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• IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1674/2006

SHYAM NATH

..... Petitioner

Through Mr. Ashish Nischal, Advocate

versus

MCD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

ORDER

14.02.2006

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1. The petitioner in this case impugns an order imposing the penalty of reduction of pay in six stages. He was charge-sheeted on 9.6.1994 for some mis-conduct. The Enquiry Officer found the petitioner guilty as charged. The disciplinary authority after proposing the penalty, issued the first impugned order on 13.6.1996. The petitioner preferred an appeal against the penalty. The concerned appellate authority, namely, the Assistant Law Officer (Vigilance) of the MCD rejected the appeal on 28.4.1997.
2. Mr. Nischal, learned counsel appearing on behalf of the petitioner endeavoured to submit that the impugned orders are arbitrary and that the petitioner did not realise the full implication of the penalty of reduction of pay in six stages. It was submitted that the petitioner is

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willing to undertake to forgo the monetary benefits for a certain period if the matter is considered on merits since the penalty has long term implications and has in fact reduced the pay package of the petitioner. It is claimed that the loss of pay is a logical consequence of the penalty and would be recurring cause of action.

3. The first issue is whether the petition ought to be entertained having regard to the delay of about 10 years in approaching the Court. Even, if one were to consider the appellate order, (which was passed on 28.4.1997), the petitioner has approached this Court more than 8 years after its issuance.
4. It is far too well established that a slumbering litigant cannot invoke the discretionary jurisdiction of the Court under Article 226. Even on the merit, I am not inclined to entertain the petition. The charge levelled against the petitioner was that he had ignored a report and facilitated an unauthorised occupant in getting a damaged site transferred in his name. The enquiry officer after considering the materials on record and hearing the petitioner concluded as follows:

"I have carefully considered the please advanced by prosecution and defence. From the records, produced in enquiry proceedings I find the issue involved is simple and clear. Respondent processed the file on the basis of an application dated 14-5-91 moved by one Sh. O.P. Tyagi for the transfer of property in his name. Respondent was required to examine the request in proper perspective keeping in

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view the site inspection report which indicated the correct factual position as submitted by the Rent Collector. But he totally ignored the report. Even in the application made for the transfer of damage site, the applicant had indicated that he was in physical position of the site/property since April-84 but this claim was not supported by any documentary evidence in as much as the ration card produced by the applicant was issued on 17-1-91 i.e. Four months prior to the application. Even this basic fact was not verified and the applicant was not asked to substantiate the claim of being in possession of site since 1984. The respondent in total disregard of site inspection report processed the file and instead of putting the same to his regular Supdt., who was incharge of the area, he submitted the same to some other Supdt. On the basis of these facts, I find that there is no cogent defence in favour of respondent and the charge is fully established."

5. During the course of hearing, learned counsel had relied upon the latter portion of the enquiry report to say that others who were also involved in the incident were not brought to book.
6. Having regard to the findings of the enquiry officer which were considered an appropriate penalty was imposed I am not inclined to entertain these proceedings. The circumstance that others were possibly involved in the same mis-conduct but were not proceeded cannot be a factor to invoke equitable jurisdiction under Article 226. In the peculiar facts of this case and having regard to the conduct of the petitioner in accepting the penalty, allowing it to be worked out for the last 10 years, I am of the opinion that the writ proceedings

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should not be entertained under Article 226. The writ petition is accordingly dismissed.

S. Ravindra Bhat
S.RAVINDRA BHAT, J

FEBRUARY 14, 2006
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