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

% Judgment delivered on: 13.10.2022

+ W.P.(C) 13677/2019 and C.M. No.55121/2019

SURINDER SINGH

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ratnesh Bansal, Advocate

For the Respondents: Mrs. Avnish Ahlawat, Standing Counsel
with Mr. Nitesh Kumar Singh, Ms. Laavanya
Kaushik and Ms. Aliza Alam, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner is aggrieved by judgment dated 03.01.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') whereby the Original Application (O.A.) filed by the Petitioner impugning order dated 27.04.2012, finding dated 03.09.2013, order of punishment dated 03.01.2014 and appellate order dated 10.12.2014, all passed in the disciplinary proceedings against the Petitioner has been dismissed.

2. Petitioner had filed the subject O.A. impugning the initiation of

disciplinary proceedings against him. Petitioner had contended that the Petitioner had been acquitted by the Criminal Court on the ground that there was no evidence available against the Petitioner. It is contended that since the Petitioner had been honourably discharged by the Criminal Court, based on no evidence coming on record against the Petitioner, the Disciplinary Authority should not have proceeded with the disciplinary proceedings and should have closed the same. It is contended that even though the order of the Criminal Court was placed before the Disciplinary Authorities, they continued with the proceedings and concluded the same by passing an adverse order against the Petitioner.

3. Perusal of the record of the Tribunal shows that the Tribunal has applied the ratio of the judgment of the Supreme Court in *K.L. Shinde vs. State of Mysore, (1976) 3 SCC 76* to hold that judicial review by the Tribunal in departmental enquiries is not permissible and power of judicial review is meant to ensure that individuals receive fair treatment.

4. Tribunal has decided the case only on the premise that principle of natural justice has been complied with in so far as the Petitioner is concerned and the power of judicial review is not to be exercised in case where principle of natural justice has been complied with.

5. Tribunal has not adverted to the merits of the case of the Petitioner or even considered the effect of an acquittal in criminal proceedings.

6. The order passed by the Disciplinary Authority against the

Petitioner is based solely on the alleged involvement of the Petitioner in the criminal proceedings. The Inquiry Officer in the Inquiry Report has held that the plea of the Petitioner that he was not identified by the complainant during the time of the arrest and during the course of investigation and further that no recovery was made from him and that he had been acquitted in the subject FIR because prosecution had failed to prove its allegations or established its case against the Petitioner, carries some weight and could not be overlooked.

7. Despite returning said finding, the Inquiry Officer has held that since the Petitioner was arrested and there was a disclosure statement of a co-accused and charges were framed against him, the charge stood prove against the Petitioner. Consequently, the Competent Authority has passed the order of punishment impugned by the Petitioner.

8. Since the Tribunal has erred in ignoring the above aspects and has solely decided the case on the touchstone of the scope of judicial review, we are of the view that the impugned order is not sustainable and calls for a remit to the Tribunal for a fresh consideration of the Original Application filed by the Petitioner on merits.

9. We may also refer to the decision of the Constitution Bench of the Supreme Court in *L. Chandra Kumar vs. Union of India and Ors., (1997) 3 SCC 261*, wherein the Hon'ble Supreme Court has observed that, '*We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted*'. It is also relevant to note that in the same judgment, the Constitution Bench has further observed that '*the High*

Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.’ It is thus advisable that the Tribunal ordinarily should endeavour to examine the case on merits, rather than dismissing the same on technicalities.

10. In view of the above, impugned order dated 03.01.2019 is set aside. The Original Application is restored on the record of the Tribunal with a direction that Tribunal shall consider the same afresh in accordance with law and on merits.

11. Parties shall appear before the Tribunal for directions on 06.12.2022.

12. Since the Petitioner is slated to superannuate in normal course on 31.01.2025. Tribunal is requested to decide the Original Application expeditiously and endeavour to conclude the same prior to date of superannuation of the Petitioner.

13. Petition and the application filed herewith are disposed of in above terms.

14. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

OCTOBER 13, 2022/ yg