IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 31, 2023

\+ W.P.(C) 6278/2018 & CM APPLs. 24215-24216/2018, 36466/2019, 19860/2023

GOVIND KRISHNA DIXIT

..... Petitioner

Through: Ms. Priya Hingorani, Sr. Adv. with Ms. Anita pandey and Mr. K.S, Prasad, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Raman K. Digpaul, Ms. Ishita Pathak and Ms. Swati Kwara, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

CM APPLs. 24216/2018 & 19860/2023

These applications have been filed by the petitioner seeking permission to file certain additional documents.

For the reasons stated in the applications, same are allowed. Additional documents are taken on record.

Applications stand disposed of.

W.P.(C) 6278/2018 & CM APPLs. 24215/2018 & 36466/2019

1. This petition has been filed by the petitioner, namely Govind Krishna Dixit, challenging the order dated May 23, 2018, passed by the Central Administrative Tribunal Principal Bench, New Delhi, ('Tribunal', for short) in Original Application No.1629/2018 ('OA', for short) whereby the Tribunal has dismissed the OA filed by him.

2. The petitioner had filed the OA with the following reliefs:

> *"8.1 Quash / set aside the impugned order No. F.No.116/3/ST/2017/1634 dated 16.11.2017.*
> *8.2 Quash / set aside the impugned order No.18/2013 dated 10.06.2013.*
> *8.3 Direct the Respondents to immediate stop the recovery of 1/3rd of gross salary of the Applicant being contrary to law.*
> *8.4 Direct the Respondents to pay to the Applicant the salary that he is entitled to be paid in the grade and post of Commissioner that he is presently holding."*

3. From the above, it is noted that the petitioner had primarily challenged two orders dated June 10, 2013 and November 16, 2017. The order dated June 10, 2013, is an order whereby the Disciplinary Authority has passed the final order imposing the penalty on the petitioner as reproduced below:

> *"xxx xxx xxx*
> *And Whereas the Disciplinary Authority, after considering the entire facts on record has concluded for rejecting the representation of the CO on UPSC's advice and imposing the penalty of "reduction of pay by two stages in the time scale of pay for a period of three years with further direction that CO will not earn increments of pay during the period of such reduction and on expiry of the period, the reduction will have the effect of postponing*

his future increments of his pay' is imposed on Shri Govind Krishna Dixit, as advised by UPSC.

Now, therefore, the President hereby imposes a penalty of "reduction of pay by two stages in the time scale of pay for a period of three years with further direction that CO will not earn increments of pay during the period of such reduction and on expiry of the period, the reduction will have the effect of postponing his future increments of his pay'. It is ordered accordingly.

(BY ORDER AND ON BEHALF OF PRESIDENT)

(B.K. Mahanta)
Under Secretary to the Govt. of India
Tel. No. 26171184

To

Shri G.K. Dixit, Additional Director

(Through: Chief Commissioner (AR) Customs, Excise and Service Tax Appellate Tribunal, New Delhi)"

4. The order dated November 16, 2017 passed by the Chief Commissioner (AR) as conveyed by Commissioner (AR) (Admn.) on compliance of order No.18/2013 dated June 10, 2013 issued by the CBEC, New Delhi.

5. The facts as noted from the petition are that the petitioner belongs to 1989 batch of Indian Revenue Service (IRS) (Customs & Central Excise). The petitioner was issued a sanction order dated August 23, 2002, permitted by the respondents to pursue a course in Master of International Policy & Practice at The George Washington University, USA. This was one year course commencing from

September 03, 2002. On completion of the said course, the petitioner did not return back to the country to join his duties, instead he joined another course of Master of Law in the same University, for which no prior permission was obtained from the respondents. He finally joined the respondents on August 21, 2009, after a gap of almost 7 years.

6. He was accordingly proceeded under the Rule 3(1) CCS (Conduct) Rules 1969. A charge sheet was issued to the petitioner which resulted in a final order dated June 10, 2013 which has already been reproduced above.

7. It appears that the initial order dated June 10, 2013 was not given effect to for the reasons best known to the respondents. Be that as it may, to ensure the compliance of order dated June 10, 2013 the respondents issued the order dated November 16, 2017.

