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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3387/2001

New Delhi, this the 17th day of May, 2002

Hon'ble Mrs.Lakshmi Swaminathan, VC (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

Mohd. Umar ..Applicant
(By Advocate: Shri Jagat Arora)


Versus

Union of India ...Respondent
(By Advocate: Shri Madhav Panikar)

Corum:-

Hon'ble Mrs.Lakshmi Swaminathan, VC (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to
Benches of the Tribunal? NO


(S.A.T. RIZVI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3387/2001

New Delhi, this the 17th day of May, 2002

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

Mohd. Umar aged about 31 years
s/o Shri Mohd. Shafi
B-857/AA, Sangam Vihar
New Delhi - 62

..Applicant

(By Advocate: Shri Jagat Arora)

Versus

Union of India through
The Joint Secretary/Director (Admn)
Prime Minister's Office
South Block
New Delhi-11

..Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

Shri S.A.T. Rizvi, M (A):

The applicant in the present OA is aggrieved by the charge-sheet dated 17.5.2001 served on him which is based on the same set of facts and allegations on which the court of criminal jurisdiction (I appellate court) has already acquitted him. He has represented in the matter and has requested the authorities not to hold departmental inquiry as it is not permissible under the law to do so. The applicant is further aggrieved by the order dated 4.12.2001 by which it has been directed that the preliminary inquiry was to be held by the inquiry authority on 20.12.2001. Based on the aforesaid grievance, the applicant has prayed for directions in the following terms :-

- (a) Set aside/quash the charge-sheet dated 17.5.2001 issued to the applicant,
- (b) The respondents be directed to reinstate the applicant with all service benefits



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past and future with interest,

- (c) Steps against the respondent for violating the order passed by the Tribunal in O.A. No.797/1999; and
- (d) Cost of the petition.

2. By way of interim relief, the applicant has prayed that the aforesaid order dated 4.12.2001 be stayed along with the proceedings initiated with the service of charge-sheet dated 17.5.2001.

3. We have heard the learned counsel on either side at length and have perused the records and judgements relied upon by the parties.

4. This case was reserved for orders on 31.1.2002. At the stage of preparation of the draft order, we had felt that the case needed to be re-heard and, accordingly, the present OA was listed for "for being spoken to" on 12.4.2002. After hearing on 12.4.2002, Shri Jagat Arora, learned counsel appearing on behalf of the applicant sought ten days' time to file his written submissions and also to make further oral submissions. Shri Madhav Panikar, learned counsel appearing on behalf of the respondents made certain submissions and supplied copies of judgements he has relied upon. The OA was accordingly listed on 3.5.2002 as part-heard with the direction to the respondents to furnish information with regard to the consequential benefits given to the applicant in terms of the Tribunal's order dated 5.1.2001 in OA-797/99. The parties were also required to furnish details of action, if any, taken against other persons (Policemen), who were involved in the act of bribery

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5. On 7.5.2002, learned counsel for the applicant filed his written submissions and supplied a copy of the same to Shri Madhav Panikar, learned counsel for the respondents, who (the latter) expressed his wish not to file any written submissions in view of the oral submissions including submissions which he had already made on the last date of hearing. Shri Madhav Panikar, learned counsel, however, supplied copies of two more judgements on which he has placed reliance in support of the respondents' case.

6. Before we proceed further, we would like to list out the various judgements on which reliance has been placed by the parties:-

Judgements relied upon by the applicant

- i) Jagmohan Lal Vs. State of Punjab through Secy. to Punjab Govt. Irrigation and Ors., decided on 18.8.1966 reproduced in AIR 1967 Punjab 422 (V 54 C 118),
- ii) O.P. Gupta Vs. Union of India & Ors., decided on 3.9.1987 reproduced in AIR 1987 SC 2257,
- iii) Hira Lal & Ors. Vs. D.D.A., decided on 8.5.1995 reproduced in 1995 LAB. I.C. 2196,
- iv) K. Nagarajan Vs. Divisional Engineer, Phones, Trichy, decided on 27.3.1986 reproduced in 1986 (3) (CAT) 235,
- v) Hukam Singh Saini Vs. Commissioner of Police & Ors., decided on 30.4.1987 reproduced in ATR 1987 (2) CAT 63, and
- vi) P. Bhaskara Rao Vs. Additional Collector of Customs & Anr., decided on 20.10.1987 reproduced in ATR 1988 (1) CAT 102,

Judgements relied upon by the respondents

- i) Dilip Kumar Roy Vs. E.S.I. Corporation & Ors., decided on 8.6.1988 reproduced in [1989] 9 ATC 215,

