

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 731/2002

New Delhi this the 23th day of October, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

P.N. Pandey,
S/o Shri B.N. Pandey,
R/o House No.1032/41,
DDA Flats, Kalkaji,
New Delhi. Applicant.

(By Advocate Shri K.N. Srivastava)

Versus

1. Union of India through
The Secretary,
Ministry of Textile,
R.K. Puram, Sector 7,
New Delhi.
2. Development Commissioner
(Handicraft),
Tinu Joshi, Sector 7,
R.K. Puram,
New Delhi.
3. Dy. Director
(Handicraft),
Regional Design & Technical
Development Centre,
43, Okhia Industrial Estate,
New Delhi.
4. Shri Gaurav Kumar,
Asstt. Director/Inquiry Officer,
O/o Development Commissioner,
(Handicrafts), West Block No.7,
R.K. Puram, New Delhi. Respondents.

(By Advocate Shri K.R. Sachdeva)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant has impugned the validity of the action taken by the respondents in issuing the charge-sheet memorandum dated 3.10.2001 and the memorandum

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dated 29.11.2001 appointing an Inquiry Officer to inquire into the charges.

2. We have seen Shri K.N. Srivastava, learned counsel for the applicant and Shri K.R. Sachdeva, learned counsel for the respondents and perused the relevant documents on record.

3. The applicant had been earlier proceeded against in the criminal court in FIR No. 2/87 under Section 420/468/471 IPC. The competent criminal court/Metropolitan Magistrate, New Delhi, vide order dated 4.12.1995 had, on the basis of the evidence led before him, come to the conclusion that the charge against the applicant had not been proved and he was acquitted. Learned counsel for the applicant has submitted that thereafter, the respondents have issued the order dated 3.6.1996 regarding revocation of the suspension order and treatment of the period of his suspension from 22.1.1987 to 15.3.1994 as spent on duty for all purposes. He has submitted that the consequential monetary benefits have also been paid to the applicant by the respondents. According to him, the respondents cannot, therefore, initiate departmental proceedings against the applicant on the same or similar charges especially after this lapse of time. There are two articles of charges in the impugned memorandum issued to the applicant, namely, (1) regarding his appointment as skilled worker, he has submitted forged/fabricated High School Pass educational and technical certificates; and (2) that he had claimed fraudulent LTC bill for journey from Bangalore to his home

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town, amounting to Rs.4222/- . Learned counsel has submitted that as the facts relating to first article of charge have already been dealt with by the criminal court and the applicant has been acquitted by the order dated 4.12.1995, the charge-sheet should be quashed and set aside. Regarding the LTC claim, he has submitted that this charge should also be quashed and set aside on which he has submitted that a decision has already been taken by the respondents. Learned counsel for the applicant has contended that departmental inquiry cannot be held after the applicant had been acquitted on the same charges. It is relevant to note that during the hearing, learned counsel for the applicant did not refer to any judgements but later he has submitted copies of certain judgements which are placed on record.

4. We have seen the reply filed by the respondents and heard Shri K.R. Sachdeva, learned counsel. He has relied on a recent judgement of the Hon'ble Supreme Court in Secretary, Ministry of Home Affairs and Anr. Vs. Tahir Ali Khan Tyagi (2002 (2) SC SLJ 230), wherein it has been held that "Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability". He has submitted that in this case not only the impugned charges issued

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against the applicant are different from the criminal charge which has been adjudicated by the competent criminal court vide order dated 4.12.1995 but it has also been held by the Supreme Court in the above referred to case that there is no bar to the charge-sheet being issued in the departmental proceedings. He has also submitted that the matter has been thoroughly examined by the respondents and the dismissal of the criminal case merely on technical grounds is not a bar to the issuance of the charge-sheet. According to the respondents, as the matter is still undecided, namely, with regard to the applicant continuing in service despite the fact that he is alleged to have joined services on the basis of the forged and fabricated documents, a decision has been taken to initiate disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965. They have also submitted that the recovery of LTC advance is also in accordance with the Rules.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. We have seen the judgement of the criminal court dated 4.12.1995 in FIR No. 2 of 1987 filed against the applicant and the memorandum of charges issued by the respondents dated 3.10.2001 which the applicant has prayed may be quashed and set aside. There are two articles of charges in the memorandum dated 3.10.2001. Apart from that, having regard to the aforesaid judgement of the Hon'ble Supreme Court in Tahir Ali Khan Tyagi's case (*supra*) and other judgements of the Hon'ble Supreme Court,

for example, *Kusheshwar Dubey Vs. M/s Bharat Cooking Coal Ltd. & Ors.* (AIR 1988 SC 2118), *State of Rajasthan Vs. B.K. Meena & Ors.* (1996 (6) SCC 417) and *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.* (JT 1999 (2) SC 456) and the facts in the present case, there is no legal bar in the action taken by the respondents in initiating the departmental proceedings. The acquittal of the applicant by the criminal court in the order dated 4.12.1995 has been mainly on the ground that the original complaint and original certificates and records were not produced against the accused and hence, the applicant was acquitted. It is also not disputed that the financial benefits following the order have since been allowed to the applicant. However, as submitted by the learned counsel for the respondents, the fact remains undecided on the question ~~as to~~ whether the applicant has submitted forged and false documents. The contention of the learned counsel for the applicant that as he has continued in service for a large number of years, this cannot be done, is not tenable. In the facts and circumstances of the case as we do not find any illegality in the initiation of the departmental proceedings, we do not consider it appropriate to interfere in the matter at the interlocutory stage of setting aside the impugned memorandum of charges (See *Union of India Vs. Upendra Singh* (JT 1994 (1) SC 658). Consequently, the appointment of the Inquiry Officer by the impugned order dated 29.11.2001 is also legal and valid.

7. We have also seen the judgements of the Hon'ble Delhi High Court relied upon by the applicant. These judgements relate to quashing of the charge-sheet on

the ground of delay in initiating the action against the employee. In the present case, the charges include submission of false and forged documents which relate to charge in Article-I and the second charge relates to LTC advance taken during the year 1997 and in the circumstances, the charges cannot be set aside only on the ground of delay. We are of the considered view that the judgements of the Hon'ble Supreme Court referred to above are ~~not~~ applicable to this case and there are no valid grounds to set aside the initiation of the Departmental proceedings.

8. For the reasons given above, we find no merit in this application. Accordingly, the O.A. fails and is dismissed. No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

'SRD'

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)