



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

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Date of decision: October 19, 2023

(8) + W.P.(C) 13090/2023

SH. JAI PAL

..... Petitioner

Through: Mr. Gaffar Hussain, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Gaurav Dhingra, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**V. KAMESWAR RAO, J. (ORAL)**

1. The challenge in this petition is primarily to an order dated November 30, 2022 whereby the Central Administrative Tribunal has dismissed the review petition filed by the petitioner herein by stating as under:-

*“The present Review Application has been filed mainly on the ground that the candidates similarly situated with the present applicant approached the Hon'ble Delhi High Court by filing WP(C) No. 56/2016 and the same was allowed. In our considered opinion, that cannot be a ground for review. If the review applicant is aggrieved by the Tribunal's order, he is at liberty to file the appropriate proceedings before the appropriate forum. Accordingly, RA No. 72/2021 is dismissed. No costs.”*

2. Suffice to state, the petitioner was issued a charge memo dated December 28, 2010, which resulted in a penalty order dated May 26, 2014, whereby the petitioner was imposed a penalty of reduction to three stage



lower in the time scale of pay for three years with a further direction that he shall not earn any increment of pay during the said period.

3. The Tribunal dismissed the petition. It appears that petitioner had availed the remedy of appeal against the said order and the appellate authority vide its order modified the penalty imposed by reduction to three stage lower in the time scale of pay till the date of his retirement i.e. May 31, 2014.

4. The Tribunal dismissed the O.A. on August 22, 2019 by stating in paragraphs 4 and 5 as under:-

*“4. The OA is filed challenging the order of punishment. The applicant contends that once the inquiry officer submitted report holding that the charge as not proved, there was no basis for imposition of punishment. It is stated that the prescribed procedure was not followed in the context of disagreement with the findings.*

*5. The respondents have filed counter affidavit. It is stated that though inquiry officer submitted report stating that the charge is not proved, a disagreement note was issued by the disciplinary authority duly pointing out lapses in the report and indicating as to why the charge can be treated as proved. It is submitted that the OA is liable to be dismissed.”*

5. The case of the petitioner in the review petition was that the similarly placed employees had also filed a petition before this Court which was decided on November 10, 2016 wherein this Court had granted liberty to the respondents to hold a fresh inquiry and pursuant thereto, the charges have not been proved against those employees. The case as canvassed by the learned counsel for the petitioner is, the petitioner is also entitled to a similar



benefit. We have seen the copy of the review petition filed by the petitioner wherein the relevant averments read as under:-

*“4. Recently, it has come to the knowledge of the Applicant that all his other colleagues (co-accused) namely Messers Gajendera Singh, Ravinder solankt, Jagdish Prasad, Gopal Lal Meena, Jai Bhagwan Dinesh Kumar, Hotu Ram and Than Singh, have all been exonerated by the Disciplinary Authority. In fact, all the said Charged Officers were 8 in number and all were served with the same charge. An inquiry was conducted wherein the Inquiry Officer concluded the charge as not proved (Enquiry Report dated 30.05.2013). The Disciplinary Authority disagreed with the findings of the Inquiry Officer vide a Disagreement Note (dated 31.12.2013). The Director of Education, being the Disciplinary Authority vide Order No. DE.7j1166/DP/Vig/HQ/2013/1926-32 . dated 26.5.2014 imposed the penalty of. reduction to three stage lower in the time. scale of pay for three years with the further direction that the Applicant shall not earn any increment of pay during the aforesaid period and on expiration of such period the reduction will not have the effect of postponing the future increment of his pay.*

*5. An Appeal was preferred by the Applicant/Petitioner and vide Order bearing No. DE.7/1166/DP/Vig/HQ/2013/4104-10 dated 10.11.2014 the punishment was modified to impose the penalty of reduction to three stage lower in the time scale of pay till his retirement from government service i.e 31.05.2014. Page 6-7 of the Rejoinder).*

*6. The other similarly placed employees (co-accused) burdened with the same punishment also filed Appeals which were dismissed by the Appellate Authority. Original Applications preferred before the Hon'ble Central Administrative Tribunal. The Judgement of the Central Administrative Tribunal was challenged before the Hon'ble High Court of Delhi (Writ*



*Petition Civil No. 56 of 2016) by the other employees (co-accused). A learned Bench of the Hon'ble High Court of Delhi vide a Judgement dated 19.1.1.2016 [Coram: Hon'ble Mr. Justice Sanjiv Khanna and Hon'ble Mr. Justice Chander Shekhar] observed in the following paras that :-*

*"18. We feel that this is a case of no evidence and therefore the finding of the Disciplinary Authority disagreeing with the enquiry officer cannot be sustained. The appellant order and the impugned order for the same reason cannot be sustained.*

