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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (T.A.) No. 97 of 1987

Prem Sagar Malhotra	....	Petitioner
Versus		
Union of India & another	....	Respondents.

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Hon'ble S. Zaheer Hasan, V.C.  
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is a writ petition received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985. The petitioner, Prem Sagar Malhotra, has challenged the order of punishment imposing upon him the penalty of reduction of his pay to a lower stage in the scale of pay passed by the Chief Commissioner (Admn.)/Commissioner of Income Tax, Lucknow. On 16.7.1985 under Rule 11(5) of the C.C.S. (C.C.&A) Rules, 1965 reducing his pay by 6 stages from Rs.660/- per month to Rs.540/- per month for a period of three years from the date of the order with further direction that he will not be earning any increment during the above period of three years and that on the expiry of this period his future increments will not be postponed. The challenge has been made by the petitioner on the grounds that the alleged misconduct ~~which~~ <sup>or</sup> was committed in a department from which he became surplus and from where he got appointed afresh in the Income Tax Department, <sup>or so</sup> the new employer was not competent to hold enquiry for the alleged misconduct in his earlier employment. He has relied on Writ Petitions No.1352 of

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1969, Ram Gopal Nigam v. The State of U.P., decided on 28.8.1972 and No. 828 of 1967, Mahabir Prasad Jain v. Nagar Mahapalika of City of Lucknow, decided on 6.2.1969, where a person who was absorbed in the Mahapalika Centralised service and was being proceeded against for some omission relating to a period prior to his absorption in the Mahapalika service in a disciplinary proceedings initiated after his absorption, a Division Bench answered the question in favour of the petitioner. He has further relied on Writ Petition No.2316 of 1975, Dr. Jagdish Prasad Sharma v. The State of U.P., where the charges related to a period when the petitioner was the Principal of a private institution and was not a Government servant. The High Court had held that the proceedings against the petitioner were without jurisdiction. He has also referred to another Writ Petition No.15932 of 1983 where a view was taken by the Allahabad High Court that the charge which related to misconduct committed by the petitioner while in employment in the Ministry of Health and Management could not be the basis of a trial again after he has left service and he has been appointed in the Income Tax Department. Thus according to the petitioner disciplinary proceedings could not be taken against him for certain charges which are not subject matter of any conduct or misconduct on his part during the course of employment of the present employer.

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2. According to the petitioner he was initially appointed as a Section Officer (Civil) in the Ministry of Labour, Employment and Rehabilitation on 21.5.1969 and was posted at the Mana Camp. On 21.5.1972 he was made quasi permanent and was later substantively appointed on the

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same post on 15.2.1973. On 1.3.1976 he was declared surplus and was placed at the disposal of the Central (Surplus Staff) Cell under the department of Personnel, Government of India. Thereafter he was appointed as an Income Tax Inspector on 17.6.1976. He was issued a charge-sheet on 4.12.1979 stating that while he was functioning as Section Officer at Mana Camp he committed gross misconduct in the matter of a contract awarded to M/s. S.C. & Co. for construction of shops-cum-residences at the Camp. The petitioner submitted to the enquiry which was ordered to be held on the charge by the Commissioner of Income Tax. The enquiry was done by the Commissioner for Departmental Enquiries, Central Vigilance Commission. The hearings of the case were held during 1981 and 1982. On 30.6.1983 the petitioner requested the Commissioner of Income Tax, Lucknow to intimate to him the result of the enquiry, but he received no reply. On 4.4.1984 a fresh Enquiry Officer was appointed. This enquiry continued during 1984 and 1985. It was on 7.6.1985 that the petitioner made a representation to the Commissioner of Income Tax, Lucknow drawing his attention that he had no jurisdiction to punish the petitioner in respect of a misconduct alleged to have been committed in the earlier employment. Then the petitioner filed a writ petition which was dismissed on account of its being premature. The same day the impugned order of punishment was served on the petitioner which he received on 25.7.1985. The petitioner has alleged that during the period of enquiry, i.e. since July, 1979 he was not allowed to cross the Efficiency Bar and thus his increment had been withheld

