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

+ LPA 43/2016, C.M. APPL.2240/2016

SHIV CHANDER PANDIT Appellant

Through: Mr Sourbh Ahuja, Adv.

versus

UNION OF INDIA & ORS Respondents

Through: Ms Arti Bansal, Adv. for Respondent
Nos. 1 to 3

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **22.01.2016**

1. The appellant is aggrieved by a judgment and order of the learned Single Judge dismissing the writ petition. He has challenged his dismissal by the 2nd Respondent (hereinafter referred to as “the Foundation”).

2. The undisputed facts are that the appellant was appointed as a Peon in the Foundation office on 02.02.2001. Disciplinary proceedings were initiated on account of his unauthorized absence. The appellant's grievance is that this culminated into an adverse order and subsequently concluded with his dismissal. His complaint before the learned Single Judge was that the enquiry was conducted *ex parte* behind his back and that he was neither afforded a proper opportunity

to defend himself in the enquiry proceedings, nor was he furnished the report of the enquiry. It is also submitted that the copies of report of the enquiry was furnished much later to him after he repeatedly approached the Foundation and applied under the RTI Act. He, thereafter, appealed to the higher authority which rejected the appeal.

3. Learned counsel submits that the learned Single Judge noticed that the enquiry was *ex parte* and was of the opinion that the appeal order was vitiated, taking into account extraneous circumstances. Nevertheless, the learned Single Judge dismissed the petition *in limine* without considering the merits, especially the averment with respect to the fact that an opportunity to represent himself in the proceedings against him was denied to the appellant.

4. This Court had asked the respondents to produce the record which they did during the course of the day. The Foundation's official file reveals that the charge-sheet, which was issued on 01.06.2005, was against the misconduct of absence which commenced from 18.02.2005 and continued till the said date of the issuance of the charge-sheet. Further, the Foundation's attempt to have the charge-sheet served upon him proved futile. Consequently, it was published in a local newspaper on 21.11.2005. Despite this, the appellant did not approach the Foundation and participate in the enquiry proceedings. The proceedings culminated a report on 19.07.2006. The official record reveals that several attempts were made by the Foundation to furnish the report through registered A.D.—both at the home address of the appellant, i.e., in Bihar, as well

as, at the local Delhi address furnished by him to his employer. The noting on the Registered A.D. cover which was returned to the Foundation's office reveals that at least seven visits were made to the address given in Delhi, but the appellant could not be contacted as he was not available. In these circumstances, on 19.07.2006, the order of dismissal was made. This was later published in the newspapers on 09.09.2006. After this development, for the first time on 04.04.2007, the appellant wrote a letter to the Foundation complaining that salary for certain periods ending in February, 2005 had not been paid; he requested for its disbursement. Interestingly, in this letter, he never complained of having been dealt with unfairly nor was there any explanation offered for his continued and prolonged absence. His explanation appears first time in the letter dated 30.05.2007, where he stated that his brother was unwell. However, no attempt was made by the appellant to show that he had ever sought leave or was authorized to be absent from work. It was, in these circumstances, when he complained on 16.07.2007 that the enquiry had been conducted *ex parte* behind his back by denying him an opportunity to represent, that the Foundation disagreed. It furnished copies of the enquiry report and enabled him to appeal to the higher authority.

5. We have considered the submissions of the appellant's counsel who highlighted that the report was never furnished to him suitably to enter him to contest the findings. The official records clearly reveal that the appellant never sought for leave or was granted any such leave at the appropriate stage. The Foundation's attempts to have

notices served upon him at every stage were unsuccessful. It, therefore, published the charge-sheet in a newspaper at the first instance and later on published the dismissal order in the newspaper. Even then, the appellant does not appear to have woken up; he wrote almost two years after, i.e., on 04.04.2007 claiming arrears and payment of salary. On 30.05.2007, some semblance of an explanation for the unauthorized absence was given. In these circumstances, there can be no doubt that the appellant had remained absent as was concluded by the Foundation in the findings that culminated in his dismissal without any explanation, or without any authorization for almost two years. As a result, we find no merit in this appeal. It is, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 22, 2016

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