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- ii) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., decided on 30.3.1999 reproduced in 1999 SCC (L&S) 810; and
- iii) Union of India & Anr. Vs. Bihari Lal Sidhana, decided on 25.3.1997 reproduced in (1997) 4 SCC 385.
- iv) Nelson Motis Vs. Union of India, decided on 2.9.1992 reproduced in AIR 1992 SC 1981,
- v) Bhaurao Dagadu Vs. State of Maharashtra (Bombay), decided on 31.9.1971 reproduced in 1972 SLR 699,
- vi) Sulekh Chand & Salek Chand Vs. Commissioner of Police & Ors., decided on 30.9.1994 reproduced in 1994 Supp (3) SCC 674,
- vii) Senior Superintendent of Post Offices, Pathanamthitta & Ors., decided on 21.2.1997 reproduced in (1997) 11 SCC 239, and
- viii) Ch. Roosevelt Vs. G.M., South Central Railway, Secunderabad & Ors., decided on 20.11.1996 reproduced in ATJ 1994-96 Full Bench 87.

In what follows, the aforesaid cases will be referred to only by the names of parties.

7. We have also noted the following information supplied by the learned counsel for the respondents contained in a letter from the PMO dated 2.5.2002:

- "1) Shri Mohd. Umar was reinstated in service vide PMO's order No.21/2098/86-PMA dt. 19.3.2001 in pursuance of CAT's order dt. 5.1.2001 in OA 797 of 1999.
- (2) Simultaneously, it was decided to initiate departmental proceedings under the Rule 14 of CCS (CCA) Rules against Shri Umar on the allegations, which led to his conviction on criminal charges by the trial court.
- (3) It was also ordered that Shri Umar shall be deemed to have been placed under suspension w.e.f. 22.4.1997 (the date of his dismissal under Rule 10 (4) of CCS (CCA) Rules, until further orders.
- (4) Consequently, in terms of FR 53 he was

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granted subsistence allowance at the same rate as drawn by him immediately prior to date of his dismissal [i.e. 22.4.1997]. In addition to subsistence allowance, Shri Umar is also being granted dearness allowance (at the latest rate -262% - prescribed by DOPT from time to time - in respect of pre-revised scales of pay) on the basis of the amount of subsistence allowance. Besides, he is granted other admissible allowance viz. HRA & CCA. The net amount of the allowances paid to him was Rs.3517/- for the month of April 2002. Consequent upon his reinstatement in service, a total of Rs.1,42,438/- was paid to Shri Umar, after necessary deductions, in April 2001 as arrears of these allowances (period 23.4.1997 to 31.3.2001).

- (5) In terms of Govt. of India's instructions under Rule 7 of CCS (Revised Pay) Rules, 1997, Shri Umar shall continue to draw subsistence allowance based on existing (pre-revised) scale of pay and his pay, in the revised scale in accordance with the said rules, will be subject to final order on the pending disciplinary proceedings.
- (6) As regards the action taken against CRPF constables, viz. S/Shri Chander Pal Singh & Uday Vir Singh, on the charges of extending illegal gratification to Shri Mohd. Umar, they were made prosecution witnesses by the CBI. It has been ascertained from their parent organisation that no disciplinary proceedings were initiated against them by CRPF."

8. The facts of the case briefly stated are that a criminal case was launched against the applicant under Sections 420/468/471 of the IPC and he was placed under suspension on 7.11.1994. He was convicted by the trial court on 20.11.1996 and 22.11.1996 and sentenced to undergo imprisonment and also to pay a fine. Soon thereafter, on 28.2.1997, the respondents relying on rule 19 of the CCS (CCA) Rules issued a notice to the applicant to show cause as to why he should not be dismissed from service. He filed a reply to the

aforsaid notice on 17.3.1997 stating therein that he had filed an appeal against the aforsaid order of conviction by the lower court and the appellate court had stayed the operation of the sentence imposed upon him until the final disposal of the appeal. The applicant's case made out in the aforsaid reply was that since the matter had not been decided finally by the competent higher court of criminal jurisdiction, the respondents should not proceed to dismiss him from service. He was nevertheless dismissed from service on 22.4.1997 without giving him an opportunity of being personally heard. The departmental appeal filed by him against the order of dismissal was also rejected on 7.7.1997. The aforsaid criminal appeal filed by the applicant was decided on 5.9.1998 resulting in the acquittal of the applicant, by giving him the benefit of doubt. Following his acquittal, the applicant represented for his reinstatement in service albeit without any response from the respondents. Thereupon, he approached this Tribunal through OA-797/99 which was decided on 5.1.2001. Relying on C.J. C.V. Cheema Vs. The Union of India & Ors. reproduced in ATR 1986 CAT 109, the Tribunal allowed the aforsaid OA. The dismissal order dated 22.4.1997 was quashed and set aside along with the departmental appellate's order dated 7.7.1997. The Tribunal issued further directions in the matter in the following terms:-

- (i) XX XX XX
(ii) The respondents are directed to reinstate the applicant in service within two months from the date of receipt of a copy of this order. We, however, make it clear that the reinstatement of the applicant would also be subject to the outcome of the appeal pending in the High Court.

