

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

Date of Decision: October 15, 2015

+ W.P.(C) 8656/2015

YOGESH

..... Petitioner

Through: Mr. Manish Garg, Mr. Akshay
Bhardwaj & Mr. Hitesh Baggi,
Advocates

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY

..... Respondent

Through: Mr. Aly Mirza, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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1. In July, 2014, petitioner was Personal Assistant, Grade-II with respondent –*Indira Gandhi National Open University (hereinafter referred to as 'IGNOU')*, against whom disciplinary proceedings were initiated regarding receiving of illegal gratification of ₹12,000/- as part payment to get the complainant admitted in Ph.D course in Public Administration.

2. Although Inquiry Officer had given a clean chit to petitioner but the Disciplinary Authority had disagreed with the Inquiry Officer and had entrusted the Inquiry Report to an independent authority to examine the Inquiry Report and on the basis of the Report received from the

independent authority, petitioner has been removed from service with a rider that the *removal* will not be a disqualification for future employment under the Government. The Appellate Authority vide impugned order of 1st April, 2015 has affirmed the penalty of *removal from service* inflicted upon petitioner.

3. The challenge to the impugned order of 1st April, 2015 of the Appellate Authority as well as to the order of 28th July, 2014 of the Disciplinary Authority is on the ground that in the absence of evidence of the complainant, petitioner cannot be held guilty on the charge of receiving illegal gratification on the basis of *admission of guilt*, as the same was obtained under duress.

4. At the hearing, it was vehemently submitted by learned counsel for petitioner that the evidence recorded during the inquiry does not incriminate petitioner and so, petitioner cannot be held guilty merely on the basis of his *admission of guilt*, particularly when the confession/ guilt stands retracted by him when petitioner was called upon to give statement in his defence in the inquiry. It was submitted on behalf of petitioner that the purported confession made before the issuance of charge-sheet is not corroborated by any material on record and since it was made under duress, therefore, it is of no avail. Reliance was placed upon a Division Bench decision of the High Court of Calcutta in *Allahabad Bank Vs. P.K. Mukherjee &ors.* 1993 I L.L.J. 390 to submit that an admission has to be strictly construed. The pertinent observations relied upon by counsel for petitioner in *Allahabad Bank (supra)* are as under:-

“In our view, unless the statement made by the charged officer amounts to a clear and unambiguous admission of his

guilt, failure to hold a formal enquiry would certainly constitute serious infirmity in the order of removal passed against him. Under the Regulations of the bank, the respondent was entitled to have a reasonable opportunity of meeting the charges framed against him and in the present case, before the show-cause notice was served on him, he has had no opportunity to meet the charges. In the instant case, there is no admission by the respondent and consequently, the action of the bank in passing the order of removal without holding an enquiry under the Regulations cannot be sustained.'

5. Reliance was also placed upon a Single Bench decision of High Court of Gujarat in *Natvarbhai S. Makwana Vs. Union Bank of India & ors.* 1985 II L.L.J. 296 to submit that admission of the delinquent alone cannot be regarded as sufficient proof of misconduct and attention of this Court was drawn to the observations made in *Natvarbhai S. Makwana (supra)*, which are as under:-

“To avoid such possibility, it is always necessary that the factum of misconduct be established. Moreover disciplinary proceedings by the department are in the nature of quasi-criminal proceedings much more so from the view point of consequences of such proceedings. An employee may be visited with the penalty of removal or dismissal from service death sentence. Therefore, proof of the facts constituting misconduct has got to be emphasised. Ordinarily, admission alone of the delinquent officer cannot be regarded as sufficient proof of misconduct as well as the facts constituting misconduct.”

6. Reliance was also placed by learned counsel for petitioner upon decision of 16th March, 2010 of the Apex Court in Civil Appeal No. 893 of 2007 *LIC of India Vs. Ram Pal Singh Bisen* to submit that mere

admission of documents in evidence does not amount to its proof. Thus, it was submitted that the impugned orders deserve to be set aside.

