

CENTRAL ADMINISTRATIVE TRIBUNAL  
MADRAS BENCH

Dated Tuesday the 2<sup>nd</sup> day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)

THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/606/2018

P. Sashikumar,

S/o. Palraj,

D. No.2, V.P. Rathina Samy Nadar Road,

Bibikulam,

Madurai-625 002.

.....Applicant

(By Advocate: M/s. S. Ramaswamyrajarajan)

Vs.

1. The Commissioner of Income Tax (Audit)-1  
II Floor, Annexe Building,  
Ayakar Bhavan,  
121, M.G. Road, Nungambakkam,  
Chennai-600 034;
- 2 Union of India Rep. by the  
Principal Chief Commissioner of Income Tax  
121 Mahatma Gandhi Road,  
Nungambakkam,  
Chennai-34.

.....Respondents.

(By Advocate: Mr. V. Vijayshankar)

**ORDER**

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

The applicant seeks the following reliefs:-

“i. To call for the records relating to the impugned disciplinary proceedings vide F.No. 32/Conf/CIT(Audit-1)/2017-2018 dated 18.09.2017 on the file of the respondent and quash the same thus render justice.”

2. The facts leading to this case can be summarized as follows:-

The applicant was working as Income Tax Officer at Tirunelveli. The applicant along with some other officials conducted a survey operation on 13.09.2006 in one M/s. Sri Rajeswari Jewellers at Thenkasi. Party impounded some documents including 'Vitrumudal'. It is alleged that the applicant had replaced the said document with another 'Vitrumual' for enabling the owner to pay lesser Tax for illegal gratification and hence committed a grave misconduct. A criminal case was instituted against the applicant as C.C. 6/2009 on the file of the II Additional District Judge for CBI cases, Madurai and after trial, he was acquitted on 17.5.2013 holding that the prosecution has failed to establish the alleged charge. The CBI has not filed any appeal against it and the judgment has become final. Thereafter on 18.09.2017, the respondents had issued a charge memo under Rule 14 of CCS (CCA) Rules 1965 on the same allegation for misconduct. According to the applicant, the disciplinary proceedings is initiated after lapse of 11 years is per se illegal and against interest of justice. The department has lifted the suspension and paid all pay and allowances for the

period. The procedure adopted by the respondents is wrong and cannot be sustained. The charge memo is produced as Annexure –A8. He gave a representation on 08.10.2017 (Annexure A10) stating that he is acquitted by the court in the Criminal case. He sought the dropping of charge on basis of the acquittal already done by the Criminal court and the delay occurred in initiating the disciplinary proceedings.

3. The respondents filed a reply denying the allegations in the OA. It is submitted that the department has power to initiate disciplinary proceedings even after a criminal case ended in acquittal. The applicant has kept the document in his house and later made alterations and had abused his position to help the owner of the Jewellery. The issuance of charge memo does not give a cause of action as it is only a step towards conducting an inquiry. There is no malafide and lack of jurisdiction alleged. The charge memo is given due to the applicant's misconduct and not for committing any offence. The applicant is proceeded under the conduct rules.

4. The applicant had filed a rejoinder denying the facts stated in the reply.

5. The counsel for the applicant contended that when a case ends in Honourable Acquittal, further disciplinary action is not warranted. The employer can proceed only if they can substantiate their reasons for the above action. The delay in issuance of charge sheet make it impossible for an applicant to make a proper defence of his case. The counsel for the applicant had cited various decisions for canvassing his argument. He cited the decision in R.P.

Kapur v. Union of India; Capt. M.Paul Antony V. Bharat Gold Mines Ltd & Anr.; Rajpal Bharadwaj vs. DTC Delhi; Ashok Kapoor v. Union of India; B. Pachinathan v Union of India & Ors.; G.M. Tank v. State of Gujarath and Ors.; DIG of Police and Anr. Vs S. Samuthiram; Joginder Singh v. Union Territory of Chandigarh & Ors.

6. The respondents on the other hand would contend that the criminal case filed against the applicant CC 6/2009 and the trial in the above case ended in acquittal on 17.5.2013 . The finding of the Trial Court was that

***“50. On an analysis of the entire materials on record in this case, circumstantial, oral and documentary, I hold that the prosecution has not sufficiently and satisfactorily proved its case against A1 & A2 for the offence U/s 120B r/w 420, 466, 471 r/w 511 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and substantive offences and I acquit A1 and A2 U/s 235(1) Cr. P.C.”***

The respondents mainly reply on the decision of the Apex Court in the case of

***Deputy Inspector General of Police & Anr. vs. S. Samuthiram (2013) 1 SCC 598***

wherein the concept of Honourable acquittal was explained:-

***“ Honourable acquittal***

***24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full***

*consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourable acquitted.*

25. *In R.P. Kapur v. Union of India it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari this court quoted with approval the views expressed by Lord Williams J. in Robert Stuart Wauchope v. Emperor which is as follows: (Raghava case SLR p.47, para 8)*

*"8. ....'The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted." "(Robert Stuart case ILR pp 188-89)*

26. *As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceedings is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and a preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the*

***crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."***

The burden of proof required in a Criminal case is conclusive proof and the accused cannot be convicted if the proof is not sufficient. The criminal court in this case had acquitted the applicant on the ground that prosecution has not "sufficiently and satisfactorily" proved the case. This shows that the court has not acquitted the applicant, not because there is no evidence, but there is no sufficient evidence.

7. We have gone through the decisions cited by both sides and we find that mere acquittal in a Criminal case will not entail the applicant to contend that no departmental proceedings can be initiated against him. In *R.K. Kapoor 's case*, the Apex Court held that if the acquittal is honourable, it is not proper to initiate disciplinary proceedings on same set of facts. We have gone through the judgment of the Criminal court in C.C. 6/2009, and we find that the applicant was acquitted only because prosecution failed to prove the case satisfactorily by adducing sufficient evidence. It is not a case where there was no evidence against the applicant. So we are of the opinion that the acquittal of the applicant was not an honourable acquittal.

8. The alleged incident took place in the year 2006 and the trial in the Criminal case ended only in the year 2013. The respondents waited till the

disposal of Criminal case as the facts are same. So we find no illegality in the initiation of disciplinary action taken for the misconduct by the applicant. The above facts also explain why delay has occurred in initiating the departmental action.

**9. In the result, we find that there is no reason to quash the impugned charge memo issued on 18.09.2017 (Annexure A8). OA lack merits and it will stand dismissed. No costs.**

(T. JACOB)  
MEMBER(A)

Asvs

02.06.2020

(P. MADHAVAN)  
MEMBER(J)