

7

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2421/2004

New Delhi, this the 4th day of February, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Jitander Kumar Kapoor
S/o Late Sh. K.R.Kapoor
R/o 43/2932, Beadon Pura
Karol Bagh,
New Delhi - 110 005.

... Applicant

(By Advocate: Sh. Baljeet Singh)

Versus

1. Govt. of NCT of Delhi
Through, Chief Secretary
Delhi Sachivalaya, I.P.Estate
ITO, New Delhi.

2. The Controller of Accounts
Principal Accounts Office
A-Block, Vikas Bhawan
New Delhi.

... Respondents

(By Advocate: Mrs. Rashmi Chopra)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant (J.K. Kapoor) seeks quashing of the Memorandum of 19.7.2004 and to direct that his services should be regularized.

2. Some of the facts are that the applicant was working in the office of Respondent No.2. In pursuance of a complaint that was made, a raid had been conducted and the applicant was tried by the Special Judge, Delhi with respect to the offence punishable under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988. The Court of the Special Judge on



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- 2 -

24.1.2003 acquitted the applicant. Thereafter, the disciplinary proceedings are purported to be initiated with the following statement of misconduct.

"On 22.9.1995 complainant Shri Nand Kishore Verma s/o Late Shri Rama Nand Verma R/O T-38, Gautam Puri, Delhi came to the Anti Corruption Branch and lodged a complaint that he was a social worker and a reporter of "Rashtriya Darpan". He further alleged that he alongwith some other persons of Seelam Pur had formed a Society in the name of M/s New Sweety School Centre Education Society, which was functioning from B-78, New Seelam Pur, Delhi. He also alleged that they had applied for registration of the said Society in the office of Registrar of Societies, on 14.8.1995 and he himself being Vice President has submitted the application duly signed by the Society's President - Mrs. Mehar Sultana. Shri Kapoor was working as UDC in the office of the Registrar of Societies and it was alleged that the complainant met him on several occasions to know the progress of their case. The complainant further alleged that on 20.9.1995, he met the delinquent official in his office where he demanded a sum of Rs.500/- as bribe to be paid to him on 22.9.1995 (afternoon), to get their society registered. Therefore, a raiding party comprising of Inspector Rajender S. Manku, Inspector Ramesh Singh, Complainant and panch witness - Shri Gautam Arora, Head Clerk in the office of Dy. Director of Education, South West District, Vasant Vihar, New Delhi was formed and a trap was laid in the office of the Registrar of Societies, Delhi. Shri Jitender Kumar Kapoor was caught red handed when he demanded, accepted and obtained Rs.500/- as illegal gratification from the complainant. The tainted money of Rs.500/- taken as illegal gratification was recovered from Jitender Kumar Kapoor.

Thus the above acts of omission and commission on the part of Jitender Kumar Kapoor, UDC while functioning as Govt. servant amounts to unbecoming of a Govt. Servant and

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thereby contravened provisions of Rule 3 (1)(iii) of CCS (Conduct) Rules, 1964."

3. The applicant assails the same contending that

- a) Since he has been acquitted by the Court of the Special Judge pertaining to the same fact, departmental proceedings cannot be initiated.
- b) There is an inordinate delay in initiation of the departmental proceedings pertaining to the incident which is stated to have taken place in September, 1995.

4. The petition is being contested. According to the respondents neither of the plea has any substance.

5. We have heard the parties' counsel and seen the relevant record.

6. On behalf of the applicant, reliance was being placed on the decision of the Madras High Court in the case of **SHAIK KASIM v. THE SUPERINTENDENT OF POST OFFICES, CHINGLEPUT DA. AND ANOTHER**, AIR 1965 Madras 502 (V. 52 C 183). The said Court expressed a view that when a person is acquitted by the Court on merits, on identical facts, it is not proper to start disciplinary proceedings and punish the said person.

7. Reliance further was being placed on the decision of the Supreme Court in the case of **SULEKH CHAND AND SALEK CHAND v. COMMISSIONER OF POLICE AND ORS.**, 1994 (5) SLR

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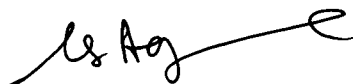
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742. In the said case, the appellant had been promoted from the post of ASI to Sub Inspector. The claim of the appellant before the Supreme Court was being contested by the Commissioner of Police on the ground that in the year 1983, he was charged for the offence punishable under the Prevention of Corruption Act. He was kept under suspension and was communicated the adverse entries. After perusing the record, the Supreme Court found that reasons which prevailed with the DPC were the prosecution under Sub-Section (2) to Section 5 of the Prevention of Corruption Act and the departmental inquiry against the said person. The Supreme Court held that if the acquittal is on merits, the material on the basis of which his promotion was denied would not stand scrutiny. In that case, the Supreme Court was informed that departmental enquiry itself had been dropped. These facts clearly show that the Supreme Court was concerned with the peculiar facts of that case. Therefore, it cannot be taken as a precedent to hold that wherever departmental proceedings are to be initiated after acquittal, the same must be held to be barred.