8. The case of the petitioner before the Tribunal was that the currency of penalty imposed on him on June 10, 2013 ended on completion of 3 years, i.e., June 10, 2016. Accordingly, the sealed cover relating to his promotion was ordered to be opened vide order dated October 30, 2017 and he has been promoted to the grade of Commissioner on *in situ* basis.

9. Pursuant to his promotion, the petitioner has assumed the charge of the post of Commissioner of Customs & Central Excise in the forenoon of October 31, 2017.

10. Vide order dated November 16, 2017, the respondents have attempted to implement the order dated June 10, 2013, which is illegal and the same amounts to double jeopardy as the same is in violation, inasmuch as; (i) he was denied promotion and for almost 6 years, his

promotion case was kept in sealed cover, and (ii) through order dated November 16, 2017, arbitrarily, the penalty has been imposed notwithstanding, the fact that the disciplinary proceedings have been concluded long time back.

11. The Tribunal while dismissing the OA has held as under:

> *"8. We have considered the arguments of learned counsel for the applicant. We have perused the impugned Annexures A-1 & A-2 orders. The Annexure A-2 order has imposed the penalty of reduction of pay by two stages in the time scale of pay for a period of three years on the applicant. Its currency ended on 09.06.2016. Obviously, the applicant could not have been promoted during the currency of the penalty. Accordingly, his case for promotion was kept in sealed cover and after the expiry of the currency of the penalty, he was promoted vide order dated 30.10.2017 (Annexure A-3).*
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> *9. As could be seen from the Annexure A-2 order, it penalizes the applicant even in monetary terms by way of reducing his pay by two stages in the time scale of pay for a period of three years. As observed by us hereinabove, Annexure A-1 order is not an independent order. It has got an umbilical link with Annexure A-2 order. The records would reveal that the respondents have inadvertently not given effect to the penalty of reduction of pay by two stages in the time scale of pay for three years on the applicant. He has been paid excess amount towards his salary oblivious of Annexure A-2 penalty order. Hence, we do not find anything amiss in impugned Annexure A-1 order dated 16.11.2017 in refixing the pay of the applicant after incorporating the impact of Annexure A-2 penalty order.*
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> *10. The argument of learned counsel for applicant that after the expiry of three years, the monetary aspect of Annexure A-2 order cannot be implemented, is specious and is repelled.*
>
> *11. The Hon'ble Supreme Court in Chandi Prasad Uniyal & others v. State of Uttarakhand & others [2012 (7)*

SCALE 376] has held that any excess payment made to a government servant is required to be recovered from him.
12. In the conspectus, we do not find any merit in this O.A. It is accordingly dismissed.
13. In view of dismissal of O.A., M.A. No.1829/2018 does not survive. It is also dismissed."

12. The submission of Ms. Priya Hingorani, learned Senior Counsel appearing for the petitioner is primarily the same as was made before the Tribunal.

13. Mr. Ajay Digpaul, learned CGSC appearing for the respondents would justify the impugned order of the Tribunal by stating that the order dated June 10, 2013, which was required to be implemented, has not been implemented which eventually resulted in the issuance of order dated November 16, 2017.

14. We find that the order of the Tribunal is justified for more than one reason; (i) a charge sheet was issued to the petitioner for over staying the study leave for almost 6 years w.e.f. 2003; and (ii) he without prior permission undertook another course.

15. The charge sheet resulted in the charges as proved, should be taken to its logical end and for that purpose the order dated June 10, 2013 was passed whereby, the Disciplinary Authority has imposed the penalty on the petitioner.

16. Regrettably, for the reasons best known, the said order was not given effect to for almost 4 years when the order dated November 16, 2017 was issued. It appears that the same was issued on realising that the order dated June 10, 2013 has not been implemented. It is in furtherance of the order dated June 10, 2013 that the order dated

November 16, 2017, was issued, surely suggest that the said order is for the implementation of order on misconduct committed by the petitioner. The misconduct having been proved, the same need to be taken to its logical end by imposing penalty and giving effect to the same.

17. So, it must be held that the order dated November 16, 2017, is issued for giving effect to the penalty on the misconduct committed by the petitioner. The Tribunal is justified in dismissing the OA in the manner it has done in the impugned order. The relevant paragraphs have been already reproduced above.

18. We do not see any merit in the petition. The writ petition and connected applications are dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 31, 2023/*aky*