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

% **Date of Decision: 25.01.2019**

+ **W.P.(C) 8345/2011**

UOI

..... Petitioner

Through Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Kamaldeep, Adv.

versus

R.S.YADAV

..... Respondent

Through Mr. S.K. Dubey and Mr. Udit Malik,
Adv. for R-1.
Ms. Manisha Lau Kumar, Sr. Adv.
with Mr. Ravi Kant Jain, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The Union of India has preferred the present writ petition to assail the orders dated 24.02.2011 passed in MA No. 133/2011 in Original Application No. 626/2007, and 06.09.2011 passed by the Central Administrative Tribunal (CAT) in Review Application No.116/2011, whereby, the petitioner had sought review of the order dated 24.02.2011. The Tribunal had dismissed MA No. 133/2011, as also the RA.

2. Respondent No.1 was sought to be proceeded departmentally by issuance of a charge-sheet on 20.04.2001, which primarily related to his unauthorized absence between 27.04.1999 and 21.02.2000. Initially, the respondent No.1 assailed the said departmental proceedings and the order of penalty dated 28.04.2006 by preferring O.A. No. 626/2007 on the ground of non-payment of subsistence allowance during the period of his suspension, when the enquiry was conducted. The Tribunal allowed the said O.A. on 02.07.2010 and remanded the case to the petitioner for conducting a fresh inquiry from the stage of appointment of the Inquiry Officer and examination of witnesses etc. Since the order dated 28.04.2006 punishing the respondent No.1 was set aside on technical ground, no consequential benefits were awarded to the respondent No.1, except for his reinstatement in service. He had to be considered under suspension, from the time he was dismissed from service on 28.04.2006. The consequential benefits were directed to abide by the decision taken in the disciplinary proceedings. It was also directed that the fresh disciplinary proceedings be completed within six months from the receipt of the certified copy of the order.

3. On 05.08.2010, the respondent no.1 re-joined the services in the office of DGP, Gujarat. On 27.08.2010, the petitioner issued orders for posting the respondent No.1 as Commandant, SRPF, Group-17, Chela, Jamnagar. The respondent No.1 joined as Commandant, SRPF, Group-17, Chela Jamnagar.

4. After about four months of the passing of the order dated 02.07.2010 in OA No. 626/2007, the State of Gujarat appointed an Inquiry Officer, and the Inquiry Officer summoned respondent No.1, for the first time, on

13.12.2010. Four hearings were held before the Inquiry Officer i.e. on 13.12.2010, 04.02.2011, 22.02.2011 and 07.03.2011. The respondent No.1 actively participated in the first three hearings, and was also present in the fourth hearing held on 07.03.2011. In the meantime, the petitioner moved the aforesaid application i.e. MA No. 133/2011, which was taken up by the Tribunal on 24.02.2011. By that application, the petitioner sought extension of time to conduct the inquiry. The Tribunal rejected the same on the premise that the petitioner had taken the step of appointing the Inquiry Officer belatedly. The Review Application preferred by the petitioner was also rejected on 06.09.2011.

5. The submission of learned Senior Counsel for the Respondent No.2 is that since the respondent No.1 had re-joined services, and joined his post as Commandant, SRPF, Chela, Jamnagar on 31.08.2010, there was no justification for the respondent No.1 in not joining the inquiry proceedings while continuing to harp upon the release of the arrears of subsistence allowance.

6. We find no merit in this submission of the respondent No.2. It is a matter of fact, as noticed hereinabove, that respondent No.1 participated actively in the proceedings held on 13.12.2010, 04.02.2011 and 22.02.2011 and was also present in the inquiry proceedings held on 07.03.2011. Since the petitioner's application seeking extension of time had been dismissed on 24.02.2011, the inquiry proceedings could not proceed on 07.03.2011. No doubt, respondent No.1 sought release of the arrears of subsistence allowance, but on that account he did not evade the enquiry proceedings. Infact, he continued to participate in those proceedings even beyond the

period of six months i.e. on 04.02.2011 and 22.02.2011. He was also present before the Enquiry Officer on 07.03.2011.

7. The Division Bench of this Court has held in **Rajendra Singh vs. Union of India & Ors.**, WP(C) 5658/2017 decided on 01.07.2017 that even if the Tribunals were to fix a time limit within which the inquiry proceedings should be concluded, the said time limit is not sacrosanct, and for justifiable reasons, it can be extended. In fact, on earlier occasions we have, in appropriate cases, granted extension of time for completion of the inquiry proceedings. However, there is no vested right in any party to demand that such time should invariably be extended.

8. When we exercise our jurisdiction under Article 226 of the Constitution of India of judicial review, we are not obliged to interfere with every order that the Tribunal may pass.

9. The charge against the respondent No.1 is that of unauthorized absence. It is not a charge relating to his integrity, or other misconduct of a very serious nature. The period of unauthorized absence itself is stated to be about ten months. The charge relates to a period nearly 20 years ago. It is high time a quietus is given to the departmental proceedings.

10. Looking into the entire background of the case, we had put to the respondent No.1 as to whether he was willing to give a quietus to the inquiry proceedings and accept that the period of unauthorized absence between 27.04.1999 and 21.02.2000 be treated as *dies non* i.e. the said period be treated as not spent on duty, for all purposes. Learned counsel for the respondent No.1, on instructions from respondent No.1 – who is also present, states that even though the respondent's representation to treat the

said period as medical leave is pending consideration before State of Gujarat, he is willing to accept the said period, as *dies non*. We, therefore, are not inclined to grant extension of time as sought by the petitioner in the present petition, and direct that the said period i.e. between 27.04.1999 and 21.02.2000 be treated as *dies non* in the service record of the petitioner.

11. So far as the period of suspension is concerned, we leave it open to the petitioner and the respondent No.2 to pass a considered and reasoned order as to how to treat the same, in accordance with law. A reasoned order shall be passed by the Competent Authority in that regard within three months from today and it shall be open to the respondent No.1 to assail the same in appropriate proceedings, in case he is aggrieved thereby.

12. The writ petition stands disposed of in the above terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 25, 2019

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