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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No.2507/98

New Delhi: this the 15th day of September, 2000.

HON'BLE MR.S.R.ADIGE VICE CHAIRMAN(A).

HON'BLE MR.KULDIP SINGH, MEMBER(J)

Ajay Kumar,
S/o Lt. Sh. Hari Raj Swarup,
R/o House No.2619-B,
Gali No.7,
Bihari Colony,
Shahdara,

Delhi-32

....Applicant.

(By Advocate Shri Goverdhan proxy for
Ms. Geeta Luthra)

Versus

1. Union of India,
through

Divisional Railway Manager,
Northern Railways,
Chelmsford Road,
New Delhi.

2. Ashwani Kumar,

Divisional Personnel Officer,
Northern Railway,
DRM's Office,
Chelmsford Road,
New Delhi.

3. M.S.Rana,

Divisional Superintending Engineer IV,
Northern Railway,
DRM Office,
Chelmsford Road,
New Delhi

....Respondents.

(By Advocate: Shri R.L.Dhawan)

ORDER

Mr.S.R.Adige, VC(A):

Applicant impugns respondents' Memorandum dated 16.6.98 (Annexure-A) initiating departmental proceedings against him on the charge of demanding and accepting illegal gratification of Rs.1000/- on 16.3.83 from one Shri Dev Raj Chugh for showing favour in getting the departmental in-quiry being conducted against Shri Chugh



decided in his favour expeditiously.

2. Shortly stated a criminal case was registered against applicant under section 161 IPC read with Sections 5(1) and 5(2) Prevention of Corruption Act on the same charge viz. demand and accepting illegal of Rs.1000/- on 16.3.83 from Shri Dev Raj Chugh for showing favour in getting the departmental enquiry being conducted against Shri Chugh decided in his favour expeditiously. Applicant was placed under suspension on 17.3.83 which was ultimately revoked on 16.5.90. The aforesaid criminal case was finally decided by judgment dated 1.12.95 (copy taken on record) in which Special Judge, Delhi held that the prosecution has failed to establish its case against applicant beyond a shadow of doubt and therefore he was entitled to get the benefit of doubt. Applicant was accordingly acquitted.

3. Applicant has stated in his OA that no appeal was filed by the respondents against the order dated 1.12.95 and this assertion had not been denied by the respondents.

4. After passage of 2½ years from the date of aforesaid judgment dated 1.12.95, respondents have now issued the impugned memo dated 16.6.98 initiating departmental proceeding against applicant on the same charge of demanding and accepting illegal gratification of Rs.1000/- on 16.3.83 from Shri Chugh.

5. Applicant's counsel Shri Goverdhan has challenged the aforesaid Memo dated 16.6.98 mainly on two grounds. Firstly he has contended that

applicant having been acquitted by the Special Judge, Delhi by judgment dated 1.12.95 which has become final, ^{he} cannot now be proceeded against departmentally on the same charge, and that too over 15 years after the date of alleged incident. Secondly it is contended that there was no justification on the part of respondents in not initiating departmental proceeding immediately after the alleged incident and this long delay is unexplained.

6. Rulings relied upon by applicant's counsel in support of his contention including State of M.P. Vs. Bani Singh & Others JT 1990 (2) SC 54 wherein the Tribunal's order quashing the proceedings on the ground of laches was upheld because there was inordinate delay in initiate the disciplinary proceedings; M.P. Singh Vs. State of Punjab & Anr. 1994(2) SLR 812 wherein it was held that the department could not be permitted to keep the enquiry pending and reopen it at any time according to their convenience and for an oblique purpose of putting obstruction in Govt. employee's promotion; E. Vedavyas Vs. Govt. of A.P. & Anr. 1990(3) SLR 688 in which it was held that the delay in holding an enquiry amounted to denial of reasonable opportunity to show cause and amounted to violation of principles of natural justice; and Rajendra Chaubey Vs. UOI & Ors. 1995(3) ATC 237.

