

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(11)

O.A. No. 2643 /90 1980
T.A. No.

DATE OF DECISION 27.8.91

Shri Hem Karan Meena Petitioner

Shri B.S. Mainee Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri A.K. Sikri, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman.

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? x
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? x

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(12)

Regn. No. OA 2643/90

Date of decision: 27.8.91

Shri Hem Karan Meena

Applicant

vs.

Union of India

Respondents

PRESENT

Shri B.S. Mainee, counsel for the applicant.

Shri A.K. Sikri, counsel for the respondents.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri P.C Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

By this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays for quashing the memorandum chargesheet and the subsequent enquiry proceedings pending against him before the Enquiry Officer.

2. The applicant was appointed as a Lower Division Clerk on 12.1.1982 in the office of the General Manager (Telephones), New Delhi. While working as a Lower Division Clerk, a memorandum chargesheet for penalty was served upon the applicant on 24.10.1988 containing the allegation that he had committed misconduct in accepting the amount of Rs. 200.00 as illegal gratification from one Shri Manna Singh for showing favour to him by issuing an appointment letter as a regular Mazdoor. According to the O.A., the applicant denied all the charges levelled against him and requested to be heard in person by filing a representation on 1.11.88. The applicant was placed under suspension with effect from 4.5.88, but it was subsequently revoked on 5.12.89. One Shri M.L. Rajpal was appointed as Inquiry Officer by the disciplinary authority.

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During the departmental inquiry, one Shri J.L. Sharma, Asstt. Engineer (Vigilance) was examined, who was cross-examined by the Defence Assistant of the applicant. According to the applicant, the said witness Shri J.L. Sharma was confronted in cross-examination with regard to Rule No. 57 of the Post & Telegraph Manual, Vol. III. The reply of the said witness was in the affirmative. The question put to the said witness was that according to Rule No. 57 of the Manual, cases pertaining to illegal gratification could not be taken up departmentally and it is to this question that the said witness replied in the affirmative. Thereupon the Inquiry Officer reserved the judgment/decision and adjourned the inquiry proceedings. The judgment/decision could not be given by the Inquiry Officer. Therefore, the Deputy General Manager appointed another Inquiry Officer on 1.8.90 (Annexure A-6). By Annexure A-7, a representation was filed by the applicant raising objection that before the inquiry commences, the question of jurisdiction of the Inquiry Officer be decided in the light of the provision contained in Rule 57 of the P&T Manual Vol. III. But, according to the applicant, no decision ^{has} as yet/been given on that point. The new Inquiry Officer, Shri O.P. Parashar, Asstt. Engineer, M.T.N.L., is to resume the inquiry from where Shri M.L. Rajpal, the previous Inquiry Officer, left the matter pending. According to the applicant, Rule 57 of the P&T Manual, Vol. III, prohibits a departmental inquiry in cases of ^{alleged} criminal offences committed by the employees during the discharge of their duties.

3. The respondents, on notice, appeared and filed their return, therein raising a preliminary objection that the departmental remedy has not been availed of before filing this O.A.; that the O.A. is barred by limitation. They further contended that the department by not filing FIR has taken a lenient view and only started the disciplinary proceedings with regard to the misconduct committed by the applicant during the discharge of his duties. The respondents further contended that Rule 57 is being misconstrued

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by the applicant and there is no such prohibition contained in the said Rule.

4. The main contention of Shri B.S. Mainee, learned counsel for the applicant, is that Rule 57 of the P&T Manual, Vol. III, is mandatory and hence as it prohibits a departmental inquiry with regard to criminal offences which are punishable under the Penal Code and cannot be inquired into departmentally. Before we answer this argument, for convenience, Rule 57 is reproduced below:

"57. There is no bar to include all charges of violation of departmental rules as well as criminal offences which can be taken up departmentally, e.g. misappropriation of Government money, defalcation, and theft of departmental material etc. But there are criminal offences such as bribery and corruption, murder offences under the Excise Act, etc. which cannot be taken up departmentally. In the case of departmental proceedings, reference to the various clauses of the Indian Penal Code should be avoided. The proceedings should be based on the failure to observe departmental rules and regulations. For instance, in the case of theft of a registered or insured articles, the charge against an employee may not be theft of that article but failure to account for the articles entrusted to him."

