#S-J1 & J2

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On : 03.06.2022
Judgment Pronounced On : 05.07.2022

J-1
W.P. (C) 2267/2022, CM APPL. 6521/2022 (for Ad-Interim Relief), CM APPL. 10543/2022 (for additional documents) & CM APPL. 10544/2022 (Exemption)

ANISH GUPTA ..... Petitioner

versus

UNION OF INDIA .....Respondents

Advocates who appeared in this case:
For the Petitioner : Mr. Karan Bharihoke and Mr. Sarthak Sachdev, Advocates.
For the Respondent : Ms. Manisha Agrawal Narain, CGSC along with Mr. Aditya Singh Deshwal and Ms. Rakshita Goyal, Advocates.

J-2
W.P. (C) 2590/2022, CM APPL. 7398/2022 (Stay), CM APPL. 7399/2022 (Exemption) & CM APPL. 7400/2022 (Exemption)

UNION OF INDIA & ANR. ..... Petitioners

versus

ANISH GUPTA .....Respondents

Advocates who appeared in this case:
For the Petitioners : Mr. Ravi Prakash, CGSC along with Mr. Farman Ali, Ms. Shruti Shiv Kumar and Mr. Taha Yasin, Advocates.
For the Respondent : Mr. Karan Bharihoke and Mr. Sarthak Sachdev, Advocates.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present Writ Petitions are in the nature of cross-petitions against the common order dated 29.07.2021, passed by the Central Administrative Tribunal (hereinafter referred to as "CAT"). Writ Petition No. 2267/2022 has been preferred by one Shri Anish Gupta against the Union of India and Ors. (hereinafter referred to as the "Petitioner"). Writ Petition No. 2590/2022 has been preferred by Union of India against the Petitioner herein. Since the facts and issues are common, both these petitions were heard together and are being disposed off by way of this common order.

BRIEF FACTS:-

(i) The Petitioner was serving as Officer on Special Duty (Legal at the Central Board of Indirect Taxes and Customs), when he was suspended on 21.08.2013.

(ii) He was served with a Departmental Charge Sheet/ Memorandum of Charge dated 16.07.2015, pursuant to an incident of July, 2013.

(iii) Admittedly no criminal investigation or prosecution was ever initiated or contemplated against the Petitioner.

(iv) Since the Departmental Inquiry, as contemplated under the extant rules did not commence within the stipulated time, the Petitioner filed OA 1396/2016 before the CAT praying for quashing the aforesaid Charge Sheet.

(v) Vide Order dated 13.05.2016, CAT granted the Respondent-Union of India, 04 (four) months time to complete the Disciplinary Proceedings arising from the subject Charge Sheet.

(vi) Since, the Union of India did not comply with the aforesaid directions; the Petitioner was constrained to file OA 3426/2016 before the CAT, seeking a declaration of closure of the said Charge Sheet. The Union of India admittedly did not file any application for extension of time.

(vii) The aforesaid OA 3426/2016 remained pending for a period of about 04 (four) years before the CAT and the Petitioner herein simultaneously was subjected to Disciplinary Proceedings. Despite this, vide an order

dated 22.12.2020, CAT granted further extension of 06 (six) months to the Union of India to complete the proceedings, while granting liberty to the Petitioner to approach the Tribunal if the same was not competed.

(viii) Despite the efflux of almost 05 (five) years from the issuance of the Charge Sheet and the aforesaid grant of two extensions by the CAT, the Departmental Inquiry was still not completed.

(ix) Hence, in terms of the liberty granted by the CAT, the Petitioner filed MA No. 1880/2021 before the CAT for closure of Disciplinary Proceedings.

(x) The Union of India also caused to be filed MA No. 1879/2021 for further extension of time, but admittedly after the expiry of time granted to it by the Tribunal, vide the said Order dated 22.12.2020.

(xi) Vide the impugned Order dated 29.07.2021, the CAT has allowed the Petitioner's MA No. 1880/2021 (for closure of the Charge Sheet) and rejected the Union's MA No. 1879/2021 (for extension of time). The CAT further directed that the sealed cover qua the Petitioner be

opened forthwith, and he be granted promotions at par with his juniors.

(xii) Subsequently, MA No. 3647/2021 was filed by the Petitioner seeking clarification/ modification of certain inadvertent errors that had crept in the order dated 29.07.2021.

(xiii) During the pendency of MA No. 3647/2021 before CAT, the Union of India filed W.P.(C) No. 2590/2022 before this Court and also opposed the said MA No. 3647/2021 pending before the Tribunal inter alia on the ground of challenge pending before this Court. Given the pendency of the Writ before this Court, the Petitioner withdrew his MA No. 3647/2021 pending before Ld. Tribunal to approach this Court, and accordingly filed W.P.(C) No. 2267/2022 before this Court.

