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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 4977 OF 2010

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Date of Decision: 27th July, 2010.

AJAY PAL SINGH

. . . Petitioner

through :

Mr. R.K. Saini with Mr. Sitab Ali
Chaudhary, Advocates

VERSUS

DELHI HIGH COURT AND ANR.

. . . Respondents

through:

Mr. Viraj R. Dattar with Mr.
Chetan Lokur, Advocates for the
respondent No.1
Ms. Latika Chaudhary, Advocate
for the respondent No.2

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. *(Oral)*

1. Rule D.B.

2. Notice. Mr. Viraj R. Dattar, learned counsel for the respondent No.1 and Ms. Latika Chaudhary, learned counsel for the respondent No.2 accept notice of Rule and waive the service. They further agree that short question of law is involved in this case for which no counter affidavit is required to be filed, as all the documents along with this writ petition are placed on record by the petitioner. Counsel for both the parties are prepared to argue the matter. With the consent of the parties, we have heard the matter finally today itself.

3. Keeping in view the order which we propose to pass, it is not necessary to delineate the facts in detail. Suffice is to point out that the petitioner is an employee of the District Court, Delhi. He was appointed as *Mali* and was working in the Karkardooma Court since 1993 at the seat of Dak Peon and attached with different Courts. An anonymous complaint was received by the Department alleging that the petitioner has purchased some property in the name of his sons. A Fact Finding Enquiry was instituted against the petitioner and the matter was entrusted with Shri S.C. Malik, Additional District Judge. The property in question qua which there was a complaint bearing No.B-2/163, Yamuna Vihar, Delhi, the first floor of the same was purchased on 21.06.2006 @ Rs.8.00 lakhs in the name of Smt. Sarita, wife of his son, Azad Singh, which means Smt. Sarita is daughter-in-law of the petitioner. Second floor with roof rights was purchased on 29.01.2007 by Shri Anand Singh, another son of the petitioner @ Rs.13.00 lakhs. After the report of the Fact Finding Authority, a regular charge sheet was served to the petitioner. The inquiry was held. The Inquiry Officer submitted its report opining that the charge against the petitioner was not proved. The Disciplinary Authority did not agree with those findings and issued notice. The petitioner gave reply thereto. After receiving the reply, the Disciplinary Authority imposed the penalty of removal from service with further stipulation that he shall be a disqualification for future employment under the Government. This penalty was imposed vide orders dated 30.09.2009.

4. At this stage, we may point out that the defence of the petitioner was that the aforesaid property was purchased by his daughter-in-law and sons respectively; they had their own earnings and nothing was contributed by the petitioner in this regard. This was not accepted by the Disciplinary Authority, who returned the finding that daughter-in-law and son of the petitioner were of 20/22 (though as per the petitioner, they were 23/27 years of age respectively) years of age and they could not have earned and accumulated more than Rs.20 lakhs to buy the property in their names. He inferred that the amount was contributed by the petitioner. He also inferred that the petitioner could not have amassed and saved that much of amount keeping in view his known sources of income. The petitioner had put up his defence that his daughter-in-law and sons had taken loans from the banks. However, in spite of the repeated opportunities given to the petitioner to produce any documentary evidence, he failed to do so. However, the petitioner produced the documents from the banks, viz., Canara Bank and Federal Bank Ltd. before the Appellate Authority to show that his daughter-in-law and his sons had taken loans for the purchase of the aforesaid property. The Appellate Authority, however, refused to admit this evidence on the ground that when in spite of adequate opportunities given to the petitioner to prove that his sons and daughter-in-law had taken loan from the banks, he had not availed the opportunity and there was no reason to grant any further opportunity to the petitioner to prove the same. The Appellate Authority also rejected the contention of the petitioner that it was not beyond his control to produce the required documents and in any case, he

could have summoned the bank officials to prove that loans were advanced by the respective banks to the two sons and the daughter-in-law of the petitioner. Challenging this order, the present writ petition is filed.

5. No doubt, the petitioner was given opportunity to prove that his sons and daughter-in-law had taken loans from the said two banks and the petitioner failed to avail that opportunity. However, we are still of the opinion that when these documents were produced before the Appellate Authority and sufficient reasons were furnished by the petitioner because of which he could not produce the documents earlier, one further opportunity should have been granted to the petitioner to prove his defence. We are making these observations also keeping in view the fact that the documents, which were produced before the Appellate Authority and are annexed with the present writ petition indicate that some loans have been taken by the daughter-in-law and sons of the petitioner from Canara Bank and Federal Bank Ltd. The statement of accounts from these banks have been filed. They match with the dates on which the loans were dispersed and property purchased. These being the bank documents, there is no possibility of tampering with the same or fabricate such record at a later date. After all, we are dealing with a case of an employee and even if it is to be treated that there was negligence on the part of the petitioner in not producing the documents to prove his defence, such a hyper-technical view should not have been taken by not permitting the petitioner to prove his defence. If the petitioner is able to establish from the documents/records that the

loans were taken by the sons and daughter-in-law of the petitioner, it may form complete defence to the charges leveled against him.

6. As pointed out above, the petitioner was appointed in the year 1993 and he has rendered more than 15 years of service. When it is a question of protecting his employment, we feel that the petitioner should be given one more chance to prove his defence. Governed by these reasons, we set aside the orders dated 30.09.2009 passed by the Disciplinary Authority as well as the order dated 22.01.2010 by the Appellate Authority. The matter is remitted back to the Disciplinary Authority, who will give an opportunity to the petitioner to produce the said documents and also witnesses in support of his defence. After giving the opportunity and considering the material brought on record by the petitioner, further action shall be taken by the Disciplinary Authority.
7. This writ petition is disposed of accordingly.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 27, 2010.
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