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though nothing adverse was ever found or communicated to him. He had also passed departmental examination for Income Tax Officer Grade II in the year 1981 and qualified for promotion to the Grade of ITO Gr.II, but he has not been promoted, though persons junior to him have been since promoted. His promotion and increments could not be withheld on the ground that enquiry was pending against him, so as a matter of fact he was punished over and over again, firstly because he was not allowed to cross E.B., secondly his two increments, <sup>which</sup> ~~one~~ fell due thereafter were not given, and thirdly he was given the major penalty of reduction by 6 stages. He has alleged in his petition that he was not afforded reasonable and adequate opportunity to defend himself. He has, therefore, prayed for the issue of a writ, order or direction in the nature of certiorari to call for the record of the case and to quash the impugned order of punishment and the enquiry report dated 19.3.1985, as also a direction commanding the respondents to permit the petitioner to cross E.B. due in July, 1979 and provide him all service emoluments including pay, promotion, etc.

3. In the reply to the petition the respondents have taken preliminary objection that the petitioner had an alternative remedy available to him under the C.C.S. (C.C.3A) Rules by way of appeal, review etc. which he has not exhausted. According to the respondents the employer being the same, i.e. the Central Government, the cases on which the petitioner has relied upon can be easily distinguished because they were under different employers. In the case of the petitioner he was given all the benefits of his previous service except for promotion purposes. His basic pay was not reduced to

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the minimum of the Inspector's grade and he was not appointed afresh in the department but was redeployed in pursuance to a letter issued by the Under Secretary to the Government of India, Department of Personnel dated 4.6.1976. He was also allowed travelling allowance and joining time which are admissible on transfer from one post into another. It was thus a change in the Ministry under the Central Government and not the change of the employer. The enquiry proceedings took time because the Enquiry Officer, who was appointed first, had held that the charge against the petitioner was not proved and the disciplinary authority did not agree with the findings because he felt that the Enquiry Officer had not correctly appreciated the evidence brought on record. It was, therefore, remitted back to the Enquiry Officer and in place of the earlier Enquiry Officer another Enquiry Officer from <sup>at the</sup> the Vigilance Commission was appointed to conduct and finalise the enquiry. The petitioner was not allowed to cross E.B. as a departmental proceeding was pending against him, and ultimately this resulted in the imposition of the impugned punishment.

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4. In his rejoinder affidavit the petitioner has opposed the various contentions raised by the respondents. He has said that the 'employer' does not mean Central Government or State Government. It is a particular department and it is <sup>its</sup> Head. He has reasserted the other averments made by him in his application.

5. Sri Chandra prakash, learned counsel for the petitioner had <sup>submitted</sup> ~~submitted~~ at the Bar ~~about his contentions~~ <sup>on which he has relied</sup> the various High Court judgments <sup>and had</sup> emphasised the fact that an offence committed in his

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earlier employment could not be questioned <sup>or in</sup> of a disciplinary case against the petitioner in his new employment, while Sri K.C. Sinha, learned counsel for the respondents, repelled his contentions on the ground that what was material was that the authority in the new department who is taking disciplinary action against the petitioner should not be lower in rank to the earlier appointing authority and that a person can be taken up for the acts of misdeeds done by him in his earlier employment under the Central Government.

6. The main question before us is whether a person could be taken up in his new employment for any offence committed by him in his earlier employment. There is no doubt that the petitioner was earlier working in <sup>the</sup> department <sup>of</sup> the Ministry of Labour Employment and Rehabilitation. He was also a confirmed employee of this Ministry as he has averred in para 10 of his petition, In respect of his substantive appointment to that post with effect from 15.2.1973. Thus he was a permanent confirmed employee of the Central Government having been appointed in the Ministry of Supply and Rehabilitation, Department of Rehabilitation under the Chief Commandant at Mana Camp. The order placed at Annexure '8' to the petition shows that owing to the reduction in the strength of Engineering wing of Mana Camp the employees who had completed 5 years of continuous service <sup>or</sup> were declared surplus with effect from 1.3.1976 and they were placed at the disposal of the Surplus Staff Cell under the department of Personnel and Administrative Reforms along with their posts from the same date. This letter also states that the persons will draw their pay and

