

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

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DB Civil Writ Petition No.16818/2012

Om Prakash Gupta

Vs.

The Union of India & ors.

DATE OF ORDER : 30/04/2015

HON'BLE MR. JUSTICE AJAY RASTOGI

HON'BLE MR. JUSTICE J. K. RANKA

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Mr. RN Mathur, Sr. Adv. assisted by
Ms. Purvi Mathur, counsel for the petitioner

Mr. TP Sharma]
Mr. Neeraj Sharma], counsel for the respondents

Instant petition has been filed assailing order of the
Central Administrative Tribunal dt. 23/08/2012.

It is a second inning of the disciplinary proceedings initiated against the petitioner in which he was held guilty for charge No.1, 3 & 7 and earlier he was punished vide order dt. 03/11/2008 and the penalty of reduction of pay by two stages in the time scale of pay for a period of three years was inflicted and that was subject matter of challenge by filing of OA No. 4/2009 before Central Administrative Tribunal, Ahmedabad Bench and by order dt.30/10/2009 the Ld. Tribunal, while quashing the order of penalty, remanded the matter back to the disciplinary authority to re-look the proceedings and pass fresh order in accordance with law without being influenced by the consultation earlier made with

the CVC and UPSC while inflicting penalty against the petitioner.

After the matter was remitted back to the disciplinary authority, a fresh opportunity of hearing was afforded to the petitioner and after consultation with the CVC and UPSC afresh, which is in compliance of the scheme of the disciplinary rules and keeping in view the observation of the Tribunal, the disciplinary authority finally held him guilty for charge No.1, 3 & 7 and punished him vide order dt.18/07/2011 with the penalty of "reduction of pay by two stages in the time scale of pay for a period of three years with further direction that he will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay."

At the very outset, we find from the records that in the charge-sheet dt. 13/9/2004 served upon the delinquent-petitioner, in all there were 7 charges against him of committing gross misconduct and out of 7 charges, charge no. 1,3 & 7 were found to be proved against him and it will be appropriate to quote the relevant charges of misconduct levelled against the petitioner which finally stood proved and is the basis for initiating penalty upon him, ad-infra:-

"(i) That the said Shri O.P. Gupta issued NIT dated

25/05/2000 for purchase of RCC Pipes without finalizing the mandatory tender documents.

(iii) That the said NIT dated 25/05/2000 was not given wide publicity to avoid free and fair competition.

(vii) That the said Shri O.P. Gupta malafidely reduced requirement from 45,838 meters in NIT dated 25/05/2000 to 37,251 meters in NIT 1.8.2000. Further Shri O.P. Gupta on 08/09/2000 once again reiterated before Shri Arun Kumar, the then GMT(S), Udaipur the scope of requirement as 45,838 meters."

It may be pertinent to note that officer Arun Kumar was also charge-sheeted dated 13/9/2004 and after holding disciplinary enquiry he was punished vide order dated 29/10/2008.

It was not case of the petitioner before the Tribunal that the procedure, which has been prescribed under the scheme of the rules, has either been violated or fair opportunity of hearing, which is *sine-qua-non* to be afforded to the delinquent, has not been complied with/ afforded to him and his thrust always remained in respect for appreciation of the evidence which has been recorded by the enquiry officer and re-looked by the disciplinary authority after opportunity of hearing being afforded to the petitioner of submitting representation and after the due and effective consultation

with the CVC and UPSC, the disciplinary authority arrived to the conclusion that the charge No.1, 3 & 7 stood proved and the bone of contention of the petitioner was that the documentary evidence, which was on record before the enquiry officer, has not been looked into and not been properly appreciated and what is being contended and recorded by the enquiry officer and confirmed by the disciplinary authority is not supported by documentary evidence available on record and such finding on the face of it, being perverse, requires interference by the Tribunal.

Earlier when the matter was assailed by filing OA before Ahmedabad Bench of the Tribunal, the matter was considered as if the Tribunal is holding and exercising jurisdiction as an appellate authority and examined the report on consultation made with the UPSC and CVC while the penalty was inflicted upon the petitioner dt. 03/11/2008, be that as it may, after the matter was remitted back to the disciplinary authority, we find from the records that it was re-looked by the disciplinary authority afresh and effective consultation has been made with the UPSC and CVC, a reasoned order has been passed upholding the finding of charge No.1, 3 & 7 and taking note thereof and after holding opportunity of hearing to the delinquent, the disciplinary authority held him guilty and punished him vide order dt. 18/07/2011 with the penalty of "reduction of pay by two stages in the time scale of pay for a

period of three years with further direction that he will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay" and this was subject matter of challenging by filing OA before the Jaipur Bench of the Tribunal.

Counsel for the petitioner reiterates his submission and tried to persuade that the documentary evidence according to him has not been properly appreciated and looked into by the disciplinary authority and also by the Id.Tribunal but the record of enquiry reveals that the Tribunal arrived to the conclusion that a fair and reasonable opportunity of hearing was afforded and what is being contended in respect of perversity based on the documentary evidence adduced for consideration, it was expressed by the Tribunal that the record of enquiry, if examined in totality, what is being contended is wholly without substance and finding is duly supported with the material on record and what is being considered by the disciplinary authority, there appears no reason for interference and this Court is not acting as a Court of appeal u/Art. 227 of the Constitution of India to re-appreciate the proceedings of disciplinary enquiry and once the disciplinary authority has examined the record in totality and afforded fair and reasonable opportunity of hearing to the delinquent-petitioner, ordinarily it is not open to interfere and this what the Id.

Tribunal has considered and observed in its order impugned before us.

We have heard counsel for the petitioner at length but unable to support the view what is being expressed before us and in our considered view, the order of the Tribunal impugned does not call for interference of this Court u/Art. 227 of the Constitution.

Consequently, the writ petition being devoid of merit is hereby is accordingly dismissed.

[J.K. RANKA], J.

[AJAY RASTOGI], J.

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Certificate:All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed. /Raghu, PA.