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(iii) In view of what has been stated above the applicant shall continue to be placed under suspension for a period of not more than four months, within which period the respondents should take a decision regarding initiation of any departmental proceedings against him if they so desire. The respondents shall also determine the question of consequential benefits in accordance with the relevant rules/fundamental rules and instructions.

(iv) The claim of the applicant for interest on consequential benefits is, however, rejected taking into account the facts and circumstances of the case."

In pursuance of the aforesaid directions, the respondents have issued the impugned charge-sheet dated 17.5.2001 and have also appointed an inquiry officer, who has decided to hold a preliminary inquiry on 20.12.2001. Aggrieved by the aforesaid charge-sheet which has been served on him as also by the inquiry officer's letter of 4.12.2001, the applicant has filed the present OA with prayers mentioned in paragraph 1 above.

9. Shri Madhav Panikar, learned counsel appearing on behalf of the respondents has proceeded by relying on the provisions of Rule 10 (4) of the CCS (CCA) Rules, 1965 (hereinafter referred to as "the Rules), which provide that where a penalty of dismissal imposed on a Government servant is set aside by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal and shall

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continue to remain under suspension until further orders. The respondents' case is that in compliance of the Tribunal's directions, the applicant was reinstated on 19.3.2001. However, since on a consideration of the circumstances of the present case, it has been decided to hold a further inquiry against the applicant on the same allegations on which the penalty of dismissal was originally imposed, he has been placed under suspension in terms of the aforesaid provision from 22.4.1997 which is the date on which the applicant was dismissed from service. Further, in terms of the same provision, the applicant shall continue to remain under suspension until further orders are passed by the respondents. Thus, according to him, no illegality has been committed by the respondents in issuing orders placing him under suspension from 22.4.1997.

10. Shri Madhav Panikar, learned counsel has further argued that the applicant was correctly dealt with under Rule 19 (1) of the Rules read with the Govt. of India's instructions No. (2) reproduced at pages 81-82 of Swamy's Compilation of the Rules (22nd Edition 1996). The respondents had found that the lower trial court had convicted the applicant of an offence which is such as to render his further retention in public service, prima facie, undesirable. Thus, a show cause notice was issued and after considering the applicant's representation, he was dismissed from service on 22.4.1997. For the same reason, the departmental appeal preferred by him was also rejected on 7.7.1997 maintaining the order of dismissal from service.)

11. Shri Madhav Panikar, learned counsel has supplied copies of a number of court orders which lay down that acquittal in a criminal case, whether honourable or by way of benefit of doubt, need not prevent the disciplinary authority from initiating departmental proceedings even where such proceedings are based on the same set of facts and allegations as might have been dealt with in the criminal trial. One of the cases relied upon by him is that of Dilip Kumar Roy Vs. E.S.I. Corporation & Ors. In that case, the applicant was acquitted of a charge under Section 409 of the IPC by the court of criminal jurisdiction on 24.9.1986. Departmental proceedings were initiated against that applicant after he had been acquitted. It was held by the Tribunal that the departmental authorities have unfettered power to start departmental proceedings in such cases. The Tribunal, however, observed that "Whatever grounds were taken by the applicant in the criminal case and whatever observations the learned Special Judge made against the prosecution's case would remain available to the applicant in the departmental enquiry". (emphasis supplied).

12. The next case relied upon by the learned counsel for the respondents is that of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. which has been relied upon by the applicant's learned counsel also to advance the applicant's plea that the facts, allegations and the evidence being the same in both the proceedings (departmental action commenced on 17.5.2001 and the criminal appeal in High Court), the departmental inquiry

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ought to be held in abeyance. In the aforesaid case, the petitioner was charge-sheeted by the department on 4.6.1985 and was dismissed from service on 7.6.1986. The departmental appeal filed by him was rejected on 22.7.1987. In the criminal proceedings simultaneously launched against the petitioner, he was acquitted by the court on 3.2.1987. The representation made by the petitioner for his reinstatement following his acquittal by the criminal court was rejected on 3.3.1987. That is to say, the departmental appellate authority passed his orders rejecting the petitioner's appeal against dismissal from service after the petitioner had been acquitted by the criminal court and his plea for reinstatement on that basis had also been rejected by the department. The departmental proceedings as well as the criminal case were based in that case on identical facts and allegations and the same evidence without there being any iota of difference. The court had nevertheless held that departmental proceedings and proceedings in a criminal case can proceed at the same time as there is no bar in their being conducted simultaneously, though separately. The court had further held that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. The stand taken by the learned counsel in the light of the aforesaid decision is that firstly there is no bar to the departmental proceedings initiated on 17.5.2001 in

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the present case being conducted even though the CBI's appeal filed in the High Court against the order of acquittal passed by the first appellate court is pending and, secondly, even if there is identity and similarity of facts in the two cases, the charge in the criminal case against the applicant is not of a grave nature which would involve complicated questions of law and fact. On this basis, the learned counsel has submitted that it will not be desirable to stay the departmental proceedings in the present case until the appeal filed in the High Court has been decided.

