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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3199/2021 & CM APPL. 9683/2021 (stay)
GOVT OF NCT OF DELHI & ANR. Petitioners
Through: Ms.Latika Chaudhary, Advs.

versus

VINOD BEHARI MATHUR & ANR. Respondents
Through: Mr.A.K.Trivedi & Mr.Dhruv Kothari,
Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER
22.05.2024

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1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 21.01.2019 passed by the learned Central Administrative Tribunal (Tribunal) in OA No.2004/2016. Vide the impugned order, the learned Tribunal has partly allowed the Original Application (OA) filed by the respondent and has, while quashing the orders dated 05.11.2013, 13.03.2014 and 17.03.2016, remanded the matter back to the petitioner for fresh consideration of the respondent's appeal dated 01.08.2011, by taking into account the decision in OA. 685/2011. We may, at this stage itself, note that vide order dated 05.11.2013 the penalty imposed on the respondent, pursuant to the departmental proceedings held in terms of the charge memorandum dated 13.04.2006, was sought to be enhanced by the petitioners, with an order enhancing the penalty having been passed on 13.03.2014



2. While passing the impugned order, the learned Tribunal has taken into account the respondent's plea that as per Rule 29(1)(v) of the CCS (CCA) Rules, 1965, the Appellate Authority could not pass an order for enhancement of penalty after six months from the date of the passing of the original penalty order. The Tribunal also took into account the respondent's plea that since he had already superannuated on 30.09.2011, under Rule 9 of the CCS (Pension) Rules, 1972 his appeal was required to be considered by the President of India.

3. Before us, learned counsel for the petitioner vehemently submits that taking into account that the initial penalty order had been passed before the superannuation of the respondent, Rule 9 of the CCS(Pension) Rules would not be applicable to him. Furthermore, since the appeal preferred by the respondent was required to be considered under Rules 23 & 27 of the CCS (CCA) Rules, Rule 29, which provides that the Appellate Authority cannot pass an order revising a penalty order after six months of the original penalty order, was also not applicable to the present case. She, therefore, prays that the impugned order be set aside.

4. On the other hand, learned counsel for the respondent supports the impugned order and submits that vide the impugned order, the learned Tribunal has merely directed the petitioner to re-consider the original appeal of the respondent dated 01.08.2011 and therefore, contends that no interference with the impugned order is called. Furthermore, by drawing our attention to the provisions of CCS (CCA) Rules, he submits that while Rules 23 & 27 deal with the manner in which the appeal is to be filed and dealt with, the power to revise penalty has been provided for only under Rule 29 and therefore, the learned Tribunal was justified in directing the petitioner to



consider the respondent's plea that in terms of the decision in OA. 685/2011, the original penalty imposed on him 27.06.2011, could not have been enhanced after six months.

5. Having considered the rival submissions of the parties and perused the impugned order, we are of the view that the petitioner's plea that an Appellate Authority cannot enhance the penalty after six months of the passing of the initial penalty order, appears to be *prima facie* merited and is therefore, required to be considered at some length. However, taking into account that the learned Tribunal has not given any specific directions in this regard and has merely directed the petitioner to reconsider the appeal, we are refraining from making any observation in this regard so that the petitioners can take a considered decision on both the aspects as noted in the impugned order.

6. For the aforesaid reasons, we are of the view that there is no infirmity with the impugned order and therefore, direct the petitioner to consider the the respondent's appeal dated 27.06.2011 as per impugned order. Needless to state, in case the respondent is aggrieved by the decision of the petitioner, it will be open for him to seek legal recourse as permissible under law.

7. The writ petition is, accordingly, dismissed in the aforesaid terms.

REKHA PALLI, J

SAURABH BANERJEE, J

MAY 22, 2024/kk