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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 1458/2021 & CM APPL. 4189/2021 (of the petitioner for ex-
parte interim stay)

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr.Ashish Uppal, Adv.

versus

OM SINGH Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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24.02.2021

CM APPL. 4190/2021 (of the petitioner for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.

2. The application is disposed of.

**W.P.(C) 1458/2021 & CM APPL. 4189/2021 (of the petitioner for ex-
parte interim stay)**

3. This petition under Article 227 of the Constitution of India impugns the order dated 2nd January, 2020 of the Central Administrative Tribunal, Principal Bench (CAT), in O.A. No. 1794/2014 preferred by the respondent impugning the disciplinary proceedings against the respondent resulting in punishment/penalty of stoppage of two increments with cumulative effect; vide the impugned order, the said punishment/penalty has been modified by CAT, to that of stoppage of one increment without cumulative effect.

4. The petition came up first before this Court on 4th February, 2021, when on request for virtual hearing, the same was posted to today.

5. We have heard the counsel for the petitioner Delhi Transport Corporation (DTC) and apprised him, that a petition with respect to the

orders of the CAT lies under Article 226 of the Constitution of India and not under Article 227 of the Constitution of India, invoking which this petition has been filed.

6. We have heard the counsel for the petitioner DTC.

7. The respondent, a Manager with the petitioner DTC, was appointed as an Enquiry Officer in a disciplinary proceedings initiated by the petitioner DTC against one Brijvir Singh. The respondent submitted his report dated 6th May, 2010, holding that the charges against Brijvir Singh had not been proved. The Chairman of the petitioner DTC who happened to consider the representation of the said Brijvir Singh, took a view that the respondent had not conducted the enquiry properly and that there were several lapses. Accordingly, disciplinary proceedings were initiated against the respondent (who is informed to have since retired), by issuing a charge sheet dated 27th December, 2011. The Enquiry Officer in the said disciplinary proceedings against the respondent submitted a report dated 4th September, 2012, holding the charges against the respondent to have been proved and the disciplinary authority of the petitioner DTC passed an order dated 31st January, 2013 imposing the punishment of stoppage of next due two increments, with cumulative effect. The departmental appeal preferred by the respondent was rejected on 2nd May, 2013, resulting in the respondent approaching the CAT.

8. CAT, vide the impugned order/judgment, has modified/reduced the punishment/penalty, reasoning (i) that the gravity of the allegation against the respondent was that he did not conduct the enquiry properly and should have summoned the relevant record; (ii) basically, it is the duty of the Department and the Presenting Officer, to place the relevant material before the Enquiry Officer and it not for the Enquiry Officer to call for any report;

(iii) that if the Enquiry Officer is enrolled with the responsibility to gather material against the delinquent employee, he tends to become partisan and would cease to be neutral; (iv) thus the lapse, if any, was on the part of the petitioner DTC; and, (v) taking into consideration the minor lapses on the part of the respondent, the punishment of stoppage of next due two increments with cumulative effect was too severe.

9. Though we entertain doubt as to the correctness of the observation of CAT in the impugned order, of the enquiry proceedings being adjudicatory and not inquisitorial, but refrain from rendering any final opinion thereon since we have neither heard the counsel for the petitioner on the said aspect nor has the counsel for the respondent appeared.

10. However, we are of the view that the modification done by the CAT in the punishment was within the jurisdiction and discretion of CAT, constituted as the final arbiter for service matters and no case for interference with the discretion exercised by CAT, and which is not found to have been perversely exercised, in reducing the punishment, especially considering that the respondent has already retired, is made out.

11. There is no merit in the petition.

12. Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

FEBRUARY 24, 2021 / SU..