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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 452/2007

J.B.GUPTA

..... Petitioner

Through: Mr. Nikhil Bhardwaj, Adv.

versus

UOI & ORS.

..... Respondent

Through: Ms. Saroj Bidawat, SPC for UOI.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

11.03.2024

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1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 03.08.2005 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 1302/2004. The petitioner also assails the order dated 09.01.2006 passed in RA No. 184/2005. Vide the impugned orders, the learned Tribunal has rejected the petitioner's claim for full backwages for the period between 31.08.1999 and 16.02.2002.
2. It may be noted at the outset that the petitioner was initially dismissed from the service w.e.f 31.08.1999, pursuant to an order passed on 17.08.1999, which order was modified by the Appellate Authority on



08.02.2000 by directing that the petitioner will stand compulsory retired with 20% cut in pension for five years along with 20% cut in gratuity. Aggrieved by this order, the petitioner approached the Tribunal by way of OA No.448/2000, which partly allowed the OA by setting aside the penalty order as also the appellate order and directing the Appellate Authority to pass a fresh order after granting an opportunity of hearing to the petitioner. This order was assailed before this Court by the respondents by way of W.P.(C) 5466/2001, which writ petition was disposed of by this Court on 13.09.2001 on the basis of the agreed terms between the parties. It may, therefore, be apposite to note herein below the relevant extracts of this decision;

Petitioner has filed this petition challenging Tribunal order on variety of grounds. But it become unnecessary to examine the merit of the issues raised in view of the agreement of L/C for parties for disposal of appeal by the following consent order:-

“Parties to appear before Appellate Authority on 17th October, 2001. Appellate Authority shall thereafter re-examine/re-consider Respondent’s appeal and pass appropriate orders thereon within four months from the date of appearance after affording a reasonable opportunity of being heard to the Respondent and granting him personal hearing. Impugned direction for reinstatement of Respondent shall, however, remain stayed till this Appeal is disposed of by Appellate Authority within the prescribed time frame.”

3. The grievance of the petitioner, as articulated by Mr. Nikhil Bhardwaj, learned counsel for the petitioner, is that once the penalty order dated 31.08.1999 imposed by the respondents was set aside by the learned Tribunal on 18.05.2001, the respondents were bound to



pay him full backwages for the period between 31.08.1999 and 16.02.2002 i.e., the date on which the order of compulsory retirement was passed against him by the Appellate Authority as per the liberty granted by the Division Bench on 13.09.2001.

4. Even though this plea of the petitioner appears to be attractive on the first blush, upon a careful perusal of the above noted order dated 13.09.2001 passed by this Court in W.P.(C) 5466/2001, we are of the considered view that the petitioner's claim for backwages is wholly misconceived. As noted in the said order, the petitioner had specifically agreed before the Division Bench on 13.09.2001 that the direction of reinstatement issued by the learned Tribunal on 18.05.2001 would remain stayed till the matter was reconsidered by the Appellate Authority. It is the common case of the parties that after reconsideration of the penalty imposed on the petitioner, the Appellate Authority passed a fresh order on 14.02.2002 wherein it reiterated the earlier order compulsorily retiring the petitioner on 08.02.2000. After some arguments, learned counsel for the petitioner concedes that the penalty of compulsory retirement imposed on the petitioner vide order dated 14.02.2002 which was served on him on 16.02.2002, was made effective from the date of the original penalty order dated 31.08.1999 and, consequently, in terms of this order dated 14.02.2002, the petitioner is drawing pension w.e.f. 01.09.1999.
5. In the light of the aforesaid, once the penalty of compulsory retirement imposed on the petitioner vide order dated 14.02.2002 passed by the Appellate Authority has been made effective from the date of the original penalty order dated 31.08.1999, the petitioner



cannot be permitted to seek benefits for the period between 31.08.1999 and 16.02.2002 on a misplaced plea that the order of reinstatement passed by the learned Tribunal was not quashed by this Court.

6. In our view, this stand taken by the petitioner in fact amounts to making an attempt to overreach the order passed by this Court on 13.09.2001, when the petitioner had specifically agreed that the direction of reinstatement would remain stayed till a fresh order was passed by the Appellate Authority. Once the fresh order was passed by the Appellate Authority on 14.02.2002, the petitioner can subject to his legal remedies against this order dated 14.02.2002, claim only those benefits as accrue under this order.
7. For the aforesaid reasons, we, find absolutely no reason to interfere with the impugned order. The writ petition being meritless is, accordingly, dismissed.

REKHA PALLI, J

DHARMESH SHARMA, J

MARCH 11, 2024/al