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

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Date of Decision: 16.01.2019

% **W.P.(C) 357/2019**

MANOJ SHANKAR

..... Petitioner

Through: Mr. Yashvardhan with Ms. Smita
Kant, Mr. Puneet Kumar and Mr.
Abhishek Praharaj, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Vivek Goyal, CGSC with Mr.
Pawan Pathak, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

C.M. No. 1679/2019

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has preferred the present writ petition to assail the order dated 13.11.2018 passed by the Central Administrative Tribunal,

Principal Bench, New Delhi, (the Tribunal) in O.A. No. 3593/2014. The Tribunal has rejected the said Original Application preferred by the petitioner wherein he had assailed the orders whereby disciplinary proceedings were initiated against him. The petitioner was charge - sheeted in a case under the Prevention of Corruption Act by the Special Judge, CBI and was tried. Vide a judgment dated 30.01.2014, he along with the other co-accused i.e. accused No.2 were acquitted by the Special Judge, CBI, Dharwad in SPL. (CBI) C.C. 28/2013.

4. Consequent upon the said acquittal, the respondent sought to departmentally charge – sheet the petitioner. The petitioner then approached the Tribunal by preferring the Original Application in question, which has been rejected by the Tribunal. The Tribunal has placed reliance on the judgment of the Supreme Court in ***Union of India v. Purushottam***, (2015) 3 SCC 779, wherein the Supreme Court observed as follows:

“14. acquittal of an employee by a criminal court would not automatically and conclusively impact departmental proceedings:

14.1.Firstly, this is because of the disparate degrees of proof in the two viz. beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries.

14.2.Secondly, criminal prosecution is not within the control of the department concerned and acquittal could be the consequence of shoddy investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the trial, etc.

14.3.Thirdly, an acquittal in a criminal prosecution may preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the criminal court must conclude that the accused is innocent and not merely conclude that he has not been proved to be guilty beyond reasonable doubt.

15. The recent case falls in the passive category, since the respondent has been let off, incorrectly on technicalities, and that too, on a very implausible and debatable if not specious opinion of the JAG. The respondents had not earned an honorable acquittal. Consequently, whether on reliance of the double jeopardy principle or on the setting aside of his punishment, departmental or disciplinary proceedings ought not to be viewed as precluded.”

5. The submission of the petitioner is that the acquittal of the petitioner by the Special Judge, CBI is an “*honorable acquittal*”. He submits that the learned Special Judge has observed in the said judgment in paragraph 119 that the prosecution has miserably failed to prove the charge against both the accused beyond reasonable doubt, and they are entitled for benefit of doubt.

6. We have perused the said judgment rendered by the Special Judge, CBI. A perusal of the said judgment shows that a trap was laid on the complaint of the complainant to apprehend the two accused red handed while accepting bribe amount. As per the case of the prosecution, accused No.2 was apprehended while accepting the amount, which was then made over to the accused No. 1 i.e. the petitioner.

7. On a reading of the judgment, it appears to us that the acquittal came about primarily on account of the failure of the prosecution in appropriately

presenting and pursuing the case. It is for this reason that the learned Special Judge observed that there were omissions on the part of the prosecution and for that reason the Special Judge gave the benefit of doubt to the accused while acquitting them.

8. Certainly, the present is not a case where it could be said that there was absolutely no material found against the petitioner. Thus, in our view, the acquittal of the petitioner cannot be said to be “*honorable acquittal*”. There is no definite finding returned by the Trial Court with regard to the innocence of the petitioner. Thus, in our view, there is no merit in this petition.

9. The same is, accordingly, dismissed.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

JANUARY 16, 2019

N.Khanna