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

+ **W.P.(C) 10067/2018**

SUSHIL KUMAR SINGHAL

..... Petitioner

Through: Mr. Prateek Tushar Mohanty and Mr.
Tushar Ranjan Mohanty, Advocates.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Arun Bhardwaj, CGSC with
Mr. Nikhil Bhardwaj, Mr. Manik
Alhat (Joint Director) for Respondent.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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03.02.2020

1. The challenge in the present petition is to the charge-sheet dated 17th February, 2006, the inquiry report dated 19th March, 2008 of the inquiry officer ('IO'), the penalty order dated 1st March, 2016 compulsorily retiring the Petitioner and the order dated 29th November, 2017 rejecting the review petition of the Petitioner.

2. The present petition is in the third round of litigation on the same issue. The background facts are that the Petitioner was posted as an Assistant Executive Engineer (Civil) between 28th April, 1999 and 21st March, 2000 in the Boarder Roads Organisation ('BRO'). He was served with a draft charge-sheet of 21st November, 2005 in relation to an alleged over payment to contractors in the execution of works on the Jowai-Badarpur-Churaibari (NH-44) and Karimganj Bye-Pass. This was followed by a major penalty charge-sheet to which the Petitioner replied on 9th March, 2006.

3. On 19th March 2008, the IO submitted the report finding the Petitioner guilty of the charges. A copy of the report was furnished to the Petitioner and after his response thereto was considered, the Disciplinary Authority ('DA') passed the impugned order dated 9th December, 2009 compulsorily retiring the Petitioner from service.

4. In the first round of challenge, this Court by an order dated 30th May, 2013 set aside the penalty allowing the Petitioner's W.P. (C) 3748/2013 on the ground that the advice of the Union Public Service Commission ('UPSC') was not furnished to him prior to the punishment order being passed. This Court directed that the Petitioner would be reinstated in service without back wages and other service benefits and his entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings which would proceed from the stage of service of the UPSC's advice on the Petitioner.

5. The said order was challenged by the Respondents in the Supreme Court of India by way of SLP (Civil) 6245/2014. By an order dated 13th October, 2014, while dismissing the SLP, the Supreme Court directed the DA to decide the matter afresh taking into consideration the inquiry report and the recommendation of the UPSC in so far as it relates to punishment. The Petitioner was held entitled to "current salary from the date of judgment of the High Court till the date of the final order passed by the disciplinary authority or the date of superannuation, whichever is earlier."

6. After this reinstatement on 30th October 2014, the Petitioner submitted a representation for implementation of judgment of Supreme Court on 21st December, 2015. Thereafter, on 1st March 2016, a fresh order was passed by the DA reiterating the punishment of compulsory retirement of the Petitioner. The Petitioner's review application was dismissed by an order dated 29th November, 2017. Thereafter the present petition was filed.

7. The Petitioner has, *inter alia*, relied upon an order passed by this Court on 5th August, 2015 in W.P.(C) No. 972 of 2014 (***Dr. Anant Ram Tiwari v. Union of India***), where Dr. Anant Ram Tiwari was also charge-sheeted by the Respondents and subjected to disciplinary proceedings in relation to overpayment to the contractors for the very same project. By that order this Court while setting aside the punishment, accepted the plea of Dr. Tiwari that the IO could not have pronounced the guilt of Dr. Tiwari in the disciplinary proceedings without the department leading evidence "howsoever formal in nature, by way of testimony of some witness to depose as to the veracity and correctness of the documents produced during the course of the inquiry". It is pointed out by the present Petitioner that just as in the case of Dr. Tiwari, in the present as well, the IO noted in his report that there were no prosecution witnesses.

8. In the case of Dr. Tiwari, this Court while directing his reinstatement, permitted the Respondents to hold a fresh inquiry in accordance with law and to complete it before 31st December, 2015.

9. Counsel for the Petitioner states that the above order was challenged in

the Supreme Court by the Respondents and the Special Leave Petition was dismissed.

10. Mr. Arun Bhardwaj, learned Central Government Standing counsel for the Respondents, points out that the order passed by this Court in Dr. Anant Tiwari's case referred to earlier judgments of the Supreme Court including the judgment in ***Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570***. He submits that in view of the decision of the Supreme Court in ***Roop Singh Negi (supra)***, it is not essential for the prosecution in a disciplinary inquiry to lead oral evidence and for the report of the IO to be based entirely on the documentary evidence which has not been disputed by the charged official.

11. The Court is not persuaded in these proceedings to reconsider its decision dated 5th August, 2015 in Dr. Tiwari's case which has been affirmed by the Supreme Court. The Court finds that throughout, these two cases have moved in parallel tracks. While it is true that there were separate disciplinary inquiries for Dr. Tiwari and the Petitioner, the fact remains that they sprung from an identical set of facts concerning alleged overpayment to the contractor for the same very project. Interestingly, even in Dr. Tiwari's case, there were several rounds of litigation. In the first round when the advice of the UPSC was not furnished to him prior to inflicting the penalty, Dr Tiwari too first approached this Court. Against the order of this Court setting aside the penalty and directing reinstatement followed by a fresh enquiry from the stage where the proceedings stood vitiated, the Respondents filed an SLP which was dismissed by the Supreme Court.

Therefore, it is obvious that Dr. Tiwari's case and Petitioner's case have proceeded on parallel tracks. The second round of litigation also proceeded likewise in both cases.

12. The Court, in the circumstances, sees no reason why, in the above circumstances, the case of the Petitioner should receive a different consideration in the hands of the Respondents. What weighed with this Court in Dr. Tiwari's case was the procedural lapse of an identical nature i.e., the failure of the prosecution to examine any witness and seeking to prove its documents. That is the same position in the present case as well. Considering that in Dr. Tiwari's case this Court while reinstating him, permitted the Respondents to hold a fresh inquiry, the Court sees no difficulty in granting the Petitioner the same relief.

13. Consequently, while setting aside the impugned penalty order dated 1st March 2016 of the DA and the order dated 29th November, 2017 dismissing the Petitioner's review petition, the Court directs the Respondents to reinstate the Petitioner and leaves it open to the Respondents to conduct the inquiry from the stage where the deficiency in crept in. It is further directed that, as was done in Dr. Tiwari's case, it is open to the Respondents to pass appropriate orders as to the Petitioner's status and the pay and emoluments to be drawn for the interregnum period between the date of compulsory retirement till date in terms of Rule 54 B of the FR/SR. The said order shall be communicated to the Petitioner within two weeks.

14. Considering that the charges were first levelled against the Petitioner in

2006, the Respondents are directed to ensure that the departmental inquiry is completed as early as possible and in any event not later than 31st August, 2020. If the Petitioner is aggrieved by the order of the DA, which should be communicated to him not later than 15th September 2020, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

15. Counsel for the Petitioner assures the Court that the Petitioner will join upon reinstatement order being issued by the Respondents, which will not be later than ten days from today and that the Petitioner will fully cooperate in the inquiry.

16. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 03, 2020

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