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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 06.02.2024***

+ W.P.(C) 1676/2024 & CM APPL. 6954/2024 -Ex., CM APPL. 6955/2024 -Stay.

DELHI DEVELOPEMENT AUTHORITY

..... Petitioner

Through: Mr.Tushar Sannu, Mr. Sahaj Karan
Singh, Advs.

versus

SUSHIL KUMAR TYAGI

..... Respondent

Through:

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 07.01.2021 passed by the learned Central Administrative Tribunal (the Tribunal) in Original Application (O.A.) No. 2033/2020. Vide this impugned order, the learned Tribunal allowed the original application preferred by the respondent by setting aside the order of the Revisionary Authority dated 24.02.2020, by which the punishment of Censure imposed upon the respondent by the appellate authority was modified to withholding one increment for a period of 6 months, with cumulative effect.

2. The petitioner also seeks to assail the subsequent order passed by the learned Tribunal in R.A. No. 91/2021 on 28.07.2023, vide which its review



application seeking review of the order dated 07.01.2021 on the ground that it had been passed without granting adequate opportunity to the petitioner to oppose the O.A., came to be rejected.

3. In support of the petition, learned counsel for the petitioner submits that the impugned order dated 07.01.2021 is liable to be set aside as the same has been passed by the learned Tribunal without granting the petitioner adequate opportunity to explain its stand. Neither was the petitioner served with a copy of the O.A. nor was it granted any opportunity to file its reply. He submits that merely because the counsel for the petitioner was present at the time of hearing would not be sufficient to conclude that the petitioner had been granted opportunity to oppose the respondent's claim. Furthermore, even though a review petition was preferred on this ground, the same had been erroneously rejected. He, therefore, prays that the impugned orders be set aside and the matter be remanded back to the learned Tribunal for fresh adjudication after granting an opportunity to the petitioner to file its counter affidavit.

4. In order to appreciate the aforesaid submissions of the learned counsel of the petitioner, we may begin by noting the relevant extracts of the order dated 28.07.2023 passed by the learned Tribunal, rejecting the review application filed by the petitioner. The same read as under:

We have gone through the pleadings on record and also various order sheets of the Tribunal. We do not find that at any point of time, time was sought on behalf of the review applicants (respondents in original lis) to file reply and/ or to place on record any document. Further we find that the respondent (applicant in original lis) has approached this Tribunal through the aforesaid OA only after a cause has accrued to him keeping in view of the provisions of Sections 19 and 20 of the Administrative Tribunals Act, 1985. Moreover, this Tribunal after taking into consideration the relevant facts and



*regulations has passed the order sought to be reviewed. Moreover, the assertion about non receipt of a copy of the aforesaid OA and/ or time was sought on behalf of the review applicants to file reply in the aforesaid OA and/ or to place on record any document is also not supported by any affidavit. **The affidavit in support of the review application is admittedly not filed by the learned counsel, who appeared in the matter on behalf of the review applicants at the time the aforesaid OA was decided by this Tribunal.** It is also not asserted in the supporting affidavit that deponent has got such information from the learned counsel who appeared for the review applicants in the OA.”*

*In view of the aforesaid facts and law, we do not find any merit in the present Review Application and the same is accordingly dismissed. **(emphasis supplied)***

5. From a bare perusal of the aforesaid, we are of the view that the learned Tribunal was justified in rejecting the petitioner’s plea that it was not granted adequate opportunity to defend the matter. Even before us learned counsel for the petitioner has not given any justification for not filing any affidavit of the learned counsel who had represented the petitioner before the learned Tribunal on 07.01.2021. We, therefore, find no reason to interfere with this order.

6. We may now proceed to examine the petitioner’s challenge to the order passed by the learned Tribunal on 07.01.2021, for which purpose, it would be apposite to refer to the relevant extracts thereof, which read as under:

“7. In the instant case, the only observation made by the Revisionary Authority for substituting the punishment of “censure” with that of “withholding of one increment for a period of six months with cumulative effect” reads:

“AND WHEREAS, I have gone through the



facts of the case and the submission made by the charged officer Shri S. K. Tyagi, A.E. (Civil). I find that the ends of justice would be met if a penalty of withholding of one increment of pay for a period of six months with cumulative effect is imposed upon Shri S.K. Tyagi, A. E. (Civil).”

Except stating that he has gone through the facts of the case, not a single reason is mentioned as to why the order of Appellate Authority warrants interference. We do not find any basis for exercise of such power.”

7. From a perusal of the aforesaid, it emerges that the learned Tribunal, while quashing the order passed by the Revisionary Authority, has restored the penalty imposed on the respondent by the Appellate Authority. We find that the learned Tribunal was of the view that even though the Revisionary Authority had the power to initiate *suo moto* proceedings and enhance the penalty imposed by the Appellate Authority, the same could be done only by way of a reasoned order. It is only upon finding that the Revisionary Authority had failed to assign any reason, whatsoever, that the learned Tribunal set aside the order passed by the Revisionary Authority, thereby restoring the Appellate order.

8. Learned counsel for the petitioner is not in a position to deny that the order passed by the Revisionary Authority is a cryptic order, which does not contain even any semblance of a reason as to why the order of the Appellate Authority was being interfered with. The said order also does not show as to why the penalty imposed on the respondent by the Appellate Authority was inadequate. We, therefore, have no hesitation in agreeing with the learned Tribunal that the order passed by the Revisionary Authority could not be



sustained.

9. At this stage, learned counsel for the petitioner prays that even if the order dated 24.02.2020 passed by the Revisionary Authority is quashed, the matter be remanded to the Revisionary Authority to pass a fresh penalty order as per law. Even though this plea appears to be attractive on the first blush, on a closer scrutiny of the factual matrix, we are of the view that this is not a fit case where liberty should be granted to the petitioner to re-argue the matter before the learned Tribunal. We cannot lose sight of the fact that the incident for which the penalty was imposed on the respondent pertains to the year 2002 and therefore, it would not be in the interest of justice to grant liberty to once again permit the petitioner to argue the matter at this belated stage, especially when it is not as if the respondent has been let scot free. The effect of the impugned order is only to the extent that it restored the penalty imposed by the Appellate Authority and set aside the order passed by the Revisionary Authority which as noted hereinabove is a wholly cryptic order.

10. We, therefore, find no merit in the writ petition, which is, accordingly along with pending applications, dismissed

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 6, 2024
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