recorded by the Tribunal will not be relied upon by the respondents.

2. At request of the learned counsel for the respondents, relist on 24th January, 2017.”

13. Counsel for the Respondent was asked to seek instructions and report on the next date by an order of the Court dated 8th February, 2018. It appears that thereafter counsel for the Respondents was not able to convey to the Court on several dates what the instructions of the Respondents were.

14. This Court has heard learned counsel for the parties. The Court is of the view that the CAT did exceed its jurisdiction in directing departmental enquiry against the Petitioner and that is what led to the issuance of the first charge-sheet. The Court also notes that at the hearing on 21st November, 2016 counsel for the Petitioner had agreed for disposal of the writ petition with the observations that the findings recorded by the Tribunal would not be treated as final and binding and that the first charge-sheet itself would not be relied upon by the Respondents.

15. Indeed, with a second charge-sheet having been issued after the first charge-sheet was stayed by this Court, the question of the Respondents proceeding on the basis of the first charge-sheet would not arise particularly since the subject matter of the second charge-sheet includes the second charge of the first charge-sheet about the Petitioner not reporting on duty upon transfer orders being issued. Here again, with the CAT having stayed the transfer order in the first instance, the Respondent may not be justified in

proceeding against the Petitioner for failure to report on duty pursuant thereto. Consequently, the Court feels that the proceedings pursuant to the first charge-sheet should be closed and it is so ordered.

16. The Court also sets aside the impugned directions of the Tribunal to the Respondents to start a departmental inquiry against the Petitioner as well as the order imposing the cost of Rs.25,000/-, both of which were unwarranted in the facts and circumstances of the case for the reasons already explained herein.

17. As far as the second charge-sheet is concerned, the Petitioner appearing in person states that no progress is being made in the enquiry proceedings. The Court notes that the second charge-sheet has not been stayed and despite three years having elapsed, the enquiry is not over. The Petitioner, who appears in person, states that he has filed a reply and asked for certain documents, which have still not been provided to him.

18. The Court would not like to comment any further on this except to state that the proceedings in the second charge-sheet should be concluded as expeditiously as possible and in accordance with law and in any event not later than six months from today.

19. It is further clarified that no observation adverse to the Petitioner made in the impugned orders of the CAT would influence the outcome of the proceedings in the second charge-sheet.

20. The writ petition is disposed of with the above directions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 1, 2019

v