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

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Date of decision: 27.09.2021

+ **LPA 346/2021 & CM No. 33572/2021**

SAPAN KUMAR RAM

..... Appellant

Through: Mr. Dibyadyuti Banerjee and Ms.
Sumedha Halder, Advocates

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical Hearing]

RAJIV SHAKDHER, J. (ORAL)

1. This appeal is directed against the judgement dated 15.02.2021, passed by the learned single judge in W.P.(C.) 7948/2018.

2. Respondent no. 1 is the Indira Gandhi National Open University (IGNOU) while respondent nos. 3 and 4 are the Regional Directors of the regional centres of IGNOU located at Vikas Bhawan, Fourth floor, North Block, Salt lake City, Kolkata, and Raghunathganj, Phooltala, Bagan Bari, Murshidabad, respectively.

2.1. To be noted, respondent no. 3 is the Enquiry Officer i.e., Mr. G.P. Bhatia.

2.2. Mr. Dibyadyuti Banerjee, who appears for the appellant, says that, an advance copy of the appeal has been served on the respondents. However, there is no representation on behalf of the respondents.

3. Mr. Banerjee says that, the appellant's only concern is that, no decision has been taken by the disciplinary authority, with regard to the representation(s)¹ made by the appellant, as regards the bias injected into the proceedings by the Enquiry Officer.

3.1. It is Mr. Banerjee's contention that, since representation(s), to that effect, had been made, the enquiry proceedings should have been stayed, in terms of Cabinet Secretariat's Office Memorandum, dated 09.11.1972. In this behalf, Mr. Banerjee has drawn our attention to paragraphs 3, 15 and 16 of the impugned judgement, where this contention has been noticed and dealt with, by the learned single judge. The relevant parts of the impugned judgement are extracted hereafter:

"15. No doubt, the instructions of the Cabinet Secretariat of the year 1972 relied upon by Mr. Mohanty do suggest when a representation is made against the Inquiry Officer alleging bias he should stay the proceedings. But I find, the Inquiry Officer has dealt with the issue in his order dated March 08, 2018, in the following manner:

"4. Regarding stay of inquiry, the IA has made it abundantly clear that the inquiry will continue till any stay order is received from the Competent Court or any directions is received from the Disciplinary Authority. It is further made clear that in CCS (CCA) Rules 1965, there is no statutory provision to stay the inquiry, if a representation of bias is alleged against the IA. These are only executive instructions

¹ Reference is made to representation(s) dated 10.11.2017, 02.08.2017 and 07.03.2018

which do not have the force of law These are not mandatory but directory in nature. It is further retreated no prejudice has been caused to the CO by not staying the proceedings, This entire inquiry is based on documentary evidences and not on oral evidences. The law on this point is settled that in proceedings which are based on documentary evidences, the charges can be proved straight away also.

5. There are also executive instructions issued by the CVC vide circular no 0210/12016 (F.No.OOOVGL-18) dated 18.01.2016 to complete the Disciplinary Proceedings within 06 months from the date of appointment of PO and IO. The executive instructions referred by CO in D-7 dated 07.03.2018 were issued on 09.11.1972 while as the CVC instructions were issued on 18.01.2016 which are the latest instructions and will prevail over the executive instructions issued on 09.11.1972.

6. In DOS-II, IA has categorically referred to the gist of all DOS and brought on record that there is not even a single instance of bias alleged by the CO. By simply alleging bias, the inquiry cannot be stayed, till any directions to the contrary have been received. The CO should have demanded expeditious disposal of the disciplinary proceedings, on the contrary, CO has tried his level best to delay the inquiry on one pretext or the other. The proceedings recorded in DOS-11 may please be read along with this DOS. "

16. The above, shows some justification for the Inquiry Officer not to stay the proceedings. This I say so, after the date of hearing of November 10, 2017 the proceedings were further held on 11.12.2017, 12.12.2017, 11.01.2018, 15.02.2018, 07.03.2018, 08.03.2018, 02.04.2018, 03.04.2018, 04.04.2018, 05.04.2018; and in the proceedings dated March 07, 2018 also the Inquiry Officer has dealt with the allegation of bias against him by the petitioner in the following manner:

"5 (m) (iii). I have considered D-6 dated 07.03.2018 and am of the view that by simply alleging bias and malice the inquiry cannot be stopped. CO nowhere has alleged any incidence of bias against the IA. Had there been an iota of bias against the IA, the CO would have brought it on record by citing specific instances. The fact remains that the IA has gone out of way to accommodate the CO in DOS-3, He was also granted adjournment for non-payment of advance TA/DA. "

The above shows, apart from the initial two responses, vide the response dated March 7, 2018 the Inquiry Officer was of the view that he is not bias [sic. biased] and proceeded with the Inquiry. If the petitioner had any grievance, he should have approached the Court immediately after November 10, 2017 or at least March 7, 2018, but surely not after 8 months, i.e. in July 2018; from the date of proceedings held on November 10, 2017, by which time, the Inquiry Officer had proceeded ahead with the proceedings."

3.2. That being the situation, Mr. Banerjee does not dispute the fact that, the learned single judge in the concluding part of his judgement i.e., paragraph 17 has observed, as follows: -

"17. The case of the petitioner is that the Inquiry Officer has not followed the procedure as contemplated in law. The petitioner would be within his right to raise such pleas before the

Disciplinary Authority Appellate Authority and even before a Court of Law but only after a final order is passed.”

4. We have put the observations made by the learned single judge in paragraph 17 of the impugned judgement to Mr. Banerjee.

4.1. According to Mr. Banerjee, the observations made in paragraph 17 of the judgement seems to suggest that, the procedural infraction committed in the conduct of the enquiry proceedings would be considered by the disciplinary authority/appellate authority only, after the final order is passed.

4.2 Mr. Banerjee says that, the appellant has no intention of delaying the enquiry, and therefore, having regard to what is observed by the learned single judge in paragraph 17 of the impugned judgement, he would be quite satisfied, if a clarification is provided by this Court.

5. To our minds, the apprehension articulated by Mr. Banerjee, on behalf of the appellant, is misplaced. It is quite evident that, before the disciplinary authority/appellate authority passes the final order, it would have to factor in and take cognizance of the entire record, which would include the representation(s) made before the enquiry officer, concerning procedural infraction and/or alleged bias in the conduct of the enquiry proceedings- although, it may so happen that, both aspects may form part of one single order.

5.1. The learned single judge’s concern, to our minds, appears to be that, enquiry proceedings are not interdicted, at every stage, and thus, paving way for a quick and satisfactory conclusion of the enquiry.

6. The appeal is thus disposed of in the aforesaid terms. Consequently, pending application shall also stand closed.

7. At this stage, Mr. Banerjee adds that, the observations made by the learned single judge should not impact the merits of the enquiry proceedings, which are currently underway.

8. In our view, the observations made by the learned single judge, in paragraph 17 of the impugned judgement, are only, for the purpose of progressing the disciplinary proceedings, right up till the stage it is dealt with by the disciplinary authority/appellate authority, and therefore, cannot have any impact on the merits of the proceedings, pending before the enquiry officer.

9. The Registry will dispatch a copy of this order to the respondents. In case, the respondents have any difficulty with the observations made hereinabove, they would have liberty to approach the Court. The appellant will also place the order passed today both before the Enquiry Officer and the respondents.

RAJIV SHAKDHER, J

TALWANT SINGH, J

SEPTEMBER 27, 2021/mr

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