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allowances from the Ministry of Home Affairs as admissible under the rules. At Annexure '9' is the letter by which <sup>the petitioner</sup> he was redeployed by the Commissioner of Income Tax, Lucknow. This letter says that the petitioner is redeployed as Inspector against a temporary vacancy and if the petitioner was agreeable to the conditions laid down in that letter he was to be relieved immediately and <sup>asked</sup> to report to the Tax Recovery Officer at Bareilly. This letter also says that the services rendered by the persons in another department will count for the purposes of pension, leave, etc. Thus the petitioner who was originally a confirmed employee of the Ministry of Labour, Employment and Rehabilitation was redeployed as an Income Tax Inspector under the Commissioner of Income Tax, Lucknow in reference to a letter issued by the Cabinet Secretariat on 4.6.1976. The <sup>services</sup> of the petitioner was continuous and he was given the benefit of his earlier service for certain purposes. He, therefore, remained an employee of the Central Government right from the date of his joining the Rehabilitation Department. He was a holder of a Civil Post and continued to be so even after he was declared surplus by the Rehabilitation Department on account of the reduction in the strength of the Mana Camp to which he was earlier allotted. His services remained continuous because when he reported to the Surplus Staff Cell he came on the <sup>strength</sup> ~~vacancy~~ of the Department of Personnel and Administrative Reforms and thereafter the Surplus Staff Cell posted him under the Commissioner of Income Tax at Lucknow. There was thus continuity of his service and continuity of his employer inasmuch as he

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continued to be a holder of a civil post under the Central Government.

7. The petitioner has relied on a number of <sup>21</sup> cases which can be easily distinguished because the <sup>previous</sup> employers in those cases were not under the Central Government and the ratio applied by the <sup>Howrah</sup> Allahabad High Court in the relied on case in Writ Petition No.15932 of 1983 cannot be extended to the case of the petitioner because in this writ petition the petitioner while in the employment of Ministry of Health and Management had left service and then he was appointed in the Income Tax Department. This case, therefore, is not parallel to the case of the petitioner. The petitioner had been in continuous employment of the Central Government, firstly with the Department of Rehabilitation then in the Surplus Staff Cell and ultimately in the Income Tax Department.

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8. In the case of the petitioner he had been in continuous employment of the Central Government. In the case of T.S. Kannan v. High Court of Judicature of T.N. (1982 Lab.I.C. 1822) on the subject of jurisdiction of borrowing authority to institute disciplinary proceedings after reversion of person to parent department it was held that the High Court had the jurisdiction to disciplinary proceedings, hold enquiry and give a finding even in respect of a person who has already been reverted provided the allegations were in respect of his work and conduct before such reversion. In this case the petitioner was an Assistant Public Prosecutor and was appointed as a temporary Judicial Second Class Magistrate by transfer. On receipt of certain complaints against him when he was serving as Judicial Second Class Magistrate,

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High Court directed his reversion to his parent department and a departmental enquiry to be conducted against him.. The petitioner had objected to the enquiry on the ground that he has already been reverted to his parent department. In the present case of the petitioner he had had been held responsible for certain acts while he was in his previous employment and the Ministry of Rehabilitation decided that action should be taken against him which was processed by the Income Tax Department where he had been redeployed after being declared surplus from the Ministry of Rehabilitation.

9. In the case of Khemi Ram v. The State of Punjab (S.L.R. 1976 S.C. 414) the Hon'ble Supreme Court had held that in case of a Government servant on deputation the lending authority can place a Government servant under suspension. It had further held that the appellant's service was placed at the disposal of the Punjab Government. His pay was debitable to the consolidated fund of Punjab State. It is, therefore, futile to contend that Punjab Civil Services Rule 1.2 could be so interpreted as to exclude the application of the Punjab Rules to the appellant merely because his services were lent over to the Himachal Pradesh Administration by way of deputation for sometime. In this case the appellant Khemi Ram was employed as an officiating Assistant Registrar in the Cooperative Department of the Punjab State. His services were placed at the disposal of the Himachal Pradesh Administration on deputation. His deputation was also extended. It was during the period of deputation that he proceeded on leave preparatory to retirement. In the meantime some matters came to the notice of the Punjab

Government which involved the appellant in embazzlement of funds, and the Punjab Government asked the Himachal Pradesh Administration to direct the appellant to report for duty to the Registrar, Cooperative Societies. The ~~same~~ questions which were the subject matter of the appeal were whether the respondent was no longer governed by the Punjab Civil Service Rules as his services had been borrowed by the Himachal Pradesh Administration and whether he ceased to be under the administrative control of the Punjab Government? Whether the Himachal Pradesh Administration could place him under suspension? The High Court had decided these questions against the appellant.