7. On the other hand, on behalf of respondents it was argued that the applicant was caught red handed by CBI on 16.3.83 for demanding and accepting illegal gratification of Rs.1000/- for showing favour to Shri Dev Raj Chug in regard to departmental enquiry pending against him. Respondents contended that



while there is nodoubt that the applicant has been acquitted in the criminal case, the acquittal did not amount to honourable exoneration from the charge, but was due to failure of prosecution to establish its case beyond a shadow of doubt which resulted in granting benefit of doubt to applicant. Respondents deny that there has been any unexplained delay in issue of memo dated 16.6.98. They state that they were awaiting the outcome of the criminal case instituted against the applicant and upon his acquittal by judgment dated 1.12.95, his case remained under examination till issue of charge-memo dated 16.6.98. Respondents therefore contend that the OA warrants no interference and in this connection, they relied upon the Hon'ble Supreme Court's judgment in the Deputy Registrar, Co-Operative Societies, Faizabad Vs. S.N.Pandey & Ors. JT 1995(2)SC 407 wherein owing to the seriousness of the charges, the Hon'ble Supreme Court had held that they were not inclined to close the matter only on the ground that about 16 years had elapsed since the date of commencement of the disciplinary proceeding, more particularly when the appellant alone could not be held responsible for the delay. Another ruling relied upon by Respondents' counsel is UOI & Ors. Vs. Upendra Singh JT 1994(1)SC 658, wherein it has been held that at the stage of framing of charge, the Tribunal has no jurisdiction to go into the correctness or the truth of the charges and cannot take over the function of the Disciplinary Authority.

8. We have considered the rival contentions of the parties.



9. At the outset we must note that as the criminal case instituted against applicant on 16.3.83 with respect to the charge of demand and acceptance of illegal gratification was finally decided only on 1.12.95, respondents cannot be faulted for awaiting the result of the criminal case, before deciding to issue a Memo dated 16.6.98, initiating departmental proceeding against the applicant. No doubt some further time was taken between the pronouncement of the judgment on 1.12.95 and the issue of Memo dated 16.6.98 but this by itself in our view, would not warrant quashing of the charge memo, particularly in the light of the Hon'ble Supreme Court's judgment in Secretary to Govt., Prohibition & Excise Dep'tt. Vs. L. Sri Niwasan, JT 1996(3) SC 20, and Pandey's case (supra). Hence this contention of the applicant is rejected.

10. What then remains is whether, in the light of the applicant's acquittal in the criminal case instituted against him on the same charge of demanding and accepting illegal gratification of Rs.1000/- for showing favour to Shri Dev Raj Chugh in a departmental proceeding pending against the latter, by judgment dated 1.12.95 which admittedly has become final, the departmental proceeding initiated against the applicant vide Memo dated 16.6.98 should be allowed to continue

or not.

11. Although this ruling was not specifically cited before us during hearing, we find that a similar issue had occasion to be examined by the Hon'ble Supreme Court in a recent case 'Cap. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another, 1999(3) SCC 679. The appellant in that case was a Security Officer in a Govt. Undertaking. He was placed under suspension and criminal as well as disciplinary proceeding were instituted against him on the ground that in a police raid, a mining sponge gold ball weighing 4.5 grms. and 1276 grms. of gold bearing sand was recovered from his house. The raid was conducted at his residence on 2.6.85 and on 3.6.85 he was placed under suspension. On 4.6.85 disciplinary proceedings were initiated against him by issuing a charge sheet. Meanwhile on the same charge the appellant was acquitted in the criminal case on 3.2.87 on the categorical finding that the prosecution has failed to establish its case. Meanwhile the appellant had already been dismissed from service on the basis of the departmental proceeding initiated against him which was concluded ex parte. On 12.2.87 he requested for his reinstatement in view of his acquittal in the criminal case, but his request was

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turned down on 3.3.87, stating that he had already been dismissed from service. Applicant's departmental appeal was also dismissed by the appellate authority on 22.7.87. Thereupon appellant approached the Karnataka High Court under Article 226 of the Constitution challenging the validity of the order on various grounds, including the departmental proceeding based on the same set of facts on which the criminal case was launched against him, ought to have been stayed awaiting the result of the criminal case. It was also pointed out that since the appellant had already been acquitted and the prosecution case against the appellant based on the raid and recovery had not been found to be true, he was entitled to be reinstated in service. This Writ petition was allowed by a single Judge of Karnataka High Court on 26.9.95 with the finding that the departmental proceeding and the criminal case being based on the same set of facts, the departmental proceeding should have been stayed till the result of the criminal case, and since in the criminal case appellant had already been acquitted, and the prosecution case had not been found established, respondents could not legally refuse the reinstatement or consequent back wages to the appellant. While directing reinstatement of the appellant, the High Court gave liberty to initiate fresh proceedings against the appellant after perusing the judgment passed in the criminal case. That judgment was set aside by the Karnataka High Court on 17.9.97 in a letters patent ^{upon which} appeal filed by the respondents against him, the appellant approached the Hon'ble Supreme Court.

