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

\+ **W.P.(C) 1335/2018**

S.S HANS ..... Petitioner

Through Mr. Rakesh Kumar Bhardwaj, Advocate

versus

INDIA TOURISM DEVELOPMENT CORPORATION LTD. ..... Respondent

Through Mr. Ravi Sikri, Senior Advocate with Mr. Deepak Yadav and Mr. Rohit Agrawal, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **13.02.2020**

1. The challenge in the present petition is to an order dated 19th September, 2017 passed by the Central Administrative Tribunal, Principal Bench (‘CAT’) dismissing the Petitioner’s Review Application being RA No. 212/2017 which sought recall of the order of the CAT dated 11th August, 2017 dismissing the Petitioner’s MA No. 286/2017 seeking condonation of delay of 362 days in filing the OA No.1995/2016. The said order dated 11th August, 2017 has also been challenged in the present petition.

2. The background facts are that the Petitioner joined the services of the Respondent/ India Tourism Development Corporation (‘ITDC’) on 24th July, 1973. By an order dated 15th December, 2008 a penalty of dismissal from service was imposed on the Petitioner upon the conclusion of disciplinary

proceedings which arose out of the charge sheet dated 19th February, 2008. The relevant portion of the said penalty order dated 15th December, 2008 reads as under:

> "THEREFORE, the misconduct of long absenteeism and voluntary abandonment of service which has been sufficiently been established as per the findings of the Inquiry Authority is so grave and serious which warrants the imposition of penalty of dismissal from the service as a major penalty under Rule 23 (B) of ITDC CDA Rules. This penalty is considered to be fit, appropriate and justified to commensurate with the gravity and seriousness of misconduct committed by Sh Hans. Further, I consider it appropriate that Shri Hans shall be entitled to all his dues till 30.6.2006 since he remained absent from 1.7.2006 and abandoned his services voluntarily.
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> AND THEREFORE, I, being the CDA appointed by the Chairman & Managing Director, ITDC Ltd., under entry no. 19.1 of Delegations of Power circulated vide Office Order SEC:182 dated 29.5.07 and under rule 2.1 (f & g) of ITDC Conduct, Discipline & Appeal Rules 2002 (Revised/Amended/Updated, in exercise of power under rule 26 & 23(B) of ITDC CDA Rules hereby impose a major penalty of dismissal from service under Rule 23 (B) (x).
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> This order is subject to Rule 33 & 34 of ITDC Conduct, Discipline & Appeal Rules 2002 (Revised/Amended/Updated)."

3. Consequent upon the above order, the Petitioner has been admittedly paid the salary that was due to him till 30th June, 2007. It is stated that as regards gratuity he has approached the Controlling Authority under the Payment of Gratuity Act, 1972. The employee's share of the Provident Fund ('PF') to which the Petitioner had contributed has been paid to him.

4. The Petitioner decided to file OA No. 1995/2016 in the CAT after a delay of over 350 days on 1st April, 2015 claiming *inter-alia* leave encashment of 274 days; the Employer's i.e. ITDC's share of the PF and the benefits under the ITDC Employees Welfare-cum-Profit Linked Incentive Scheme.

5. While dismissing the application for condonation of delay being MA No. 286/2017 by the order dated 11th August, 2017, the CAT did not accept the plea of the Petitioner for his not approaching the CAT earlier. The explanation that the Petitioner offered in the said MA No. 286/2017 was that on account of dismissal from service the Petitioner's health had deteriorated and that he was under depression.

6. By the second impugned order dated 19th September, 2017, the CAT declined to recall its earlier order.

7. In the considered view of the Court, the explanation offered by the Petitioner in the MA No. 286/2017 appears to be a plausible one. The Petitioner's OA need not have been dismissed only on the ground of delay.

8. Ordinarily, the course adopted by the Court in matters such as these is to remand the OA to the CAT for adjudication on its merits. Nevertheless, given the fact that the Petitioner was dismissed from service more than a decade ago and his claim pertains to his dues as a result of the dismissal, the Court does not consider it to be in the interest of justice to remand the matter to the CAT. Rather, the Court ought to decide the issue arising out of the Petitioner's OA in the present petition itself.

9. As regards the employer's contribution of PF, with the Respondent having already released the employee's share of contribution, there should be no difficulty in directing the Respondent/ITDC to release its contribution to the Petitioner's PF. It is ordered accordingly.

10. Mr. Ravi Sikri, learned Senior Counsel for the ITDC sought to submit that the word "dues" in the dismissal order dated 15th December, 2008 was intended to cover only the arrears of salary and not other dues. The Court is not persuaded to take such a restrictive view of the expression 'dues' considering the fact that the Respondents themselves have released the employee's share of the PF. Moreover the issue regarding gratuity has also been separately pursued.

11. It was then pointed out by Mr. Sikri that the prayers in the present petition seek to go beyond the Petitioner's prayers before the CAT. Here, the Court is inclined to agree with the submission that the Petitioner should not be allowed to expand the scope of the relief in the present petition beyond what was sought by him before the CAT.

12. With the arrears of salary already having been paid to the Petitioner, the only other issue that remains to be considered is whether the Petitioner is entitled to leave encashment.

13. On this aspect Mr. Sikri points out that in the absence of the specific rules applicable to the ITDC it was decided in 2010 to adopt the CCS Rules

in this regard. He states that an Explanation (viii) was added to Rule 23 of the ITDC Conduct Discipline and Appeal Rules ('ITDC Rules') to incorporate provisions of the CCS (Leave) Rules providing for forfeiture of past service in the event of dismissal or removal.

14. However, it is seen that at the time of the dismissal order i.e. 15th December, 2008 the above change to the ITDC Rules had not been effectuated. The Court is unable to accept the stand of the Respondent that the above Explanation would have retrospective effect so as to deprive the Petitioner of leave encashment.

15. In that view of the matter, the Court accepts the plea of the Petitioner that he would be entitled to the monetary benefit of leave encashment corresponding to the actual service rendered by him till the date of his dismissal.

16. Accordingly the following directions are issued:

(i) The impugned orders of the CAT are set aside;

(ii) Respondent will pay to the Petitioner the employer's share of the PF as well as the leave encashment due to the Petitioner within a period of eight weeks from today.

(iii) If the payment is not made within the above period, simple interest at 6% per annum will be payable on the said sum for the period of delay.

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

S.MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 13, 2020
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