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

+ **RSA 240/2016**

UNION OF INDIA & ORS

..... Appellants

Through: **Mr. Anil Panwar, Advocate.**

versus

DEVENDER SINGH

..... Respondent

Through: **Mr. H.S. Dahiya, Advocate.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **29.08.2016**

Caveat No.754/2016

1. Counsel appears for the caveator and thus the caveat stands discharged.

C.M. No.31344/2016 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.31343/2016 (for condonation of delay)

3. For the reasons stated in the application, delay of 12 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.240/2016

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+RSA No.240/2016 and C.M. No.31345/2016 (stay)

4. Learned counsel for the appellants argues that even if new enquiry proceedings emanating from a fresh charge-sheet were liable to be quashed, the courts below have fallen into an error in not giving opportunity to the appellants to conclude proceedings as per the earlier show cause notice and the earlier enquiry proceedings after reconstructing the record by ensuring genuineness of the record and considerable part of which record is admittedly said to be with the respondent.

5. Counsel for the respondent states that as per the letter given by the respondent before commencement of the second enquiry proceedings being dated 8.7.1998 (Ex.PW1/3), the respondent will give necessary copies of the statements of witnesses and all other records with the respondent as regards the first enquiry proceedings to the employer/Central Industrial Security Force(CISF).

6. In this view of the matter, the appeal itself is liable to be accordingly disposed of by sustaining the judgments of the courts below quashing the second enquiry proceedings inasmuch as no effort was made by the appellants to reconstruct the record before commencing the second

enquiry proceedings. Also, statements of witnesses in the second enquiry proceedings were recorded within three days against the respondent, and that too ex parte. Of course, respondent had notice of the proceedings but he had valid reasons not to appear because he was entitled to take a view that employer should have in fact taken steps to reconstruct the record as per the first enquiry proceedings before ordering second enquiry proceedings and which was not done.

7. Therefore, the orders passed by the disciplinary authority dated 22.2.1999, appellate authority dated 4.10.1999 and the revisional authority order dated 2.9.2000 are liable to be quashed and accordingly quashed with the direction that the appellants will pay the respondent $\frac{2}{3}^{\text{rd}}$ of the monetary benefits which are payable to the respondent taking that the second enquiry proceedings emanating from the second chargesheet dated 25.6.1998 did not fructify against the respondent. Of course this payment made would be subject to any final order which may be passed by the disciplinary authority, if passed against the respondent.

8. Finally, for the purpose of the present order, I may note that before the commencement of the enquiry proceedings pursuant to the charge

memorandum dated 12.5.1997, the respondent had already been subjected to seven minor and major punishments as was the case of the employer in the courts below. Hence the need for holding enquiry proceedings as per genuine reconstructed record of the first enquiry proceedings.

9. Accordingly, the present appeal is disposed of in terms of the aforesaid directions, and the respondent is directed within a period of four weeks from today to coordinate with the enquiry officer who conducted the second enquiry proceedings for reconstructing the record of the first enquiry proceedings emanating from the charge memorandum dated 12.5.1997. The enquiry officer will reconstruct the record not only as per the records given by the respondent but also any other record which will be traced out in the department with respect to the first enquiry proceedings emanating from the charge memorandum dated 12.5.1997. Respondent will cooperate in the enquiry proceedings and enquiry officer is requested to expedite the disposal of the enquiry proceedings. It will be open to the employer/CISF to appoint a fresh enquiry officer in case the earlier enquiry officer for some reasons is not available or his continuing as an enquiry officer in the present case is for some reasons not possible or permissible. If the enquiry officer is changed

CISF/appellants will inform the respondent as also his counsel who appears in the Court today as regards the new enquiry officer before whom the respondent must appear for reconstruction of the records as regards the first enquiry proceedings.

VALMIKI J. MEHTA, J

AUGUST 29, 2016

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