7. To controvert the aforesaid submissions advanced by learned counsel for petitioner, learned counsel for respondent-University had submitted that the *admission of guilt* made by petitioner at the first opportunity discloses the true picture and its belated retraction after about eleven months is of no avail, as petitioner had the opportunity to take the plea of duress when he had filed reply to the charge-sheet but petitioner has not done so. It was next submitted that on petitioner's direction, complainant had deposited 50% of the bribe amount of ₹12,000/- in the bank account of petitioner and the complainant had handed over copy of the deposit slip along with her complaint and the reason for her non-appearance finds mention in the e-mail sent by her to the Registrar of respondent-University on 26th July, 2011, which was produced before the Inquiry Officer but he took no note of it because by then, he had closed the evidence. It was submitted that a bare perusal of this e-mail of 26th July, 2011 reveals that complainant was not getting leave to appear before the Inquiry Officer, as admissions were going on in her Institute and her inability to appear in the Inquiry Proceedings was due to petitioner pestering her from different sim numbers and she had expressed apprehension about her security in the campus of the respondent-university by disclosing that whenever she came to the university campus, petitioner had come to know about it.

8. Learned counsel for respondent-University relied upon decisions in *State of Haryana & anr. Vs. Rattan Singh* (1977) 2 SCC 491; *Superintendent Govt. T.B. Sanatorium & anr. Vs. J. Srinivasan* (1998) 8

SCC 572; *State of T.N. Vs. M.A. Waheed Khan* (1998) 8 SCC 723; *Delhi Transport Corporation Vs. N.L. Kakkar, Presiding Officer & ors.* 2004 (73) DRJ 568; *Hawa Singh (Shri) Vs. Union of India & ors.* 2005 VI AD (Delhi) 305; *I.T.D.C. Ltd. Vs. S.K. Roy & ors.* 140 (2007) DLT 336 and *Brahm Singh Vs. Sumitra & ors.* 182 (2011) DLT 350 to submit that non-examination of complainant is not fatal as there is sufficient material on record to connect the chain of events to draw adverse inference against the delinquent to establish his misconduct. It was pointed out that the *admission of guilt* was made by petitioner in the presence of Dr. Y. Venugopal Reddy, Director Research Institute; Prof. E Vayunandan, CVO Incharge IGNOU and other officials of IGNOU and it is not the case of petitioner that he was coerced by any of these person or by whom, petitioner was coerced to make *admission of guilt*. Thus, it was submitted that *admission of guilt* has to be read as a whole and upon doing so, it becomes clear that petitioner is *guilty* of misconduct for which he has been charged and so, this petition deserves to be dismissed.

9. After having heard learned counsel for the parties at length and on perusal of order of the Appellate Authority, order of Disciplinary Authority, Inquiry Report, report of Independent Authority and copy of record placed before this Court as well as the decisions cited, I find that non-examination of complainant in the inquiry is not fatal, as the circumstances of this case coupled with production of bank deposit slip filed by complainant along with the complaint, amply justifies the *finding of guilt* returned against the petitioner.

10. In any case, plea of non-appearance of complainant would be of no consequence as the unexplained deposit of ₹12,000/- in petitioner's bank

account amply corroborates the *admission of guilt* by petitioner in the first instance. Non production of complainant in the inquiry proceedings was held to be fatal by the Apex Court in *Kuldeep Singh Vs. The Commissioner of Police & ors.* AIR 1999 SC 677. In the instant case, non examination of complainant is of no consequence. In *Delhi Transport Corporatio Vs. N. L. Kakkar* 2004 (73) DRJ 568 it has been held that non-examination of the complainant in domestic inquiry is not necessarily fatal, as pragmatic view of the situation has to be taken.