2. We have heard Mr. Karan Bharihoke, learned counsel appearing on behalf of the Petitioner and Ms. Manisha Agrawal Nain, learned CGSC for the Union of India.

SUBMISSIONS OF THE PETITONER:-

3. Mr. Karan Bharihoke, learned counsel appearing on behalf of the Petitioner contends that the present case is covered on all fours by the binding precedents of the Hon'ble Supreme Court and this Court in :-

(i) ***Prem Nath Bali v. Registrar, High Court of Delhi & Ors.*** reported as **(2015) 16 SCC 415,** and

(ii) ***Union of India v. Dr M.R. Diwan & Anr.*** in **W.P.(C) 5653/2018,** dated 12.03.2019, which was followed in ***Prem Nath Bali*** *(supra)*.

4. Mr. Karan Bharihoke, learned counsel for the petitioner contends that in view of the ratio in ***Prem Nath Bali*** *(supra)* and ***M.R. Diwan*** *(supra)*, the Charge Sheet must be considered lapsed/closed. Further, the Petitioner also prays for modification of the Tribunal Order dated 21.07.2021 praying for deletion of certain unwarranted words in the said order.

SUBMISSIONS OF THE RESPONDENT-UNION OF INDIA :-

5. Ms. Manisha Agrawal Narain, learned CGSC appearing on behalf of the Union of India, contends that the CAT in directing the

Respondent to open the sealed cover of the Petitioner for the purpose of promotion is patently against the judgment of Hon'ble Supreme Court in the case of ***Union of India v. K.V. Janakiraman*****,** reported in **(1991) 4 SCC 109.**

6. In terms of ***K.V. Janakiraman*** *(supra)*, it was contended that, opening of sealed cover for the purpose of promotion is not permitted till the pendency of the Disciplinary Proceedings. It was also contended that it should be inferred that the time to complete Disciplinary Proceedings may be construed to be extended and hence direction to open sealed cover was erroneous; or in the alternative the rejection of the prayer for extension, be set aside.

ISSUE:-

7. Thus the primary issue that arises for our consideration in these proceedings, is whether the Union of India was entitled for further extension of time as prayed for by it before the CAT. If the answer to the above is in the negative; what then would be the consequences of such a rejection.

ANALYSIS:-

8. We have given our thoughtful consideration to the submissions canvassed across the Bar as well as perused through the relevant documents placed on the record. We are of the considered opinion that the Petitioner's Writ Petition must succeed for the reasons elaborated hereinbelow.

9. In ***Prem Nath Bali*** *(supra)*, a case with facts analogous to the present Petition, the Hon'ble Supreme Court held that :-

> *"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 effort should be made to conclude within the reasonably extended period depending upon the cause and the nature of the enquiry but not more than a year." [Emphasis Supplied]*

10. Immediately thereafter, the Central Vigilance Commission (**CVC**) issued a Circular dated 18.01.2016 containing instructions to comply with the said directions of the Hon'ble Supreme Court in all

Disciplinary Proceedings including those involving CBI investigations, in ***Prem Nath Bali*** *(supra)*.

11. In view of the foregoing, the Petitioner's contention that the Respondent-Union of India has failed to abide by the dicta of the Hon'ble Supreme Court in ***Prem Nath Bali*** (*supra*) as well as the CVC Circular, *ex-facie* carries force.

12. The Respondent-Union of India has sought to urge that the Petitioner's reliance on ***Prem Nath Bali*** *(supra)* is misplaced as the said judgment is *per incuriam* and was rendered only in the peculiar facts of the case. It is urged that, the ratio thereof is mere obiter. It was further submitted that the Circular dated 18.01.2016 issued for following the said precedent of the Hon'ble Supreme Court in ***Prem Nath Bali*** *(supra)* is also merely directory and compliance thereof is not mandatory.

13. We cannot commend ourselves to accept the aforesaid contentions. The Respondent- Union of India has not placed any material to show that the said judgment is *per incuriam*, as asseverated. A mere *ipse dixit*, or a bald assertion cannot *a fortiori* render a judgment of the Apex Court as *per incuriam.*

14. Under Article 141 of the Constitution of India, the law laid down by the Apex Court is binding on all Courts throughout the territory of India. We too are bound by the judicial discipline of Article 141 of the Constitution of India and the principle of *stare decisis*. We cannot, in law and the facts attendant, declare the judgment of the Hon'ble Supreme Court as *per incuriam.* On the contrary, once it is discernible that the said judgment of the Supreme Court is applicable to the facts of this case, we are duty bound to *de rigueur* apply the same.

