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

% Date of decision: 19th May, 2016

+ **W.P.(C) 1079/2015, CM No.1923/2015**

A.S. NEGI Petitioner

Through: Mr. Rajesh Katyal, Adv.

versus

GOVT. OF NCT OF DELHI & ANR Respondents

Through: Ms. Manika Tripathy Pandey, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. Mr. A.A. Negi by this writ petition impugns order dated 2nd July, 2014 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi whereby his OA no.2277/2012 has been dismissed.

2. The petitioner was dismissed from service vide order dated 27.12.2010 passed by the Disciplinary Authority after an enquiry under Rule 14 of the Central Civil Service (CCA) Rules, 1965, on the following article of charge:-

“That Shri A.S.Negi, UDC, while working in the office of SDM (E), DEO (South) on 09.07.2007 at 3.00 PM

has indulged in an act unbecoming of a public servant in as much as he was found entertaining an outsider woman namely Vimal Ikka and doing immoral act with her in the Store Room of the department which was locked from outside located at Distt. South, MB Road, Saket, New Delhi. A team of officers namely Shri Lallan Singh, SDM (Defence colony/HQ), Distt. South and Shri Azad Singh, Supdt. (E) Distt. South under the overall supervision of DEO (Sought), Delhi, caught the official red handed. The said immoral act was done by the official in the Store Room and Shri Deep Chand, Peon, working in diverted capacity from the Education Department who locked the store room from outside.”

3. The order of dismissal was affirmed by the Revisionary Authority vide order dated 3.4.2012.
4. The aforesaid orders of the Disciplinary Authority and Revisionary Authority were challenged by the O.A.No. 2277/2012 before the Tribunal.
5. The impugned order passed by the Tribunal refers to the contentions including the submission that it was a case of no evidence and Manoj Kumar, Store Keeper and Deep Chand, Peon were exonerated in the disciplinary proceedings. The Tribunal, exhaustively examined the evidence on record pursuant to which the Enquiry Officer had held that the charges against the petitioner stand fully proved. The contention that it was a case of no evidence, or exoneration of Manoj Kumar and Deep Chand, merited absolving the petitioner was rejected.
6. Challenging the aforesaid findings of fact before us, petitioner has submitted that the prosecution witness Lallan Singh - PW-2, Sub

Divisional Magistrate had not supported the prosecution's case. He also submits that there were contradictions in the statements by Rajesh Prashad- PW-1, Lallan Singh – PW-2 and Azad Singh – PW-3.

7. We have considered the said contention, but they are devoid of substance for several reasons. The Enquiry Officer has dealt with, examined and evaluated the evidence led by the Presenting Officer. He has referred to the statement of Azad Singh who had affirmed Ex.PW-1/A, a letter written by the petitioner on 9th July, 2007, i.e. the date of the occurrence to the following effect:-

“I am to submit that a lady named Smt. Ikka, well known to me from the last five years, came to me with her some problems.

Sir she was my old friend, I asked her to wait for me in the Store of the office. At about I also entered in the store and asked Sh. Deep Chand, Peon to lock the door from outside as I had to do some urgent work.

Sir I loved her for about half an hour. In the mean-time some-one knocked at the door, then we aparted.

Sir, I apologize from the core of my heart for my this action in the office premises and request in your kind honour to forgive me as this is my first mistake in 31 years of my Govt. Service. During the course of opening the door, worthy DEO(s) SDM(O/C), Supdt. (O) & C.T.(D/C office) were present.”

8. Azad Singh had also stated that the said letter was written without any pressure. He was exhaustively cross-examined but affirmed his statement and denied the fact that earlier another

statement was made by the petitioner or the said statement was torn. Lallan Singh affirmed that the letter in question was written in his presence. He had accepted that on opening the door, the petitioner was found with the said person inside the room. However, the witness did somewhat oscillated, when he expressed ignorance about the person knocking on the door of the room. The third witness Rakesh Prashad had stated that he was informed by Azad Singh on his mobile phone that the petitioner, officer-in-charge was inside the locked room. On looking through the window pane, the petitioner was found with another person. Thereafter, the lock was opened in his presence. He had also sent a note to the Chief Electoral Officer giving details of the occurrence on 9th July, 2007. This is not a case of no evidence, pervert or absurd finding of fact, or the conclusion being faulty on the precept that no reasonable person on the evidence could have reached the said finding. When we exercise power of judicial review, the High Court does act as an appellate forum and re-appreciate evidence.

9. The petitioner had led defence evidence and had produced one Prithvi Singh who had claimed that the person found with the petitioner was his wife. He professed that his family was friendly and they had close relations with the petitioner. His wife had gone to the office of the petitioner as there was a problem in water supply and to request for plumber services. This version has been dealt with and examined in the Enquiry Report. On being questioned, Prithvi Singh had accepted that no valid marriage has taken place between him and his "wife" and that they had been living together for four years. He

admitted that his written statement was prepared by his 'vakil' (an advocate). The defence version accepts, the presence of the other person in the office on 9th July, 2007 and the finding of the Enquiry Officer was that the door was closed and the petitioner and the other person were inside the locked room.

10. Learned counsel for the petitioner contends that there was a violation of Rule 14(18) of the Central Civil Service (CCA) Rules, 1965 as the Enquiry Officer had not examined the petitioner. To examine the contention, we have gone through the Enquiry Report. This contention, in the facts of the present case should not be accepted. The Disciplinary Authority had appointed Enquiry Officer by order dated 20th December, 2007. The prosecution evidence was produced and thereafter the petitioner led defence evidence. The Enquiry Report mentions and refers to the written submissions by the petitioner. Under the sub-heading 'arguments' the Enquiry Report records that the Presenting Officer had submitted a copy of the evidence and material to each of the charged officers, including the petitioner, who were asked to give their written brief. The Enquiry Report takes into consideration the written briefs submitted by the petitioner in response to the evidence adduced and relied by the Presenting Officer. The petitioner claimed that he was sitting in a closed/locked room and discussing with the other person, personal/domestic problems and private matter. He had, therefore, not conducted any act of moral turpitude. The petitioner had countered the evidence/material in the form of his letter Ex. PW-1/A as recorded under coercion by the Sub Divisional Magistrate on the instructions of

District Election Officer. Thus, the petitioner was bestowed and given adequate and fair opportunity to rebut and answer the evidence and material relied against him. Prejudice and any injustice is not shown or elucidated. Except for placing reliance on the Rule, no attempt is made to bring out a fact or an issue not examined and considered in the Enquiry Report.

11. In these circumstances, we feel that full opportunity was given to the petitioner to meet the allegations and in fact there has been full compliance of principles of natural justice including the requirement as stipulated in Rule 14(18) of the Central Civil Service (CCA) Rules, 1965. Therefore, the judgments relied upon by the petitioner in the case of *K.K.S.Sirohi & Anr. vs. Union of India & Ors.*, WP(C)3510/2013 decided on 3rd July, 2013 and *Ministry of Finance vs. S.B. Ramesh*, AIR 1998 (3)SC 227 are not applicable.

12. In view of the aforesaid, we do not find any merit in the present writ petition and the same is dismissed. No order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 19, 2016/ak