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

\+ W.P.(C) 1516/2020

SHISHU PAL ..... Petitioner

Through: Mr. Sachin Chauhan, Advocate.

versus

GOVT. OF NCTD THROUGH THE COMMISSIONER OF POLICE & ANR. ..... Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel for GNCTD with Mr. Nitesh Kumar Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **17.02.2020**

C.M. No.5287/2020 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.1516/2020

The present petition is directed against the order dated 28.08.2018 passed by the Central Administrative Tribunal ('Tribunal'). The essential grievance of the petitioner is that although all submissions and grounds raised by him have been noted in paras 5 and 6 of the impugned order, no finding has been given by the Tribunal on the issues so raised.

Notice to show cause as to why petition be not admitted.

Mrs. Avnish Ahlawat, learned counsel for the respondents accepts notice.

With the consent of the parties, the writ petition is set-down for final hearing and disposal at the admission stage itself.

Paras 5 and 6 of the order of the Tribunal read as under:-

> *"5. The gist of the arguments of Mr. Sachin Chauhan, learned counsel for applicant is as under:-*
>
> *a) It was standard practice followed in the Outer District that only after the receipt of the bills, the stationery items supplied by the suppliers were being entered into the main register. In this regard, he has referred to the deposition of Mr. Rajender Singh (PW-3), who was then posted in the General Branch, Outer District, who, in his cross examination, has stated that no entry could be made in the register without the receipt of the bills and articles, but the entry could be made in a separate register to remember and to handover the same to the successor on transfer.*
>
> *b) Annexure A-20 is kachha noting in respect of certain materials received on 25.04.2008, which could not be entered in the register, as the bills of these items had not been received from the suppliers.*
>
> *c) The Outer District was created recently then and the procurement procedures were not laid down.*
>
> *d) The applicant could not cross examine Lokesh Kumar (PW-5), who was then working in the office of stationery supplier, M/s. Vijay Stationery Mart No.18 No. Palika Palace Annexe, Panchkuian Road, New Delhi, as he was still awaiting response to his representation dated 03.09.2009 addressed to EO, wherein he had stated that the departmental enquiry (DE) proceedings may be kept in abeyance till his representation dated 20.07.2009 to the disciplinary authority, seeking cancellation / dropping of DE*

proceedings on certain technical grounds, is disposed of by it.

e) The applicant did not participate in the DE proceedings initially for some dates, for which Annexure A-14 show cause notice dated 22.09.2009 was issued, to which he replied vide his Annexure A-18 letter. However, the disciplinary authority imposed the penalty of "censure" on the applicant for the charge of not attending the DE proceedings on some dates. This action of the disciplinary authority was highly illegal and has been challenged by the applicant in a separate O.A. before this Tribunal.

6. During the course of his arguments, Mr. Chauhan raised certain law points. He stated that in terms of Government of India instruction No.9 under Rule 15 of CCS (CCA) Rules, 1965, reasons for cancellation of original charge sheet are required to be mentioned, whereas in Annexure A-1 order dated 19.06.2009, no reason is mentioned with regard to withdrawal of Annexure A-13 order dated 03.03.2009, except cryptically mentioning that the order has been withdrawn on administrative grounds without prejudice to the action to be taken against the applicant later on. He submitted that Annexure A-1 order is in contravention with the said instructions of Government of India."

Submissions of counsel for the respondents are also noted in para 11, which we reproduce below:-

"11. Per contra, Mrs. Sumedha Sharma, learned counsel for respondents submitted that the Annexure A-13 order dated 03.03.2009 was withdrawn by the respondents for a technical reason. She said that in terms of Rule 15 (2) of Delhi Police (Punishment & Appeal) Rules, 1980, prior approval of Joint Commissioner of Police was required to be obtained before initiating the DE proceedings against the applicant. Since Annexure A-13 order was issued without such approval, the respondents considered it prudent to withdraw it and

accordingly Annexure A-1 order dated 19.06.2009 was issued, in which it is clearly mentioned that the order dated 03.03.2009 was being withdrawn on administrative grounds."

Thereafter in paras 13 to 17, the Tribunal has rendered its observations, which we are reproducing below:-

"13. We have considered the arguments of learned counsel for the parties and perused the pleadings.

14. The scope of judicial review in the matter of DE proceedings is highly limited. Judicial review is normally resorted to only in following circumstances:

(a) Principles of natural justice have not been followed in the conduct of DE proceedings,

(b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,

(c) The penalty orders have been passed in violation of relevant laws/rules; and

(d) The punishment inflicted is disproportionate to the offence committed.

15. The above principles have been enshrined in the following judgments of Hon"ble Supreme Court:

(i) Union of India v. P. Gunasekaran,(2015) 2 SCC 610

(ii) Ranjit Thakur v. Union of India & others, (1987) 4 SCC 611; and

(iii) Kuldeep Singh v. Commissioner of Police & others, JT 1998 (8) SC 603.

16. In the instant case, we notice that shortfall in the stock of stationery items procured has been fully established during the course of enquiry. The EO, after going through the documents and assessing the evidences of the witnesses, has come to the conclusion that the charge against the applicant has been proved. We also notice that the enquiry has been conducted as per the prescribed procedures and principles of natural justice have been observed at every stage. The punishment imposed on the applicant is not at all disproportionate to the charge proved against him.

17. In the conspectus, we do not find any merit in this O.A. and accordingly, it is dismissed. No order as to costs."

A complete reading of the paras which we have reproduced above would show that, no doubt grounds urged by the petitioner were recorded as was the response given by the counsel for the respondents; however the Tribunal does not give its reasoning or finding on any aspect, except that it appears to accept the conclusions of the Enquiry Officer.

Resultantly, we set-aside the impugned order and remand the matter to the Tribunal for a fresh hearing.

Parties to appear before the Tribunal on 12th March 2020.

Petition is disposed of in terms of aforesaid observations.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 17, 2020

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