8. However, strong reliance was being placed on the decision of the Supreme Court in the case of **CAPT. M. PAUL ANTHONY v. BHARAT GOLD MINES LTD. AND ANOTHER**, 1999 SCC (L&S) 810. We are not dwelling into the details of all the facts but the Supreme Court observed:

“13. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a



criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

Thereafter, the Supreme Court further had drawn the following conclusions:

"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."

In other words, the Supreme Court itself found that in departmental proceedings, the standard of proof is different than in a criminal trial. It was further held that where they are based on similar set of facts and the evidence in both the proceedings, departmental proceedings may not be drawn.

9. On the contrary, **three judges Bench of the Supreme Court** in the case of **CORPORATION OF THE CITY OF NAGPUR, CIVIL LINES, NAGPUR AND ANOTHER v. RAMCHANDRA G. MODAK AND OTHERS**, AIR 1984 SC 636, held that this question had to be decided by the department after considering the nature of the findings given by the criminal Court. It further observed that it would not be expedient if a person is honourably acquitted



to draw the departmental proceedings. Otherwise, there is no bar.

The findings are:

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges **it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains**, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so. In case the respondents are acquitted, we direct that the order of suspension shall be revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry. Mr. Sanghi states that if it is decided to continue the inquiry, as only arguments have to be heard and orders to be passed, he will see that the inquiry is concluded within two months from the date of the decision of the criminal court. If the respondents are convicted, then the legal consequences under the rules will automatically follow."

10. In the case of **NELSON MOTIS v. UNION OF INDIA AND ANOTHER**, JT 1992 (5) SC 511, another **three judges Bench** of

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13

the Supreme Court in unambiguous terms held that departmental proceedings can continue even after acquittal. The findings are:

“5. So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case.”

11. Similarly, in the case of **SENIOR SUPERINTENDENT OF POST OFFICES, PATHANAMTHITTA AND OTHERS** v. **A. GOPALAN**, (1997) XI SCC 239, after relying in the case of **Nelson Motis (supra)**, the Supreme Court held:

“6. We have heard Shri V.C.Mahajan, the learned Senior Counsel appearing for the appellants and Shri K.M.K.Nair, the learned counsel appearing for the respondent. Shri Nair has submitted that since the respondent has been acquitted by the criminal court on the charge of withdrawal of Rs.8,000, the Tribunal was right in holding that the finding regarding the first charge could not be sustained. Shri Nair has placed reliance on the decision of this Court in *Nelson Motis v. Union of India* [(1992) 4 SCC 711]. The said does not lend support to the said submission of Shri Nair. In that case the Court has rejected the contention that disciplinary proceedings could not be continued in the face of the acquittal in the criminal case and has held that the nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. This is so because in

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a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities.....”

12. Same view was again expressed in the case of **GOVT. OF A.P. v. C. MURALIDHAR**, 1997 SCC (L&S) 1746. Therein, the Tribunal had observed that if a criminal trial had already concluded and judgment become final, departmental inquiry into the same charge would be impermissible. The **Supreme Court** had set aside the Tribunal's order and disciplinary proceedings were directed to continue.

13. Reverting back to the facts of the present case, it is obvious that not only the Larger Bench decision binds but it is for the departmental authorities to consider whether they have any material in this regard to initiate departmental proceedings after acquittal of the applicant by the Special Judge.

14. At this stage, we do not intend to dwell into this matter. If the departmental authorities feel that they can initiate departmental proceedings, we find little ground to hold that there is a legal bar to that fact. This question, therefore, can only be gone into in further details after the evidence is recorded in departmental proceedings because if some further evidence is available which is recorded, in that event, at this stage, to put an end to the proceedings, would be improper.



15. Resultantly, as for present, it must follow that departmental proceedings indeed can continue.

16. Reverting back to the **second argument**, we do not dispute the proposition of law that if there is an inordinate delay in initiation of the departmental proceedings, which causes prejudice, the departmental proceedings should not be allowed to continue.

