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Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 855/1994

New Delhi this the 19th Day of September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Shri Madan Lal II,
son of Shri Ganga Ram,
Resident of F-25/28,
Sector 3, Rohini,
Delhi.

... Applicant

(By Advocate: Mahesh Srivastava)

Vs.

1. Union of India, through its
Secretary, Ministry of Agriculture,
Department of Food & Agriculture,
Krishi Bhawan, New Delhi

2. Delhi Milk Scheme through its
General Manager, West Patel Nagar,
New Delhi.

... Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant has been working as Cash Clerk since January 1972 in Delhi Milk Scheme. A case was registered by C.B.I against the applicant under Sec. 406, 467 and 473 of IPC at the instance of General Manager, DMS. The applicant was suspended with effect from 21.10.1980. That case was acquitted by the Metropolitan Magistrate by the judgement dated 11.12.1987. The State Appeal against the same was also dismissed by the High Court on March 10, 1988. The suspension of the applicant was revoked after this judgement on 12.8.1987. However, no order has been passed regarding the treating of the period under suspension with effect

from 11.10.1980 to 11.8.1988. By the order dated 7.1.1991, the respondents initiated disciplinary departmental proceedings under Rule 14 CCS(CCA) 1965 after obtaining the documents from CBI/Court. It was further directed in that order that the period of suspension with effect from 21.10.1980 to 11.8.1988 may be held in abeyance which will be decided in the light of the findings of the departmental enquiry and orders thereon. The other administrative action viz. fixation of pay in the revised scale and admissibility of the increment will be decided accordingly. It is alleged by the applicant that the action of the respondent is arbitrary. The applicant has prayed that the period of suspension from 21.10.1980 to 11.8.1988 be directed to be treated as period spent on duty with full pay and allowance and the salary of the applicant may be fixed on the recommendation of the Fourth Pay Commission and the applicant be paid arrears.

2. A notice was issued to the respondents. They did not file any reply. Shri Madhav Panikar appeared on behalf of the respondents and opposed the admission of the application on the ground that it is totally devoid of merit and does not make out a prima facie case for admission. He has also filed a copy of the notification dated 11.5.1984 issued by the Ministry of Agriculture that Officer-on-Special Duty In-Charge, Delhi Milk Scheme shall be the competent authority for the purpose of Rule 12 for all posts in the General Central Service Group 'C' & 'D'.

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3. Heard the learned counsel for the parties at length. There is no bar for initiating departmental enquiry against the acquitted employee from the criminal court as held in the case of Nelson Motis reported in 1993(23) ATC P 382. Thus, the respondents by virtue of the statutory power have initiated departmental enquiry against the applicant for the alleged misconduct which also amounted to a criminal act and the criminal court has acquitted him. The case is fully covered by the judgement of Union of India vs. K.V. Jankiraman reported in 1991 (2)SC P 423. The same view has been taken by the Hon'ble Supreme Court in the case of Union of India vs. Kewal Kumar JT 1993(2) SC P 705. In fact the applicant has not been exonerated and the alleged misconduct against him and an order for treating the period under suspension can only be passed by the competent authority after the conclusion of a departmental enquiry. The respondents in their order dated 7.1.1991 have kept the treatment of the suspension period in aveyance till the conclusion of the disciplinary proceedings against the applicant. This order is fully covered by FR 54(b) as well as the decision of the Hon'ble Supreme Court. The applicant has no case.

4. The application is devoid of merit and is dismissed.

J.P. SHARMA
(J.P. SHARMA)
Member (J)

Mittal