A mere perusal of the wordings of this Rule indicates that it does not prohibit departmental proceedings with regard to the misconduct an employee is alleged to have committed during the performance of duty and his conduct can also be punished in criminal proceedings.

In such a situation, this Rule indicates that the various clauses of the Indian Penal Code should be avoided at the time of filing the chargesheet or during the inquiry. The underlined portion of this Rule clearly indicates that the departmental proceedings can be started against the delinquent because of his failure to observe departmental rules and regulations. The example with regard to the theft of a registered or an insured article also indicates that the words like theft of the article should not be used but the words failure to account for the articles entrusted to him should be used during the departmental inquiry. What the Rule says is that if a departmental inquiry is to be held by the department to inquire into the alleged misconduct of the employee, then the words used in the Penal Code describing that misconduct should not be used during the inquiry. Annexure-1 to Annexure A-1

is the Article of Charge framed against the applicant which reads

Annexure-1

as follows:

"That the said Shri Hem Karan Meena while working as L.D.C. in STC-II Section of this office during May, 1988 committed an act of gross misconduct in as much as he demanded and accepted Rs. 200/- as illegal gratification from Shri Manna Singh, DRM, to give him (the latter) a copy of his appointment letter as Regular Mazdoor.

It is alleged that by his above act the said Shri Hem Karan Meena failed to maintain absolute integrity and exhibited a manner unbecoming of a Govt. servant in violation of Rule 3 (1) (i) & (iii) of the CCS (Conduct) Rules, 1964".

A glance at this Annexure makes it clear that the Article of Charge framed against the applicant is not under Section 161 of the Indian Penal Code or Section 5(1)⁽²⁾ of the Prevention of Corruption Act, but it is with regard to the fact that the applicant failed to maintain absolute integrity and exhibited a manner unbecoming of a Govt. servant in violation of Rule 3(1) (i) & (iii) of the C.C.S. (Conduct) Rules of 1964 (hereinafter referred as 'Rules'). Thus, the misconduct of the applicant which is the subject matter of the departmental inquiry is not an alleged offence under the I.P.C. or Prevention of Corruption Act, but it is for violating the provisions of Rule 3 of the Rules.

5. The Bench in the beginning inquired from the learned counsel for the respondents as to whether any F.I.R. has been filed by the department against the applicant or not and to which Shri Sikri replied that no FIR has been filed against the applicant before the Police and no criminal trial is pending against the applicant in a court of criminal law. The very Article of Charge framed against the applicant indicates that he is not alleged to have committed any crime under Section 161 of the I.P.C. or under Section 51 (ii) of the Prevention of Corruption Act, but it is a chargesheet for having contravened Rule 3 of the Rules.

6. In the case of Karuppa Udayar vs. Madras State (AIR 1956 (Madras) p. 460) it was observed that

"The fact that the charges framed against a public servant make out the ingredients of an offence punishable under the Penal Code and that the person

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can be prosecuted in a criminal Court does not affect the jurisdiction of his superior officers to enquire into the truth of charge in a departmental enquiry or to punish him, if the charges are proved, without recourse to a criminal Court."

It becomes, therefore, clear that the fact that a particular act attributed to the delinquent officer amounts to an offence under the Penal Code does not necessarily entail a duty on the part of the respondents to take proceedings in a criminal court. It is left to the choice of the employer either to prosecute the delinquent or to proceed against him departmentally. The choice is left to the employer and not to the employees. This view of ours stands fortified by the pronouncement of the Division Bench judgment of the A.P. High Court in the case of Abdul Rahim v. Chief Executive Officer, A.P. (A.I.R. 1964 (A.P.) p. 407).

