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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11632/2015, CM No.30837/2015

SUDHANSHU

..... Petitioner

Through: Ms. Jyoti Singh, Sr. Adv. with Mr.
Dinesh Yadav & Ms. Tinu Bajwa,
Advts.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Dev P. Bhardwaj, CGSC for R-
1/UOI
Mr. Mohinder J.S. Rupal, Adv. with
Ms. Simran Jeet, Adv. for University
of Delhi
Ms. Manisha Singh, Adv. with Ms.
Seema Dolo & Mr. Akhil
Kulshreshtha, Advts. for R-4, 5

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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04.01.2016

W.P.(C) 11632/2015

1. The present petition has been filed seeking the following reliefs:-

(i) Issue a writ of Certiorari quashing the Charge Sheet and the Suspension Order, both dated 28.07.2014, against the Petitioner, being illegal and non-est in law due to lack of jurisdiction and having not been issued by the competent authority.

(ii) Issue a writ of Certiorari quashing the Respondent's letter dated 30.11.2015, vide which the petitioner has been asked to appear before the enquiry committee, without first deliberating and communicating on the basic issues of inquiry proceedings as raised by him through his various submissions to the respondents, as well as this Hon'ble Court's directions vide its Order dated 12.08.2015.

(iii) Issue a writ of Mandamus directing the respondents to permit the petitioner to re-join duties with immediate effect and to regularise the period spent by the petitioner under suspension, with all consequential benefits.

(iv) Issue any other writ / direction that this Hon'ble Court may deem fit and proper in the facts of this case.”

2. This petition is an offshoot of earlier petition filed by the petitioner i.e W.P.(C) No.7360/2015, which was disposed of vide order dated August 12, 2015. The relevant paras of the said order are reproduced as under:-

“5. The petitioner shall give reply to the charge sheet within a period of two weeks from today. On receipt of the reply, the competent authority shall consider the same and take a decision in accordance with the rules. If the competent authority decides to drop the charges against the petitioner, that is the end of the matter but, if it proceeds to hold an inquiry, the same shall be held in accordance with the rules by the same committee or a committee to be appointed afresh by the authority.

6. Insofar as the suspension is concerned, learned Senior Counsel for the petitioner would urge, that assuming, the respondent No.4 had reviewed the suspension of the petitioner on October 27, 2014 and April 24, 2015, no communication in that regard has been sent to the petitioner. She would state, in the absence of any

communication, the suspension should be deemed to have been revoked keeping in view the legal position. Noting the above, this Court is of the view that the petitioner should incorporate his grievance with regard to his continued suspension in his reply to the charge sheet relying on such rules and law as deem fit. The authority concerned shall also consider the issue of his continued suspension and take a decision and communicate the same to the petitioner. If the petitioner is aggrieved with the order with regard to suspension, he would be at liberty to challenge the same by way of a fresh writ petition.”

3. On the last date of hearing, I issued notice to the respondent Nos.4 &
5. Ms. Manisha Singh, learned counsel appearing for respondent Nos.4 & 5 would state that pursuant to the order passed by this Court on August 12, 2015, the Governing Body has considered the reply to the charge sheet, filed by the petitioner and also the aspect of continuance of suspension of the petitioner, in its meeting held on October 17, 2015 and a communication dated October 26/28, 2015 was issued. Despite efforts, the order could not be served on the petitioner. It was only during the enquiry proceedings held on December 11, 2015, the same could be served on the petitioner. She would also state that this aspect has been concealed by the petitioner in the writ petition.
4. Ms. Jyoti Singh, learned Senior Counsel for the petitioner dispute the said aspect and state, there was no intention on the part of the petitioner to

conceal the said communication. She rely upon the minutes of the proceedings of the Enquiry Committee held on December 11, 2015, wherein it was noted that the order has been served on the petitioner. She would also state, it was inadvertent mistake and the petitioner would withdraw the writ petition and challenge the communication dated October 26/28, 2015 by way of a fresh proceeding.

5. I am unable to agree with the justification given by the learned Senior Counsel for the petitioner for the simple reason, no averment in that regard has been made by the petitioner in the writ petition, which is a sufficient ground for this Court to dismiss the writ petition. Keeping in view the fact that the challenge in the writ petition, by the petitioner, is to his suspension and to the issuance of charge sheet, being without jurisdiction, ensuring that a majesty of law is upheld, and a petitioner does not approach the Court with unclean hands and as a deterrent, the Court impose a cost of Rs.25,000/- on the petitioner, to be paid to the Delhi High Court Legal Aid Services Committee within one week from today without foreclosing the right of the petitioner, to challenge the said communication in accordance with law by way of fresh proceedings, the writ petition is dismissed as withdrawn.

6. It goes without saying that the respondent Nos.4 & 5 would be at

liberty to take such objections, as are available to them in law and on facts.

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7. In view of the order passed in the writ petition, the present application is dismissed as infructuous.

V. KAMESWAR RAO, J

JANUARY 04, 2016/ak