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

Date of decision: 07.05.2024

+ W.P.(C) 6366/2019

SARPAL SINGH

..... Petitioner

Through: Ms. Jaswant Mann, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vijay Joshi, SPC with
Mr. Shubham Chaturvedi, Adv. for R-
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Mr. Ramesh Kumar, Mr. Ashutosh
Prakash and Mr. Ashish Jain, Adv.
for R-2 to R-4

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 15.11.2016 passed by the learned Central Administrative Tribunal (the Tribunal) in T.A. No. 37/2013. The petitioner also assails the order dated 13.08.2018 passed in the review petition being RA no. 74/2017 preferred by him.

2. Vide the impugned order, the learned Tribunal has rejected the



petitioner's prayer for quashing of, *inter alia*, orders dated 05.03.2008 and 30.04.2008, whereunder he was suspended and a charge memorandum was issued to him for holding a departmental inquiry against him.

3. It needs to be noted, at this stage itself, that being aggrieved by the aforesaid orders, the petitioner had initially moved the Punjab and Haryana High Court by way of a writ petition which was transferred to the Central Administrative Tribunal, Principal Bench, and consequently numbered as TA 37/2013, and has been dismissed by the learned Tribunal vide the impugned order. It needs to be noted that alongwith TA 37/2013, the petitioner had also moved TA 38/2013 assailing the appointment of respondent no.4 as Director General in the respondent no.2/National Council for Cement and Building Material, which TA was also dismissed vide the same order. Even though, the rejection of TA 38/2013 has also been assailed by way of W.P (C) no. 6360/2019, the petitioner is giving up his challenge thereto.

4. At the outset, the brief facts of this case as emerging from the record may be noted.

5. Having joined the services of respondent no. 2 in 1995, as a Group Manager, the petitioner was, vide order dated 31.03.2001, appointed as Joint Director (Group D-1) with retrospective effect from 1.12.2000. On 05.03.2008, the petitioner was placed under suspension and a charge memo dated 30.04.2008 was issued to him, leveling seven articles of charges against him, mainly pertaining to the validity of his PhD degree; none of these, however pertained to any financial irregularities. Upon receipt of the charge memo, the petitioner submitted a reply denying the charges and then



approached the Punjab and Haryana High Court with a prayer to quash the suspension order as also the charge memo alongwith the order appointing an inquiry officer.

6. It appears that the High Court, while issuing notice in the writ petition preferred by the petitioner, initially stayed the departmental proceedings but later, upon being informed that the appropriate remedy for the petitioner was to approach the Central Administrative Tribunal, Principal Bench, transferred the writ petition to the learned Tribunal wherein the same was registered as TA 37/2013. It may also be noted at this stage that while his writ petition was pending before the High Court, the petitioner reached the age of superannuation and consequently retired from service on 30.12.2010, without any departmental proceedings held against him.

7. The interim stay on departmental proceedings granted by the High Court continued before the learned Tribunal till 15.11.2016 when the TA itself came to be dismissed vide the impugned order. While dismissing the TA the learned Tribunal observed that since the charge sheet had been issued to the petitioner much before his superannuation, there was no reason as to why the departmental proceedings would not be continued even after his superannuation. Being aggrieved, the petitioner has approached this Court by way of the present petition. Even though notice in the petition was issued on 30.05.2019, no interim stay was granted and therefore, it was open for the respondents to initiate departmental enquiry in terms of charge memo dated 30.04.2008. However for reasons best known to the respondents, no enquiry was held and in the meanwhile the petitioner has now attained the age of 74 years and is stated to be suffering from 50% visual impairment.



8. In support of the petition, learned counsel for the petitioner submits even if this Court were to find that there was no infirmity in the impugned order dated 15.11.2016, and therefore held that an enquiry could be held at this belated stage, when the petitioner is already 74 years of age and is suffering from partial visual impairment, grave injustice would be caused to him as he would not be in a position to produce any defence witnesses. She submits that even though the learned Tribunal had dismissed the petitioner's claim way back in 2016 and despite there being no stay on the enquiry proceedings, the respondent no.2 has not even initiated the enquiry, which ought to have been completed within a reasonable time not exceeding one year. In support of his plea, that the enquiry was required to be completed within one year, she places reliance on the decision of the Apex Court in ***Prem Nath Bali vs. Registrar General of High Court of Delhi & Anr, (2015) 16 SCC 415***. She, therefore, prays that taking into account that the respondent no.2 itself has not taken any steps to even start the enquiry as also the fact that none of the charges levelled against the petitioner relate to any financial irregularity or serious misconduct, the respondent be restrained from taking any action at this belated stage.

9. On the other hand, Mr. Ramesh Kumar, learned counsel for the respondent no.2 supports the impugned order. While admitting that despite there being no stay, no enquiry has been initiated against the petitioner till date, he contends that the respondent no.2 acted in a bona fide manner in awaiting the decision of the present writ petition, and therefore, cannot be faulted for not initiating any enquiry against the petitioner. He is however not in a position to deny that none of the charges levelled against the



petitioner pertained to any financial irregularity or serious misconduct. He also does not deny that the petitioner stands superannuated almost fourteen years ago on 30.12.2010.

10. Having considered the submissions of the learned counsel for the parties, and perused the record, we find that both parties are ad idem that the petitioner is today aged almost 74 years and that the charges levelled against him do not pertain to any financial irregularity or serious misconduct. It is also an admitted position that despite there being no stay since 15.11.2016, the respondent has chosen not to proceed with the enquiry. Even if we were to accept the respondent's plea that they were under a bona fide impression that the enquiry should not be initiated till the present writ petition is disposed of, the undisputed fact remains that as on date more than 16 years have elapsed since the date of issuance of the charge sheet.

11. We have also considered the decision of the Apex Court in **Prem Nath Bali(supra)**, wherein it has been emphasised that it is the duty of the employer to ensure that a departmental enquiry initiated against the delinquent employee is concluded within the shortest possible time. It would, therefore, be apposite to note the relevant observations of the Apex Court as contained in para 28 of the said decision, the same reads as under:

28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending



upon the cause and the nature of inquiry but not more than a year.

12. In the light of the aforesaid, we are of the view that in the peculiar facts of the present case where despite there being no stay of disciplinary proceedings, the respondent no. 2, under a bona fide belief, chose to await the outcome of the present petition, it will not be appropriate to permit the respondent no. 2 to proceed with the enquiry at this belated stage. We are inclined to adopt this course of action as we are of the considered view that permitting the respondent no. 2 to hold an enquiry against the petitioner at this stage will not only cause grave hardship and prejudice to him but even the respondent no.2, who may not be able to produce any witnesses in support of the charges which pertain to the yesteryears 2007 and 2008.

13. Under the aforesaid circumstances and especially taking into account that the enquiry was initially kept in abeyance only on account of the petitioner approaching this Court, after he was suspended on 05.03.2008, we are of the view that even though the respondent no. 2 ought to be restrained from proceeding with the enquiry at this stage, the petitioner does not deserve to be granted any consequential benefits for the period between 05.03.2008 to the date of his superannuation, the said period will however be taken into account for computing all his terminal benefits.

14. We, therefore, allow the writ petition by setting aside the impugned order as also the charge memo dated 30.04.2008. This will, however, not have any effect on the suspension order dated 05.03.2008 and consequently the petitioner, who has already received subsistence allowance from the date of his suspension till the date of his superannuation, will not be entitled to



any further benefits for this period except for inclusion of this period towards his total service. The terminal dues of the petitioner be released within a period of six weeks from today.

15. The petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 7, 2024/rr