13. In Union of India & Anr. Vs. Bihari Lal Sidhana, it was held that disciplinary action can be taken even after acquittal. In Nelson Motis Vs. Union of India & Anr., it was held that the nature and scope of a criminal case being very different from those of a departmental disciplinary proceeding, an order of acquittal cannot conclude the departmental proceeding.

14. Yet another case relied upon by the learned counsel for the respondents is that of Bhaurao Dagadu Thakur Vs. State of Maharashtra. The appellant in that case was acquitted by the criminal court, but was dismissed from service as a result of departmental inquiry which was held on the same facts. The question which came up before the Court for consideration was whether it was open to the dismissing authority to record a finding contrary to the one in the criminal trial and dismiss the appellant. It was held that the domestic

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tribunal, such as the dismissing authority in the departmental proceedings, does not violate any rule of law or any other principle of law, when it chooses to ignore the findings of the criminal Court and decides to act on the evidence led before him, and ultimately comes to a conclusion that the delinquent official is not fit to be retained in service in spite of his acquittal by the criminal Court. The Court further held that the dismissing authority also does not violate any principle of natural justice merely by ignoring such findings of the criminal Court, where otherwise he has recorded his own findings and has given full opportunity to the delinquent to have his say. In the same case, the Court further observed that it is true that the witnesses and the evidence relied upon by the dismissing authority were virtually the same which had been condemned by the Special Judge in criminal proceedings. The Court had further noted that it was unfortunate that the infirmities relied on by the Special Judge did not impress the dismissing authority a bit and observed that such a situation will not make any difference to the principle involved in the case. The dismissal order passed could not be said to have been beyond the jurisdiction of the said authority.

15. In Sulekh Chand and Salek Chand Vs. Commissioner of Police & Ors. also relied upon on behalf of the respondents, the Court laid down as follows:-

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"2.. It is not in dispute that the proposed departmental enquiry also is related to the selfsame offence under Section 5 (2) of the Prevention of Corruption Act. The judgment acquitting

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the appellant of the charge under Section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the 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.."

The sum and substance of the law laid down by the various Courts on which reliance has been placed by Shri Madhav Panikar, learned counsel is that acquittal by the criminal court cannot and need not impose any disability on the departmental authorities preventing them from proceeding departmentally against the Govt. servant even in cases where both the proceedings are based on the self-same allegations, facts and evidence.

16. Having summarised the respondents' position vis-a-vis the rule position and the ratio of the various judgements relied upon on their behalf, we hasten to point out that the distinguishing feature of the present OA is that the applicant herein was dismissed on 22.4.1997 immediately after he was convicted and sentenced by the lower trial court and was subsequently acquitted by the first appellate court on 5.9.1998, and further that while the CBI has filed an appeal against the aforesaid order of acquittal in the High Court, the applicant has been proceeded against departmentally as well by serving on him charge-sheet dated 17.5.2001. The aforesaid cases, the judgements in respect of which have been relied upon by the learned counsel for the

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respondents, did not deal with a situation identical to the present case inasmuch as in none of them the departmental proceedings were initiated afresh after the dismissal of the Govt. servant from service on the basis of conviction by the trial Court. Further, in none of them, the lower Court's verdict has been overturned by the first appellate court and the matter taken thereafter to the High Court. This difference in the factual matrix cannot, however, affect the principle upheld by the Courts which is broadly to the effect that departmental action and criminal case can proceed on the basis of identical/similar facts and allegations and that acquittal by the criminal court, whether by giving benefit of doubt or otherwise, cannot prevent the departmental authority from proceeding against the delinquent official on the same set of facts and allegations and also on the basis of the same evidence, if he, on consideration of facts and circumstances, finds it necessary and in order to do so.