121 The Hon'ble Supreme Court in its judgment dated 30.3.99 after referring to a large number of their earlier rulings on the subject, allowed the appeal, and in the concluding paragraphs of their judgment, the Hon'ble Supreme Court held inter alia as follows:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, in so far as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceeding. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is

undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement within three months. The appellant would also be entitled to his cost which is quantified at 15,000/-."

13. In the present case also, there can be no doubt that the charge in the criminal case and the charge in the disciplinary proceeding is one and the same, namely that of demanding and accepting illegal gratification of Rs.1000/- on 16.3.83 from Shri Dev Raj Chugh for showing favour in getting the departmental enquiry being conducted against Shri Chugh, decided expeditiously. Furthermore, along with Articles of charge in the DE, a list of seven prosecution witnesses have been cited (Annexure-III) including

- 1) Shri Dev Raj Chugh, A.C. Coach Incharge,
- 2) Shri V.Krishna Murthy, Desk Officer,
- 3) Shri Surender Gosain, Steno
- 4) Shri B.N.Jha, Dy.S.P./CBI
- 5) Shri R.N.Azad, Inspector, CBI
- 6) Shri D.R.Sethi, Divl.Engineer
- 7) Shri Sukh Ram, Inspector of Police, CBI

14. Six of these 7 PWs were also PWs in the criminal case instituted against the applicant in which he was acquitted. One prosecution witness in the departmental enquiry; namely Shri R.N. Azad, Inspector CBI was not examined as PW in

the criminal case but Shri B.N.Jha, Dy. SP/CBI who was examined as PW in the criminal proceeding, referred to Shri R.N.Azad's role in the incident. Indeed in the criminal proceeding 2 other witnesses namely Shri Vaishnavi and Shri Shiv Avtar Rastogi were also examined as PWs but have not been cited in the DE. Needless to say all the PWs in the criminal case were subjected to detailed cross-examination as is clear from the judgment dated 14.12.95 wherein also, as in Paul Anthony's case (supra), it was concluded that the prosecution had failed to establish its case against accused.

15. It has been contended on behalf of respondents that applicant was not honourably exonerated in the criminal case instituted against him and it is only because of failure of the prosecution to establish its case against accused beyond a shadow of doubt, that he was granted the benefit of doubt. Would that in any manner mean that the ruling in Paul Anthony's case (supra) is not applicable? We do not think so, because we have already noted that in Paul Anthony's case (supra), the Hon'ble Supreme Court had specifically noted that the prosecution had failed to establish its case against the accused in the criminal proceedings, but had granted the relief to him.

16. Indeed if Shri Paul Anthony had a sword of Damocles hanging over his head from 1985 till the

pronouncement of the Hon'ble Supreme Court's judgment in 1999 in the present case that Sword has been hanging over the head of applicant from even earlier date, i.e. 1983 and as the departmental proceedings have been initiated against him as late as 16.6.98, it is not known that how much longer that Sword would continue to hang over his head.

17. By Tribunal's interim order's dated 23.12.98, respondents have been restrained from continuing with the proceedings and that interim orders have been extended from time to time and still continues.

18. In the light of the aforesaid discussion, we hold that the ratio of the Hon'ble Supreme Court's ruling in Shri Paul Anthony's case (supra) is squarely applicable to ^{the} particular facts and circumstances in the present case, and under the circumstances, the impugned Memo dated 16.6.98 initiating departmental proceeding against applicant on the same charge in which he had been acquitted in the criminal proceedings by judgment dated 1.12.95 is quashed and set aside. Applicant will be entitled to such consequential benefits as are admissible to him in accordance with rules and instructions, pursuant to judgment dated 1.12.95 acquitting him in the criminal case.

19. The OA succeeds and is allowed in terms of para 18 above. No costs.

Kuldeep
(KULDIP SINGH)
MEMBER (J)

Antolige
(S.R. ADIGE)
VICE CHAIRMAN (A)