

(2019) 02 CAT CK 0124

In the Central Administrative Tribunal

Case No : Original Application No. 3170 Of 2013

A.K. Malhotra

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0124

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, J

Bench : Division Bench

Advocate : Sh. Amit Anand, Sh. Zulfiqar Alam

Final Decision : Dismissed

Judgement

Aradhana Johri, J

1. The applicant Sh. A.K. Malhotra, then Steno (now Private Secretary), Delhi Development Authority, was given a penalty of reduction to the lowest of the grade in the present post for a period of 3 years with cumulative effect vide order dated 22.03.1999 [order not filed]. The applicant has filed a copy of the decision in TA No.131/2007 in which the Tribunal set aside the findings of the Enquiry Officer, the order of the Disciplinary Authority and the order of the Appellate Authority amending the said punishment, and remanded the matter back to the Disciplinary Authority for taking up the enquiry from the stage of drawing up of the report of the Enquiry Officer. Thereafter, the Disciplinary Authority passed an order dated 13.10.2009 by which the following penalty was imposed:-

"NOW, THEREFORE, the undersigned in exercise of the powers conferred upon me under the said Regulations hereby imposes the penalty of reduction of pay by two stages (equivalent to two increments) for two years with cumulative effect on Sh. A.K. Malhotra. During the penalty period, he will not earn increments and the penalty will have the effect of postponement of his future increments. These orders will take immediate effect."

One increment and arrears were also refunded to the applicant and first financial upgradation was sanctioned on 25.09.2013 w.e.f. 22.03.2001. However, second MACP has not been sanctioned to him.

2. It is the contention of the applicant that the punishment order dated 22.03.1999 was over in 2001. He has been granted non-functional pay of Rs.8000-13500/-vide order dated 12.09.2008, which shows that there is no punishment being undergone by the applicant. He has further contended that if there is modification in the penalty order it has to relate from the date of initial order of punishment as laid down in the case of in SI (Exe) Dharamveer Gautam vs. Govt. of GNCTD & Anr. [OA No.4387/2011 decided on 21.11.2012]. Therefore, second financial upgradation, which has been given to other staff vide order dated 13.05.2013, should be given to the applicant also. He has claimed that he filed a representation dated 21.07.2013, which has been orally rejected. He has not filed any copy of the same.

3. The respondents have denied the claims of the applicant. They have submitted that the applicant was granted first financial upgradation w.e.f. 22.03.2001, vide order dated 25.09.2013. They have denied receiving any representation dated 21.07.2013 from the applicant. Further, they aver that having refunded one increment and arrears as well as having given first financial upgradation w.e.f. 22.03.2001, it cannot be said that the penalty imposed vide order dated 22.03.1999 stands. The punishment, which stands, is that which was imposed vide order dated 13.10.2009.

4. Heard Sh. Amit Anand, learned counsel for the applicant and Sh. Zulfiqar Alam, learned counsel for the respondents.

5. The applicant has relied upon the decision of the Tribunal in Dharamveer Gautam (supra). Though there is mention of the stand taken by the respondents that since original punishment order was quashed by the Tribunal, the currency of this order ceased immediately after pronouncement of the judgment and the subsequent punishment order was a fresh punishment order whose currency had to be reckoned by the DPC from the date of award of punishment, however, no finding was given on this point even though the OA was allowed. In fact, the order of this Tribunal was for not taking into consideration both the original and subsequent punishment orders. Therefore, the decision relied upon by the applicant will be of no help to adjudicate on the point of the second punishment order relating back to the original punishment order.

6. A perusal of the order dated 13.10.2009 also reveals that it carries the clause that the orders will take "immediate effect". A letter of the Personnel Branch-I dated 12.09.2008 (Annexure A-4) which speaks of grant of Rs.8000-275-13500 non functional scale to eligible Private Secretaries on completion of four years regular service does not have any reference which can relate back to the applicant. In any case, this antedates the second punishment order of 13.10.2009, therefore, it does not strengthen the case of the applicant in any

way. The letter of Senior Accounts Officer dated 25.05.2010 filed at Annexure A-5, which has been referred to by the applicant as proof of the penalty having been implemented, also does not endorse his contention that the penalty is over. It states the following:-

"With reference to your U.O.No. F10(64)/2010/CC/4978 dated 21.5.10 on the subject mentioned above subject, it is intimated that penalty of reduction to the lowest of the grade in the present post for period of three years with cumulative effect is imposed vide order dated 22.03.99 which is further modified that reduction of pay by two stages (equivalent to two increment for the two year with cumulative effect vide order dated 13.10.09. The above order has been implemented by this office & photocopy enclosed."

From this, it cannot be assumed that the penalty is over. Since the meaning of ? implemented? would have been clarified from the photocopy of the order, which is said to be enclosed, but actually not filed by the applicant.

7. It is also to be taken into account that after passing of the order dated 13.10.2009, one increment and arrears have been paid to the applicant. Further, first MACP has been sanctioned on 25.09.2013 w.e.f. 22.03.2001. All these actions together clearly bring out that the respondents have nullified the original punishment order dated 22.03.1999 and put into immediate effect the subsequent punishment order dated 13.10.2009.

8. In view of the above discussion, we find no merit in the instant OA and the same is dismissed accordingly. There shall be no order as to costs.