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

+ **W.P.(C) 8180/2015**

YOGENDRA SINGH SANGER

..... Petitioner

Through: Mr.Ashwin Vaish and Mr. Vinod
Kumar Pandey, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr.Kumar Rajesh Singh, Standing
Counsel and Ms. Punam Singh,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

25.11.2019

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1. The short ground on which the Petitioner questions the order dated 10th October, 2012 passed by the Central Administrative Tribunal ('CAT') dismissing his O.A.No3364/2012 is that prior to his dismissal from service by the order dated 24th July, 2012 he was not issued a separate notice.

2. The facts in brief are that the Petitioner joined the Municipal Corporation of Delhi ('MCD') as a Junior Engineer way back on 7th July, 1983. On 6th December, 2003 an FIR No. 59/2003 was registered in the Police Station Anti Corruption Branch under Section 13 (2) read with Section 13 (1) (c) of Prevention of Corruption Act ('PC Act') against the Petitioner on the charge that while he was posted as Junior Engineer in March, 2002 he misappropriated the wages of casual labourers.

3. On 9th October, 2007 a charge-sheet was filed in the above FIR. In the meanwhile in the year 2008, the Petitioner was promoted as Assistant Engineer (AE).

4. Nearly five years after the charge-sheet was filed, the trial Court passed a judgment convicting the Petitioner *inter alia* of the offences punishable under Section 13 (2) read with Section 13 (1)(c) of the PC Act. He was sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.5000/- was imposed on him, for default of which he would have to undergo simple imprisonment for a period of three months. He was separately convicted under Section 420 IPC and awarded the same sentence for that offence as well. The third and fourth convictions were under Section 468 IPC and 471 of the IPC with identical sentences.

5. On the basis of the above order, the impugned office order dated 24th July, 2012 was passed dismissing the Petitioner from service, which dismissal ordinarily would be a disqualification for further employment. The CAT has in the impugned order discussion Regulation 9 of the DMC Services (Control and Appeal) Regulations, 1959 as well as Regulation 8 thereof. The CAT negated the plea that there was violation of the binding regulations in view of notice not having been issued to the Petitioner.

6. It is not the case of the learned counsel for the Petitioner that there is any specific provision in the regulation or even the DMC Act that requires a separate notification for the Petitioner prior to disciplinary action on him consequent upon a conviction by the criminal court.

7. The Court's attention is drawn to Sections 95 (2) and 95 (3) of the DMC Act which read as under:

“95. Punishment for municipal officers and other employees

(2) No such officer or other employee shall be punished under sub-section (1) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this sub-section shall not apply—

(a) where an officer or other employee is removed or dismissed on the ground of conduct which had led to his conviction on a criminal charge; or

(b) where the authority empowered to remove or dismiss such officer or other employee, is satisfied that for some reason to be recorded by that authority, it is not reasonably practicable to give that person an opportunity of showing cause.

(3) If any question arises whether it is reasonably practicable to give to any officer or other employee an opportunity of showing cause under sub-section (2), the decision thereon of the authority empowered to remove or dismiss such officer or other employee shall be final.”

8. It is plain where there is a conviction in a criminal case then in terms of clause (a) of the proviso, no notice is expected to be given before taking disciplinary action against such officer. Since in the present case, proviso (a) to Section 95 (2) is attracted, the question of Section 95 (3) being applicable does not even arise.

9. Learned counsel for the Petitioner on the other hand, submits that the

Respondents were being selective in how they applied the law and referred to the case of one employee, who was initially not proceeded against despite his conviction under Section 120B read with Sections 7, 13 (2) and 13 (1)(d) of the PC Act. According to the Petitioner, it was only after he pointed out the above instance in this petition that the Respondents took action to dismiss the said person from service.

10. The Court finds that as far as the Petitioner is concerned, his conviction for the offence under Section 13 (2) read with Section 13 (1) (d) of the PC Act and the separate convictions under Sections 420, 468 and 471 of the IPC in the manner indicated hereinbefore, was sufficient for the impugned order to be passed against him. It is needless to state that this order will be subject to the outcome of the appeal filed by the Petitioner against his conviction, which appeal is stated to be still pending before this Court.

11. For the above reasons, the petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 25, 2019

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