

15-1-2001

(10)


11.

OA-865/2000


Present: S.H. Arun Bhardwaj, learned
counsel through proxy counsel
Shri A.K. Behra, counsel for the
applicant.
S.I. Vijay Kr. Kataria, Departmental
representative on behalf of respondents

This case was listed today for
possible final hearing. However, learned
proxy counsel seeks an adjournment on the
ground of personal difficulty of the
learned counsel.

Admit, subject to legal pleas.
List for hearing in its turn.


(Goundan S. Tampi) (Smt. Lakshmi Swaminathan)
Member (A) Vice Chairman (J)

Later Mrs. Neelan Singh, learned counsel
for the respondents appeared.


(Goundan S. Tampi) (Smt. Lakshmi Swaminathan)
Member (A) Vice Chairman (J)

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R-23

12-2-2001

OA 865/200

(11)

Atst: Hiji Bheem Bhadracharya, local and spiritual
- HC Ram Niwan, spiritual Representative.

List on 19-2-2001

✓
(Covindan S-Tam-81)

re (A)

✓
(Sud. La Bala's Swaminathan)

VC (S)

Atst/

R-19

19-2-2001


DA 865/2001


12

Pres: Sri Arun Bhandari, learned Counsel for the
applicant.

Was for the respondents.

List on 18-4-2001


(Govind Kumar S. Tamari)
M(A)


(Smt. Lakshmi Swaminathan)
VC(J)

Atty/

Admission case
Pl. Contd.

19.

R-12

20-4-2001

DA865/2000

Presnt: Shri Anur Bhargava, learned counsel for the appellants
None for the respondents even on the second call.

List on 25-4-2001.

(Crainaloff Sr. Temple)

m (at)

ADG/

18

(Smt. Lakshmi Srinivasan)

V C (3)

14

12.

1-5-2001

08 & 65/200

Presence: None for the applicant even on the second call.
DPR representative. Shri Ram Narayana, Head Constable.

List in 3-5-2001, on which date if the applicant
for the position are not present, it shall be presumed that
they are not interested in being heard.

(~~Gopinath S. Tanna Di~~)

M(A)

(Sd/-)

(Sd/- Lakshmi Suman Choudhary)
V = (S)

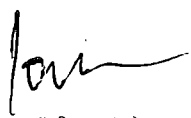
R-6
10-5-2001
OA 865/2000

15

Present : Shri Arun Bhardwaj, learned counsel for the
applicant through learned proxy counsel Shri
Pardeep Dahiya.
Mrs. Neelam Singh, learned counsel for the
respondents through learned proxy counsel
Shri Mohit Madan.
Depttl. representative HC Ram Niwas.

List on 21-5-2001.

(Govindan S. Tampi)
Member (A)


(Kuldip Singh)
Member (J)

/vikas/

RS

25-5-2001

OA 865/200

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Present: Shri Arun Bhardwaj, learned counsel for the applicant
Shri Yashvir Singh, learned proxy counsel for
Mrs. Neelam Singh.

Learned proxy counsel for the respondents seeks
an adjournment, as he states that Mrs. Neelam Singh,
learned counsel is unwell. He also undertakes to
argue this case on the next date.

2. List on 28-5-2001

(Gaurinder & Tarni)
M(A)

JS
(Smt. Lakshmi Swaminathan)
VC(J)

for / OA 865/00 29/5/2001

Present & Sh. Arun Bhardwaj, counsel
for the appl.

Sh. Harvir Singh, proxy counsel
for Mrs. Neelam Singh, counsel
for the respts.

Both heard, order reserved
by a DB of Hon'ble Smt. Lakshmi Swaminathan,
VC(J) and Hon'ble Sh. SAT. Rizvi, M(A)

for dk
VC(J) PTC

(167)

04/6/2001

07/8/57/2000

Order pronounced to day
in open court, as dismissed
by a DS of the District Examination,
re (1) and Harrie & SAT Rizvi, m(1)
Order attached.

RD
Y or
Coey

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 865/2000

199

T.A.No.

DATE OF DECISION 1-6-2001

Harish Chand Ex.H.C.

....Petitioner-

Shri Arun Bhardwaj

....Advocate for the
Petitioner(s)

VERSUS

Lt.Governor NCT of Delhi through....Respondent
Addl.Commissioner of Police
Southern Range, and Ors.

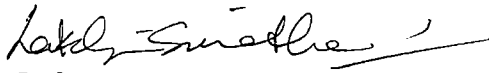
Ms Neelam Singh, learned counselAdvocate for the
through proxy counsel Sh.Harvir Singh Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

The 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 other Benches of the Tribunal? No.