17. Rule 10 (4) of the rules also contemplates a situation where in the event of a penalty of dismissal imposed by the departmental authority being overturned by a court of law, the disciplinary authority decides to hold a further inquiry on the same allegations on which the penalty of dismissal was originally imposed. The situation obtaining in the present OA is same as the one contemplated in the aforesaid sub-rule. Shri Jagat Arora, learned counsel appearing on behalf of the applicant has vehemently argued that a further inquiry in terms of the aforesaid sub-rule can be made only if the

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lower court has passed orders of acquittal on purely technical grounds and without going into the merits of the case. The contention raised by him is that the order of acquittal dated 5.9.1998 passed by the first appellate court is not based on technical consideration. The Court has, according to him, gone into the merits of the case in vivid details and has observed as follows:-

"13.. Aforesaid material contradictions in the testimonies of PW2 and PW3 coupled with the fact that investigation has been done in an unfair manner raise a grave doubt against the correctness of prosecution version. In my opinion, the prosecution version regarding the role of appellate-accused Mohd. Umar is highly improbable. Therefore, I feel that he ought to have been given the benefit of doubt in this case."

We are unable to agree with the aforesaid contentions in view of the law clearly enough laid down by the various Courts on which reliance has been placed by the learned counsel appearing for the respondents and which we have already adverted to in some detail in some of the earlier paragraphs. Our view is abundantly supported by what the D.B. of the Bombay High Court has held in the case of Bhaurao Daqadu Thakur's case (supra).

18. Further, at any rate, in the case of C.J. C.V. Cheema (supra), on which excessive reliance has been placed on behalf of the applicant and the facts and circumstances of which are substantially similar to the facts and circumstances of the present OA, it has been held as follows:-

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"10... Consequentially, the impugned order dated 22nd May, 1979 is hereby set

aside and respondent No.3 is directed to re-instate the applicant with effect from the date on which the impugned order was made operative. We may, however, hasten to add that the quashing of the impugned order would not preclude the competent authority from initiating any departmental enquiry, if they so decide. The respondents shall determine the question of consequential benefits in the light of the applicable rules."

Thus, it is not open to the applicant to question the respondents' discretion to initiate departmental action by issuing the impugned charge sheet dated 17.5.2001.

19. Shri Jagat Arora, learned counsel appearing on behalf of the applicant has drawn our attention to Govt. of India's instructions dated 29.11.1966 reproduced at pages 91-92 of Swamy's compilation already referred to which provide that if an appeal/revision filed in a higher court against conviction succeeds and the Govt. servants is acquitted, the order imposing a penalty on him on the basis of conviction becomes liable to be set aside, and in that event, the Department should take a decision on whether the acquittal will need to be challenged in a still higher court OR whether the facts and circumstances of the case are such as to call for a departmental inquiry on the basis of the allegations on which the Govt. servant was previously convicted. The aforesaid instructions further provide that if it is decided to take the matter to still higher court, necessary action to institute proceedings in the higher court should be taken expeditiously, but if, on the other hand, it is decided that the departmental inquiry would need to be held, a formal order should be passed setting aside the order of penalty and initiating departmental

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inquiry. Thus, according to the learned counsel, only one course of action is permissible and since in the present case, the CBI has already filed an appeal in the higher court against the applicant's acquittal, it is not possible to proceed against the applicant departmentally as well. The learned counsel appearing on behalf of the respondents, on the other hand, submits that the aforesaid instructions are in the nature of administrative instructions or guide-lines and these cannot be relied upon in the face of a clear provision made under Rule 10 (4) of the Rules which refers to the possibility of launching a further inquiry in the circumstances of the present case. He has also relied on C. J. C.V. Cheema' case (supra) in which the circumstances were substantially similar to the circumstances of the present OA, but the Tribunal had held that further departmental proceedings could be initiated. In Ch. Roosevelt Vs. G.M. South Central Railway, Secunderabad & Ors. decided by the Full Bench of this Tribunal at Hyderabad on 20.11.1996 in OA-848/95, it has been held that guide-lines/circulars cannot confer a legally enforceable right on an employee. We are, in the circumstances, unable to agree with the aforesaid contention raised on behalf of the applicant.

20. In support of his plea for grant of full benefits arising consequentially upon revocation of suspension orders, the learned counsel for the applicant relies on O.P. Gupta Vs. Union of India & Ors., Hira Lal & Ors. Vs. D.D.A. and Jagmohan Lal Vs. State of Punjab

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through Secy. to Punjab Govt. Irrigation and Ors. We have perused these judgements and find that on facts and in circumstances, these are distinguished and, therefore, the applicant's plea for grant of full benefits for suspension period cannot be accepted.

