

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 852/2017

This the 17th day of September, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

S. K. Jasra
Aged 63 years, Group 'C',
S/o. Shri C. L. Jasra,
Joint Director (Retd.)
1568, Housing Board Colony,
Sector-31, Gurgaon.

....Applicant

(By Advocate : Mr. Padma Kumar S. with Ms. Uma Prasuna Bachu)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block, New Delhi – 110 011.

2. Joint Secretary (Training) & CAO,
Ministry of Defence,
E-Block, Dalhousie Road,
New Delhi – 110 011.

3. Deputy Chief Administrative Officer (DCW)
Ministry of Defence
Office of the JS (E & CAO)
E- Block, Dalhousie Road,
New Delhi – 110 011.

...Respondents

(By Advocate : Mr. Manjeet Singh Reen)

O R D E R (O R A L)

Justice L. Narasimha Reddy, Chairman :

The applicant joined the Headquarter of Ministry of Defence as Deputy Director. He was granted in-situ

promotion as Joint Director. Disciplinary proceedings were initiated against him by issuing charge memo dated 24.03.2009, which mostly contained the allegation of sexual harassment. On receiving the explanation of the applicant, disciplinary authority appointed the inquiry officer. A detailed inquiry was conducted and quite good number of witnesses were examined. The inquiry officer submitted his report on 18.12.2009. The applicant was given an opportunity to put forward his defence in the light of the report, on the findings of the inquiry officer dated 18.12.2009, holding the charges as proved. On consideration of the reply submitted by the applicant, disciplinary authority passed an order dated 21.09.2010 imposing the punishment of reduction of pay by three stages for a period of two years with further direction that he will not earn increments during the period of two years and his future increments will remain postponed.

2. Feeling aggrieved by the order of punishment dated 21.09.2010, the applicant filed O.A No.654/2011 before this Tribunal. After dealing with various contentions advanced before it by the applicant as well as the respondents, the Tribunal passed a detailed order dated 28.02.2012, setting aside the order of punishment and

directing the respondents to pass a fresh order in the light of the discussion undertaken in the order. The department filed a Writ Petition No. 3820/2012 before the Delhi High Court. The same was disposed of on 25.07.2012. It was directed that the disciplinary authority shall take into account, all the material available on record and pass an appropriate order.

3. On such remand, the disciplinary authority passed order dated 28.09.2012 imposing the punishment of reduction in rank from the post of Joint Director (in-situ) to that of Deputy Director. In other words, it was a kind of reversion of the applicant. The applicant filed O.A No. 3577/2012 before this Tribunal challenging the order of punishment dated 28.09.2012. The O.A was disposed of on 10.09.2013, once again remanding the matter for a fresh consideration, taking exception to the enhancement of the penalty.

4. The applicant filed W.P. (C) No. 7699/2013 before the Delhi High Court. That was dismissed on 28.05.2015 by imposing cost of Rs.50000/-. Though the applicant filed SLP against it, it is stated to have been withdrawn. On consideration of the matter after 2nd remand, the

disciplinary authority passed an order dated 27.08.2015 reiterating the punishment of reduction in the rank, which is the punishment imposed after the 1st remand. The same is challenged in this O.A.

5. The applicant contends that if it is to be assumed that there was no basis for him to challenge the order of punishment, which was passed at first instance, he could not have been relegated to a worse position, just because he approached the Tribunal, for pursuing the remedies.

6. The respondents filed a detailed counter affidavit. It is stated that while remanding the matter on an earlier occasion, direction was given to the competent authority to take all aspects into account, before passing the fresh speaking and reasoned order and accordingly it was passed. It is also stated that the evidence on record warranted the punishment of reversion, and was imposed.

7. We heard Mr. Padma Kumar S., learned counsel for applicant and Mr. Manjeet Singh Reen, learned counsel for respondents.

8. The charges against the applicant were certainly grave in nature and the evidence on record was beyond any

pale of doubt. The punishment of reduction of pay by three stages for a period of two years was imposed. It is lowest of the major punishments. The applicant ought to have realised the gravity of the matter and introspected about the misconduct on his part. Instead, he approached this Tribunal and pleaded so many facts.

9. Obviously, at his instance, the entire inquiry proceedings were analysed as if the Tribunal is his appellate authority. By pointing out the so called lapses, the punishment was set aside and the matter was remanded. It appears that the competent authority took the matter seriously and has availed the occasion to enhance the punishment. In the 2nd round of litigation, the Tribunal expressed the view that the enhancement of the punishment was not warranted and remanded the matter once again. At this stage also, the applicant, exhibited his over enthusiasm and approached the High Court. The Writ Petition invited the displeasure of the Hon'ble Judges. The approach and conduct of the applicant was commented upon. Ultimately, the order of remand was retained.

10. It needs to be noted that the order of punishment dated 21.09.2010, and the one dated

28.09.2012, passed after remand run into more than 30 closely typed pages. However, the one which is passed after the 2nd remand is in four pages and it reiterated the punishment of the reduction in rank. It is not about the length of the order, but the legality of the whole exercise.

11. The disciplinary authority was of the view that the punishment that is warranted on the proven charges against the applicant is the one of reduction in pay scale by three stages for a period of two years. There are instances where the service rules provide for enhancement of punishment by the reviewing authority, even suo moto, if the circumstances warrant. However, there is no such provision in the instant case, much less, such a power was exercised by any superior authority.

12. An order of remand was passed by this Tribunal, after setting aside the order of punishment of reduction in pay. However, that circumstance did not warrant the imposition of the higher penalty. At the most, same punishment, as imposed originally, could have been retained. Such an approach is prone to be treated as one of punishing the applicant for approaching the Tribunal

seeking remedies. In a system governed by rules of law such course of action cannot be permitted.

13. We are of the view that even if the O.A No. 654 of 2011 filed by the applicant challenging the order of punishment dated 21.09.2010, were to have been treated as the one without any merits, that order of punishment would have held the field. An enhanced punishment cannot ensue when the matter is remanded after setting aside the original order of punishment.

14. We, therefore, partly allow the O.A, set aside the impugned order dated 27.08.2015 and direct that the punishment as imposed in the order dated 21.09.2010 i.e. the reduction of pay by three stages for a period of two years with further orders that he will not earn increments during these two years and his future increments will remain postponed, shall become operative.

15. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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