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

% **Decision delivered on: 23.08.2024**

+ **W.P.(C) 10058/2024 & CM APPL. 41095/2024-STAY**

UNION OF INDIA AND ORS

.....Petitioners

Through: Ms. Garima Sachdeva, Senior
Panel Counsel with Shri Varun
Kalia, Advocate
Mr. Satinder SO and Shri Sanjay
Kumar Officer Superintendent

versus

AJAY KUMAR CHAUDHARY

.....Respondent

Through: Mr. Ankur Chibber, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

CM APPLs. 41096-97/2024

1. Exemption allowed, subject to all just exceptions.
2. Applications stands disposed of.

W.P.(C) 10058/2024 & CM APPL. 41095/2024-STAY

3. By way of the present writ petition under Articles 226 & 227 of the Constitution of India, the petitioners have assailed the judgment and order dated 19.09.2023 passed by the learned Principal Bench, Central



Administrative Tribunal, New Delhi in the Original Application No. 3672/2017 and have sought the following relief:

“a. Set aside the Impugned Order dated 19th Sept 2023 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, Delhi in OA No. 3672/ 2017 being erroneous and against settled principles of law in the interest of justice”

4. The respondent had joined the Indian Defence Estates Services in the year 1997. An inquiry was initiated by the petitioners in the year 2007 based on a complaint originally against Shri M. Nautiyal, Principal Director, Defence Estate (since retired). The complaint was made in connection with alleged irregularities committed by the respondent in directing refund of an amount of Rs. 67,00,931/- for the cancelled period of Octroi and transit pass fees collection contract, without recovering the amount which was illegally collected by the contractor.

5. The CVC vide letter dated 26.11.2007 while rendering the 1st stage advice, advised the petitioners to initiate major penalty proceedings against the three officers of Indian Defence Estates Service, namely, Shri M. Nautiyal, Principal Director (since retired), Shri Ved Prakash Director (since retired) and the respondent herein. The relevant extract of the said letter is reproduced as under :

“On facts of the case, the Commission would advise initiation of major penalty proceedings against Shri Ajay Kumar Chaudhary, then CEO, Kamptee Cantt. The role of S/Shri M. Nautiyal, Principal Director (retired), Ved Prakash, Director (retired), DE, Southern Command was more serious as they were the senior most and experienced officers in the set up and they ought to have guided Shri Chaudhary properly. In view of



their clear culpability, the Commission would advise the cut-in-pension proceedings against S/Shri M. Nautiyal, Principal Director (retired), Ved Prakash, Director (retired), DE, Southern command. Since December 2007, the Ministry is further advised to issue the charge sheets to them within a fortnight under intimation to the Commission.”

6. Thereafter, vide Memorandum No. 13019/3/D(VIG III)/2007 dated 20.12.2007, a charge-sheet was issued to the respondent containing three charges against him. The respondent submitted a detailed reply to the said charge sheet. Since he did not receive any reply, he preferred a Writ Petition(C) No.5961/2009 before Learned Single Judge of this Court praying for quashing of the charge sheet dated 20.12.2007 or in the alternative to direct the petitioners to dispose of their pending representations dated 07.05.2008, 10.10.2008 and 14.11.2008 by passing a reasoned and speaking order. The Court vide Order dated 05.07.2010 transferred the said petition bearing W.P.(C) No.5961/2009 to the learned Tribunal which was disposed of by the Tribunal vide Order dated 10.08.2010 with a direction to the petitioners to consider the representation of the respondent and pass a speaking order within two weeks from the date of receipt of the order. Till that time, the inquiry was directed to be kept on hold.

7. However, the petitioners imposed major penalty on the respondent by issuing the impugned order dated 01.06.2017 which was served upon the respondent vide letter dated 12.06.2017. The relevant portion of the said order is reproduced as under :



“Now therefore, in exercise of the powers conferred by Rule 15(4) of Central Civil Service (Classification, Control and Appeal) Rules, 1965 and in consultation and in agreement with the Central Vigilance Commission, the President is inclined to take a view that justice would be met by imposing the penalty of ‘Reduction of pay by two stages in the time scale of pay for two years with further direction that he will not earn increments during the penalty period and this will have the effect of postponing his future increments of pay’ with immediate effect on Shri Ajay Kumar Chaudhary ex-CEO, Cantonment Board, Kamptee. It is further directed that a relevant entry in the service records of the applicant be made”.