21. On the question of initiation of departmental proceedings following acquittal on criminal charge, Shri Jagat Arora, learned counsel for the applicant has relied on K. Nagarajan Vs. Divisional Engineer, Phones Trichy., Hukam Singh Saini Vs. Commissioner of Police & Ors. and also on the case of P. Bhaskara Rao Vs. Additional Collector of Customs & Anc. We have perused these judgements also and find that they are also distinguished on facts as well as in circumstances. In K. Nagarajan's case (supra), departmental inquiry was held after the petitioner's acquittal in criminal proceedings. In the departmental inquiry, those very facts, documents and witnesses were cited as were cited or had appeared in the criminal case resulting in acquittal. It was also held that the departmental inquiry was, in the circumstances, futile. That was a case of honourable acquittal and the prosecution had failed to prove the offence. Further, the Department had not filed any appeal against the order of acquittal. In Hukam Singh Saini's case (supra), the petitioner was acquitted by the Special Judge and departmental proceedings were initiated on the same charge. It was held that after acquittal, the departmental proceedings could be initiated against the petitioner (Police Officer) only in the circumstances mentioned in Rule 12 of the Delhi Police (Punishment &

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Appeal) Rules, 1980 and not otherwise. In P. Bhaskara Rao's case (supra), the petitioner had been detained under COFEPOSA and the Andhara Pradesh High Court had held that the petitioner was not guilty of involvement in smuggling. It was held that holding of departmental proceedings on the same facts and the same material and on same grounds is not permissible. In respect of the present OA, as already indicated, the departmental proceedings commenced on 17.5.2001 include a charge (that of bribery) which did not figure in the criminal proceedings. Besides, we have also seen, while referring to Bhaurao Dagadu Thakur's case (supra) which was decided by the Bombay High Court, that departmental inquiry can always be initiated in such circumstances. That decision was rendered by a D.B. of the Bombay High Court, whereas P. Bhaskara Rao's case (supra) has been decided by D.B. of this Tribunal (Hyderabad Bench).

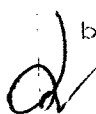
22. In the light of the foregoing, the only matter which is required to be examined by us is whether the respondents have faithfully and correctly complied with the directions of this Tribunal given in OA-797/99. In the written submissions filed on behalf of the applicant, the learned counsel appearing on his behalf has drawn our attention to the contents of the directions given by this Tribunal in OA-797/99 which we have already reproduced in paragraph 8 above. According to him, by passing orders dated 19.3.2001 reinstating him and placing the applicant under deemed suspension w.e.f. 22.4.1997 and until further orders, the respondents have flouted the aforesaid directions of this Tribunal. The applicant was

suspended in 1994 and was under suspension when he was dismissed from service. By the aforesaid order of 19.3.2001, his suspension has been continued from the date of his dismissal and thus, he in fact remains under suspension to date from 1994. The learned counsel has submitted that the order of the applicant's suspension has not been revoked at all as directed by the Tribunal, and thus the applicant's harassment continues. Furthermore, the respondents have not been paying the subsistence allowance to the applicant in accordance with the revised pay scale. At the time of his dismissal from service, the applicant was working in the pay scale of Rs.950-1400/- and was drawing a salary of Rs.1130/-. The subsistence allowance paid to him is on the basis of the aforesaid salary of Rs.1130/- in the old pay scale of Rs.950-1400/-. The applicant's case is that after his reinstatement as per the directions of this Tribunal, he should have been paid full wages from the date of his suspension till date. The further submission made is that the applicant should be paid whether subsistence allowances or wages in accordance with the revised pay scale of Rs.3050-4500/- made applicable w.e.f. 1.1.1996.

23. The respondents have not accepted any of the contentions raised on behalf of the applicant in the previous paragraph. According to the learned counsel appearing on their behalf, the applicant was reinstated vide order dated 19.3.2001 in pursuance of this Tribunal's order dated 5.1.2001, and simultaneously, it was decided to initiate further departmental proceedings against him under Rule 14 read with Rule 10 (4) of the

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Rules. It is in compliance of the aforesaid sub-rule, namely, Rule 10 (4), which is mandatory in nature, that the applicant has been placed under deemed suspension w.e.f. 22.4.1997 until further orders. The contention raised on behalf of the respondents is that the further departmental inquiry ordered on 17.5.2001 against the applicant, is not only intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case. The first appellate court has no doubt gone into the merits of the case but has decided to acquit him by giving benefit of doubt. The charges therein relate to Sections 420, 468 and 471 of the IPC which deal with cheating and forgery. The allegation of bribery which is a part of the departmental charge-sheet dated 17.5.2001 was dealt with by the first appellate court but that Court could not give a verdict in regard to the same as the criminal charge-sheet was concerned only with the charges of forgery and cheating. To this extent, according to the learned counsel appearing for the respondents, the departmental charge-sheet served on 17.5.2001 contains a charge not adjudicated by the criminal court. In view of this, the impugned charge-sheet dated 17.5.2001 cannot be faulted even if a substantial part of it relates to the charges of forgery and cheating already adjudicated by the first appellate court. In this context, the learned counsel appearing on behalf of the respondents has recalled the judgement rendered by the D.B. of the Bombay High Court in Bhaurao Dagadu Thakur (supra) which has clearly held that the disciplinary authority cannot be said to violate any rule of law or any other principle



of law, when it chooses to ignore the findings of the criminal Court and decides to act on the evidence led before him, and ultimately comes to the conclusion that the delinquent officer is not fit to be retained in service in spite of his acquittal by the criminal court on the same set of facts. In the circumstances, we are unable to accept the contention raised on behalf of the applicant that the impugned charge-sheet could not be issued and that it is illegal.

