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

+ W.P.(C) 6394/2016

% ***Judgment dated 25th July, 2016***

LAXMAN SINGH

..... Petitioner

Through : Mr.Anil Singal, Adv.

versus

GNCT OF DELHI & ORS

..... Respondents

Through : Ms.Harvinder Oberoi, Adv. for
Mr.Devesh Singh, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition, which has been filed by the petitioner under Articles 226 and 227 of the Constitution of India, is to the order dated 2.5.2016 passed by Central Administrative Tribunal (in short '*the Tribunal*'), by which OA No.3434/2014 filed by petitioner stands partly allowed and the order dated 21.7.2014 was set aside. The case was directed to be remanded back to the Appellate Authority to decide the appeal afresh in view of the observations made in the impugned order and in accordance with law.
2. The brief facts of the case are that the petitioner was appointed as a Constable in Delhi Police on 14.11.1990. During the course of his employment, Delhi Police received a complaint against the petitioner from one, Sh.Hardeava and some other unknown persons, alleging that the real name of the petitioner is Jai Ram instead of Laxman Singh; he is involved in a criminal case registered against him and other co-accused in case FIR No.2/87 registered at Police Station Madhopur, Sikar District, Rajasthan; and the petitioner has served the job in Delhi

Police by impersonation and production of educational certificate of his brother, Laxman Singh. The complaint was referred by the Delhi Police to the Superintendent of Police, District Sikar, Rajasthan, for conducting an enquiry into the matter. On 13.10.1993, a report was submitted to the Delhi Police wherein it was held that the complaint filed against the petitioner was false and held the petitioner innocent. Despite holding the petitioner innocent, a Preliminary Enquiry was initiated against the petitioner, wherein the allegations of the complaint were substantiated and found to be true. Thereafter a criminal case, being FIR No.227/96, was registered at Police Station Mukherjee Nagar against the petitioner and a Departmental Enquiry was initiated against him on the same charges. The Departmental Enquiry was kept in abeyance vide order dated 20.3.1997, which was confirmed by the Additional Commissioner of Police (AP&T) vide order dated 28.4.1997. However, subsequently the Deputy Commissioner of Police, vide order dated 21.7.1998, without giving any opportunity to the petitioner to show cause, restarted the Departmental Enquiry. Charges were proved against the petitioner and he was dismissed vide order dated 26.2.1999. Thereafter the petitioner approached the Tribunal by filing OA No.1084/2000 against the order dated 24.1.2001. The Tribunal vide order dated 21.7.2008 set aside the order and directed the respondents to reinstate the petitioner in service. However, the respondents were given liberty to take up the disciplinary proceedings prior to resumption of Departmental Enquiry kept in abeyance on 28.4.1997. The petitioner was reinstated in service. The Deputy Commissioner of Police, 7th Battalion, resumed the Departmental Enquiry vide order dated 25.11.2010 without giving any opportunity to the petitioner to show cause. The Enquiry Officer

submitted his supplementary findings on 24.12.2011 holding the charges against the petitioner as proved. Pursuant to the report submitted by the Enquiry Officer, the Departmental Authority held the petitioner guilty of the charges. The petitioner thereafter filed an appeal before the Appellate Authority. During the course of appeal, the petitioner was acquitted in case FIR No.227/96 on 10.1.2014 by the criminal court. The petitioner thereafter filed an Additional Appeal before the Appellate Authority bringing to their knowledge the order dated 10.1.2014 passed in FIR No.227/96. The appeal filed by the petitioner was rejected by the Appellate Authority. Thereafter the petitioner filed OA No.3434/2014 before the Tribunal, which was decided vide impugned order dated 1.7.2016, whereby the order dated 21.7.2016 was quashed and a direction was issued to decide the appeal afresh.

3. The grievance of the petitioner is that although vide impugned order dated 2.5.2016 passed in the final OA, the Tribunal quashed the order dated 21.7.2016 passed by the Appellate Authority but the Tribunal did not consider the prayer of the petitioner to quash and set aside all the impugned orders.
4. Mr.Singhal, learned counsel for the petitioner, submits that the Tribunal has failed to take into consideration that once the Departmental Enquiry has been kept in abeyance by the Additional Commissioner of Police, the Deputy Commissioner of Police, who is a subordinate authority to the Additional Commissioner of Police, would not be legally competent to restart the Departmental Enquiry. It is further submitted that the learned Tribunal has also failed to take into consideration that before restarting the Departmental Enquiry, no fresh show cause notice was issued to the petitioner.

5. Learned counsel for the petitioner further submits that the Tribunal has primarily remanded the matter back to the appellate authority but having regard to the observations so made in the impugned order by the Central Administrative Tribunal there is hardly any possibility in the petitioner getting a fair chance before the Appellate Tribunal.
6. Learned counsel for the respondents enters appearance on an advance copy and submits that the present petition is premature as the Tribunal has recommended the matter to the Appellate Authority to look into the grievances of the petitioner which even otherwise they are empowered to do so being the Appellate Authority in this case. Counsel further submits that the apprehensions of the petitioner are baseless and unfounded.
7. At this stage, counsel for the petitioner submits that the petitioner would be satisfied if this Court clarifies that the appellate authority would decide the matter unaffected by the observations made by the Tribunal in its order dated 2.5.2016.
8. With the consent of the parties, we dispose of this writ petition by clarifying that the appellate Authority will take into account all the grounds raised by the petitioner in the appeal filed by the petitioner before them unaffected by any observations made by the Tribunal in the impugned order which has been assailed by the petitioner before us in the present proceedings.
9. The present petition stands disposed of in above terms.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 25, 2016 msr