15. Even if the CVC Circular is *arguendo* assumed to be directory and not mandatory- as sought to be canvassed by the Respondent—there must exist cogent, persuasive and compelling reasons for non-compliance or non-adherence of the same. The Respondent cannot merely decide not to comply with the CVC circular, without persuasive and tenable reasons, as such a course of action would not only be impermissibly capricious and arbitrary action on the part of the Respondent but also render the said CVC circular as nugatory rather than merely directory as contended.

16. The facts of the present case also do not provide for any scope to grant any indulgence to the Respondent. It cannot be said that the

Respondent did not receive ample opportunities to conclude their Departmental Proceedings. An authority must be strictly held to the standards by which it professes its conduct to be judged.

17. The following dates shed light on the cavalier and casual manner in which the Respondent has sought to pursue the proceedings against the Petitioner herein :-

(i) 21.08.2013 : Petitioner was suspended, while contemplating Disciplinary Proceedings against him.

(ii) 12.02.2015 : The suspension was revoked on this day.

(iii) 16.07.2015 : The Departmental Charge Sheet was issued and served upon the Petitioner after a further 5 month delay.

(iv) 31.07.2015 : Reply was submitted promptly by the Petitioner.

(v) 04.03.2016 : For 08 months thereafter, no Inquiry Officer was appointed, when the time prescribed limit is only 15 days.

(vi) 18.04.2016 : The Petitioner challenged the Departmental Charge Sheet vide OA 1396 of 2016 before the CAT.

(vii) On 13.05.2016, the first CAT Order was passed, directing the Respondent to complete the inquiry within 04 (four) months.

(viii) On 03.10.2016, after expiry of the said period of 04 (four) months, an OA 3426/2016 was filed by the Petitioner seeking closure of the impugned proceedings, on the ground of the enquiry not being completed within the time stipulated by the CAT, vide order dated 13.05.2016.

(ix) Vide order dated 22.12.2020, the OA pending before the CAT for more than four years whilst the inquiry proceedings continued, but were not completed during this long further period of more than four years; the CAT disposed off the same and granted further time of 6 (six) months to the Respondent to complete the Disciplinary Proceedings.

18. Thus, the CAT was extremely generous in granting two extensions to the Respondent-Union of India, vide Order dated 13.05.2016 for 04 (four) months, and another after more than four years, vide Order dated 21.12.2020 granting further extension for 06 (six) months. The Respondent has evidently received a time period of more than 05 years, which is many times more than the time period contemplated under the dicta of the Hon'ble Supreme Court in ***Prem Nath Bali*** *(supra)* and the CVC circular; for completion of the Departmental Proceedings; and yet failed to conclude the said proceedings.

19. It is not the case of the Respondent that no extension was granted by the CAT to complete the Disciplinary Proceedings. It is not even the case of the Union of India that the time since 16.07.2015 was insufficient. Significantly no application seeking extension before expiry of the time of six months was preferred. The CAT in these circumstances while rejecting the Respondent's Application seeking further extension and allowing Petitioner's Application in the order impugned before us observed that-

" ... . *The applicant was issued* a *memorandum of charge on 16.07.2015 with certain allegations. The OA No.1396/2016 filed by him challenging the said charge memorandum was disposed of on 13.05.2016, with* a *direction to the respondents to conclude the disciplinary proceedings within four months. In the normal course, the proceedings were required to be concluded by the end of 2016.*

2. Alleging that the proceedings were not concluded within that stipulated time, the applicant filed the present OA i.e. OA No.3426/2016, with a *prayer to quash the charge memorandum itself. It was pleaded that his juniors stole* a *march over him in promotions. The OA was pending till the end of 2020. Even by that time, the disciplinary proceedings were not concluded. Lest it is said that the Tribunal has terminated the proceedings just on the ground of delay, we passed the order on 22.12.2020 granting six months time to the respondents to conclude the proceedings. We took into account the fact that the respondents have already delayed the matters unduly. We observed in para 8 of the order that in case the proceedings are not concluded within the stipulated time, it shall be open to the applicant to file MA. Accordingly, the present MA is filed.*

3. Learned counsel for the respondents submits that the delay occurred on account of various reasons and it is reaching at a final stage and an Application is also filed for extension of time. It is brought to our notice that the case of the applicant for promotion to the post of Deputy Commissioner is kept in sealed cover.

4. In view of the fact that respondents did not show any respect whatever to the time stipulated by the Tribunal either in the year 2016 or thereafter, we reject their Misc. Application no. 1879 of 2021.