24. Insofar as the grant of subsistence allowance is concerned, the respondents have, in their letter dated 2.5.2002, the relevant portion of which has been reproduced in paragraph 7 above, submitted that in terms of FR-53, the applicant was entitled to the grant of subsistence allowance at the same rate as drawn by him immediately prior to the date of his dismissal, and that in terms of the Govt. of India's instructions under Rule 7 of the CCS (RP) Rules, 1997, the applicant shall continue to draw subsistence allowance based on the existing (pre-revised) scale of pay laying down further that the applicant's pay in the revised scale will be subject to final orders in the disciplinary proceedings currently pending against him. We have perused FR-53 and Rule 7 of the CCS (RP) Rules, 1997 and are unable to agree with the aforesaid submissions made on behalf of the respondents. We find nothing in FR-53 which would prevent the applicant being placed in the revised scale of pay. Further, the aforesaid Rule 7 of the CCS (RP) Rules, 1997 also does not provide that the applicant could not be placed in the revised scale. Rule 6 of the

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CCS (RP) Rules to which a reference has been made in the aforesaid Rule 7 deals with the exercise of option. Sub-rule (1) (ii) of the aforesaid Rule 6 lays down that where a Government servant is under suspension on the 1st day of January, 1996 (the date from which pay scales have been revised), the option could be exercised within three months of the date of his return to duty. Sub-rule (3) of the aforesaid Rule 6 provides that if the intimation regarding option is not received within the time mentioned (3 months) in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect from 1.1.1996. A plain reading of the aforesaid Rules 6 & 7 would show that the intention is not to deprive a Govt. servant under suspension of the benefit of the revised pay scale. Under the aforesaid Rule 6, the Govt. servants are required to exercise options in their own interest and only with a view to finalizing the dates from which the revised pay scales would find application in a particular case. The aforesaid rule does not impose a disability on a Govt. servant under suspension. In view of this, we are inclined to agree with the contention raised on behalf of the applicant that the subsistence allowance should be paid to him in accordance with the revised pay scale from 1.1.1996 or, if the applicant has exercised his option from the date of his option.

25. Since Shri Jagat Arora, learned counsel has vehemently argued that the directions of this Tribunal in OA-797/99 have not been complied with properly and adequately, we now proceed to examine this contention in

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the light of the observations we have already made in the preceding paragraphs. The direction No. (ii) reproduced by us in paragraph 8 above will apply only in that situation in which the respondents were not keen to initiate departmental inquiry. In that event, the applicant was to be reinstated and he was to remain in his reinstated position until the outcome of the criminal case pending in the High Court became known. The direction No.(iii), however, relates to the other situation, namely, to the situation in which the respondents decide to initiate departmental proceedings. This could be done, as we have already seen, by way of a further inquiry referred to in Rule 10 (4) of the Rules. In that case, the applicant was to be placed under deemed suspension with effect from the date of his dismissal from service, i.e., from 24.2.1997. To this course of action, there can be no objection, as far as we can see. Going by the same sub-rule, the applicant's suspension was to continue until a different order is passed by the competent authority under Rule 10 (5) (c) of the Rules. This would imply that even though under the deeming provision of sub-rule 4 of Rule 10 of the Rules, the applicant would have to be placed under suspension w.e.f. 22.4.1997, the respondents will retain the authority to reinstate him from a future date by exercising the authority vested in them under Rule 10 (5) (c) of the Rules. A period of four months was given to the respondents to decide on the question of initiation of departmental inquiry. The implication was that if the respondents failed to initiate departmental inquiry within the said period of four months, the applicant will

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have to be reinstated in any case. The respondents have, we find, initiated departmental inquiry against the applicant within the said period of four months and that event having taken place, it is no longer necessary for the respondents to reinstate him after the expiry of the aforesaid period of four months. Thus, insofar as the applicant's suspension is concerned, it is clear to us that the respondents having acted in time, he can be continued under suspension in the discretion of the competent authority.