7. Thus, there was nothing illegal on the part of the respondents/employers when they chose to conduct a departmental inquiry with regard to the misconduct allegedly committed by the applicant during the discharge of his official duty.

8. The object of the criminal proceedings is to enforce the law of the land and to secure the punishment of an offender. If a delinquent is convicted in a criminal prosecution, then in such a situation to avoid double jeopardy to the delinquent, departmental proceedings may not be desirable. The object of these two proceedings is different. It is not a rule of law but merely a matter of discretion depending on the facts of each case as to whether the employer shall proceed straightaway to inquire into the allegations of misconduct on the part of its employee or to leave the delinquent, after the FIR is filed, to be prosecuted in a court of law. There is a clear distinction between a departmental inquiry and the criminal proceedings. In the former, the misconduct is one in relation to the duty of the employee which he performs under the supervision of his employer. In the case of the latter, it is the contravention of the provisions of the law of the land where crimes are committed, investigated and prosecuted. Light is also thrown on the subject

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by a judgment of the apex court delivered in the case of P.J. Ratnam v. D. Kanikaram (AIR 1964 S.C. 244).

9. Another contention of Shri Mainee is that the witness, Shri J.L. Sharma, examined during the inquiry has admitted during the cross examination that cases pertaining to illegal gratification could not be taken up departmentally. At the first place, the question by the Defence Assistant of the applicant of this nature should not have been permitted by the Inquiry Officer ^{be} because a witness can never be allowed to cross examined on a point of law, but as the Inquiry Officer who was not a man well versed in law and procedure cannot be expected to disallow such questions. However, it is irrelevant, as to what the witness's ^{or interpretation of a rule.} reply is with regard to the question of law. This argument deserves outright rejection. It is also pertinent to note that no objection in this regard was raised by the applicant during the departmental inquiry. It was wrong on the part of the Inquiry Officer to have stayed the further proceedings after the reply of Shri J.L. Sharma on a question of law.

10. Another argument of Shri Mainee is that Rule 57 quoted hereinabove is mandatory, but it is immaterial for our purpose for the said Rule, in our opinion, cannot prohibit the respondents from holding a departmental inquiry for having committed misconduct and which contravenes the provisions of Rule 3 of the Rules.

11. The preliminary objection raised by the respondents and also the objection that the applicant did not avail the departmental remedy become irrelevant as we have decided this O.A. on merits. It is the chargesheet which was filed for major penalty on 24.10.88, but the order appointing another Inquiry Officer was passed in October, 1990 (Annex. A-2). Thus, the O.A. cannot be said to have been filed beyond the ^{period of} limitation because the O.A. has been filed on 24.11.90. The applicant does not appear to have filed any departmental representation nor was it necessary

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for him to do so because no material has been placed before us which may indicate that the applicant was bound to file any representation for quashing of the departmental inquiry.

13. Before parting we would undertake the liberty of considering where simultaneous criminal proceedings are started alongwith the disciplinary proceedings. Though such a situation is not present in this case, yet the law laid down by the apex court needs mention. The Supreme Court in the case of *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. & Others* (AIR 1988 SC 2118) has observed:

"While there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. It is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation."

The desirability of simultaneous criminal prosecution and disciplinary proceedings differs from case to case and fact to fact. No hard and fast rules can be laid down in this regard.

13. We, therefore, conclude that Rule 57 of the P&T Manual, Vol. II, does not prohibit holding of the departmental inquiry against a delinquent for having committed misconduct contravening Rule 3 of the Rules. We further conclude that the prayer of the applicant for quashing the chargesheet deserves outright rejection. Another prayer of the applicant made in the O.A. is also to quash subsequent inquiry proceedings which are going to be held. As held earlier, the inquiry which is being conducted is in accordance with the law and does not contravene any rules. Hence, neither the past nor the subsequent inquiry proceedings can be quashed.

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14. Consequently, this O.A. which is bereft of any merit is dismissed. The parties shall bear their own costs.

P.C. Jain
(P.C. JAIN) 27/8/91

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH) 27.8.91

VICE-CHAIRMAN (J)