

**Central Administrative Tribunal
Principal Bench, New Delhi**

R.A.No.239/2015 in O.A. No.2164/2014

Wednesday, this the 23rd day of September, 2015

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. A.K. Bhardwaj, Member (J)**

Mohd. Ilyas, Executive Engineer (Civil)
s/o Mr. Mohd. Quasim
Shadhra North Zone, Delhi

..Applicant

(Mr. Rajeev Sharma, Advocate)

Versus

1. East Delhi Municipal Corporation
(through its Commissioner)
1st Floor, 419, Udyog Sadan
Patpar Ganj Industrial Area, Delhi
2. The Commissioner
East Delhi Municipal Corporation
1st Floor, 419, Udyog Sadan
Patpar Ganj Industrial Area, Delhi
3. Director (Personnel)
East Delhi Municipal Corporation
419, Udyog Sadan
Patpar Ganj Industrial Area, Delhi

..Respondents

(Mr. K.M. Singh, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The only plea raised by the applicant in the present Application for review is that the Tribunal should not have given liberty to the respondents to proceed against the applicant in the departmental proceedings from the stage of disagreement note. In **State of Punjab & others v. Dr. Harbhajan Singh Greasy**, JT 1996 (5) SC 403, the Hon'ble Supreme Court categorically ruled that where the disciplinary proceedings are interfered with by Courts/Tribunals on technical ground, the matter should

invariably be referred back to the authorities for their decision in the matter. The judgment reads thus:-

“1. Leave granted.

2. We have heard learned Counsel on both sides. The respondent was charged for being absent from duty in the Emergency of attending on the flood victims between July 18, 1975 and July 21, 1975. He was further charged for other derelictions of duty. The details are not necessary. Suffice it to state that enquiry was conducted and the Enquiry Officer submitted his report that respondent No. 1. had admitted that he was having a private practice at Moga during the period of his suspension in spite of the directions issued by the Government in the suspension order to remain at Head-quarter. Accordingly, the disciplinary authority removed him from service which came to be challenged in the High Court. The learned single Judge allowed the writ petition and directed reinstatement with consequential benefits. On appeal, the Division Bench confirmed the same in the impugned order dated November 17, 1993 in L.P.A. No. 398/92. Thus, this appeal by special leave.

3. It is seen that the Enquiry Officer's report is based on the alleged admission made by the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing. Subsequently, the respondent has denied having made any admission. As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he voided responsibility as a Doctor to treat on flood victims and that was cause for the suspension.

4. The appeal is accordingly allowed. No costs. Disallowance of the back wages would not stand in the way of computation of the pensionary benefits as if he had continued in service.”

2. In the wake, Review Application is found devoid of merit and is accordingly dismissed. No costs.

(A.K. Bhardwaj)
Member (J)

(Sudhir Kumar)
Member (A)

September 23, 2015
/sunil/