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

*Date of Decision: 18<sup>th</sup> November, 2015*

+ W.P.(C) 10652/2015 & C.M. 27266/2015

SHIV CHANDER PANDIT ..... Petitioner

Through: Mr. Sourabh Ahuja, Advocate

versus

UNION OF INDIA & ORS. .... Respondents

Through: Ms. Arti Bansal, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**J U D G M E N T**

% **(O R A L)**

Consequent upon departmental inquiry, petitioner has been dismissed from service vide order of 19<sup>th</sup> July, 2006 (*Annexure-2*), which was appealed against and petitioner's appeal stands dismissed vide order of 13<sup>th</sup> April, 2012 (*Annexure-3*), which is belatedly assailed in this petition after lapse of more than three years.

Petitioner was employed as Peon and on the ground of absence from duty, disciplinary proceedings were initiated against him. As per Inquiry Report of 25<sup>th</sup> May, 2006 (*Annexure-1*), efforts to serve petitioner with the '*Memorandum of Charges*' failed and petitioner was served by way of publication in the newspaper. Inquiry proceeded *ex parte* against petitioner on the charge of leaving the office on 18<sup>th</sup> February, 2005 at

noon time without permission and thereafter, he remained absent from duty. On the strength of evidence of two witnesses, the Inquiry Officer held that both the charges stood proved against petitioner and the Disciplinary Authority vide order of 19<sup>th</sup> July, 2006 (*Annexure -2*) imposed the penalty of *dismissal from service* upon petitioner . Although petitioner was *ex parte* in the Inquiry, but he chose to contest dismissal order 19<sup>th</sup> July, 2006 (*Annexure-2*) by filing a statutory appeal, which stands dismissed vide impugned order 13<sup>th</sup> April, 2012 (*Annexure-3*).

During the course of hearing, it was vehemently argued by learned counsel for petitioner that the principles of natural justice have been blatantly violated, as petitioner has not been supplied documents nor opportunity was given to petitioner to cross-examine the witnesses and infact, petitioner never absented from duty but was turned out of the office by respondent without any rhyme or reason and petitioner was not allowed to approach the higher authorities nor to join the duty and for no fault of petitioner, he cannot be made to suffer. Reliance was placed by petitioner's counsel upon decision in *Ramesh Chandra Tyagi Vs. Union of India & ors.* (1994) 2 SCC 416 to submit that it has to be conclusively established that petitioner was avoiding the Inquiry and before passing the dismissal order, an opportunity of hearing ought to have been afforded to petitioner.

Upon hearing and on perusal of the impugned order, dismissal order, Inquiry Report, material on record and decision cited, I find that reliance placed upon the oral statement of Mr. Tiwari needs to be excluded from consideration. Upon doing so, I have carefully perused

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the impugned order as well as Inquiry Report and I find that notice to petitioner was sent on 11<sup>th</sup> March, 2005 at his residential address and it was received back undelivered with the remarks of the postal authority that *in spite of frequent visits to the house of petitioner, he is not found available at his residence*. Reliance placed upon decision in *Ramesh Chandra Tyagi (supra)* is of no avail, as in the said case there was no substituted service by way of publication whereas in the instant case, petitioner stands duly served by publication in the newspaper.

During the course of hearing, attention of this Court was drawn to Rule 14 of *CCS CCA Rules* providing for procedure to be adopted to impose major penalties and even in an *ex parte* Inquiry, notices of hearing in the Inquiry should be communicated to the delinquent. In the instant case, no such grievance was made by petitioner in the statutory appeal preferred by petitioner, therefore, on this count dismissal order cannot be questioned. Moreover, this is not a material irregularity in view of the fact that petitioner has been duly served with the dismissal order on the same very address where notice of *Memorandum of Charge* was sought to be served. The irresistible conclusion which can be reasonably drawn upon perusal of the Inquiry Report and the impugned order is that petitioner was deliberately avoiding the Inquiry proceedings and when he was served with the dismissal order, then he promptly filed the appeal.

Unauthorized absence of petitioner cannot be justified because the plea taken by petitioner of his not being allowed to enter the office does not appeal to reason. Hypothetically speaking, even if it was so, then

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petitioner should have got sent a legal notice to the authorities concerned. No such step was taken by petitioner. Petitioner had not even written a letter to the higher authorities making any such grievance. Leaving office without permission and then unauthorizedly absenting is an act insubordination and such indiscipline cannot be tolerated. Petitioner cannot legitimately complain of violation of principles of natural justice because petitioner himself had not participated in the Inquiry proceedings and now he cannot turn around and say that there is violation of principles of natural justice and so Apex Court's decision in *Ramesh Chandra Tyagi (supra)* is of no avail to the case of petitioner. It goes without saying that an official who participates in the Inquiry proceedings can only complaint of the violation of principles of natural justice and not a person who deliberately abstains from participating in the disciplinary proceedings.

In the considered opinion of this Court, no fault can be found in the dismissal order or the impugned order nor can it be said that the Inquiry Report is vitiated. I find no irregularity or irrationality in the impugned order to justify any interference by this Court in exercise of the writ jurisdiction. Accordingly, this petition and application are dismissed while leaving the parties to bear their own costs.

**(SUNIL GAUR)**  
**JUDGE**

**NOVEMBER 18, 2015**

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