8. Thereafter, the respondent had filed an additional affidavit bringing out certain additional facts. The contention in the affidavit was that the respondent and the other two officers namely Shri M. Nautiyal, Principal Director, Defence Estate and Shri Ved Prakash, Director (since retired) had been issued separate charge sheets, however, the imputations of misconduct were identical.

9. Thereafter, the respondent was awarded the punishment of reduction of pay by two stages in the time scale of pay for two years with further direction that he will not earn increments during the penalty period and this will have the effect of postponing his future increments of pay, whereas the other two officers, namely, Shri M. Nautiyal and Shri Ved Prakash were exonerated of the charges vide orders dated 26.07.2021 and 21.12.2021 respectively.

10. The case put forward by the respondent before the learned Tribunal was that although CVC vide letter dated 26.11.2007 had observed that the role of Mr. M. Nautiyal, Principal Director (retired) and Mr. Ved Prakash, Director (retired), DE was more serious as they were



senior most experienced officers in the set up and they ought to have guided the respondent herein properly. Despite, they were exonerated of all the charges. The relevant portion of the said letter reads as under:-

“2. On facts of the case, the Commission would advise initiation of major penalty proceedings against Shri Ajay Kumar Chaudhary, then CEO, Kampetee Cantt. The role of S/Shri M. Nautiyal, Principal Director(retired), Ved Prakash, Director(retired), DE, Southem Command was more serious as they were the senior most and experience officers in the set up and they ought to have fuided Shri Chaudhary properly. In view of their clear culpability, the Commission would advise the cut-in-pension proceedings against S/Shri M. Nautiyal, Principal Director(retired), Ved Prakash, Diredor (retired), DE, Southem Command. Since the cases against the above mentioned two officers would get time bared in December, 2007, the Ministry is further advised to issue the charge sheets to them within a fortnight under intimation to the Commission.”

11. In view of above, learned Tribunal noted that inasmuch as all the three officers had been charged of exactly the same charges, therefore, it is not equitable on the part of petitioners to punish the respondent herein alone by exonerating the other two officers, that too, when the CVC had observed that the other two officers were more at fault than the present respondent.

12. The case of the petitioners before the learned Tribunal was that the procedure for imposition of penalty had been fully followed in the case of the respondent as per the CCS Rules and there was no deviation from the Rules on this account. The disciplinary case of each individual was to be dealt separately and the respondent could not claim relief viz-a-viz similar cases of other individuals.



13. The learned Tribunal has observed that although it was a fact that disciplinary cases were stand alone matters and should not be compared with each other, yet in the peculiar facts and circumstances of the said case, where three different individuals of the same organization were charged with exactly the same charges and two of them had been exonerated, only the respondent had been imposed a penalty of reduction of pay by two stages in the time scale of pay for two years with further direction that he would not earn increments during the penalty period and the same would have the effect of postponing his future increments of pay with immediate effect on the respondent.

14. However, the learned Tribunal opined that ends of justice would be met by directing the petitioners to have a re-look on the contention of the respondent as placed before the learned Tribunal in view of the fact that the other two officers, namely, Shri M. Nautiyal, Principal Director (retired) and Mr. Ved Prakash, Director (retired) have been exonerated of the charges despite the fact that the CVC in their letter dated 26.11.2007 had observed that the responsibility of the aforementioned two officers was more than that of the respondent.

15. Consequently, the impugned order dated 01.06.2017 was set aside and the liberty was granted to the petitioners to have a relook on the contentions raised by the respondent before the learned Tribunal.

16. In view of the above, we find no error or perversity in the order of the learned Tribunal. However, we make it clear that until and unless the petitioners take similar and same action against the other two officers



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named above, the petitioners are restrained to take action stand alone against the respondent herein.

17. The present petition is, accordingly disposed of in view of above terms.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 23, 2024/as