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

+ **Date of Decision: 31.01.2019**

% **W.P.(C) 9562/2018 & CM No.37203/2018**

A.K. SINGH Petitioner

Through: Ms. Kiran Patra, Mr. Sanjiv
Joshi and Mr. Pradeep Tiwari,
Advts.

versus

UNION OF INDIA AND ANR. Respondents

Through: Ms. Suparna Srivastava, CGSC
and Ms. Nehul Sharma,
Advocate for R1 & R2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **31.01.2019**

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petition to assail the order dated 03.08.2018 passed by the Learned Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.888/2018. By the impugned order, the Tribunal has rejected the original application of the petitioner.

2. The petitioner is a Senior Public Prosecutor in Central Bureau of Investigation ('CBI'). He preferred the original application to challenge the order dated 08.02.2018 passed by the Commissioner of Departmental Inquiries, whereby the petitioner was informed that the disciplinary proceedings would be taken up against him on daily basis and the Presenting Officer and the Charged Officer shall report at 11:00 AM on 26.02.2018. He claims that the said order was untenable in view of the fact that the Tribunal, in O.A.2828/2015, had fixed the time limit for conclusion of the inquiry proceedings, which had expired without the proceedings being completed.

3. The petitioner stands charged vide a charge memo dated 31.01.2014, wherein allegations of his misconduct in a case where he appeared on behalf of the CBI, were set out. He preferred O.A. No.2828 assailing the said charge memo. The original application was disposed of on 09.05.2016, directing the respondents to conclude the disciplinary proceedings within four months from the date of completion of inspection of the documents by the petitioner. The petitioner was directed to extend co-operation. The Tribunal further directed that in case the proceedings are not completed within the stipulated period, it shall be open to the respondents to file an application for extension. Consequently, the respondent filed a MA No.900/2017 seeking extension of time by seven months. The said application was taken up on 14.11.2017 and was dismissed, since the period of seven months from the date of filing of the application had already expired.

4. Since the aforesaid order dated 08.02.2018 came to be passed by the Commissioner of Departmental Inquiries after the dismissal of the said application on 14.11.2017, the petitioner contended in his present Original Application in the light of the order dated 14.11.2017, the departmental proceedings could not be proceeded with. The original application was contested by the respondent, and it was disclosed that it was the petitioner who was obstructing the proceedings by his conduct, and he was not co-operating in the inquiry proceedings.

5. The Tribunal has rejected the petitioner's original application while observing as follows:-

“7. The allegations against the applicant are contained in the charge memo. Though the charge memo was questioned at the threshold itself by filing OA No.2828/2015, this Tribunal was not inclined to interfere with the same. After directing that the relevant documents shall be furnished to the applicant and granting permission to inspect the original documents, a time frame was fixed for completion of the proceedings. There is no complaint that the applicant was not furnished the documents or that that he was not permitted to inspect the documents. However, on account of various reasons, the inquiry could not be completed within the time stipulated by the Tribunal.

8. One important fact that needs to be noticed is that the applicant himself was not satisfied with the order passed in OA No.2828/2015 and accordingly filed WP (C) No.182/2017 before the Hon'ble Delhi High Court. That WP (C) was disposed of only on 22.03.2017. One cannot expect the inquiry officer to proceed with the

matter, when the application for extension of time in the Tribunal and WP (C) in the High Court were pending, in relation to the very inquiry.

9. *In the month of March, 2017, itself, an application was filed for extension of time. Here again the application was not taken up immediately and only after completion of the time mentioned therein, it was heard, and was dismissed by observing that the period has already expired. If one stitches all these events together, it would not be difficult to understand the impediment faced by the inquiry officer in proceeding with the inquiry.*
10. *It is strongly urged that once the time stipulated by the Tribunal had expired for whatever reason, the continuation of proceedings becomes untenable and they must be held to be invalid or as abated. In U. Das's case (supra), this Tribunal has expressed the view that the stipulation of time to complete the proceedings was resulting in serious hardship and there was every likelihood of a corrupt person escaping or being free, on expiry of the time so stipulated. The respondents herein were directed to settle this issue either by themselves or by approaching the High Court.*
11. *The judgment of the Supreme Court in Prem Nath Bali vs. Registrar High Court of Delhi & Anr. Dated 16 December, 2015 [(2015) 16 SCC 415] was taken note of by the Tribunal in that case. However, it was held that if the proceedings are not concluded within a time stipulated in the order, they would abate. Though an attempt was made to derive support from the judgment of the Supreme Court in Prem Batli's case, a perusal of the relevant paragraph makes it clear that no such consequence can flow automatically. The paragraph in the said judgment of Supreme Court reads as under:*

