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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 7864/2016
G.D. NAGANITHYANAND DASARI Petitioner
Through: Mr. V. R. Anummolu, Mr. Sushil K.
Tekriwal and Dr. Mamta Tekriwal, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through: Ms. Mrinalini Sen and Ms. Kritika
Gupta , Adv. for R1 to R4.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **06.09.2016**

CM. No. 32539/2016 & CM. No. 32540/2016 (for exemptions)

Exemptions allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 7864/2016

1. This writ petition has been filed challenging the impugned order dated March 7, 2016 passed by respondent no.2 rejecting the application of the writ petitioner, for revision of the appellate order dated 29th June, 2017, whereby an order dated 17th April 2015 of removal of the petitioner from service has been upheld.

2. The petitioner was a Constable of the Central Industrial Security Force posted at the Indira Gandhi International Airport.

A complaint lodged by an ASI Vikas Kumar, also posted at the CISF unit at the Indira Gandhi International Airport on 12th October 2014, alleging that the petitioner had enticed his 7 year old daughter, taken her to his room and committed vulgar acts.

3. Pursuant to the complaint, a preliminary enquiry was conducted, after which, a charge sheet was issued to the petitioner on 7th November, 2014. After receiving the charge sheet, the petitioner requested the Disciplinary Authority to provide the petitioner with the findings of the preliminary enquiry. The Disciplinary Authority did not accede to the request since the report of the preliminary enquiry was not a document listed in the charge sheet, which was to be relied upon in the enquiry. On 26th November, 2014, the Disciplinary Authority appointed an Enquiry Officer. An enquiry commenced. After transfer of the enquiry officer from the post held by him, another Enquiry Officer was appointed.

4. Allegations have been made by the writ petitioner against both the Enquiry Officers of impropriety, which are devoid of particulars.

5. The writ petitioner was found guilty. On the basis of the enquiry report, the Disciplinary Authority passed the final order of removal of the writ

petitioner from service.

6. The writ petitioner filed an Appeal against the order of removal, which has been dismissed. The revisional application has also been dismissed.

7. The main grounds urged on behalf of the petitioner are: (i) no copy of the report of preliminary enquiry was served on the petitioner; (ii) no criminal proceedings were initiated against the petitioner; and (iii) relevant documents were not furnished to the petitioner.

8. It is also been argued that the preliminary enquiry has been conducted without any notice whatsoever to the petitioner and without giving the petitioner any opportunity of hearing.

9. It is well settled that principles of natural justice have no application to a preliminary enquiry. Nor is notice required to be given to an employee before conducting a preliminary enquiry. The entire object of a preliminary enquiry is to ascertain whether an allegation is absolutely frivolous or there is some material which may warrant a formal disciplinary enquiry.

10. In the instant case, a chargesheet was duly issued to the writ petitioner. The charge sheet is clear. The charges against the petitioner

have been spelt out. The petitioner has been given full opportunity to appear in the disciplinary proceedings and to contest the disciplinary proceedings which he has chosen not to do, for his own reasons which are hardly clear.

11. It is not the petitioner's case that the enquiry has been conducted without notice to the petitioner. It is also not his case that the petitioner had no opportunity to appear.

12. May be criminal proceedings might also have been instituted. Such criminal proceedings might also have continued parallely along with the disciplinary proceedings. However, the fact that no criminal proceedings were initiated by the employer, in this case, does not affect the validity of the disciplinary proceedings.

13. The charges against the petitioner were extremely serious. The petitioner, a member of a disciplined service is alleged to have molested a child. There is some evidence undoubtedly. It is not for this court exercising jurisdiction under Article 226 of the Constitution of India to sit in appeal over the enquiry findings. It is reiterated at the cost of repetition that if the proceedings went on *ex-parte*, it is the writ petitioner alone who is responsible for the same as he chose not to appear in the enquiry.

14. Even otherwise, the allegation of not furnishing relevant documents is totally vague. It is not clear which document apart from, of course the preliminary report, has not been furnished to the petitioner. First of all, a person who does not appear in the enquiry proceedings and ask for specific relevant documents cannot complaint of violation of principles of natural justice for non-supply of documents. So far as the report of the preliminary enquiry is concerned, there was a reply from the respondent authorities clearly indicating that the report of preliminary enquiry was not a document relied upon by the respondents in the enquiry.

15. Our attention has not been drawn to any infirmity either in the appellate order or in the revisional order which calls for interference of this Court. Having regard to the gravity of the nature of misconduct, we are not inclined to interfere with the disciplinary proceedings.

16. The writ petition is accordingly dismissed.

CM. No. 32538/2016 (for stay)

Dismissed as infructuous.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

SEPTEMBER 06, 2016/jg