(Smt.Lakshmi Swaminathan)
Vice-Chairman(J)

(18)

Central Administrative Tribunal
Principal Bench

O.A. 865/2000

New Delhi this the 1ST day of June, 2001

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

Harish Chand Ex. H.C.,
S/o late Shri Krishan Chand,
R/o Village Ahmed Pur, Majra,
PO Bichpri,
Distt. Sonapat,
Haryana.

... Applicant.

(By Advocate Shri Arun Bhardwaj)

Versus

1. Lt. Governor,
National Capital Territory of Delhi,
through Addl. Commissioner of
Police, Southern Range, PHQ I.P. Estate,
New Delhi.
2. Deputy Commissioner of Police,
West District Rajouri Garden,
New Delhi.
3. Deputy Commissioner of Police,
Distt. West,
New Delhi.

... Respondents.

(By Advocate Shri Harvir Singh, proxy for Ms. Neelam Singh)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This application has been filed by the applicant stating that he has been illegally punished by the respondents, although he has been subsequently acquitted by the competent Criminal Court on the same charge. He has submitted that his representation to the respondents to reinstate him in service after his acquittal by the Criminal Court with consequential benefits has been dismissed. Hence, this O.A. in which he has prayed that the orders dated 10.9.1998, 11.6.1992,

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and 30.9.1993 should be quashed and set aside and he should be granted all consequential benefits.

2. The brief relevant facts of the case are that a Departmental inquiry had been held against the applicant in 1988. According to him, on the same facts he had also been proceeded against in FIR No. 270/87 under Sections 409/468/471 of IPC. He had filed O.A. 1482/88 which was disposed of by Tribunal's order dated 17.1.1992. In this order, it has been observed that keeping in view all the facts and circumstances of the case, the application is disposed of with the observation that the respondents may pass final order in the Departmental enquiry on or after 31.3.1992 till which date, the interim order already passed will continue in operation. Thereafter, he had filed another application before the Tribunal (OA 263/94), in which he had impugned the orders passed by the disciplinary authority and appellate authority dismissing him from service as Head Constable in Delhi Police. This O.A. was dismissed by Tribunal's order dated 25.2.1994. The Review Application filed against this order was also rejected on 26.8.1994. The applicant had filed SLP in the Supreme Court which was dismissed as withdrawn on 13.2.1995.

3. Shri Arun Bhardwaj, learned counsel for the applicant has submitted that a fresh cause of action has arisen to the applicant for filing this application as the applicant had been acquitted in the criminal case by the Hon'ble Metropolitan Magistrate, Delhi vide his order dated 11.2.1998. Thereafter, the applicant had

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represented to the respondents to reinstate him in service, taking into account the fact of his acquittal by the Criminal Court which according to him, was on the same facts which formed the basis for Departmental enquiry. This had been rejected by the impugned letter issued by the respondents dated 10.9.1998. Against this, he had filed a Memorial to the Lt. Governor of Delhi which he states is still pending. He has also submitted that the applicant had filed a Writ Petition in the Delhi High Court, praying for quashing of the impugned order of dismissal dated 11.6.1992, appellate authority's order dated 30.9.1993 and Tribunal's order dated 25.2.1994 in OA 263/94. He had also prayed to reinstate the applicant in service with all consequential benefits. We note from the High Court's order dated 18.2.2000 that on submission made by the petitioner's counsel that he will approach this Tribunal, the petition was disposed of.

4. The main contention of the learned counsel for the applicant is that the action of the respondents in dismissing the applicant from service was based on the same material, that is, the facts, evidence and other records which were before the competent Criminal Court which had arrived at a finding that the applicant was not guilty of the offence for which he was charged. He has, therefore, submitted that the dismissal order passed by the respondents has to be quashed and set aside and the applicant should be reinstated in service. Learned counsel has submitted that the respondents could not have held the applicant guilty of the same charge on which the Criminal Court has acquitted him. He has referred to the charge in the DE proceedings dated 14.2.1998, in which

reference has been made to a Motor Cycle, Gold Chain and one Scooter and the allegations were that the applicant had failed to deposit the articles with District Nazir but had made certain entries in the Daily Register and Road Certificate which were false regarding deposition. Therefore, Shri Arun Bhardwaj, learned counsel has submitted that it appears from the Hon'ble Metropolitan Magistrate's order dated 11.2.1998 that the charges were the same except that while only few articles were mentioned in the Departmental proceedings, the charge under FIR No. 270/87 had a few more articles. He has, therefore, submitted that essentially it is one and the same charge which was levelled against the applicant in the Departmental proceedings and in the Criminal case before the Metropolitan Magistrate. He has also submitted that the evidence of PW-4 in the criminal case is relevant which is to the effect that he had put his signature on the Roznama when the charge was handed over to him.

