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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

13.

O.A. No.1133/91 ~~in~~ **TA 473/85**

New Delhi this the 8th Day of November, 1993.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Sh. O.P. Rajpal,
Son of late Sh. K.C. Rajpal,
R/o H-64, Kirti Nagar,
New Delhi-15.

Petitioner

(By advocate Sh. Shyam Babu)

versus

1. Lt. Governor of Delhi,
Raj Niwas, Delhi.
2. Delhi Administration,
through Chief Secretary,
5, Sham Nath Marg,
Delhi.

Respondents

(By advocate Ms. Geeta Luthra)

CCP 78/92 in
O.A.No.973/85

Sh. O.P. Rajpal,
son of late Sh. K.C. Rajpal,
R/o H-64, Kirti Nagar,
New Delhi-15.

Petitioner

(By advocate Sh. Sh. Shyam Babu)

versus

1. Sh. Markande Singh,
Lt. Governor, Delhi,
Raj Niwas, Delhi.
2. Sh. Nathu Ram,
Joint Secretary,
(Services), Delhi Administration,
5, Sham Nath Marg,
Delhi-54.
3. Sh. Godbole,
Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

Respondent.

(By advocate Ms. Geeta Luthra)

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order(oral)
(Delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

O.A.No.1133/91 and CCP 78/92 in TA-973/85 are inter related. They have been heard together. Therefore, they are being disposed of by a common judgement.

Disciplinary proceedings were initiated against the petitioner. In those proceedings, on 22.4.1991 the Lt. Governor, Delhi passed an order compulsorily retiring the petitioner from service. The order of Lt. Governor is being challenged.

The ground is that the Lt. Governor had no jurisdiction to pass the order as at no stage he was the disciplinary authority. The petitioner's case is that he was appointed as a Sales Tax Officer, an ex-cadre post in the Delhi Administration by the Chief Secretary, Delhi Administration. Later on, he was given an appointment in the Daman, Andaman & Nicobar Civil Service (DANICS). He went back to his parent department. Finally on 4.7.1983 an order transferring him from the ex-cadre post from Delhi Administration to DANICS was passed. He challenged that order by means of Writ Petition No.CW 174/84 in the High Court of Delhi wherein an interim order was passed restraining the respondents in the writ petition from transferring the petitioner to DANICS. That petition was transferred to this Tribunal and was registered as TA 973/85. On 6.4.1990 the said Transferred Application was disposed of finally. This Tribunal held that the petitioner was entitled to continue in the Sales Tax Department on an ex-cadre post and the respondents were estopped from treating him as a member of any other

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Service/Cadre. The Tribunal quashed the order of transfer dated 4.7.1983 and directed the respondents to continue the petitioner on an ex-cadre post in the Sales Tax Department. This Tribunal further directed that in case the respondents had not promoted the petitioner to the post of Sales Tax Officer on the due date they should convene a D.P.C. for considering the petitioner's case for promotion to the post of Sales Tax Officer from the due date within a period of three months from the date of receipt of a copy of the judgement. It is now relevant to extract the remaining portion of the order of the Tribunal:-

"It is scarcely necessary to add that if there is no available post of STO, the respondents may create a supernumerary post for complying with the directions given herein above....."

The stand taken by the petitioner is that in view of the aforesaid judgement of this Tribunal dated 6.4.1990, the respondents could not by any stretch of imagination, consider him to be transferred to DANICS. This contention has force. In the eye of law, he was on or before 22.4.1991 holding an ex-cadre post in the Sales Tax Department in the Delhi Administration.

In the counter-affidavit filed in this O.A. the stand taken by the respondents is that in spite of the judgement dated 6.4.1990 of this Tribunal the petitioner continued to be a member of DANICS as there was some practical difficulty in implementing the direction of the Tribunal. The averments made in the counter-affidavit

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have given rise to the contempt petition. In fact, the contempt petition was filed immediately after the receipt of the counter-affidavit of the respondents.

