$~21

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

\+ W.P.(C) 9529/2018

SH. RAJEEV SHARMA ..... Petitioner

Through

Mr. C. Mohan Rao, Adv.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT CORPORATION ..... Respondent

Through

Ms. Anisha Upadhyay, Adv.

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 17.02.2020

Instant petition has come to be preferred by the petitioner to quash the disagreement note dated 06.08.2018. The disagreement note dated 06.08.2018 is of the Managing Director and CEO of the respondent, who is stated to be the competent Disciplinary Authority of the petitioner to inflict punishment for misconduct.

Concisely, the facts emerging from the record are that the petitioner, who, at the relevant time was posted as Asstt. Manager, IGI Airport Information Counter as Incharge, was alleged to have accepted illegal gratification of Rs.2,000/- from one Shri Swami Charan - a Taxi Operator, on 24.09.1996, by Anti Corruption Branch. As a sequel thereof, he was prosecuted for trial of the offence punishable under Section 13(2) of the

Prevention of Corruption Act, in short 'the P.C. Act'. The Trial Court held the petitioner guilty of the offence, but, on the appeal preferred thereagainst, he was acquitted extending the benefit of doubt. After such acquittal of the petitioner, the respondent proceeded to hold a departmental inquiry on the same allegations. On the conclusion of the inquiry, the Enquiry Officer submitted his report dated 01.07.2018 holding that the Article of charge was not proved and also made certain other observations for the misconduct being administrative lapse. The Disciplinary Authority did not agree with the conclusions drawn by the Inquiry Officer and made the impugned disagreement note. Thereby, the petitioner was directed to make his written representation. Though, nothing emerges from the record as to whether the petitioner had made any written representation pursuant to the impugned dissenting note, ld. counsel for the petitioner on his part comes forward to state that in pursuance of the impugned dissenting note, the petitioner was put under suspension, and on the representation made, the Disciplinary Authority had passed an order dated 22.10.2018, revoking the suspension without prejudice to the final decision on the inquiry report. A copy of the said order dated 22.10.2018, ld. counsel for the petitioner has sought to place on record during the course of hearing, and, that is taken on record. Taking note of this order dated 22.10.2018, when, it comes to be inquired from the ld. counsel for the parties, as to whether the final decision on the inquiry report has been taken or not, it comes to be stated that no final decision on the inquiry report has come to be taken till now, and, it could not happen on account of the pendency of the instant writ petition.

Though, in the given factual conspectus, the instant petition would be considered pre-mature, the Court considers that the observations made by the Disciplinary Authority in the dissenting note, which, suggests forming of an opinion contrary to the view expressed by the Court, was unjustifiable and unwarranted especially, in view of the fact that the Article of charge on which the disciplinary proceeded was itself akin to the trial of the offence under Section 13(2) of the P.C. Act. It reads as under:

> *"Shri Rajeev Sharma, Asstt. Manager while posted at IGI Airport Information Counter as In charge on 24.09.1996 accepted illegal gratification of Rs. 2,000/- from Shri Swami Charan to verify his bills in presence of punch witness during the raid conducted by Anti Corruption Branch. He was arrested on 24.09.1996 as per arrest report from ACP Anti Corruption Branch dated 24.09.1996 and prosecution sanction U/s 19(1)(c) of Prevention of Corruption Act was also given on 9.11.1998. Shri Rajeev Sharma, thus, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of an employee of the Corporation and the above misconduct on the part of Shri Rajeev Sharma violates the provision of sub rule (1) of rule 03 of CCS (Conduct) Rules, 1964 read with Rule 11.1 of DTTDC Staff Service Rules, 1986."*

A bare perusal of the foregoing Article of charge would show that it does not even indicate for any other act or omission to be construed misconduct other than those of accepting illegal gratification on 24.09.1996. Apparently, the Disciplinary Authority has misconstrued the effect of the orders passed by this Court in the criminal proceedings in making the dissenting note. Such dissenting note in the considered opinion of the Court, proceeds on misconceptions of law and facts and, is not sustainable. It appears, the Disciplinary Authority having realised so, proceeded to revoke the suspension of the petitioner later in the face of the same facts and circumstances without anything else being brought to its notice. Not only that, during the course of hearing, it also emerges that CVC has issued an Office Memorandum dated 18.12.2018, which, reads as under:

> *"DTTDC may refer to their reference dated 26.11.2018 (received in the Commission on 03/12/2018) sent through their file no. VG/10669/9/96DTTDC/ Part File-1 (noting on page 126-129/N refers) wherein it was requested to advise that whether Disciplinary Authority can impose major penalty or the current article of charge or a fresh charge sheet is to be issued for imposing penalty as it has been established that the CO on his own was using Sale proceeds for giving advance to the drivers without approval of the competent authority. The Commission has perused the matter and advised DA, DTTDC to decide the issue himself as per law. Further, Commission has observed that it is strange that the chargesheet of 2006 is still pending for final order."*

Though, the CVC vide the foregoing O.M. has left the matter to be decided by the Disciplinary Authority as per law, it has been categorical to observe that the chargesheet of 2006 was still awaiting final order. Such remains the position on the receipt of the inquiry report dated 01.07.2018.

Taking note of the totality of the facts and circumstances, the writ petition is disposed of by quashing the impugned dissenting note reserving the liberty to the Disciplinary Authority to take a decision afresh on the inquiry report or other action, as may be invited. Since, during the course of hearing, ld. counsel for the petitioner has submitted that the incident of alleged misconduct is of 24.09.1996 and the petitioner is scheduled to superannuate on 30.06.2020, it is further directed that any such decision shall be taken as expeditiously as possible, preferably, within six weeks from today, and, in doing so, the Disciplinary Authority shall take into consideration the overall conduct of the petitioner.

The writ petition stands disposed of in the foregoing terms. No orders as to costs.

A. K. CHAWLA, J

FEBRUARY 17, 2020
acm