

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00078/2019
DATED THIS THE 05th DAY OF MARCH, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri R.Shankarappa, 60 years
S/o Late Sri.Rangappa
Retired Sub-Divisional Engineer
O/o General Manager (West)
Telephone Exchange Building
Vijayanager, Bengaluru:560 040.
Residing at No.25
MIG KHB Colony
1st stage, 1st Main, 1st Floor
Basaveshwara Nagar, Bengaluru: 560 079.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Department of Telecommunications
To be represented by its Secretary
(Vigilance II Section)
912, Sanchar Bhavan
20, Ashoka Road
New Delhi: 110 001.

2. Sri Brajendra Kumar
Director (SR) & Inquiry Authority
O/o DDG (SR), Regional Telecom Engineering Center
2nd Floor, Jayanagar Telephone Exchange Building
9th Main, 4th Block, Jayanagar
Bengaluru: 560 011.

3. Sri M.N.Pawan Kumar
Assistant Director General (TTSC) & Presenting Officer
Office of DDG (Security)
1st Floor, Sanchar Complex
WMS Compound, 47th Cross
9th Main, Jayanagar, 5th Block
Bengaluru: 560 041.Respondents

(By Advocate Sri N.Amaresh, Sr.PC for CG)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The facts of the case are as follows:

The applicant was convicted by the order dtd.7.3.2014 passed by the XXXII Addl. City Civil and Sessions Judge and Spl. Judge for CBI Cases, Bangalore in Spl. C.C.No.92/2003 and he was sentenced to undergo simple imprisonment for three years and fine of Rs.2 lakhs. The applicant filed Criminal Appeal No.277/2014 and in its order on the same, the Hon'ble High Court of Karnataka in its order in I.A.No.1/14 for suspension of sentence and bail, heard the matter on 8.4.2014 and ordered for suspension of the sentence and ordered to stay the conviction also. From a reading of the said order, it is stated that the complainant has not supported the case of the prosecution and he has turned hostile. The prosecution has not examined shadow witnesses in the case. Further no recoveries were made from the possession of the appellant-accused. Considering the facts of the case, the Hon'ble High Court had suspended the sentence and stayed the conviction in April 2014. In OA.475/2017, the action of the respondents in appointing an inquiry officer and presenting officer from BSNL was objected to and this Tribunal vide its order dtd.18.7.2018 remitted the matter back to Dept. Of Telecommunications to do the needful as the case may be in accordance with law. Subsequent to it, Annexure-A8 and A9 proceedings have been given. Vide Annexure-A10, the respondents have also admitted to continue the process of enquiry against the applicant. This has been challenged by the applicant on the main ground that when the criminal appeal is pending, further disciplinary action taken against the applicant would prejudice him and therefore no further action should be taken till the completion of Criminal Appeal No.277/2014 pending before the Hon'ble High Court of Karnataka.

2. The respondents have filed reply wherein they have detailed the original CBI case in relation to demanding and accepting of illegal gratification of Rs.1 lakh for

doing official favour in the matter of clearing the pending bills, the conviction by the Special Judge for CBI cases and further proceedings thereon. They have also stated that the action taken by the respondents to appoint inquiry officer and presenting officer and proceeding with the enquiry is following the orders of this Tribunal in OA.No.475/2017 dtd.18.7.2018. They have also cited the DOPT Memorandum dtd.21.7.2016 in continuation of OM dtd.1.8.2007 relating to the fact that there is no bar in law for initiation of simultaneous criminal and departmental proceedings on the same set of allegations. They have cited a number of cases like the *State of Rajasthan vs. B.K.Meena & Ors. (1996) 6 SCC 417, AIR 1997 SC 13, 1997 (1) LLJ 746 (SC)*, *R.P.Kapur vs. UOI & Anr. AIR 1964 SC 787, Ajit Kumar Nag vs. G.M.(PJ) Indian Oil Corporation Ltd., (2005) 7 SCC 764* etc. to bolster the arguments that even in the case of acquittal by a Criminal Court, it would not debar the employer from exercising power in accordance with the rules and regulations in force. They have cited that the two proceedings criminal and departmental are entirely different and operate in different fields having different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of disciplinary proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules. The degree of proof necessary to order a conviction is different from the degree of proof necessary to decide on the delinquency. They would argue that even an acquittal of a person like the applicant by a Judicial Magistrate does not ipso facto absolve him from the liability under the disciplinary jurisdiction. The applicant would continue to argue that if the facts on both the cases namely the criminal appeal and disciplinary

proceedings are the same, the issuance of charge memo to start the proceedings from the initial stage is not appropriate.

3. In this connection, we have examined the orders of the Hon'ble Apex Court in the following cases: In the case of *Lalit Popli vs. Canara Bank* in CA.No.3961/2001 decided on 18.2.2003, the Hon'ble Apex Court had confirmed that it is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In *Allahabad Co-operative Bank Ltd., vs. Vidhya Varidh Mishra* in CA.No.5179/2004 decided on 11.8.2004 by the Hon'ble Supreme Court, it is held as follows:

"It is settled law that in a disciplinary inquiry a conclusion different from that arrived at by a Criminal Court, may be arrived at. The strict burden of proof required to establish guilt in a Criminal Court is not required in disciplinary proceeding. The respondent had not claimed that the disciplinary proceedings were not conducted fairly. As the termination was based on findings of the Disciplinary Committee, the fact that the Appellate Court exonerated the Respondent was of no consequence."