11. It cannot be said that the instant case ‘is of no evidence’ as in the inquiry, evidence of Dr. Y Venugopal Reddy, Director of Research Institute; Professor Sunita Malhtora and Professor Javed Abrar Farooqui was recorded and Defence Assistant of petitioner had cross-examined these witnesses. No explanation is forthcoming as to how the bank deposit slip of ₹12,000/- in the account of petitioner was produced by the complainant along with the complaint. Petitioner gave no explanation regarding deposit of ₹12,000/- in his bank account.

12. The translated copy of petitioner’s Confessional Statement of 13th September, 2010 needs to be adverted to test its voluntariness. It reads as under:-

“ **STATEMENT**

I am Yogesh s/o Shri Baldev Parkash, R/o JG-3/72 B, Vikas Puri, New Delhi. I was working in IGNOU since 19.12.2003 (PA II). Presently I am posted at School of Sciences. Prior to this, I was posted at Research Unit.

Q.1. How do you know Smt. Jyoti Tripathi Shukla and since when?

Ans. Smt. Jyoti Tripathi Shukla had contacted me in my office IRU) in the month of May. She had requested me to get her admitted in Ph.D. program.

Q.2 What did you speak with Smt. Jyoti Tripathi Shukla and after that when did you speak to her and for what purpose?

Ans. Smt. Jyoti Tripathi Shukla came to my office and requested me for her admission. For this purpose, she offered me money. As my family financial condition was bad, I accepted her offer.

Q.3 What did you speak to Smt. Jyoti Tripathi Shukla for her Ph.D admission and what did you offer her and how much money you demanded her?

Ans. She gave me Ph.D admission form and also paid me ₹12,000/- and we agreed for a further sum of ₹13,000/-.

Q.4. Did you make the demand of money with consent of Dr. Venugopal Reddy and whose passbook you showed to Smt. Jyoti Tripathi Shukla?

Ans. No, this was not in knowledge of Dr. Venugopal Reddy nor I showed her any such passbook.

Q.5. When all did you meet Smt. Jyoti Tripathi Shukla and were these meetings were with the consent of Director, Prof. Vayunandan or you met her on your own?

Ans. I met her in my office only once when she had come. I have only met her once.

Q.6. When did you talk for money from Smt. Jyoti Tripathi Shukla and whose account you deposited the money?

Ans. I took the money from Smt. Jyoti Tripathi Shukla (₹12,000) on 31.5.2010 and took the money in my account.

Q.7. How did Smt. Jyoti Tripathi Shukla came to know about your account details?

Ans. I gave my account no. to Smt. Jyoti Tripathi Shukla and told her to deposit ₹12,000/- in that account. Alongwith amount of ₹12,000/- Smt. Jyoti Tripathi Shukla also gave me Ph.D admission form which was supposed to have been submitted with RU. I still have that application form.

Q.8. Why did you not submit the form of Smt. Jyoti Tripathi Shukla?

Ans. Because in that session in the public advertisement issued by the University, no Ph. D offer had been given by the university which I had told Smt. Jyoti Tripathi Shukla already. However, she told that do whatever and get my form submitted and get my admission done.

Q.9. How much money did you demand in the name of Venu Gopal Reddy?

Ans. I did not demand anything in the name of Venugopal.

Q.10. Is account no. 2257000102012910 yours? If yes, in whose name and what is the address?

Ans. Account No.2257000102012910 is my account no. in PNB Maidan Garhi.

Q.11. Did you ask Smt. Jyoti Tripathi Shukla to deposit ₹12,000/- in your account?

Ans. She said that on 31.5.2010, she would deposit ₹12,000/- in the account. I was shown a deposit slip dated 31.5.2010 of PNB Account No.2257000102012910 in which ₹12,000/- was deposited on 31.5.2010. This deposit slip is of my account number and in my hand writing and on which my correct name is written.

Q.12. How much time do you need for submit one statement of bank account no.2257000102012910, PNB with the vigilance cell?

Ans. I can submit the same in one week.

The above noted statement is correct and I accept the information given be me completely. I have given the statement without any fear or pressure and of my own violation. This statement can be used against me or any other person. The vigilance cell will call in connection with this incident and I will appear.