“28. Keeping these facts in the mind, we are of the considered opinion that ever employer (whether

state or private) must make sincere endeavor to conclude the departmental inquiry 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 efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year”

12. *Their Lordships no doubt indicated the time within which the disciplinary proceedings must be concluded and have also emphasized the need to conclude them latest by one year. However, nowhere it was mentioned that in case the proceedings are not completed within one year, they would lapse automatically. That being the case, the Tribunal observed as under:-*

“25. On account of these reasons, both these OAs are allowed. The disciplinary proceedings pending against the applicants are deemed to have been abated. It is thus declared that the disciplinary proceedings against the applicants in all these cases are non est in the eyes of law.”

13. *In this regard, it becomes relevant to take note of the judgment of the Hon'ble Delhi High Court in **Rajendra Singh Vs. UOI and Ors.** (WP (C) No.5658/2017). Dealing with the submission that the proceedings must be treated as having elapsed in case they are not concluded within the time stipulated by Court or Tribunal, the Hon'ble High Court held as under:-*

“Having heard counsel for the petitioner and perused the record, we do not find any merit in this

petition. First and foremost, the directions issued by the Tribunal cannot be read as, and did not attain the status of a statute. The kind of direction issued by the tribunal-that is to say that the departmental proceedings shall abate if the proceedings are not finalized within a particular period, in our view, should not be issued. Even if the tribunal, in a given case, feels that the departmental proceedings are unduly delayed and the tribunal makes a direction that the same should be completed in a time bound manner, the directions should be couched in such language as to not vest the delinquent with a right, which even a statute does not vest in him. There are other ways and means for the tribunal to ensure strict compliance of its directions. Such unintended benefit cannot be accorded to a delinquent employee, whose conduct is under examination. The tribunal has itself not viewed its earlier direction issued on 01.05.2014 as peremptory and, in our view, rightly so.

The spirit and purport of the order passed by the tribunal in O.A. No.675/2013 is only that the respondents should act expeditiously and, so far as possible, conclude the disciplinary proceedings within six weeks from the date of receipt of the order. There is substantial compliance of the said direction inasmuch, as, the order imposing penalty was issued on 07.07.2014. The intent of the Disciplinary Authority to conclude the proceedings urgently cannot be doubted, since the order of penalty was passed on 07.07.2014. In our view, that was sufficient compliance and on account of the so-called delay of 11 days in passing the said order, the proceedings against the petitioner could not have been abated. Since the penalty imposed upon the petitioner vide order dated 07.07.2014 is

premised on a wrong assumption with regard to his induction in the present posting, the same can obviously be corrected.”

14. We are of the clear view that the observation made by the Delhi High Court reflects the true spirit and correct stipulation of law, and the order passed by this Tribunal in U. Das's case must be understood in the light of the judgment of the High Court.”

(emphasis supplied)

6. The only submission advanced by the petitioner before this Court is that the Tribunal could not have permitted the respondent to proceed with the inquiry proceedings in view of the dismissal on 14.11.2017 of the earlier application moved by the respondents, being M.A. No.900/2017, to seek extension of time. We cannot accept this submission, firstly, because the Tribunal did not examine whether further time should be granted in light of the facts and circumstances of the case, and; secondly, because the application was rejected due to the lapse of the period of 7 months from the time the application was moved, and extension of time had been sought for that period only. Since that period had already come to an end, the application was rejected. The petitioner is not able to point out any prejudice suffered by him on account of proceedings being not concluded.

7. Moreover, it is pointed out by learned counsel for the respondent that it is the petitioner who had obstructed the proceedings by his conduct, and deliberately did not permit them to progress. She points out that the petitioner has now raised the issue of the Inquiry

Officer being biased against him and on that ground, he is not allowing the inquiry proceedings to progress. One cannot lose sight of the fact that the petitioner was serving as a Senior Public Prosecutor. Therefore, he is well versed with the law and knows the tricks of the trade. The petitioner could put to use all his skill and knowledge to frustrate the proceedings.

8. We, therefore, do not find any merit in the petition. The same is dismissed. We further direct that the petitioner shall participate in the inquiry proceedings punctually.

9. The application, being CM No.37203/2018, is also dismissed accordingly.

VIPIN SANGHI, J.

VINOD GOEL, J.

JANUARY 31, 2019

"shailendra/SDP"