5. Another contention of the learned counsel is that the order dated 11.2.1998 passed in the criminal case has been done after examination of the statement of the witnesses and other evidence by the Court and, therefore, the respondents should consider acquittal of the applicant on the merits of the case and not on benefit of doubt even if the Hon'ble Metropolitan Magistrate might have said so. Learned counsel has relied on the orders of the Tribunal in Ex. Constable Joginder Singh Vs. Union of India & Ors. (in which one of us Smt. Lakshmi Swaminathan, then Member(J) was also a Member) (OA 940/95), decided on 1.9.1999 and Inderjit Vs. Commissioner of Police and Anr. (OA 1931/98), decided on 7.3.2001 (Copies placed on

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-5-

record). He has also relied on the judgement of the Supreme Court in Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. (JT 1999(2) 456) which has also been referred to in Tribunal's order dated 1.9.1999 in O.A.940/95. He has, therefore, submitted that following these judgements, the impugned punishment orders of dismissal from service passed by the respondents should be quashed and set aside in the light of the acquittal by the Criminal Court by order dated 11.2.1998 with all consequential benefits.

6. The respondents in their reply have controverted the above claims of the applicant and we have also heard Shri Harvir Singh, learned proxy counsel. The respondents have stated that after the Tribunal had passed its order dated 17.1.1992 in O.A.1482/1988, they had passed the dismissal order against the applicant dated 11.6.1992. Learned proxy counsel has submitted that this had been done after holding a Departmental inquiry in accordance with the relevant law and rules. Appeal against the dismissal order had also been rejected. They have submitted that after the applicant was acquitted in case FIR No. 270/87, he had submitted a Memorial to the Lt. Governor of Delhi on which decision is still awaited. However, learned counsel for respondents has submitted that the charges levelled against the applicant in the Departmental enquiry and before the Criminal Court are not the same as the charges in the Criminal Court were under Sections 409/468/471 of IPC on which he has been acquitted by giving the applicant the benefit of doubt and not on merits. He has also stressed on the fact that as the charges in the two cases were different and no fault has

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been alleged or proved in the conduct of the Departmental proceedings which had resulted in the punishment orders being passed against the applicant, the O.A. may be dismissed.

7. We have carefully considered the pleadings and the rival contentions of the learned counsel for the parties.

8. In Capt. M. Paul Anthony's case (supra), the Hon'ble Supreme Court has held as follows:

"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".

(Emphasis added)


9. Having regard to the charge levelled against the applicant in the Departmental inquiry proceedings and the charge levelled against him in FIR No.270/87 as seen from the Hon'ble Metropolitan Magistrate's order dated 11.2.1998, we are unable to agree with the contentions of the learned counsel for the applicant that they are exactly the same and there was not even any iota of difference between ^{the two} two. In Tribunal's order dated 1.9.1999 in O.A. 940/95, there was a finding that those very facts of domestic disharmony on the basis of which the impugned penalty orders were passed by the respondents were later amicably settled by the concerned parties, as a result of which all complaints, including the FIR were

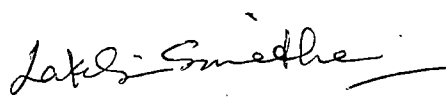
withdrawn which was recorded by the Hon'ble High Court. In the facts and circumstances of the present case, we are unable to agree with Shri Arun Bhardwaj, learned counsel that the judgement of the Apex Court in M. Paul Anthony (supra) or the orders of the Tribunal in the cases relied upon by him would be applicable to the facts and circumstances of the case. The Apex Court has clearly stated that the distinction which is usually drawn as between the departmental proceedings and the criminal case would not be applicable to a case where there is any iota of difference on the facts and evidence in both the proceedings. In the present case, admittedly what has been the subject matter of the charge was not exactly the same as the charge before the competent Criminal Court. Further, it is noted that the criminal court has acquitted the applicant giving him benefit of doubt. We are also unable to agree with his contention that even if Metropolitan Magistrate has said that based on the evidence and statement of witnesses he is acquitting the applicant by giving him benefit of doubt, that should be considered as if the applicant has been acquitted on merits of the case. The statement of one of the witnesses which the applicant has referred to in the order dated 11.2.1998 will not also assist the applicant in the facts and circumstances of the case. Similarly, the judgement of the Tribunal dated 7.3.2001 in OA 1931/98 will also not assist the applicant as the charges in the two proceedings

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are not the same in the present case i.e. in the Criminal Court and in the Departmental proceedings.

8. For the reasons given above, we find no good grounds to justify any interference in the matter. The application accordingly fails and is dismissed. No order as to costs.


(SAT Rizvi)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'