*19. in view of the aforesaid discussions; the present writ petition has to be allowed and the punishment imposed on the petitioners quashed.*

*21. In the facts of the present case/ we would permit the respondents to undertake fresh enquiry from the stage of appointing a new enquiry officer by the Disciplinary Authority. The respondents are at liberty to lead proper evidence to establish the charges. We have given the said direction as the charges against the petitioners are very serious and for some unexplainable reason the relevant evidence and material were not produced before the enquiry officer. As noted, the apprehension expressed is that the evidence was deliberately withheld.*

*22. As the matter is very old, in case the respondents proceed with fresh enquiry, they should take necessary steps expeditiously and the proceedings must conclude within the shortest possible time.*

*24. With the aforesaid observation the writ petition is disposed of. No order as to costs."*

*(True Copy of the Order dated 10.11.2016 in Writ Petition Civil No. 56 of 2016 is annexed herewith as Annexure A-3)*



7. The de-novo inquiry held found (in accordance with the directions of the Delhi High Court) the charges "NOT PROVED" against the other employees (save the Applicant/Petitioner as he had not' approached the Delhi High Court as his case was pending before this learned Tribunal). The Director of Education being the Disciplinary Authority exonerated all the

other employees. It is only recently that the Applicant/Petitioner herein came to know of this development and as such is approaching this re-visit the Order dated 22.08.2019 do substantial and complete justice in the case of the Applicant herein. It took him time to secure the relevant documents as he was not privy to the exoneration.

(True Copies of the Orders bearing Nos. DE.7/1162/DP/Vig/HQ/2013/7527-7531 dated 28.11. 2019, DE.7/1169/DP/Vig/HQ/2013/125 dated 06.01.2020, No. DE.7/1172/DP/Vig/HGj2013 dated 28.02.2020, No. DE.1/1170j DP/Vig/HGj2013 dated 28.02.2020, No. DE.7/1168/DP/Vig/HQ /2013 dated 28.02.2020 and No. DE.7/1165/DP/Vig/HQ/2013 dated 28.02.2020 exonerating the other co-employees of the Applicant are annexed herewith as **Annexure A-4 [Colly]**)

8. It is relevant to mention the following facts which call for a Review of the Order dated 22.08.2019 :-

- (a) The Charge of Article against the Applicant/Petitioner and the other co-accused fellow employees is similar;
- (b) The Report of the Enquiry Officer in favour of the Applicant and the other co-accused fellow employees is similar in languages and content;
- (c) The Report of the Enquiry Officer is of the same date (30.05.2013);



*(d) The Report of the Enquiry Officer concluded that the charges have not been proved (in favour of the Applicant and the co-accused:*

*(e) Disagreement Note was similar in language and content (vis a vis the Applicant/Petitioner and the co-employee);*

*(f) The Orders of the Disciplinary Authority against the Applicant/Petitioner (dated 26.05.2014) and those against the co-accused (dated 27.05.2014) were to the same effect viz penalty of reduction to three stage lower in the time scale of pay for three years with no earning of any increment of pay during the period etc.*

*9. Interestingly, on identical Charges all the co-accused were exonerated and the Applicant/Petitioner was burdened with punishment. This has caused heart-burning and an anomalous situation. This has been owing to lack of proper clarificatory communication by the Director of Education and/or his agents and the discovery of new and important matter not within the knowledge of the Applicant/Petitioner (when the QA was taken up for hearing). There is sufficiency of reason and justification in re-calling the' said Order and for appropriate modification/review in the interest of justice."*

6. The plea of the learned counsel for the petitioner is that the petitioner herein is also entitled to parity and the charges framed against him need to be dropped and the penalty need to be set aside.

7. The averments made in the review petition that too with regard to the writ petition filed by similarly placed persons and the relief granted to them have not pleaded by the petitioner in the OA or while arguing the OA for the reasons best known.

8. Though, the Tribunal dismissed the review by stating that grant of



benefit to similarly placed persons is not a ground to file review, surely a fact, now brought to the notice of the Tribunal, which aspect was not pleaded at the time of arguing the OA should have been considered by the Tribunal on merits. Having not done that, we are of the view that the Tribunal shall consider the effect of the order passed by this Court in W.P.(C) 56/2016 on the case of the petitioner on merits by deciding the review petition afresh.

9. Accordingly, the impugned order passed by the Tribunal is set aside. We revive the review petition filed by the petitioner being RA 72/2021 on the Board of the Tribunal. The Tribunal shall consider the review petition and decide the same in accordance with law.

10. For this purpose, we list the review petition before the Tribunal on November 20, 2023 when the parties shall appear before the Tribunal.

11. The petition is disposed of.

**V. KAMESWAR RAO, J**

**ANOOP KUMAR MENDIRATTA, J**

**OCTOBER 19, 2023/ds**