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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1449 OF 2004

New Delhi, this the 4th day of June, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

J.K. Bagri
S/o Late Shri Dharam Singh
R/o-A/121, Vijay Park, Naya Bazar,
Najafgarh, New Delhi-110043.

....Applicant

(By Advocate : Shri A.K. Trivedi)

Versus

1. Union of India,
Through It's Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Director General
Central Industrial Security Force,
Block No.13, CGO Complex,
Lodhi Road, New Delhi-110003.

.....Respondents

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL:-

The applicant had earlier filed OA No.3384/2001, which was disposed of by this Tribunal on 4.2.2003. At that time, learned counsel had only pressed for the facts that the penalty awarded is disproportionate to the alleged dereliction of duty. Keeping in view the same, this Tribunal had considered the same and allowed the said Original Application with the following observations:-

"8. Resultantly, we allow the present application and quash the impugned order. It is directed that the disciplinary authority may, at his discretion, impose any other punishment in the facts and circumstances of the case. However, the applicant will not be entitled to any arrears for the intervening period from the date the impugned order had been passed uptill the date of this order. O.A. is disposed of."



(2)

2. Aggrieved by the same, the Union of India had filed Civil Writ Petition No.4332/2003 before the Delhi High Court. The Writ Petition was dismissed on 23.9.2003.

3. Thereafter the disciplinary authority had passed a fresh order reinstating the applicant and penalty was imposed. The operative part of the order reads:-

"05 In pursuance to the order dated 04.2.2003, passed by CAT, Principal Bench, New Delhi, I have considered the matter afresh. On re-consideration I found that Charge-I was proved and charge-II was partially proved. Having regard to the facts and circumstance of the case in totality, the gravity of the misconduct Shri Bagri has been found guilty of and the direction issued by CAT, New Delhi, I am inclined to take a lenient view. I therefore, in exercise of the powers vested in me vide Rule 29 of the CCS (CCA) Rules, 1965, hereby educe the penalty of 'Compulsory Retirement from service' to that of Reduction to the lower post of Assistant until he is found fit, after a period of three years from the date of this order, to be restored to the higher post of Section Officer."

6 With the above modification in the punishment order, I hereby reinstate Shri J K Bagri in service and direct him to report for duty at CISF HQrs., 13 CGO Complex, Lodhi Road, New Delhi-03 within 15 days of receipt of this order.

7. The intervening period from the date of his Compulsory retirement from service to the date of CAT's judgment in OA No.384/2001 i.e. from 22.5.2000 to 04.2.2003 is proposed to be regularized by treating the entire period as "Dies-non". He will, however, be entitled for full salary of Section Officer minus the pension already drawn, from the order of CAT Delhi i.e. 04.2.2003 till the date of this order, subject to fulfilment of conditions prescribed under FR 53."

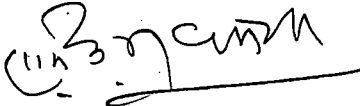
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4. By virtue of the present Original Application, the applicant again assails the aforesaid order.

5. Learned counsel contended that the co-delinquent has been exonerated while penalty has been imposed on the applicant. We have no hesitation in rejecting the said contention for the simple reason that the merit of the matter has not been pressed in the earlier Original Application. It is too late in the day to rake up such a plea.

6. As is evident from the sequence of events that it is in pursuance of the direction of this Tribunal that lower penalty has now been imposed, keeping in view the alleged dereliction of duty and the facts, as considered desirable by the disciplinary authority. Therefore, we find little ground to interfere in this matter. This Tribunal ^{could} interfere only when it shocks the conscience. ^{Presently} it does not.

7. Resultantly, the present Original Application must fail and is accordingly dismissed in limine.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(V.S. AGGARWAL)
CHAIRMAN

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