*SD/-
Yogesh
13.9.2010”*

13. The plea of duress has been belatedly taken by petitioner. In the Confessional Statement of 13th September, 2010, petitioner had admitted that he had received amount of ₹12,000/- and he was to get the remaining amount after getting admission of complainant done in Ph. D course in Public Administration. Even when petitioner was suspended on 17th September, 2010, he had not responded to his suspension by asserting that he had made confession under duress. Even in the reply to the

charge-sheet filed on 16th December, 2010, petitioner had not made any assertion that the Confessional Statement was under duress, coercion or pressure and by whom. For the first time, petitioner had taken the plea of duress in the written statement filed by him on 3rd August, 2011 but it was a bald plea. It was not disclosed as to who had pressurized him to make Confessional Statement. As already noted above, petitioner does not explain deposit of ₹12,000/- in his account and as to how deposit slip came in the hands of complainant. Absence of any explanation in this regard unerringly points out towards the *guilt* of petitioner. A bare reading of petitioner's Confessional Statement of 19th September, 2010 reveals that it was made spontaneously and in a natural way. It is a detailed statement and upon its bare reading, voluntariness of petitioner's confession becomes evident.

14. It is relevant to note that petitioner had made the Confessional Statement in the presence of Director of the Research Institute, IGNOU and CVO Incharge of IGNOU and other officials of IGNOU. No reason is forthcoming as to why he would be coerced and put under duress by such eminent persons and for what purpose. Upon reading of petitioner's Confessional Statement of 13th September, 2010, the irresistible conclusion which a prudent person would draw is that it is a voluntary statement and by no stretch of imagination, it can be said that it was under duress.

15. Apex Court in *Delhi Transport Corporation Vs. Shyam Lal* (2004) 8 SCC 88 has reiterated that '*admission of guilt*' by the delinquent is best piece of evidence against its maker though it is open for the maker to show why it should not be acted upon.

16. In *L.I.C. of India (supra)*, Apex Court held that filing of inquiry report or the evidence adduced during the domestic inquiry would not partake the character of admissible evidence and so, admission of delinquent on those documents, was of no help. This decision is distinguishable on facts and is of no help to the case of petitioner. Reliance placed by learned counsel for petitioner upon decision in *Union of India Vs. Anokhey Lal* 2008 I AD (Delhi) 107 is also of no avail as in the said case, it was found that there was pre-determined and biased mind whereas no such inference can be drawn in the facts of the instant case. In *Nirmala J. Jhala Vs. State of Gujarat & anr.* 2013 IV AD (SC) 144 it was held that evidence recorded in the preliminary inquiry cannot be used in regular inquiry and in the regular inquiry, the onus was wrongly shifted on the delinquent. This decision is apparently distinguishable on the facts as in the instant case, as it was open for petitioner to satisfactorily substantiate the plea of duress. Since petitioner has failed to substantiate the plea of duress, therefore, reliance placed upon decision in *Nirmala Jain (supra)* by petitioner's counsel is of no avail.

17. Apart from afore-referred Confessional Statement, there is a bank deposit slip which provides ample corroboration to the confession made by petitioner. The circumstances of this case clearly show that belated retraction of confession by petitioner deserves outright rejection. The principles of natural justice stands complied as petitioner was provided an opportunity to respond to the Memorandum of 6th December, 2010 and petitioner had infact responded to the said Memorandum. The response of petitioner to the aforesaid Memorandum has been rightly discarded by the Disciplinary Authority while relying upon the report of independent

authority. The appellate order sustaining the punishment awarded to petitioner does not suffer from any apparent error on the face of it. The report of Inquiry Officer discloses mechanical approach and has been rightly discarded by the Disciplinary Authority, which stands duly affirmed in appeal.

18. In the considered opinion of this Court, there is no substance in this petition. It is accordingly dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 15, 2015

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