



2024:DHC:6086-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: August 2, 2024*

+ W.P.(C) 10695/2024, CM APPL.43968-70/2024

DR. D.S. SHANKAR

.....Petitioner

Through: Mr. M.D. Jangra, Advocate with
petitioner in person

versus

UNION OF INDIA AND OTHERS

....Respondents

Through: Mr. Mridul Jain, Senior Panel
Counsel with Mr. Hrishikesh K.P.,
Advocate and Mr. Rajkumar Maurya,
GP for R-1 & 2**CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T (oral)**

1. The present writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner against the orders dated 18.04.2024 passed in RA No. 28/2024 and impugned order dated 08.02.2024 passed in RA No. 53/2022 in OA No. 2051/2019 by learned Central Administrative Tribunal, Principle Bench, New Delhi (the 'Tribunal') as well as impugned order F.No. 12-44/2017-NERIE/PF/DSS/5411-15 dated 13/14.03.2018, Charge Memo No. F. 5-1/ 2017/RIEFA/ Complaint/ Pt. file/331 dated 11.04.2018, Inquiry Report dated 26.09.2018 and impugned penalty order No.F.5-1/2017/RIEFA/Complaint/Pt. file/572 dated 27.11.2018 and order dated 25.02.2019 passed by the Appellate Authority as well as order No.1-

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Signing Date: 13.08.2024
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10/2022-Sch.4 dated 19.01.2024 whereby the learned Tribunal failed to take into consideration that the petitioner was given liberty by this Court to approach the Tribunal to seek review of the impugned order dated 24.08.2020, still dismissed the Review Application filed by him by the aforesaid impugned orders.

2. Notice issued.

3. Mr. Mridul Jain, learned counsel for respondent Nos.1 & 2 accepts notice.

4. With the consent of learned counsel for the parties, the present petition is being taken up for final hearing.

5. Brief facts of the case are that the petitioner, who was working as Senior Assistant Professor Group-A in National Council of Educational Research & Training (NCERT), faced disciplinary proceedings initiated against him in terms of Charge Memo dated 11.02.2018.

6. The Inquiry Officer vide memo dated 06.09.2018 proved the charges against the petitioner and the disciplinary authority imposed punishment of petitioner's removal from service vide order dated 27.08.2018.

7. The appellate authority vide order dated 25.02.2019 rejected petitioner's appeal against which he preferred OA No.2051/2019 seeking quashing of charge memo dated 11.04.2018, inquiry report dated 26.09.2018, order of penalty dated 27.11.2018 and order of appellate authority dated 25.09.2019.

8. The learned Tribunal vide order dated 24.08.2020 dismissed the OA filed by the petitioner, against which the petitioner preferred W.P.(C) No.2636/2021 before this Court which was dismissed as withdrawn vide order dated 29.09.2021, however, liberty was granted to the petitioner to

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seek review of order dated 24.08.2020 passed by learned Tribunal.

9. The petitioner thus, preferred RA No.53/2022 in OA No.2051/2019 which was disposed of by the learned Tribunal vide order dated 08.02.2024 *inter alia* observing as under:

“Learned counsel for the respondents, at the outset, places on record the forwarding letter dated 31.01.2024 along with the Speaking Order dated 19.01.2024 by order and in the name of the President. The said Speaking Order discloses that the applicant approached the President of India in terms of Rule 29 of CCS (CCA) Rules, 1965, challenging the Penalty Order dated 27.11.2018, which was also the subject matter of this OA.

2. The applicant's Revision Application dated 23.12.2021 has been rejected by the President of India vide Speaking Order dated 19.01.2024. Thus, at the time of filing the OA, the applicant was aware that he had preferred the aforementioned Revision Application which fact he had knowingly concealed.

3. Faced with the above dilemma, the applicant seeks leave to withdraw the present RA with liberty to file afresh by challenging the Presidential Speaking Order dated 19.01.2024, which has been passed in his Revision Application, under the provisions of Rule 29 of the CCS (CCA) Rules, 1965.

