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

+ W.P.(C) 5653/2018 & CM Nos. 22051-22052/2018

UNION OF INDIA Petitioner

Through: Mr. Amit Mahajan, CGSC.

versus

DR. M.R. DIWAN & ANR.

..... Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

Anup Jairam Bhambhani, J. (Oral)

This writ petition has been filed by the Ministry of Environment & Forests, Government of India (hereinafter the 'Ministry') impugning order dated 05.04.2018 made by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter the 'Tribunal') in OA No. 1645/2017, whereby the Tribunal has allowed OA No. 1645/2017 filed by respondent No. 1/Dr. M.R. Diwan (hereinafter the 'Officer') and has quashed penalty order dated 19.06.2017 imposed by the Ministry upon the Officer. By penalty order dated 19.06.2017 the Ministry has imposed a penalty of

withholding 50 per cent pension and gratuity upon the Officer. The Tribunal has further directed the Ministry to pay all consequential benefits to the Officer.

2. The Officer was recruited in the Indian Forest Service (IFS) (AGMUT Cadre) in 1974. By order dated 10.02.1993 the Officer was placed under suspension with effect from the said date. A charge sheet was issued to the Officer on 15.11.1993 and eleven charges were framed against him.

3. In the *first* round of proceedings, the departmental enquiry conducted against the Officer culminated in imposition of penalty of 'dismissal from service' *vide* order dated 03.07.2001. A review petition filed by the Officer against imposition of such penalty was rejected on 12.09.2002. These proceedings were challenged by the Officer by way of OA No. 181/2002 before the Tribunal ; and by order dated 29.05.2003 the Tribunal quashed dismissal order dated 03.07.2001 on certain technical grounds and remanded the matter back to the Ministry for continuing proceedings from the stage that the Officer was proceeded against *ex-parte*.

4. In the meantime, on 30.04.2004, the Officer superannuated.

5. The remanded departmental enquiry led to an order being passed by the Ministry, based on advice dated 13.04.2007 taken from the Chief Vigilance Commission, whereby the pension and gratuity of the Officer were withheld.

6. In the *second* round, the Ministry's order withholding the pension and gratuity of the Officer was challenged by the Officer *vidé* OA No. 418/2006 before the Tribunal; which OA was dismissed as withdrawn *vidé* order dated 30.04.2007.

7. In the *third* round, the Officer filed OA No. 1043/2007 before the Tribunal, which was disposed of with a direction to the Ministry to give the petitioner another opportunity to submit his representation. Such representation having been made and considered, on 08.04.2010 the penalty of withholding pension and gratuity on permanent basis was again imposed upon the Officer.

8. In the *fourth* round, Order dated 08.04.2010 was challenged by the Officer by way of OA No. 1826/2010 before Tribunal; which matter was disposed of by the Tribunal quashing order dated 08.04.2010, giving liberty to Ministry to proceed against the Officer after giving him a copy of advice rendered by the Chief Vigilance Commission in relation to imposition of penalty, whereafter the Officer was required to submit his representation, which however, he failed to do. Accordingly, by order dated 25.09.2012, the penalty of 'withholding of pension and entire gratuity on permanent basis' was imposed upon the Officer yet again.

9. In the *fifth* round, the Officer filed OA No. 925/2012 before the Tribunal praying for quashing charge sheet dated 15.11.1993; which matter was disposed of as withdrawn, with the Tribunal giving permission to file a fresh application challenging penalty order dated 25.09.2012 alongwith charge sheet dated 15.11.1993.

10. It is in the *sixth* round that OA No. 3660/2012 came to be filed before the Tribunal challenging charge sheet dated 15.11.1993 and order dated 25.09.2012; which penalty order was quashed by the Tribunal by order dated 31.10.2013, holding the punishment to be excessive and the matter was remanded yet again to the disciplinary authority for taking a fresh decision on quantum of punishment in the light of the directions contained

in the Tribunal's order. The disciplinary authority was directed to complete the process *within two months* from the date of receipt of the order.

11. Upon a fresh consideration on the quantum of punishment, the competent authority/Ministry of Environment & Forests (Vigilance Division) *vidé* order dated 13.02.2014 decided to impose penalty of 10% cut in pension; and referred the matter to the Union Public Service Commission (UPSC) for its advise. In the meantime, a miscellaneous application was moved by the Ministry seeking extension of time from the Tribunal to implement the directions contained in order dated 31.10.2013. At the same time, the Officer moved a review application and a contempt petition in relation to order dated 31.10.2013; which were dismissed as having become infructuous by order dated 15.05.2014 made by the Tribunal.

12. To the Ministry's reference on imposing 10% cut in pension upon the Officer, the UPSC disagreed and instead advised penalty of withdrawal of 100% pension and gratuity on a permanent basis. In view of the divergence of opinion as between the Ministry and the UPSC, the Ministry referred the matter for decision to the Department of Personnel & Training (Establishment Division) (DoPT); and this entire process culminated in a decision whereby *vidé* order dated 19.06.2017 penalty of 50% cut in pension on a permanent basis and withholding of 50% gratuity was imposed upon the Officer.

