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

+ **W.P.(C) 9489/2018 and CM APPL. 36952/2018**

BALWAN SINGH Petitioner

Through: Mr. Ankit Punia, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Anil Dabas, Advocate with

Mr. Praveen Kumar Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **11.09.2018**

1. The petitioner has filed the present petition challenging an order passed by the respondents as long back as on 13.08.2009, terminating his services by compulsorily retiring him.

2. It is an admitted position that the petitioner did not challenge the order dated 13.08.2009, by exhausting the statutory remedies available to him by filing an appeal, etc. In fact, the petitioner did not take any action till the learned Additional Sessions Judge, Dwarka Court passed a judgment dated 22.05.2018, setting aside the judgment and order on sentence dated 18.12.2017 passed by the learned Trial Court in the case arising out of FIR No.667/2007, P.S. Najafgarh, under which he was convicted for the offence under Section 377 of the IPC and sentenced to undergo rigorous imprisonment for a period of one year with a fine of Rs.50,000/- imposed on him.

3. Learned counsel for the petitioner submits that once the petitioner has been acquitted in the criminal case, then he ought to be reinstated in service forthwith.

4. On a bare perusal of the judgment dated 22.05.2018, passed by the learned Additional Sessions Judge, Dwarka Court, it is apparent that the appeal filed by the petitioner against the judgment and order on sentence dated 22.12.2017, has been allowed only by giving him the benefit of doubt. Furthermore, the contention of learned counsel for the petitioner that having been acquitted by the Sessions Court, the penalty awarded to the petitioner pursuant to the disciplinary proceedings ought to be set aside, cannot be accepted. As is apparent from the facts of the present case, after the disciplinary proceedings were initiated against the petitioner, his services were terminated on 13.08.2009, whereas the trial court had indicted him vide judgment dated 22.12.2017, which was reversed in appeal as recently as on 22.5.2018.

5. Further, the charges levelled against the petitioner in the disciplinary proceedings are also not identical to the charges framed against him in the criminal case. In the disciplinary inquiry, the charges levelled against the petitioner were, amongst others, that he had consumed alcohol on duty on 21.07.2007, while posted at the Group Centre, Jharoda Kalan, New Delhi and he had picked up a quarrel with a Safai Karamchari and had demanded a sum of Rs.100 towards the mess cutting, even though no such outstanding amount was allegedly payable by him as was depicted in the mess register. The second charge against the petitioner in the disciplinary inquiry was that

not only had he consumed alcohol while on duty on the relevant date, but he had forcibly indulged in unnatural sex with the aforesaid Safai Karamchari. After the entire inquiry proceedings had concluded, the impugned order dated 13.08.2009 was passed by the Disciplinary Authority holding that the charges against the petitioner had been proved in the Departmental Enquiry.

6. It has been consistently held in several cases decided by the Supreme Court and followed by the High Courts that where the inquiry has been held independent of the criminal proceedings, then acquittal by the criminal court would not be of any avail to a delinquent employee. This is for the reason that criminal proceedings are entirely different from the departmental proceedings. While the criminal proceedings are initiated by the State against a delinquent employee in the criminal court, a departmental inquiry is initiated by the employer against a delinquent employee under the service law. Thus, even if a person stands acquitted by the criminal court, he can be held guilty in a departmental inquiry for the simple reason that the standard of proof required in a domestic inquiry is based on preponderance of probabilities as against criminal proceedings where the standard of proof required is beyond reasonable doubt [Refer: Nelson Motis vs. UOI and Anr. reported as **AIR 1992 SC 1981**, State of Rajasthan vs. B.K. Meena and Ors. reported as **AIR 1997 SC 13**, Roop Singh Negi vs. Punjab National Bank and Ors. reported as **(2009) 2 SCC 570**, Karnataka SRTV vs. M.G. Mittal Rao reported as **2012 (1) SCC 442** and Management of Bharat Heavy Electricals Ltd. vs. M. Mani reported as **(2018) 1 SCC 285**].

7. In the instant case, the domestic inquiry initiated against the petitioner has been conducted strictly in accordance with law, in a fair manner and the charges have been proved against him on the basis of preponderance of probabilities. Despite the proven serious misconduct of the petitioner, keeping in mind his length of service, the respondents have been rather indulgent and lenient towards the petitioner. This is evident from the fact that while imposing the punishment of compulsory retirement on him, the Disciplinary Authority has ordered that the qualifying service of the petitioner will not be excluded while calculating his pension and gratuity and that he would be entitled to full pension under Rule 40(1) of the CCS (Pension) Rules, 1972.

8. We are of the opinion that given the aforesaid facts and circumstances, the impugned order dated 13.08.2009 passed by the respondents does not warrant interference merely on account of the petitioner succeeding in the appeal preferred by him before the Additional Sessions Judge against the judgment and order on sentence dated 22.12.2017, passed by the learned Trial Court in case arising from FIR No.667/2007.

9. The petition is accordingly dismissed alongwith the pending application.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 11, 2018/na/rkb/ap
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