4. Leave with liberty is granted.

5. The RA stands dismissed as withdrawn.”

10. The petitioner yet again preferred RA No.28/2024 in RA No.53/2022 in OA No.2051/2019 seeking review of order dated 08.02.2024 passed by the learned Tribunal pleading that he was not given an opportunity to advance arguments which is against the principle of natural justice.

11. The learned Tribunal while disposing of the RA No.28/2024 vide W.P.(C) 10695/2024



order dated 18.04.2024 observed and held as under:-

*“4. We have perused the aforesaid order dated 08.02.2024 as also the contents of R.A. We do not find any error apparent on the face of the record or discovery of new material, which was not available with the review applicant despite due diligence at the time of hearing. While considering an application for review, the Tribunal has to confine its adjudication with reference to material, which was available at the time of initial decision, and the happening of some subsequent event or development cannot be taken note of the declaring the initial order/decision as vitiated by an error apparent. Therefore, passing of the Presidential order dated 19.01.2024, which is subsequent to the order passed in the O.A., cannot constitute a valid ground to seek review of the initial order. If the review applicant is not satisfied with the order passed by the Tribunal, remedy lies elsewhere. By way of this R.A., he seeks to re-argue the entire case, which is not permissible in terms of the provisions contained in Section 22 (3) (f) of the Administrative Tribunals Act, 1985 read with Order XLVII of Rule 9 of CPC, and also in view of the ratio laid down by the Hon'ble Supreme Court in **K. Ajit Babu v. Union of India**, AIR 1997 SC 3277 and **Union of India v. Tarit Ranjan Das**, 2004 SCC (L&S) 160.*

5. In view of the above, we do not find any merit in the present R.A. and the same is accordingly dismissed in circulation.”

12. Aggrieved against the order dated 08.02.2024 and 18.04.2024 passed by the learned Tribunal, the present petition has been filed on the ground that that disciplinary proceedings initiated against him by the erstwhile Director, Mr. H.K. Senapati was with the intent to harass him; the disciplinary authority was biased against him; the disciplinary authority did



not appreciate that biometric attendance was not compulsory for the academic faculty; disciplinary inquiry initiated and private consultant was appointed as IO of the case; the officials against whom he had made complaint are witness to the disciplinary proceedings and the penalty imposed upon the petitioner is not prescribed in CCS (CCA), Rules 1965.

13. It is pertinent to mention here that in the order dated 08.02.2024 impugned before us the learned Tribunal observes that petitioner's revision application was rejected by the President of NCERT vide order dated 19.01.2024, consequent upon dismissal of petitioner's OA vide order dated 24.08.2020, which fact was concealed from the learned Tribunal and petitioner had withdrawn the review application with liberty to challenge the said order dated 19.01.2024. However, instead of challenging the order dated 19.01.2024 passed by the President, NCERT, the petitioner challenged the order dated 08.02.2024 passed by the learned Tribunal by filing RA No.28/2024, which was dismissed vide order dated 08.04.2024, and rightly so, as review of a review order, is impermissible in law. The petitioner was granted liberty to challenge the order dated 19.01.2024, however, by filing the present petition has not only challenged the orders dated 08.02.2024 and 08.04.2024 but also sought setting aside of Charge memo dated 13/14.03.2018, Inquiry Report dated 26.09.2018, penalty order dated 27.11.2018 but also order dated 19.01.2024 by the President, NCERT. In fact, vide order dated 19.01.2024 passed by the President, NCERT, the charges levelled against the petitioner have already been dealt with.

14. Accordingly, the appropriate remedy as such with the petitioner is to challenge the order dated 19.01.2024 before the learned Tribunal instead of directly approaching this Court.



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15. With aforesaid observations, the present petition is dismissed with liberty to the petitioner to challenge the order dated 19.01.2024 passed by the President, NCERT before appropriate Forum as per law.

16. Pending applications are disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 2, 2024
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