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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision:21.01.2019

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W.P.(C) 479/2019 & C.M. No. 2130-2131/2019

MR. S.K. TANWAR

..... Petitioner

Through: Mr. Rajesh Srivastava, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Mrs. Bharathi Raju, CGSC for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 25.10.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 4067/2018. The petitioner had preferred the said Original Application to assail the charge memo issued to him on 06.07.2016, whereby the said disciplinary proceedings under Rule 14 of the CCS CCA Rules were sought to be initiated against him.
2. There was a complaint against the petitioner made by a lady employee of sexual harassment by the petitioner. The competent authority caused a preliminary enquiry to be held through an Internal Complaints Committee (ICC). The Committee submitted its report after making some inquiries, wherein it was of the view that the petitioner appears to have violated the

law. The operative part of the said preliminary report reads as follows:

“The committee is of the view that Shri Tanwar has violated the law and found guilty and the strongest action should be taken against him. Administration Wing may take further appropriate action in this regard.”

3. On the basis of the said preliminary inquiry, the President as the appointing authority, constituted a fresh ICC for holding an inquiry under Rule 14 of the CCS CCA Rules. Two charges have been framed in the charge sheet dated 06.07.2016 against the petitioner, which reads as follows:

“Article-I

That the said Shri S.K. Tanwar, Under Secretary, Ministry of Defence, has indulged himself in an act of sexual harassment of women at workplace.

Article-II

That the said Shri S.K. Tanwar, Under Secretary, Ministry of Defence, was found misusing the office computer for watching pornographic videos and photographs in DHQ security zone. By this conduct, the said Shri S.K. Tanwar, Under Secretary, has violated para 23(b)(xiv) of Section –V of Chapter 7 Computer Security Instructions of Manual of Security Instructions, 2008, Ministry of Defence.”

4. Upon issuance of the said charge sheet, the petitioner approached the Tribunal with the plea that first ICC had already returned a definite finding against the petitioner and, therefore, there is no purpose to be achieved by constituting a fresh ICC. The petitioner also claimed that he is highly prejudiced by the first preliminary report of the ICC, since definite findings have been returned against him without compliance of the principles of natural justice.

5. The Tribunal has rejected the Original Application by observing that

the competent authority could have straight away initiated proceedings under Rule 14 of the CCS CCA Rules by constituting the ICC on the complaint being received against the petitioner. However, a preliminary inquiry was got conducted by the competent authority. In this process, no witness was examined and only some aspects were examined. Even the petitioner was not called upon to explain his conduct. The Tribunal observes that, evidently, on account of lack of experience, the said ICC had made the observation to the effect that the petitioner had violated the law and found him guilty, and recommended that strongest action should be taken against him. This was not the jurisdiction of the said ICC, which conducted only the preliminary inquiry. Consequently, while dismissing the petitioner's Original Application, the Tribunal has expressly observed that no observation made in the preliminary report of the ICC submitted in 2015 shall be treated as final, and the matter shall be decided on its own merits afresh.

6. Before us, counsel for the petitioner is harping upon the aforesaid observations made in the preliminary inquiry report of the ICC. We find absolutely no merit in the petitioner's submission. The said observations, obviously, cannot come in the way of the petitioner. The purpose of holding a preliminary inquiry was only to ascertain whether the matter required deeper consideration by holding an appropriate inquiry in terms of the CCS CCA Rules. The competent authority, after examining the preliminary inquiry report, has considered it appropriate to hold a formal inquiry under Rule 14 of the CCS CCA Rules, wherein the petitioner would be afforded the opportunity to defend himself. Only thereafter the said ICC shall form its report. We, therefore, find no merit in this submission and dismiss the

same.

7. Learned counsel for the respondent, who appears on advance notice submits that the petitioner has not been appearing before the ICC now constituted to hold the formal inquiry.

8. We have made it clear to the petitioner that if he chooses not to appear in the said proceedings to defend himself, he shall be doing so entirely at his own peril, and it shall not be open to him to seek reopening of the inquiry proceedings on that ground.

9. However, even at this stage – the petitioner chooses to participate, the respondent may consider the said request so as to obviate any technical difficulty on a later stage.

10. We find no merit in this petition. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 21, 2019

N.Khanna