26. Discretion in the matter of suspension is required to be exercised properly and fairly. Powers have been conferred on the competent authority under Rule 10 (5) (c) of the Rules only in order to enable the said authority to judge the situation for himself and to act in a fair and just manner. That is to say, if the competent authority finds that in a particular case it is not necessary to continue the period of suspension of the delinquent official, orders revoking suspension must be passed. Coming to the case of the present applicant, it is seen that being a carpenter only he is incapable of influencing the witnesses in the departmental trial and cannot also tamper with the documents relating to the departmental inquiry. He is a low paid employee. His services can always be utilized in an isolated/insulated position with a view to rendering him totally harmless insofar as the functioning of the PMO is concerned. The order passed by the first appellate court has resulted in his acquittal even though the Judge has given the benefit of doubt. The Acquitting Judge has, in his order, dealt

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with the charges under Sections 420, 468 and 471 of the IPC and has acquitted him. The allegation of bribery has also been discussed by the Acquitting Judge and he has, in a way, exonerated the applicant of that allegation also. However, since the applicant was not formally charge-sheeted under an appropriate section of the IPC on the allegation of bribery, purely on technical basis, it can be said that the applicant has not been exonerated of the charge of bribery. It will also need to be seen and considered that the CRPF Constables, namely, Shri Chander Pal Singh and Shri Uday Vir Singh also involved at any rate insofar as the offence of bribery is concerned have been allowed to stay away without any departmental action having been taken against them. It is stated that these persons were made prosecution witnesses by the CBI in the criminal case against the applicant. Thus, the authorities concerned have been somewhat selective in not taking appropriate action against all those who were found guilty in relation to the charge/offence of bribery. The High Court before whom the CBI's appeal is currently pending may take some time before the matter is decided and this may result in further harassment to the applicant, who has remained suspended right from 1994. All these matters and possibly others will have to be kept in view by the respondents in taking a decision on continued suspension of the applicant.

27. As a matter of fact, the facts and circumstances just mentioned in some detail in the above paragraph are all relevant matters which should have been kept in view by the respondents at the time of taking a decision on

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launching of further disciplinary proceedings against the applicant. We do not think that has been the case. During the course of arguments, the emphasis laid by the learned counsel appearing on behalf of the respondents was on the rule position and the Judge made law according to which further departmental proceedings can be initiated even if the delinquent official has been acquitted on the basis of the same set of facts, allegations and evidence. Be that as it may, we are not inclined to go into that aspect at any length as launching of further proceedings is, in our judgement, something which is within the discretion of the respondent-authority. We will rather desist from looking into the manner of exercise of the aforesaid discretion in the circumstances of this case.

28. In the background of the above discussion, we dispose of the present OA in the following terms:-

- i) The applicant has been placed under suspension under the deeming provisions of Rule 10 (4) of the Rules. His suspension will continue until revoked by the competent authority in exercise of the powers available to him under Rule 10 (5)(c) of the Rules. The competent respondent-authority will have regard to the observations made by us in this order and consider the question of reinstatement of the applicant from a prospective date after revoking the current suspension order. If, on consideration, the respondent-authority is not inclined to revoke the applicant's

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suspension, it will pass a reasoned and a speaking order in the matter at the earliest and in any event within a period of two months from the date of receipt of a copy of this order.

- ii) The applicant was suspended in 1994. He was dismissed from service in April, 1997. After his acquittal by the first appellate court, he has been placed under deemed suspension with effect from the date of his dismissal from service. A period of nearly eight years has gone by since he was placed under suspension. This is a long enough period. It will be in the interest of respondents as well as the applicant if the departmental proceedings now underway are decided at the earliest possible. We accordingly direct the respondents to conclude the departmental proceedings within a maximum period of three months from the date of receipt of a copy of this order. Needless to say, the applicant shall also fully co-operate so that the proceedings are concluded within the aforesaid period. In the event of a departmental appeal being filed by the applicant against the order to be passed by the disciplinary authority, the appellate authority will pass orders on appeal within a period of one month from the date of receipt of appeal. It is clarified that following the observations made by the Court in D.K. Roy v. ESI Coprn. (supra) reproduced in para 11 above whatever grounds were taken by the applicant in the criminal case and

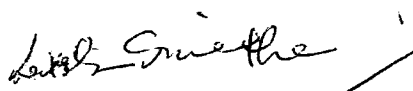
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whatever observations the learned Judge of the Ist appellate Court made against the prosecution's case would remain available to the applicant in the departmental enquiry pending against him.

- iii) It appears that the pay scale in which the applicant has been working was revised from Rs.950-1400 to Rs.3050-4500 w.e.f. 1.1.1996. The respondents will grant benefit of the aforesaid pay revision to the applicant w.e.f. 1.1.1996 in relation to the payment of subsistence allowance.

There shall be no order as to costs.


(S.A.T. Rizvi)
Member (A)


(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)

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