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

*Date of Decision: October 30, 2015*

+ **W.P.(C) 9417/2015**

B.S. CHAUDHARY ..... Petitioner

Through: Mr. R.K. Shukla, Advocate

versus

THE DIRECTOR INDIAN INSTITUTE OF TECHNOLOGY &  
ORS ..... Respondents

Through: Mr. Arjun Mitra, Advocate with  
Mr. G.D. Bahuguna, Jr.  
Superintendent

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**

% **(ORAL)**

Impugned order of 20<sup>th</sup> July, 2015 (*Annexure P-1 colly.*) holds that exoneration in the criminal proceedings does not impact upon the dismissal order passed in the departmental proceedings as the case against petitioner stands proved by preponderance of probabilities and the yardstick of beyond doubt applicable to criminal proceedings cannot be applied to the departmental proceedings.

At the hearing, learned counsel for petitioner submitted that upon acquittal from the criminal court, petitioner had filed a detailed Representation of 7<sup>th</sup> July, 2014 (*Annexure P-7*) to the Director of respondent-Institute which has been rejected vide impugned order by simply observing that the yardstick adopted in departmental proceedings and the criminal proceedings are quite different whereas the charges framed in these two proceedings were identical and the material witnesses

relied upon in both these proceedings were the same and so, in view of the conflicting decision of both the Forums, the dismissal of petitioner from service deserves to be quashed. Reliance was placed upon Apex Court's decision in *G.M. Tank v. State of Gujarat and Ors.* (2006) 5 SCC 446 to submit that the dismissal order is rendered unsustainable when the departmental inquiry and criminal proceedings based on same set of facts ends in acquittal in the criminal proceedings.

Learned counsel for respondent had strongly opposed this petition by pointing out that the acquittal of petitioner by the criminal court was because the CFSL report was not conclusive whereas in the departmental proceedings, it was clarified by the Deputy Registrar (Accounts) that any receipt issued or receipt number indicated in the PF ledger alone cannot be relied upon unless it is substantiated by corresponding reference entry in the cash book relating to that transaction. Thus, it was submitted that the impugned order suffers from no illegality and so, this petition deserves to be dismissed. Reliance was placed upon Apex Court's decisions in *State of Karnataka v. T. Venkataramanappa* (1996) 6 SCC 455; *State of A.P. v. Allabakash* (2000) 10 SCC 117 and *Badarpur Thermal Power Station v. Central Government Industrial Tribunal-cum-Labour Court & Anr.* 218 (2015) DLT 792 to submit that despite acquittal in a criminal case, departmental inquiry for misconduct can be still held and the delinquent can be held guilty.

Upon hearing and on perusal of the impugned order, the Inquiry Report, criminal court's judgment and the material on record as well as the decisions cited, I find that the acquittal of petitioner in the criminal proceedings is primarily based upon the inconclusive expert opinion

whereas in the departmental proceedings, it has been found that there is no corresponding entry in the cash book relating to the transaction in question. Considering that the allegations levelled against petitioner of embezzling ₹67,964/- from the Provident Fund Account is of serious nature, I find that the penalty of dismissal from service inflicted upon petitioner not to be disproportionate.

Reliance placed upon the Apex Court's decision in *G.M. Tank (supra)* is of no avail because in the said decision, the charges and the evidence led in the two proceedings were one and the same, whereas in the instant case, the acquittal of petitioner is for want of conclusive expert opinion. Pertinently, in the departmental proceedings, the evidence of Deputy Registrar (Accounts) proves the charges against petitioner. Thus, it cannot be said that the nature of evidence in both the proceedings is the same. Apart from the complainant witnesses, there were official witnesses also in the departmental proceedings from whose evidence, the charge in the departmental proceedings stood conclusively proved.

Hence, findings in the criminal proceedings relating to forgery, etc., cannot be made the basis for upsetting the well considered findings in the domestic inquiry. Impugned order suffers from no perversity or irrationality requiring any interference by this Court in the exercise of writ jurisdiction. Consequentially, this petition is dismissed while leaving the parties to bear their own costs.

**(SUNIL GAUR)**  
**JUDGE**

**OCTOBER 30, 2015**

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