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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 6th September, 2024*

+ W.P.(C) 12458/2024 and CM APPL. 51861-51862/2024

**DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED AND ANR.**

.....Petitioner

Through: Dr. Vikrant Narayan Vasudeva and
Mr. Rohit Lochav, Advocates.

Versus

HARI OM GUPTA

.....Respondent

Through: Mr. R.A. Sharma, Advocate.

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 petition has been preferred by the petitioners challenging the order dated 01.02.2024 passed by the learned Central Administrative Tribunal in O.A. No.3894/2017 whereby the learned Tribunal set aside the orders dated 31.08.2017 and 09.11.2015 passed by the petitioners and directed to release the withheld amount under the head of 'Leave Encashment' to the respondent with interest @ admissible GPF amount.
2. The petitioners in the present petition have averred that the respondent had joined the services of petitioners on 04.04.1977 as Junior Engineer (Civil) and with regular promotions, he was promoted to the post



of Chief Project Manager (Civil). In respect of work titled 'Comprehensive Project & Consultancy Services for improvement of infrastructure in existing Govt. School Building in different areas of Delhi', which was awarded to M/S and IL&FS-ETS bearing Agreement no. DSIIDC/EE(CD)-XII/Accounts/Agmt./2006-07/12 dated 29.11.2006, the respondent was issued a Vigilance Memo dated 22.11.2012 mentioning that while functioning as Executive Engineer (CD-XII) in the year 2006-07, he committed gross misconduct in the appointment of Consultant in respect of work titled above.

3. The respondent in his reply dated 26.11.2012 in respect of above Memo denied the charges. However, the petitioners found it unsatisfactory enquiry under Rule 46 read with Rule 7(ii) of DSIIDC (Staff Services) Rules, 1978. The article of charge dated 29.11.2012 was framed against the respondent and he was issued chargesheet of even date.

4. The respondent retired from his services on 30.11.2012.

5. The respondent in his reply dated 4.12.2012 reiterated that in his earlier reply dated 26.11.2012, he has given his defence.

6. The Inquiry Officer on the basis of documentary and oral evidence submitted the inquiry report dated 30.04.2014 whereby observed that the charge was partially proved against the respondent.

7. The Disciplinary Authority in view of the inquiry report held that 50% of Leave Encashment of respondent be forfeited, which decision was forwarded to and upheld by CVC. Thereafter, a show cause notice dated 16.09.2015 was issued to the respondent to give his explanation to which the respondent had filed a reply dated 30.09.2015.



8. The Disciplinary Authority vide order dated 09.11.2015 imposed penalty of forfeiting 50% of Leave Encashment against the aforesaid order dated 09.11.2015, the respondent preferred an appeal before the Appellate Authority, which was dismissed vide order dated 31.08.2017.

9. The respondent thus preferred OA No.3894/2017 challenging the orders dated 09.11.2015 and 31.08.2017 passed by the Disciplinary Authority as well as Appellate Authority alleging that the allegations pertained to the year 2006-07 and all the facts were well within the knowledge of the respondent however, just a week prior to his retirement, he was issued chargesheet and imposed penalty as noted above.

10. Learned Tribunal taking note of the fact that the allegations pertained to the year 2006-07 and in view of Circular dated 18.11.2011 issued by the Department of Revenue, Ministry of Finance, Government of India with regard to the scope of Rule 39(3) of the CCS (Leave) Rules, 1972; held that there was no allegation of loss suffered by the petitioners and no averment was made by the petitioners that any recoveries are likely to be made from the respondent if allegations against him stood proved, accordingly set aside the impugned orders passed by the petitioners.

11. Being aggrieved, the present petition has been filed by the petitioners on the ground that the learned Tribunal did not consider that the disciplinary proceedings were conducted in a fair manner and there was no illegality or perversity and that the disciplinary proceedings were initiated against the respondent prior to his superannuation.

12. During the course of hearing, learned counsel appearing on behalf of the petitioners has submitted that the power to impose penalty on a



delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. Also submitted that the financial loss suffered by the petitioners is implicit not only in the allegations levelled against the respondent herein but also the findings reported by the Inquiry Officer as well as the decision of the Disciplinary Authority and the Appellate Authority. Thus, it is submitted that the order passed by the learned Tribunal deserves to be set aside.

13. On the other hand, learned counsel for the respondent has supported the impugned judgment passed by the learned Tribunal, submitting that the same is well narrated and calls for no interference.

14. Having heard learned counsel for the parties and on perusal of impugned orders and material placed on record, this Court finds that the respondent joined the services of the respondents on 04.04.1977 as Junior Engineer (Civil) and he was promoted to the post of Chief Project Manager (Civil) vide order dated 14.09.2012 and vide order of even date, he was assigned the Current Duty Charge (CDC) of Project Director (Civil). Just a week prior to his superannuation on 30.11.2012, respondent was issued Office Memorandum (OM) dated 22.11.2012. He was served charge sheet on 29.11.2012 proposing to hold an enquiry for the allegations pertaining to work conducted in the year 2006-07.

15. It is not in dispute that Rule 39(3) of CCS (leave) Rules, 1972 make provision for withholding whole or part of the payment due on encashment of leave temporarily so that if some money is to be recovered as a result of disciplinary/ criminal proceedings, it could be adjustable from the



Government Servant, but only in cases where there is embezzlement of Government funds or loss of public money. This provision makes it clear that it is only if it is proved in departmental proceedings and a finding is recorded to the effect that the misconduct on the part of official, has made the department suffer the losses, that the leave encashment/pension or other benefits due to the retiring officer can be withheld.

16. In the present case, on perusal of the Articles of charge and the Statement of Imputation of Misconduct issued to the respondent vide Memorandum dated 29.11.2012, we find that both are identical. The Enquiry Report dated 30.04.2014 holds that the charges levelled against the respondent stood partly proved however, did not indicate anything about the loss suffered by the petitioners on account of lapses alleged against him. Hence, the learned Tribunal has rightly set aside the impugned orders dated 31.08.2017 and 09.11.2015 passed by the petitioners.

17. In view of the above, we find no error or perversity in the impugned order passed by the learned Tribunal. Accordingly, finding no merit, the present petition is dismissed.

18. The petitioners are directed to comply with directions passed by the learned Tribunal in the impugned order dated 01.02.2024 in OA 3894/2017 within four weeks.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

SEPTEMBER 06, 2024/uk/r