



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.212 of 2011

Dated of order: 11.02.2016

PRESENT:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

CHOWDHURY ABULBASAR

V/S

POSTS

For the Applicants :Mr.B.K.Chatterjee, Counsel
For the Respondents :Ms.M.Bhattacharyya, Counsel

ORDER

JUSTICE V.C.GUPTA, JM:

Heard, the learned counsel for both sides and perused the records.

2. In this OA, the order of removal passed after full-fledged enquiry against the applicant and the consequential order of the appellate authority have been challenged mainly on two grounds namely that the applicant was acquitted from all the charges by the criminal court. Therefore, the findings recorded in the departmental proceedings are liable to be ignored and secondly that the opportunity to adduce evidence has been declined without any cogent reason.

3. Reply was filed on behalf of the Respondents. No rejoinder has been filed by the applicant.

4. It has been contended by the learned counsel for the respondents that the acquittal does not affect the findings recorded by the Disciplinary Authority because a benefit of doubt was extended to the applicant and thus the same is a technical acquittal. In so far as the second ground is concerned, the learned counsel for the respondents replied that the appellate authority as well as disciplinary authority categorically held that unless the identity of the witnesses are established they cannot be permitted to be examined. As the identity was not established, it cannot be said that the applicant was deprived of his right of defence. It was further contended that during the enquiry the applicant was given all reasonable opportunities, as per rules and law, to defend his case and, after due enquiry, the Disciplinary authority imposed the punishment which was also affirmed by the appellate authority in a well reasoned order.

5. It is well settled principle of law that a technical acquittal cannot give an advantage to the delinquent in a departmental proceedings because the standard of proof required in criminal trial is altogether different than the proof required in departmental proceedings. In a criminal trial the case must be proved against accused beyond all reasonable doubt though in departmental proceedings preponderance of probability is the



criteria to conclude the proceedings. It is worth to notice that the finding of the criminal case based on that the witnesses did not support the prosecution case regarding defalcation of money by the accused for which benefit of doubt was extended to the applicant which has to be kept in mind while deciding this OA.

6. In so far as the question of denial of opportunity is concerned we find that the applicant filed copy of the order of acquittal where the names of witnesses are there. It is also not in dispute that no tangible step was taken by the applicant to prove the identity of the witnesses before the IO. Unless, the identity of the witnesses are ^{JNG} ~~not~~ established before the IO by the applicant he cannot be permitted to produce them. Hence for the laches of his own, the applicant cannot accuse the authority concerned. So far as the findings in departmental proceedings are concerned, it could not be said that they are based on no evidence.

7. Considering all the facts and circumstances of the case, we find no merit in this OA which is accordingly dismissed.
No costs.

(Jaya Das Gupta)
Admn. Member

(Justice V.C. Gupta)
Judicial Member

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