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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8646/2015

% *Judgment dated 15th October, 2015*

UNION OF INDIA Petitioner

Through : Mr.V.S.R. Krishna, Adv.

versus

BIRENDER SINGH & ORS Respondent

Through : Mr.R.K. Shukla, Adv. for respondent
no.1.

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Articles 226/227 of the Constitution of India seeking a direction to quash and set aside the Order dated 6.4.2015 passed by Central Administrative Tribunal (hereinafter referred to as the "*Tribunal*") in O.A.No.4/2014 and the Order dated 29.6.2015 passed in RA No.147/2015.
2. The necessary facts, to be noticed for disposal of the present writ petition, are that the respondent herein was a Bungalow Khalasi also known as Telephone Attendant and Dak Khalasi. Having been found medically fit, on 16.1.2009 he was appointed to the aforestated post on temporary basis with Sh.Y.S. Chaudhary, Deputy Engineer (Survey), Northern-Railways, New Delhi (respondent no.4 in the O.A.). On 24.2.2012 the respondent fell ill. He informed Sh.Y.S. Chaudhary about his illness and could not attend the duties for a week. On 4.3.2012 when the respondent returned for duties with the medical certificate, he was not allowed by Sh.Y.S. Chaudhary to join his duties. A written request along with medical certificate/fitness certificate was also submitted by the respondent.

Subsequently on 7.3.2012 Sh.Y.S. Chaudhary issued him a warning. Along with the said warning the respondent was also handed over a copy of another warning stated to have been issued to him on 23.2.2012. According to the respondent, the warnings were issued with *malafide* intentions so that the services of the respondent would not be regularised. Subsequently on 10.3.2012 the respondent received a Memorandum dated 9.3.2012 proposing to take disciplinary action against him under Rule 9 of the Railway Services (Discipline & Appeals) Rules, 1968. Charge against the petitioner was that he was absconding from duty w.e.f. 24.2.2012 to 9.3.2012. A list of documents was mentioned yet no document was enclosed. An Enquiry Officer was appointed and a statement of defence witnesses was filed by respondent herein. Subsequently by an order dated 2.4.20012, before the enquiry could be completed, the respondent was removed. The Tribunal by the impugned order dated 6.4.2015 set aside the order of removal from service.

3. Counsel for the petitioner submits that there is an error apparent on the face of the impugned order passed by the Tribunal. Counsel submits that the Tribunal has failed to take into consideration that respondent was a Bungalow Khalasi with temporary status. The petitioner was well within its rights to disengage his services on the ground of unsatisfactory service. Counsel submits that in case the Tribunal had formed an opinion that enquiry was not conducted in a proper manner, the Tribunal should have remanded the matter back for fresh enquiry but the Tribunal has failed to do so.
4. Learned counsel for the respondent submits that there is no infirmity in the order passed by the Tribunal and the respondent could not have been removed from the service without a full-fledged enquiry. Counsel further submits that Sh.Y.S. Chaudhary should not have been associated with the

conducting of enquiry and also the final order of removal has been passed by a person subordinate to Sh.Y.S. CHaudhary, who was under the control of Sh.Y.S. Chaudhary. Counsel further submits that the respondent has been removed from the service illegally only because of animosity of Sh.Y.S. Chaudhary against him. Counsel also contends that the respondent would have no objection in case the matter is remanded back at the stage when the order of removal was issued.

5. Learned counsel for the petitioner submits that the allegations made against the petitioner are baseless and unfounded, however, it is submitted that a fresh enquiry would be conducted without Sh.Y.S. Chaudhary being associated in the enquiry in any manner.
6. Accordingly, the present writ petition is allowed. Orders 6.4.2015 and 29.6.2015 are set aside. Interim order dated 9.9.2015 stands vacated. As agreed, the respondent would be reinstated within ten days from today. It is made clear that the issue of backwages is kept open, to be decided by the disciplinary authority.
7. Writ petition stands disposed of.

CM APPL. 18872/2015

8. Application stands disposed of in view of above.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

October 15, 2015

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