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

+ **W.P.(C) 2208/2016**

VIVEKANAND SINGH Petitioner

Through Mr. K.B.B. Singh, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through Mr. Arun Birbal & Mr. Sanjay Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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18.03.2016

The petitioner-Vivekanand Singh impugns order dated 12th August, 2015 passed in OA No. 3143/2012, whereby the aforesaid OA has been dismissed.

2. The petitioner was charge sheeted on the following Articles of charge:-

“Article-I

That the said Shri Vivekanand Singh, LDC during the above said period had unauthorisedly sold prepaid lottery tickets of Delhi Lotteries on credit to the local dealers/agents in violation of the Scheme of Delhi Lotteries.

Article-II

That the said Shri Vivekanand Singh, LDC as on

17.6.1987, when his Branch was inspected by the CAO, had to deposit a sum of Rs.2,55,000/- lakhs against which till 12.8.1987 he had remitted only Rs.79,500/-. The balance amount of Rs.1,75,000/- was left to be deposited by Shri Vivekanand Singh, LDC which tantamounts to embezzlement of Govt. money.

Article-III

That the said Shri Vivekanand Singh, LDC during the aforesaid period in the aforesaid office did not maintain or render detailed account of sales of lottery tickets on credit. The lottery accounts were kept pending despite issue of repeated instructions from the office of Delhi Lotteries with ulterior motive.

Shri V.N. Singh, LDC by his above acts of commission and omission failed to maintain absolute integrity and devotion to duty thereby contravening Rule 3 of CCS (Conduct) Rules 1964 made application to the employees of the Authority.”

3. The disciplinary authority by order dated 27th July, 1990 imposed penalty of dismissal. The Appellate Authority by order dated 15th January, 1991 upheld the findings and penalty of dismissal.

3.1 The two orders were challenged in Writ Petition (C) No. 990/1992 before the Delhi High Court, which was partly allowed vide order dated 9th February, 1996 as the appellate authority was directed to pass a speaking order recording reasons for its decision.

3.2 In compliance, the appellate authority passed a fresh order dated 3rd May, 1996 rejecting the appeal of the petitioner. In other words, the order of

dismissal was sustained.

4. The petitioner did not challenge and question this order dated 3rd May, 1996. The petitioner accepted the same.

5. The petitioner was prosecuted under Sections 409 and 411 of the Indian Penal Code, 1860 in FIR No. 683/1988 and was convicted by the judgment of the trial court dated 22nd October, 2009. However, the Additional Sessions Judge allowed his appeal and the conviction and sentence were set aside vide judgment dated 5th July, 2010.

6. The petitioner, on acquittal in the criminal appeal, started making representations seeking reinstatement. The first representation was made on 26th August, 2010. Thereafter, on 23rd November, 2011, the petitioner had sent a legal notice to which a reply dated 11th January, 2012 was received refusing to reinstate the petitioner. In January, 2012, the petitioner filed the aforesaid OA No. 3143/2012, which as noticed above, by the impugned order dated 12th August, 2015 has been dismissed.

7. In our opinion, the tribunal has rightly drawn a distinction between the criminal proceedings and the articles of charge on which the petitioner had faced disciplinary proceedings. Criminal proceedings were separate and distinct. The judgment in the criminal proceedings would depend upon evidence led and produced. It would also depend upon whether there was violation of the provisions of Section 409 or 411 IPC. Further, in criminal

proceedings the principle of benefit of doubt applies, whereas in departmental proceedings the standard of proof required is different as they are decided on the principle of preponderance of probability. The tribunal in the impugned judgment has rightly referred to the decisions of the Supreme Court in *Nelsom Motis versus Union of India and Another*, AIR 1992 SC 1981, *State of Karnataka and Another versus T. Venkataramanappa*, (1996) 6 SCC 455, *State of Karnataka and Another versus T. Venkataramanappa*, (1996) 6 SCC 455, *State of Andhra Pradesh versus K. Allabaksh*, (2000) 10 SCC 177 and *Ajit Kumar Nag versus General Manager (PJ) Indian Oil Corporation Limited*, (2005) 7 SCC 764 wherein it has been held that acquittal in a criminal case need not be a bar to the departmental enquiry, for in the criminal trial the standard of proof is stricter and in disciplinary proceedings what is required to be proved and shown is misconduct and the standard required is preponderance of probability. Acquittal in a criminal case cannot be construed as clear exoneration from departmental proceedings

8. Evidence was led on the aforesaid articles of charge in the disciplinary proceedings. Penalty of dismissal was imposed by the disciplinary authority vide order dated 27th July, 1990. The petitioner had filed an appeal and in terms of the order passed by the High Court a fresh order was passed by the appellate authority on 3rd May, 1996. The appeal filed by the petitioner

against the order of dismissal was dismissed and the penalty sustained. As noticed above, the petitioner accepted the said order and did not challenge the same by filing a writ petition.

The writ petition has no merit and is accordingly dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 18, 2016
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