17. Reliance was being placed on the decision of the Supreme Court in the well-known decision in the case of **STATE OF MADHYA PRADESH v. BANI SINGH AND ANOTHER**, AIR 1990 SC 1308. The Supreme Court held that when there is an inordinate delay, which is not explained, departmental proceedings were liable to be quashed. There is no dispute with the said proposition. But in the present case before us, the departmental proceedings have been started after the acquittal.

18. More close to the facts of the present case is the decision of the Supreme Court in the case of **THE FOOD CORPORATION OF INDIA v. GEORGE VARGHESE AND ANOTHER**, AIR 1991 SC 1115. The Supreme Court, in almost similar circumstances, held:

“..... The respondent as well as his companions having thus been acquitted, the appellant set aside the order of dismissal, reinstated the respondent in service and immediately placed him under suspension by the order of 12th August, 1980. Soon thereafter he was served with the charge-sheet and the statement of allegations, etc., for holding the departmental inquiry. Thereupon he filed a Writ Petition in the High Court which was allowed by the learned

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single Judge. The learned single Judge came to the conclusion that once there is an acquittal, no departmental proceedings could be initiated against the delinquent. The appellant filed a Letters Patent Appeal challenging the order of the learned single Judge. While the Division Bench agreed with the ultimate conclusion of learned single Judge, it differed with him on the question of law but refused to interfere with the ultimate order on the ground of delay. We do not think that the Division Bench was justified in refusing to interfere only on the ground of delay because the delay was not occasioned on account of inaction on the part of the appellant. The appellant acted fairly by staying its hands as soon as the prosecution was initiated. It did not proceed with the departmental inquiry lest it may be said that it was trying to over-reach the judicial proceedings. It if had insisted on proceeding with the departmental inquiry, the respondent would have been constrained to file his reply which could have been used against him in the criminal proceedings. That may have been branded as unfair. After the conviction the order of dismissal was passed but immediately on the respondents being acquitted the appellant fairly set aside that order and reinstated the respondent and initiated departmental proceedings by suspending him and serving him with the charge-sheet and the statement of allegations, etc. It cannot, therefore, be said that the appellant was guilty of delay. It is true that between setting aside the order of dismissal and the service of the charge-sheet, there was a time gap of about eight months but we do not think that that can prove fatal.

2. In the Result, we allow this appeal, set aside the order of the High Court and direct that the appellant will proceed with the inquiry expeditiously and complete the same as far as possible within a period of six months or thereabout provided the respondent co-operates in the inquiry and does not delay the proceedings. If the respondent has not filed his written statement to the charges levelled against him, he may do so within two weeks from

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today. The appeal is allowed accordingly with no order as to costs."

19. Otherwise also, as already referred to above, the consistent view is that it has to be examined on the **touchstone of the prejudice.**

20. In the case of **DEPUTY REGISTRAR, COOPERATIVE SOCIETIES, FAIZABAD v. SACHINDRA NATH PANDEY AND OTHERS**, (1995) 3 SCC 134, keeping in view the serious charges of misappropriation and embezzlement, the Supreme Court held that if 16 years have lapsed, there is no ground to quash the same. The findings read:

"7. On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay. So far as the merits are concerned, we regret to say that the High Court has not dealt with the submissions – and facts in support of the submission of the appellant – that in spite of being given a number of opportunities the first respondent has failed to avail of them. If the appellant's allegations are true then the appellant cannot be faulted for not holding a regular inquiry (recording the evidence of witnesses and so on). The High Court has assumed, even without referring to Regulation 68 aforesaid that holding of an oral inquiry was obligatory. Indeed, one of the questions in the writ petition may be the interpretation of Regulation 68. On facts, the first respondent has his own version. In the circumstances, the writ petition could not have been allowed unless it was held that the appellant's version of events is not true and that the first respondent's version is true. In the circumstances, we have

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no alternative but to set aside the order under appeal and remit the matter to the High Court once again for disposal of the writ petition afresh in the light of the observations made herein. Since the matter is a very old one it is but appropriate that the matter is dealt with expeditiously. Perhaps, it would be appropriate if the Court looks into the records relating to the disciplinary proceedings also."

21. Similar view was expressed by the Supreme Court in the **STATE OF PUNJAB AND OTHERS v. CHAMAN LAL GOYAL**, (1995) 2 SCC 570. It was held:


"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted."


22. From the aforesaid, it is clear that one has to revert back to the facts of each particular case. In the present case before us, the departmental proceedings have been started after the acquittal and consequently when it is not shown that any prejudice is caused, keeping in view the totality of the facts and circumstances

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particularly following the ratio deci dendi of the decision of the **Supreme Court** in the case of **The Food Corporation of India (supra)**, the contention has to be rejected.

23. Resultantly, for these reasons, the application being without merit must fail and is dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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