

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.136 of 2012 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Nagesh Agarwal, Advocate, for the petitioner. Mr. Alok Mahra, Advocate, for the respondents. The brief facts in the instant writ petition are that the petitioner, by virtue of invoking Article 226 to be read with Article 227 of the Constitution of India (as in the instant case), puts a challenge to the order dated 28.11.2011, which was as passed by the Appellate Tribunal/District Judge, Haridwar, by virtue of which the Miscellaneous Appeal No.74 of 2008, as preferred by the present appellant as against the order of the dismissal of his services dated 28.01.2009, was dismissed, consequently, resulting into an affirmation of the dismissal order as it was issued against the present petitioner by the appointing authority, the respondent, herein. The brief facts which emerge for consideration are that the petitioner has come up with a case that he was initially appointed with the respondent as a Librarian, but owing to the strained relationship which he had with respondent no.1, he had maliciously acted against the present applicant resulting into suspension of his services by an order dated 04.08.2008. Immediately after passing of the suspension order, respondent no.2, was appointed as the Inquiry Officer, and he further submits, that the inquiry report, which was submitted by the Inquiry Officer, was in violation of the principles of natural justice. But the fact remains that as against the order of the suspension dated 04.08.2008, and the chargesheet as submitted against him on

			13.10.2008, he had approached the Tribunal by putting a challenge to it, and later on when the services of the petitioner was dispensed with by the respondent after the culmination of the inquiry, he had amended the relief clause, whereby he has also put a challenge to the order of the dismissal, too, along with the challenge already given to the suspension order, as well as, the chargesheet. A very peculiar argument has been raised by the learned counsel for the petitioner from the prospective that (1) that since the suspension order dated 04.08.2008, <i>prima facie</i> contained two ground, as to be the basis for the suspension, the issuance of the subsequent chargesheet on 13.10.2008, by adding thereto the additional grounds would be contrary to the law and principles of natural justice, because according to his perception, if the chargesheet which was required to be submitted by the Inquiry Officer, the grounds of the chargesheet could not have been elaborated by adding charges without providing an opportunity of the hearing to the petitioner. Be that as it may, the inquiry proceeded as per law and the Inquiry Officer, who was other than the disciplinary authority, has submitted the inquiry report, based on which, the services of the petitioner has been dispensed with by the impugned order, which was put to challenge before the Tribunal. It has been argued by the learned counsel for the respondent that the so-called philosophy of providing him with an opportunity of the hearing is concerned, that may not be available to him, to be argued by the learned counsel for the petitioner for the reason being that when the Inquiry Officer was appointed to conduct an inquiry into the charges as levelled in the chargesheet dated 13.10.2008, the petitioner has not availed the same, and, has not contested the proceedings before the Enquiry Officer. Consequently, the report which was submitted by the Inquiry Officer was absolutely justified to be accepted by the disciplinary authority,
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			while passing the order of the dispensation of the services on 28.01.2009. Learned counsel for the respondent has submitted that in fact there was a tacit denial by the petitioner to actively participate in the inquiry proceedings, because of the fact that even upon the conclusion of the inquiry, when the report was submitted, the records of the inquiry proceedings were sent by the post to the present petitioner, and that was refused to be accepted by him, and as such, upon the refusal of its acceptance of the inquiry report by the petitioner, and coupled with the fact that since the inquiry has proceeded ex parte against him, the action taken of dismissing his services on 28.01.2009, could not be said to be in violation of the judgment of the “Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others”, as reported in 1993 (4) SCC 727, the question of the issuance of the show-cause notice would have been only when the employee records his resentment as against the findings, which have been observed by the Inquiry Officer in the report, thus, submitted by him. But since in the instant case, apart from the fact that the petitioner has not participated in the disciplinary proceedings, he has not even accepted the records of the inquiry report, which was submitted to him, and thus the compliance of the wider principles laid down in the judgment of the Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others”, was not required to be adhered to and the action of the respondent cannot be said to be in violation of Article 311 of the Constitution of India, which though, in its applicability, has been argued by the learned counsel for the respondent, that it may not be applicable in the instant case for the reason being that owing to the subsequent amendment being made in the Article 311 of the Constitution of India, the aforesaid principles may not be applicable under the circumstances of the instant case.
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			Since the petitioner himself has not availed the opportunity of the hearing, having not participated in the disciplinary proceedings as conducted by the Inquiry Officer, nor has he even oppose the chargesheet by filing his reply to it. The consequential action taken by the dismissal of his services, which was put to challenge by amending the proceedings of the Miscellaneous Civil Appeal No.74 of 2008, and its consequential dismissal cannot be said to be in violation of the provisions contained under Article 14 to be read with Article 21 of the Constitution of India. Owing to the above, since right from the inception of the disciplinary proceedings, there has been an apparent dereliction on the part of the petitioner to effectively participate in the proceedings of the Inquiry Officer, the subsequent order of dismissal of his services was absolutely justified, and in accordance with the canons of law. Apart from it, the petitioner has not been able to satisfy the court that in accordance with the bye-laws on which reliance has been placed by him, being the bye-laws governing the service conditions of the employees of society of the Brothers of St. Gabriel, which governs the service conditions has been violated, is not a fact which has been established by the petitioner in the writ petition. Thus the writ petition lacks merit, and the same is accordingly dismissed. (Sharad Kumar Sharma, J.) 19.09.2023 NR
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