13. In the *seventh* round, in OA No. 1645/2017 filed by the Officer before the Tribunal seeking quashing of charge sheet dated 15.11.1993 with consequential relief including declaring the entire disciplinary proceedings as closed/ended/lapsed, the Tribunal passed impugned order dated 05.04.2018, whereby penalty order dated 19.06.2017 was quashed, with the

Tribunal holding that the disciplinary proceedings stood *abated* for the reason principally that the proceedings had not been completed within the time granted by the Tribunal *vide* order dated 31.10.2013 in OA No. 3360/2012.

14. The principal grounds of challenge raised by the Ministry by way of the present petition are:

- a. that the main charge of unauthorized absence of duty constitutes 'grave misconduct' within the meaning of Rule 8(5) Explanation (b) of the Central Civil Services (Pension) Rules, 1972 and therefore the penalty awarded against the Officer was justified ;
- b. that the Ministry had applied to the Tribunal for extension of time to decide the issue of penalty; however that application came to be dismissed on the ground of having become infructuous since the review application filed by the Officer impugning judgment dated 31.10.2013 was dismissed by the Tribunal ;
- c. that the delay in making the penalty order was due to conflict of opinion in regard to the appropriate penalty as between the Ministry and the UPSC, by reason whereof that issue had to be referred to the DoPT as per rules and the Ministry cannot be faulted for such delay;
- d. that taking advice of the UPSC was mandatory for imposition of penalty under Rule 6 of All India Services (Death-cum-Retirement Gratuity) Rules, 1958 and reference to the DoPT on the issue of divergent views on penalty was required under

DoPT O.M. No. 39023-2002/2006–ESTT (B) dated 05.12.2006;

- e. that the matter was referred to DoPT on 08.10.2014 and its final advice was received on 15.05.2017; whereupon the Ministry issued penalty order expeditiously on 19.06.2017;
- f. that the entire disciplinary proceedings ought not to be quashed merely on the ground that they were not concluded within the time stipulated by the Tribunal, unless the delay causes prejudice to the Officer, which is not the case;
- g. that quashing of the entire disciplinary proceedings would result in unjust enrichment for the Officer and would benefit him for a period of service he had not even rendered and for the period when he was either unauthorizedly absent from duty or under suspension;
- h. that disciplinary proceedings are essential to inculcate a sense of discipline and efficiency in a public servant and therefore it is necessary to mete-out punishment in public interest;

15. While the Tribunal has dealt with various aspects of the disciplinary proceedings, including its chequered history as also its merits, we would confine ourselves to only those aspects which in our view are dispositive of the matter, without delving upon issues which are not central to our decision.

16. Impugned order dated 05.04.2018 proceeds on the essential basis that :

- (a) there is no specific allegation of misappropriation against

- the Officer; nor was any loss caused to the government;
- (b) the departmental enquiry does not reveal anything by which it can be said that the Officer is guilty of ‘grave misconduct’;
 - (c) there is nothing in the All India Services (Discipline & Appeal) Rules, 1969 which permitted the continuance of disciplinary proceedings after retirement; and the only rule which could possibly be applied is Rule 6 which allows the continuance of disciplinary proceedings, which rule also can be invoked only if the circumstances mentioned therein are applicable, which circumstances do not apply in this case;
 - (d) departmental proceedings were not completed against the Officer within two months as stipulated by the Tribunal’s order ; and the order impugned before the Tribunal was passed after a period of *three years and four months*’;
 - (e) the Ministry’s application seeking extension of time to comply with the directions of the Tribunal stood dismissed by reason of the review application having been dismissed; and the Ministry not having sought any remedy seeking extension of time, the Tribunal’s order fixing time for completing disciplinary proceedings attained finality and was required to be adhered to;
 - (f) Relying on its own decision in ***U. Das vs. Union of India & Ors.*** in O.A. No. 288/2015 decided on 08.05.2017, the Tribunal has held that the employer nothaving completed

the disciplinary proceedings within the time fixed by the Tribunal *vidé* order dated 31.10.2013, such disciplinary proceedings must be deemed to have *abated*.

17. In this background, the Tribunal has quashed penalty order dated 19.06.2017 and has directed the Ministry to pay to the Officer all consequential benefits within the time of two months from the date of receipts of the Tribunal's order.

18. Other things apart, the matter of delay in concluding disciplinary proceedings has been addressed lately by the Supreme Court in the judgment titled ***Prem Nath Bali vs. Registrar, High Court of Delhi & Ors.*** reported as (2015) 16 SCC 415, where the court has opined as follows:

“26. Time and again, this court has emphasized that it is the duty of the employer to ensure that the departmental enquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such enquiry then it becomes all the more imperative for the employer to ensure that the enquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

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“28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the

departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then effort should be made to conclude within the reasonably extended period depending upon the cause and the nature of the enquiry but not more than a year.”