4. In *Nelson Motis vs. Union of India* AIR 1992 SC 1981, the Apex Court held that since nature and scope of criminal case is different from departmental proceedings, an order of acquittal cannot conclude the departmental proceedings. In *United Commercial Bank vs. P.C.Kakkar* in CA.No.3433/2000 vide order dtd.11.2.2003, the Hon'ble Supreme Court observed as follows:

"Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most of factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

Therefore, the departmental action can be taken even after the acquittal in the criminal proceedings in the following situations:

i. *Where the accused is not acquitted honourably and completely exonerated of the charges [Corporation of Nagpur v Ramachandra G. Modak, AIR 1984 SC 626]. The Court observed:*

“Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered.”

ii. *Where the acquittal is on technical grounds [Sulekh Chand case, supra]*

iii. *Where the departmental allegations are not exactly the same which were the subject-matter of the criminal case [Nelson Motis case, supra].*

Thus, it is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court [ibid.]. In one case where the court acquitted a school master of the charge of attempted rape on a girl student, the Madras High Court held that the department were well within their rights to take departmental action against him for grave impropriety in his relationship with the girl student which would disentitle him to that office [Shaik Kasim v. Supdt. of Post Offices, AIR 1965 Madras 502]. The fact remains that there is that the finding of a criminal court are not conclusive in every aspect upon the administrative authority. For instance, the department may punish on the same facts but for some lesser charge which may not amount to a criminal offence but may well amount to a grave dereliction of duty entitling disciplinary action [Shaik Kasim case]. Thus, departmental action is not totally precluded on the ground of acquittal alone.

5. The Hon'ble Apex Court also held that where acquittal is on merits, the need for proceeding with the departmental proceedings is obviated. In *Sulekh Chand vs. Commissioner of Police(1994) Supp.3 SCC 674*, the Hon'ble Apex Court observed as follows:

“The judgment acquitting the appellant of the charge under Section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal is on merits the necessary consequence would be that the delinquent is entitled to re-instatement as if there is no blot on his service and the need for departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits.”

6. The sum and substance of all the above judgments is that even in the case of acquittal, though honourably, the departmental proceedings need not be stopped since the parameters for the two proceedings and the rationale for the same are different. It is however necessary for the disciplinary authorities to consider the facts and circumstances of the case before taking up further proceedings. While the criminal proceedings seek to confirm about an offence committed and the punishments to be meted out thereon, the departmental proceedings would emphasise upon the misconduct of the delinquent and the need to discipline the servants in the respondent organisation. The nature and the burden of proof would mainly differ even if the same set of circumstances is taken up. In both *Paul Anthony and G.M.Tank's* cases cited by the applicant, the Hon'ble Apex Court found that in one case there was no evidence at all and in another, the same set of witnesses and documents examined in the criminal case were part of the disciplinary proceedings also and therefore on being acquitted in the criminal case, the Hon'ble Apex Court found no reason to punish departmentally. However, in the present case, the applicant was indeed convicted by the XXXII Addl. City Civil and Sessions Judge and Spl. Judge for CBI Cases, Bangalore for the offence P/U/S 7 and 13(2) R/w Sec. 13(1) (d) of Prevention of Corruption Act, 1988. Therefore, it is obvious that in the interest of efficient administration, the department has every right to continue with the departmental proceedings. We find no merit in the OA and therefore dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00078/2019

Annexure-A1: Order dtd.31.5.2018 permitting the applicant to retire on superannuation
Annexure-A2: Order dtd.8.4.2014 in Cr.A.195/2014 of High Court
Annexure-A3: Order dtd.22.4.2014 in Cr.A.277/2014 of High Court
Annexure-A4: CAT BG order dtd.18.7.2018 in OA475/2017
Annexure-A5: CAT BG order dtd.18.7.2018 in OA.486/2017
Annexure-A6: Provisional PPO dtd.14.12.2018
Annexure-A7: Bank intimation letter dtd.14.12.2018
Annexure-A8: DOT order dtd.16.11.2018 appointing IO
Annexure-A9: DOT order dtd.16.11.2018 appointing PO
Annexure-A10: Notice dtd.8.1.2019 of R2
Annexure-A11: Corrigendum dtd.16.1.2019

Annexures with reply statement:

Annexure-R1: Order dtd.15.3.2012 in OA.67/2010 of CAT BG

Annexures with Rejoinder:

Annexure-RJ1: SP CBI Bengaluru report No.21 dtd.30.6.2003
Annexure-RJ2: Charge memo dtd.4.12.2008
Annexure-RJ3: (1999) 3 SCC 679
Annexure-RJ4: (2006) 5 SCC 446

Annexure-RJ5: (2015) 2 SCC 365

Annexures with written arguments note filed by the applicant:

Annexure-1: (2005) 6 SCC 636

Annexure-2: 2019 SCC online SC 952

Annexures with written arguments note filed by the respondents:

-NIL-
