

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00582/2019
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 V.Gopala Reddy, 57 years
S/o Sri Lakshmana Rao
Occn: Deputy Chief Engineer (Construction)
Office of Chief Administrative Officer
SWR, 18, Miller's Road
Benson Town
Bengaluru: 560046.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. The Secretary
Railway Board
Ministry of Railways
New Delhi: 110 001.
2. General Manager
and Disciplinary Authority
South Western Railway
Gadag Road
Hubballi: 580 023.
For and on behalf of Union of India
3. Chief Personnel Officer
South Western Railway
Headquarters
Hubballi: 580020.Respondents

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

ORDER

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

The brief facts of the case are as follows:

Vide Annexure- A2, the charge memo under Rule-9 of the Railway Servants(Discipline & Appeal) Rules 1968 was issued against the applicant with the following two charges:

ARTICLE – I *That the said Sri V.Gopala Reddy, Dy.CE/G/CN/BNC, while working as Sr.DEN/West/SC had kept two variation statements of agt No. 20/West/08 dated 15.04.2008 unsanctioned for a long period (more than 1 ½ years in one case and for more than 6 months in the second case).*

By the aforesaid act, the said Sri V.Gopala Reddy, Dy.CE/G.CN/BNC failed to maintain absolute integrity and devotion to duty and thus violated Rule No.3(1)(i), (ii) and (iii) of the Railway Services (Conduct) Rules 1966.

ARTICLE –II *Sri V.Gopala Reddy, Dy.CE/G/CN/BNC, while working as Sr.DEN/West/SC during 2010, had committed serious misconduct in as much as demanding and accepting bribe amount of Rs.10,000/- from Sri Srinivasa Prasad, Managing Partner, M/S Bhaskara Enterprises, Hyderabad for approving the pending variation bills.*

By the aforesaid act, the said Sri V.Gopala Reddy, Dy.CE/G.CN/BNC failed to maintain absolute integrity and devotion to duty and thus violated Rule No.3(1)(i), (ii) and (iii) of the Railway Services (Conduct) Rules 1966.

2. Subsequently, vide Annexure-A3, the respondents provisionally decided to impose the penalty of dismissal from service based on his conviction by the Hon'ble CBI Court at Hyderabad under the provisions of Rule 14(1) of Railway Servants(Discipline &Appeal) Rules 1968. Vide Annexure-A4, the earlier disciplinary proceedings initiated under Rule-9 were to be kept in abeyance. The applicant filed OA.626/2016 against the Annexure-A3 order which was dismissed by this Tribunal vide its order dtd.24.1.2017 which has subsequently been assailed by the applicant in WP.7876/2017(S-CAT) and vide its order dtd.6.3.2017, the Hon'ble High Court had stayed the operation, implementation and all other further proceedings further to the memorandum at Annexure-A3. Now the applicant is before this Tribunal once again to quash Annexure-A2 since vide Annexure-A1, the applicant has been acquitted by the Hon'ble High Court of Telangana at Hyderabad in Criminal Appeal No.900/2014 vide its order dtd.8.4.2019(Annexure-A1). The applicant would also request relief for opening

the sealed cover relating to the formation of SG/IRSE Panel and to extend the promotion due to the applicant if he is found fit w.e.f. 1.1.2013. The applicant has relied on the issue of continuation of disciplinary proceedings in terms of the law laid down by the Hon'ble Apex Court in Capt. M.Paul Anthony's case vide Annexure-A6 and G.M.Tank's case vide Annexure-A11.

3. MA.No.906/2019 dtd.16.12.2019 has been filed pointing that vide order dtd.3.12.2019, the applicant has been retired under the powers conferred under Rule 1802(a) of IREC Vol-II with effect from the date on which the order is served on him which is on 11.12.2019. The applicant now claims that there is no scope for the Railway Administration to proceed with the major penalty proceedings vide Annexure-A2 since he has been retired compulsorily vide order dtd.3.12.2019. It is trite law that the departmental proceedings are distinct from criminal proceedings and departmental proceedings can continue irrespective of the criminal proceedings. This Tribunal however has taken a consistent stand of keeping in abeyance the departmental proceedings till the 313 CRPC examination of the accused is completed in the Trial Court. In the present case, the Trial Court had already convicted the applicant for rigorous imprisonment for 3 years and a fine of Rs.10000/- which has subsequently been set aside by the Hon'ble High Court of Telangana at Hyderabad. In any number of cases, 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. Reference is given in the case of *Lalit Popli vs. Canara Bank in CA.No.3961/2001* decided on 18.2.2003. 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 Trial Court but has subsequently been acquitted by the Hon'ble High Court of Telangana. However, even from a perusal of the order of the Hon'ble High Court of Telangana, it is seen that statement of defence witnesses etc., have not been gone into by the Hon'ble High Court and the Hon'ble High Court also did not give much credence to the trap proceedings conducted by the CBI. As we have already seen, one of the charges related to the acceptance of bribe which was actually proved by the trap proceedings but not accepted by the Hon'ble High Court. And one more charge related to keeping two variation statements unsanctioned for a long period of time. Therefore, it is obvious that in the interest of efficient administration, the department has every right to continue with the proceedings. Coming to the point made in the MA that there is no scope for the Railway administration to proceed with the major penalty proceedings in view of the compulsory retirement of the applicant, we find no merit in this contention since an appropriate order can be passed under the disciplinary proceedings after the retirement whether compulsorily or on superannuation.

7. The OA is 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.170/00582/2019

Annexure-A1: Order dtd.8.4.2019 in Cr.A.No.900/2014
Annexure-A2: Charge memo dtd.23.10.2011
Annexure-A3: Railway Board order dtd.10.5.2016
Annexure-A4: SWR Hubballi order dtd.18.7.2016
Annexure-A5: CAT BG order dtd.24.1.2017 in OA.626/2016
Annexure-A6: Order in WP.7876/2017 dtd.18.12.2018
Annexure-A7: Comparative table
Annexure-A8: DOPT OM dtd.21.7.2016
Annexure-A9: AIR 1964 SC 787
Annexure-A10: (2005) 7 SCC 764
Annexure-A11: (2006) 5 SCC 446
Annexure-A12: Railway Board order dtd.19.11.2012
Annexure-A13: Railway Board order dtd.30.8.2013
Annexure-A14: RTI application dtd.11.12.2013
Annexure-A15: RTI information dtd.16.1.2014
Annexure-A16: (1999) 3 SCC 679

Annexures with reply statement:

-NIL-

Annexures with MA.No.906/2019:

Annexure-MA1: Order dtd.3.12.2019 of Railway Board
