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

+ W.P.(C) 771/2016

RAJESH KUMAR JHA Petitioner

Through: Mr. Umesh Sharma, Advocate.

versus

CENTRAL RAILSIDE WAREHOUSE COMPANY LTD. Respondent

Through: Mr. Ashish Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

ORDER

% **18.02.2016**

1. By way of present petition, the petitioner has challenged suspension order dated 08th January, 2016 issued by respondent being illegal and arbitrary and seeks quashing of the same.
2. Succinctly stated the facts as culled out from the petition are that the petitioner was appointed as Manager on 13.03.2014. The petitioner has alleged that his candidature to the next level post of E-V was rejected by the respondent on false grounds. The petitioner represented against the same to the respondent. The petitioner has also alleged certain allegations and biasness against the Managing Director of the respondent.
3. The petitioner filed a writ petition in this Court being W.P.(C) No.11391/2015 against the denial of promotion to him which is pending

before this Court.

4. The respondent issued a show-cause notice dated 16.11.2015 followed by impugned suspension order dated 08.01.2016 against the petitioner, which is under challenge in the present petition.

5. Learned counsel for the petitioner urges that the suspension order is illegal and is in violation of the Central Railside Warehouse Company (Conduct, Discipline and Appeal) Rules, 2012, when no disciplinary proceedings were pending against the petitioner much less there was any charge sheet issued against the petitioner.

6. Learned counsel for the petitioner further submits that the suspension of the petitioner is bad in law and in violation of the disciplinary rules as no enquiry was pending when suspension order was passed. He also submits that the suspension order should be passed only when there is a strong prima-facie case against the charged official/ delinquent. He has relied upon a judgment of Hon'ble Supreme Court in '**Union of India and Anr. vs. Ashok Kumar Aggarwal**', Civil Appeal No.9454 of 2013, decided on 22nd November, 2013.

7. Learned counsel for the respondent, during the course of hearing, handed over a memorandum dated 16th February, 2016 issued to the petitioner enclosing therewith the Statement of Article of Charges and the Statement of the Imputations/ Misconduct in support of each Article of Charge along with the list of documents and list of witnesses. The same is

taken on record.

8. Learned counsel for the respondent contends that with the issuance of the charge-sheet, the petition becomes infructuous and is liable to be dismissed as such.

9. I have heard learned counsel for both the parties and carefully perused the material on record.

10. The grievance of the petitioner that the suspension order could not be passed when there was no enquiry pending and without issuing the charge-sheet to the petitioner, is misplaced in view of the General instructions regarding suspension as provided in Rule 8 of Central Railside Warehouse Company (Conduct, Discipline And Appeal) Rules, 2012. Sub-clause (ii) of the aforesaid CRWC Rules clearly provides as under: -

(ii) Reasons for suspension: Whenever an employee is placed under suspension, he has a right of appeal against the order of suspension. It is, therefore, necessary that the employee who has been placed under suspension should generally know the reasons leading to his suspension. Where an employee has been placed under suspension on the ground of contemplated disciplinary proceedings, the charge sheet against him should, as far as possible, be finalized and issued within a period of three months of the date of suspension. However, if charge sheet is not issued within three months from the date of suspension, the reasons for suspension should be communicated to the employee concerned immediately on the expiry of aforesaid time limit prescribed for the issue of charge sheet, enabling him to effectively exercise the right to appeal.

11. Thus, a careful perusal of the aforesaid rule makes it clear that if an employee has been suspended on the ground of contemplated disciplinary proceedings, the charge-sheet should be issued within three months from the date of suspension. In the present case the suspension order was passed on 08th January, 2016 and the charge-sheet is now issued vide memorandum dated 16th February, 2016. Thus, the respondent acted according to their service rules and it cannot be said that they acted arbitrarily and vindictively against the petitioner. The Rules makes it clear that the Competent Authority is empowered to suspend a Government Servant in contemplation of a disciplinary proceeding.

12. It is also relevant to mention here that the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India also issued an Office Memorandum dated 03rd July, 2015 relating to suspension order, in terms of the judgment of the Supreme Court in 'Ajay Kumar Chaudhary vs. Union of India', Civil Appeal No.1912 of 2015 decided on 16th February, 2015. The relevant clause of the said Memorandum reads as under: -

“3. In this connection, attention is invited to this Department O.M. No.35014/1/81-Estt.A dated 9.11.1982 which contained the guidelines for timely issue of charge-sheet to Charged office and to say that these instructions lay down, inter-alia, that where a Government servant is placed under suspension on the ground of “Contemplated” disciplinary proceedings, the existing instructions provide that every effort would be made to finalise the charges, against the Government servant within three months of the date of suspension. If these instructions are

strictly adhered to, a Government servant who is placed under suspension on the ground of contemplated disciplinary proceedings will become aware of the reasons for his suspension without much loss of time. The reasons for suspension should be communicated to the Government servant concerned at the earliest, so that he may be in a position to effectively exercise the right of appeal available to him under Rule 23(i) of the CCS (CCA) Rules, 1965, if he so desires. The time-limit of forty five days for submission of appeal should be counted from the date on which the reasons for suspension are communicated”

13. Further, the suspension order stipulates that disciplinary proceedings against the petitioner were contemplated and the Competent Authority in exercise of the powers conferred under the CRWC Rules suspended the petitioner with immediate effect.

14. In the instant case, as noted above, the charge sheet has been issued within the time frame of the Rules and as per dictum of Hon’ble Supreme Court in **Ajay Kumar Chaudhary’s** case (supra). The present petition is, therefore, devoid of merit and is dismissed as such.

V.P.VAISH, J

FEBRUARY 18, 2016

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