5. *The applicant cannot be punished just because the respondents are keeping the disciplinary proceedings pending indefinitely. It is brought to our notice that the case of the applicant for promotion to the post of Deputy Commissioner is kept in sealed cover.*

6. We, therefore, allow the MA No.1880/2021, directing that the respondents shall extend the benefit of promotion to the Petitioner on par with his juniors in the post of Assistant Commissioner, in Indian Customs without taking into account, the pendency of any disciplinary proceedings.

7. *The sealed cover in respect of promotion to Deputy Commissioner shall be opened forthwith, and benefit thereunder shall be extended to the Petitioner, which in turn shall be subject to the outcome of the disciplinary proceedings. If the Petitioner has otherwise become eligible for further promotion on par with his juniors, that shall be considered, in accordance with law, if necessary, by convening a review DPC."*

20. In the facts and circumstances antecedent and attendant, no fault can be found with the aforesaid ratio of the CAT. It is not in dispute that in the normal course the disciplinary proceedings ought to have been concluded by the end of 2016. More than adequate opportunities

to complete the disciplinary proceedings arising from Departmental Charge Sheet dated 16.07.2015 had been granted by the CAT firstly in 2016, and then again in 2020. The proceedings were admittedly not concluded within this long period stretching from July 2015 till May 2021.

21. It is also not a case of dilatory tactics employed by the Petitioner. Even assuming if it had been a case of dilatory tactics by the Petitioner; after granting adequate opportunity, the Respondent ought to have proceeded to complete the Disciplinary Proceedings and ought to have complied with the express orders passed by the CAT.

22. Further, no application seeking extension of time on any genuine meritorious ground specific to the Petitioner's case was filed before expiry of the extension granted by the CAT in the year 2020, by the Respondent.

23. There is no gainsaying the legal position that the Disciplinary Proceedings cannot continue *ad infinitum.* Allowing such proceedings to continue *ad infinitum* would not only be highly prejudicial to the Petitioner herein but destructive of the Rule of Law. The Respondent-Union of India, being a 'State' under Article 12 of the Constitution is

bound to act in a fair non-discriminatory, reasonable and non-capricious manner. The conduct of the Respondent in the facts of the present over a long period of 05 years and not merely on one two dates of hearing, disentitles it for any discretionary relief of extension of time.

24. Once the application for extension of time to complete Disciplinary Proceedings filed by the Respondent was rejected, the Disciplinary Proceedings did not survive and all steps taken subsequent thereto by continuing the Disciplinary Proceedings were manifestly arbitrary, illegal and *non-est* in the eyes of law.

25. The contentions on behalf of Union of India regarding the Petitioner not cooperating in completion of Disciplinary Proceedings after the impugned Order dated 29.07.2021 are mere bald assertions averments and do not warrant acceptance by us.

26. Had the extension to continue disciplinary proceedings been granted, there was no question of opening sealed cover in terms of ***K.V. Janakiraman*** *(supra)*. However, axiomatically, the application for extension of time was categorically rejected. Hence, the direction to open sealed cover cannot be faulted with.

27. It is not in dispute that no other Disciplinary Proceedings were contemplated against the petitioner. The use of the words *"the pendency of any disciplinary proceedings"* in para 6, and observation in Para 7 of the order impugned before us, to the effect that benefits thereunder *"shall be subject to the outcome of the disciplinary proceedings"* appear to be wholly unwarranted and have created unnecessary anomaly, warranting interference therewith in the instant petition. The aforesaid limited and apparent error of CAT has caused unnecessary prejudice to the petitioner and resultantly in the interest of justice, the said unwarranted words are required to be eschewed from the said para 6 and 7 of the impugned common Order.

CONCLUSION :-

28. For the foregoing reasons, we hold:-

(i) That the CAT had rightly rejected the request of the Respondent for extension of time for completion of Departmental Proceedings. Consequent to such rejection, the Departmental Proceedings stood lapsed. As a further Consequence, the direction given by the

CAT to open the sealed cover and to consider the Petitioner for promotion cannot be faulted with.

(ii) Accordingly, in the above peculiar facts and circumstances, the Writ Petition filed by the Union of India bearing W.P.(C) No. 2590/2022, assailing the rejection of their application for extension of time has no merit and it is hereby dismissed.

(iii) The Writ Petition filed by the Petitioner herein bearing W.P. (C) No. 2267/2022 is allowed in the aforesaid terms. The proceedings arising from the Departmental Charge Sheet dated 16.07.2015 no longer survive and stand closed. All consequential proceedings will also terminate and be considered *non-est ab initio*. The Petitioner must therefore be given all consequential benefits, including the necessary promotions at par with his juniors, within 04 weeks of the receipt of this judgment.

29. All the pending applications stand disposed of. No order as to costs.

SIDDHARTH MRIDUL
JUDGE

ANOOP KUMAR MENDIRATTA
JUDGE

JULY 05, 2022
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