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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8045/2016 & CM No.33356/2016

JOY AMLENDU AICH

..... Petitioner

Through: Mr. M.S. Rao AND Mr. Vijay K.
Verma, Advocates.

Versus

CONTAINER CORPORATION OF INDIA LTD AND ORS.

..... Respondents

Through: Mr.Rakesh Dwivedi, Senior Advocate
with Mr. Rajinder Dhawan, Mr. B.S.
Rana and Mr. Anish Agarwal,
Advocates for Respondents No. 1, 2
and 4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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22.09.2016

1. This petition seeks the following reliefs:-

“i) call upon the Respondent No.2 herein to place before this Hon'ble High Court all the original records pertaining to the impugned departmental disciplinary enquiry initiated against the Petitioner herein;

ii) Upon a close scrutiny of the aforesaid original records, this Hon'ble High Court may be further be graciously pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction in the nature of the Writ of Mandamus quashing and setting aside (i) the Charge Memorandum dated 14.08.2015 issued by the Respondent No.2 herein, (ii) Order dated 16.09.2015 passed by the Respondent No.2 herein

nominating the Respondent No.3 herein as the Inquiry Officer, (iii) Inquiry Officer's Report dated 01.08.2016 submitted by the Respondent No.3 herein to the Respondent No.2 herein holding all the charges proved and (iv) the Show Cause Notice dated 29.08.2016 issued by the Respondent No.2 herein calling upon the Petitioner herein to show cause as to why the Petitioner herein should not be dismissed from the service of the Container Corporation of India Limited.

iii) Issue appropriate directions to the Respondents No.1 & 2 herein to grant promotion to the Petitioner herein to the post of Senior Manager at par with the respondent no.4 herein, with all consequential benefits flowing therefrom;

iv) issue any other or further Writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. Primarily, the petitioner is aggrieved by the Show Cause Notice dated 29.08.2016, which according to the learned counsel for the petitioner is actually a decision of the Chairman of the respondent Corporation, based on the report of the Inquiry Officer. Therefore, according to the learned counsel, no useful purpose would be served in replying to the Show Cause Notice as the Chairman has disclosed what his intention is, and as the Disciplinary Authority he would not revise his own decision; and eventually the decision will in all likelihood, be what is incorporated in the following paragraphs of the Show Cause Notice:-

“AND WHEREAS on careful consideration of the inquiry Report (copy enclosed as Annexure-I), the undersigned has come to the conclusion that as all the Article of charges stand proved conclusively and article

II, IX and XI charges proved partially against the C.O. i.e. Shri Joy Aich, it warrants the imposition of appropriate penalty on account of gross misconduct unbecoming of an officer on a responsible post.

AND WHEREAS after taking into consideration the gravity of the proved acts of omissions & commissions by Shri Joy Aich, which are serious misconduct under D&A Rules of this Corporation, I as Appointing Authority/Disciplinary Authority am of the considered opinion that CONCOR has lost confidence in him and that he is not suitable for the job and not fit person to be retained in the job. Accordingly, Show Cause Notice for his dismissal from service of CONCOR is hereby served. Shri Joy Aich is given an opportunity to explain as to why he should not be dismissed from service of CONCOR in pursuance of the provisions of Rule 11 of CONCOR D&A Rules, in case Shri Joy Aich wishes to make a representation, he should make it in writing so as to reach the undersigned not later than 10 days from the date of receipt of Show Cause Notice by Shri Joy Aich.”

3. Mr. Rakesh Dwivedi, the learned Senior Advocate, who appears on receipt of advance copy of the writ petition, submits that the petition is premature since it is only at the stage of consideration of the penalty which may be imposed upon the petitioner. Therefore, the petition is not maintainable.

4. The Court is of the view that insofar as a decision has not yet been taken, the petitioner is not pre-judged in any manner. It would always be open to the petitioner to reply to the show cause notice, await the decision and if he is aggrieved by the subsequent decision taken by the respondent Corporation, he may impugn the same in accordance with law. To say that the respondent's decision will necessarily be in terms of the Show Cause Notice, would be pre-judging the issue.

5. The Court is informed that in disciplinary appeals where the CMD is the Disciplinary Authority having imposed a penalty, he recuses himself from the appellate proceedings. Furthermore the Appellate Authority comprises independent directors appointed by the Government of India, under Rule 19 of the CONCOR Discipline and Appeal Rules.
6. The learned counsel for the petitioner submits that time for filing the reply to the Show Cause Notice has expired on 10.09.2016. He received a copy of the Show Cause Notice on 31.08.2016 and the petition was filed on 06.09.2016. Hence, time may be extended for filing a reply.
7. In the circumstances, the petitioner is permitted to file his reply to the Show Cause Notice within a week from today, i.e., by 29.09.2016, which shall be duly considered by the respondents Corporation.
8. The petition alongwith pending application is disposed-off in the above terms.
9. The Court has expressed no views on the merits of the case.
10. A copy of this order be given *dasti* to the learned counsel for the parties under the signatures of the Court Master.

NAJMI WAZIRI, J.

SEPTEMBER 22, 2016

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