On 28.3.1988 a charge memo was issued by the Chief Secretary of Delhi to the petitioner. On 22.7.1988 an Enquiry Officer (Sh. R.S. Goel) was appointed by the Chief Secretary. On the same date the Chief Secretary appointed a Presenting Officer.

On 30.7.1990 the enquiry officer submitted his report to the Chief Secretary. On 22.1.1991 the Chief Secretary called for an explanation from the petitioner on the enquiry officer's report. On 22.4.1991 the impugned order was passed by the Lt. Governor. It will be immediately seen that the crucial question to decide is whether the petitioner, inspite of the judgement of this Tribunal dated 6.4.1990, continued to be a member of D.A. CC so as to entitle the Lt. Governor to act as the disciplinary authority in the case of the petitioner. The judgement of this Tribunal is clear and categorical. As already indicated, the Tribunal clearly held that the petitioner was entitled to continue in the Sales Tax Department on ex cadre post and the respondents were estopped from treating him as a member of any Service/Cadre. The conclusion is that the disciplinary proceedings, were rightly initiated by the Chief Secretary of the Delhi Administration and he alone had the jurisdiction to pass the final order in these proceedings. We, therefore, come to the conclusion that the impugned order was passed completely without jurisdiction.

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The learned counsel for the respondents, apart from contending that since the judgement dated 6.4.1990 has not been implemented, could not advance any argument to sustain the impugned order and demonstrate that the Lt. Governor, in fact, had the jurisdiction to pass the same.

My We now come to the question ^{as to} what is the proper order to be passed in this case? Should the competent authority be given a chance to apply its mind on the existing material? The learned counsel for the petitioner has strenuously urged that the petitioner has already suffered enough since proceedings are going on since 1980. After giving due consideration to the matter, we feel that this is a fit case where such an opportunity should be given to the disciplinary authority. We are quashing the impugned order purely on technical ground.

Smt. Geeta Luthra has placed before us an order dated 6.12.93 passed by the Joint Secretary (Services), Govt. of National Capital Territory of Delhi addressed to the Commissioner, Sales Tax, Govt. of NCT of Delhi. A perusal of this communication indicates that a direction has been given to implement the directions given in the judgement dated 6.4.90 of this Tribunal. In the counter-affidavit the plea raised is that the extra-duties post of Sales Tax Officer has been abolished. This averment has not been controverted by the petitioner. Naturally, some time is to be consumed for creating a supernumerary post. Having considered the question from the angle as to whether the respondents have willfully disobeyed the directions of the Tribunal, we are of the opinion that this is a case where benefit of doubt may be given to the respondents. Thus, this is a case where no

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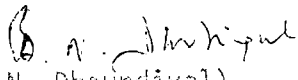
action should be taken against the respondents in the contempt proceedings. Therefore, the said proceedings are dropped.

We have no doubt that the respondents shall fully comply with the directions as contained in para-8 of the judgement of this Tribunal dated 6.4.1990 in TA No.973/85. In particular, the respondents shall hold a D.P.C. and consider the case of the petitioner for promotion. If the petitioner is found suitable for promotion, he shall be promoted from the due date and be given consequential benefits. The respondents shall carry out the afore-mentioned exercise within a period of 3 months from today.


O.A.No.1133/92 is allowed. The order dated 22.4.90 passed by the Lt. Governor is quashed. However we make it clear that it will be open to the competent authority to pass a fresh order, if he so advised, on merits and in accordance with law, on the basis of the existing material. It goes without saying that if the petitioner is aggrieved by the decision of the competent authority he will be at liberty to challenge the same before the appropriate forum and raise all other pleas which have been raised in this petition.

Contempt Petition No.78/92 is dismissed.
Notice issued to the respondents is discharged.

There shall be no orders as to costs.


(B.N. Dhoundiyal)

Member(A)


(S.K. Dhaon)

Vice-Chairman

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