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

% **Decided on : 15.01.2016**

+ **LPA 27/2016**

YOGESH

..... Appellant

Through: Mr.Manish Garg and Mr.Akshay
Bhardwaj, Advocates

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

C.M.No.1351/2016 (for condonation of delay in re-filing the appeal)

For the reasons mentioned in the application, the delay in re-filing the appeal is condoned.

Appeal stands disposed of.

LPA 27/2016

1. The appellant's grievance in this case is that the order removing him from service was not based upon any evidence. He was charged with demanding illegal gratification and consequently disciplinary proceedings were initiated against him by the issuance of charge memo on 06.12.2010. The appellant had challenged the order of

removal dated 19.06.2013 in W.P.(C) 8656/2015 which was dismissed by the impugned judgment and order.

2. The appellant contends that Ms.Jyoti Shukla, the applicant aspiring for admission, who complained about the demand for illegal gratification by way of bribe, did not depose or record any statement before the enquiry officer. He also highlighted that two enquiry proceedings were held. It was contended that the first enquiry which ended in exoneration was subsequently remanded and later resulted in a finding of guilt. He submitted that officers who were alleged to have heard the appellant's confession about the demand, in fact, did not record any statement. Thus, submits the counsel present, that the finding of the enquiry officer was not backed by evidence as is required and subsequently order of removal should have been but was not interfered with by the Single Judge. Counsel for the appellant further submitted that the so called statement recorded on 13.09.2010 could not have been taken into account since it was retracted at the first available opportunity i.e. after show cause notice was issued to him on 06.12.2010. In the alternative it was submitted that the court should consider imposing a lighter punishment having regard to the facts and circumstances of the case.

3. The impugned order is an elaborate and reasoned one. The appellant was undoubtedly exonerated in the course of inquiry. However, the disciplinary authority recorded a disagreement note which finally led to the imposition of penalty. The statement whereby the appellant admitted his guilt is a written document signed by him.

The relevant questions put to the appellant – in light of the complaint made – and answers are as follows:

“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.

xxxx xxxx xxxx xxxx

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.”

4. This court is of the opinion that disciplinary proceedings are not criminal proceedings that would lead to conviction. It is well established that disciplinary proceedings are not akin to criminal proceedings whereby the standard of proof mandated is one beyond reasonable doubt. In adjudication proceedings such as those conducted by customs or other revenue officers, even uncorroborated

and retracted confessional statements or admissions have evidentiary value. He was aware of the statement that was recorded on 13.09.2010. In the present case, though the appellant today argues that admission or confession made by him in writing was by coercion, there is nothing on record to substantiate the submission. If indeed there was coercion, nothing prevented him from immediately retracting or complaining to higher authorities if such confession was recorded by an officer. He could have even approached the police. However he let the record as it was till a show cause notice was issued to him on 06.12.2010. It was at that stage that he chose his statement to be retracted. Consequently, this court is of the opinion that the findings of guilt recorded by the disciplinary authority and upheld by the higher authorities as well as this court do not call for interference. As far as alternative submissions with respect to imposition of lighter punishment goes, the nature of misconduct is such that penalty imposed cannot be characterised as disproportionate. This submission too has no merit.

5. For the above reasons, the appeal is meritless and consequently it is dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 15, 2016/rb