10. In view of the ratio of the judgments in the cases cited above it would be clear that the Commissioner of Income Tax could take up the petitioner for any offence committed by him during his service in the Rehabilitation Department, both the departments belonging to the Central Government, and the reliance placed by the petitioner on the cases cited by him does not come to his assistance at all. We, therefore, do not find anything wrong in the Income Tax Department processing the case and finally imposing a punishment on the petitioner for certain actions for which the Department of Rehabilitation had initiated the case against him and action was finally taken by the Commissioner of Income-Tax.

11. One of the grievances of the petitioner is that during the period of the enquiry, i.e. since July, 1979 he has not been allowed to cross E.B. and thus his increments had been withheld though nothing adverse was ever found or communicated to him. The petitioner

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was issued a charge-sheet on 4.12.1979 and an enquiry was held. The enquiry was also completed but a fresh enquiry was ordered on 4.4.1984. The reasons for ordering the fresh enquiry were that the Enquiry Officer who was earlier appointed had not correctly appreciated the evidence brought on record. It was, therefore, remitted back to the Enquiry Officer. An enquiry proceeding is not concluded until the disciplinary authority has imposed the punishment. The disciplinary proceedings was started in December, 1979 and once a decision has been taken to start the same, the petitioner was not allowed to cross E.B. The question of eligibility of crossing E.B. has to be considered on the basis of the record existing at that time, i.e. when the occasion arose. Any adverse entry made during a period subsequent to it cannot be taken into account for considering the suitability for crossing E.B. Though crossing of E.B. is not a matter of right and it is a discretion of the authority concerned to allow a Government servant to cross the bar or not, the decision has to be exercised on the subjective satisfaction regarding the assessment of the ~~over~~ all service record of the officer in regard to his efficiency, integrity, intelligence etc. We are not sure of the exact date when the petitioner was due to cross E.B. If by July, 1979 a chargesheet had not been issued to him, his case should have been considered for crossing of E.B. on the due ~~time~~ <sup>date</sup> because he has been given a punishment ultimately in 1985. It cannot be said that since a departmental proceeding was pending against him which ultimately resulted in imposition of the impugned punishment, he cannot be allowed to cross E.B.

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The position which has to be examined is on the day the petitioner was due to cross E.B. As far as the request of the petitioner for his promotion to Income Tax Officer Gr.II in which examination he had qualified in the year 1981 is concerned, he cannot demand a promotion on the plea that persons junior to him have been since promoted because a disciplinary case was already instituted against him <sup>at when</sup> ~~at~~ the relevant time <sup>& came</sup> ~~at~~ and it had ultimately resulted in the imposition of the punishment. There can be no promotion plus punishment. If that had to happen those who have no punishment and are not promoted because some one who has been given punishment has taken that place will have a cause for grievance. We, therefore, do not agree to the contention of the petitioner that his promotion could not be withheld on the ground that an enquiry was proceeding against him.

12. As far as his two increments are concerned, which he alleges, he has not been given because he was stopped at E.B. if at the relevant time he could be considered fit to cross E.B. he would also be <sup>& entitled</sup> ~~able~~ to earn the increments, but if he was not fit he naturally cannot claim the subsequent increments too.

13. We, therefore, do not find any force in the submissions made by the petitioner that he could not be taken up for some misconducts committed by him in his previous employment under the same employer, i.e. Central Government. <sup>& but in a different department.</sup> As far as his E.B. is concerned, we direct the respondents to examine the position as it existed on the date the petitioner was due to cross E.B. and if no disciplinary proceedings were pending against him on the particular date and his record was otherwise

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satisfactory his case, be considered in accordance with rules.

14. In regard to the relief prayed by the petitioner that he was not given adequate and suitable opportunity to defend himself, we find that the petitioner had not availed of the departmental remedies available to him in the manner of making an appeal or seeking a review of the punishment. Since he has not exhausted them, if he wishes to put in an appeal we direct that the respondents will consider the same according to rules by condoning the delay. *31 & pass appropriate orders. 31* This appeal, if the petitioner wants to prefer, should be submitted to the appellate authority within two months from the date of issue of these orders.

15. The petition is disposed of accordingly. Parties will bear their own costs.

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*अजय जैसवाल*

MEMBER (A).

*[Signature]*

VICE-CHAIRMAN.

Dated: March 11<sup>th</sup>, 1988.

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