(Emphasis Supplied)

19. It is therefore the clear mandate of the Supreme Court that a departmental enquiry *must* be concluded in a period of *not more than one year*.

20. In the present case, even assuming there was some ambiguity as to the point of commencement of the two month period granted by the Tribunal *vidé* order dated 31.10.2013 by reason of the review application filed by the Officer himself; even that review application stood dismissed on 30.07.2014 alongwith the application seeking extension of time filed by the Ministry. Even thereafter, the penalty order was passed only on 19.06.2017 that is after a long lapse of nearly three years from the date of dismissal of the review application. The delay so caused can by no stretch be said to be reasonable.

21. We are also of the view that apart from being in the teeth of the mandate of Supreme Court in ***Prem Nath Bali*** (supra), such delay is unreasonable, even unconscionable ; and even purely on the touchstone of fairness, such delay vitiates the entire process. The rationalisation by the

Ministry that the delay was occasioned by mandatory inter-departmental procedures involved as between the Ministry, the UPSC and the DoPT, in our view, cannot justify breach of the Supreme Court mandate. For the officer under suspension the employer is the Union of India ; and from his perspective, and indeed from the legal perspective, all Ministries, authorities and departments involved with the proceedings are part of the same *establishment*. The Officer has no concern *separately* with the various entities involved. On point of fact, in this case, the litigating party throughout has been only one, namely the Ministry of Environment & Forests of the Government of India.

22. From the legal standpoint, the timeframe laid-down by the Supreme Court in ***Prem Nath Bali*** (supra) is *not* for adherence only by one department or the other; but by *all* entities and persons involved in conducting the departmental enquiry proceedings, in this case the Ministry, the UPSC and the DoPT. The *aggregate time* for completion of departmental enquiry proceedings must not be more than one year from the date of commencement; and the date of commencement of proceedings, it is settled law, is the date when charge sheet is issued to a delinquent employee [cf. ***CMD, Coal India Ltd. & Ors. vs. Ananta Saha & Ors.*** (2011) 5 SCC 142 para 27].

23. We are also of the view, that unlike in criminal proceedings, in departmental enquiry proceedings, there are no separate stages for returning a finding of guilt and deciding the quantum of punishment, as it were. Departmental Enquiry proceedings start with issuance of a charge sheet and culminate in the issuance of a penalty order by the Disciplinary Authority, in

one unbroken set of steps which are part of one and the same proceedings. Disciplinary proceedings do not come to an end merely with returning a finding that one or more charges stand proved, but continue until such time as penalty to be imposed is also decided, unless of course the employee is exonerated.

24. To be clear, we are *not* holding that the departmental enquiry proceedings have lapsed because they were not completed within the two month period stipulated by the Tribunal but because they are well beyond the maximum period of one year laid-down by the Supreme Court in ***Prem Nath Bali*** (supra).

25. We also find ambiguity in the Tribunal using the word ‘abate’ in relation to disciplinary enquiry proceedings, inasmuch as the word ‘abate’ has a special connotation, both in civil and criminal law, whereby proceedings *abate against a party* for reasons that the law may prescribe. In case there are multiple parties to a litigation, this would mean, that proceedings may abate against one or more parties but continue against others. However a proceedings *lapses in itself* bringing the entire action to an end against every party, for reasons, again, as may be provided in law. In view of the law laid down by the Supreme Court in ***Prem Nath Bali*** (supra), if departmental enquiry proceedings are not completed within the maximum period stipulated by the Supreme Court as aforesaid, such proceedings must be deemed to have *lapsed*. We would add that even if delay is attributable to the delinquent officer, the proceedings must be concluded, whether with or without the participation of the officer, provided adequate opportunity is given to the officer to participate.

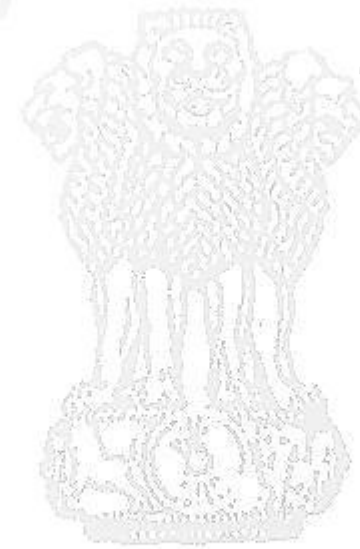
26. In the above view of the matter, we find no merit in the challenge to order dated 05.04.2018 made by the Tribunal.

27. The writ petition is accordingly dismissed, without however any order as to costs.

ANUP JAIRAM BHAMBHANI, J.

THE CHIEF JUSTICE

MARCH 12, 2019/uj



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