

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**M.A. No.100/2255/2013 In
O.A No.100/3131/2016**

New Delhi this the 14th day of December, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)**

Shri Ajay Kumar Dubey
S/o Late Shri D.C. DubeyApplicant

(Argued by: Mrs. Meenu Mainee, Advocate)

Versus

U.O.I. & Others ..Respondents

(By Advocate: Shri G.S. Chaturvedi for respondents)

ORDER (ORAL)

Justice M. S. Sullar, Member (J):

M.A. No.100/2255/2013

The compendium of the facts and material, relevant for deciding the instant Miscellaneous Application (MA), for amendment of Original Application (OA), is that, initially, applicant, Ajay Kumar Dubey, has preferred the main OA, challenging the impugned order dated 10.10.2012 (Annexure A-1), whereby ex-parte enquiry was ordered against him, by the competent authority and for further direction to relieve him from the date of expiry of period of notice for resignation.

2. The respondents have refuted the claim of the applicant and filed the reply.
3. During the course of preliminary hearing, the competent authority was directed to proceed in the matter, but only after

taking a view on the fact and effect of resignation tendered by the applicant, vide order dated 07.03.2013, by this Tribunal.

4. During the pendency of the OA, the Enquiry Officer (EO) was stated to have completed the Departmental Enquiry (DE) proceedings, despite the indicated order of this Tribunal. It necessitated the applicant to file the instant MA, for amendment of the OA, so as to also challenge the validity and illegality of enquiry report, being without any legal evidence, arbitrary and without jurisdiction.

5. The respondents have contested the prayer of the applicant and filed the reply, stoutly denying all the allegations contained in the MA and prayed for its dismissal.

6. After hearing the learned counsel for the parties, going through the record with their valuable help, and after considering the entire matter, we are of the firm view that the instant MA, deserves to be accepted.

7. As indicated hereinabove, that the applicant has already tendered his resignation, which was not yet accepted by the competent authority. At the same time, the respondents have started departmental proceedings for absence from duty against the applicant. While issuing notice, this Tribunal, vide order dated 07.03.2013, directed the competent authority to proceed in the matter, but only after taking a view on the fact and effect of resignation tendered by the applicant. It is not a matter of dispute, that despite the above mentioned order, the EO has already submitted enquiry report to the competent authority, during the pendency of the OA. Therefore, the applicant is

entitled to challenge the validity, legality or otherwise of the enquiry report, by way of amendment in the OA. We are also of the considered opinion, that the proposed amendment is very much essential to decide the real controversy between the parties, and in order to avoid the possibility of multiplicity of the litigation, particularly when, no prejudice is going to be caused to the respondents in this regard.

8. In the light of the aforesaid reasons, and without commenting further anything on merit, lest it may prejudice the case of either side, during the course of regular hearing of the OA, the instant MA is accepted. The applicant is permitted to amend the OA, as prayed for.

**(P.K. BASU)
MEMBER (A)**

**(JUSTICE M.S. SULLAR)
MEMBER (J)
14.12.2016**

Rakesh