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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2631/2004

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Mrs. Chitra Chopra, Member (A)

New Delhi, this the 28th day of April, 2006

Sh. S.K. Dev
S/o Shri Late Sh. B.R.Bhardwaj
R/o 21/LF Tansen Marg
New Delhi – 110 001.

... Applicant

(By Advocate: Sh. P.P.Khurana, Sr. Counsel with Sh. A.N. Sabri)

Vs.

1. Union of India through
The Secretary
Ministry of Personnel, Public Grievance & Pension,
Department of Personnel and Training
New Delhi.
2. UPSC, through
The Chairman
UPSC,
Dhaulpur House,
Shahjahan Road
New Delhi – 110 001.
3. Central Bureau of Investigation
Through The Director
CBI, CGO Complex
Lodhi Road
New Delhi.

... Respondents

(By Advocate: Sh. Tiger Singh)

ORDER

By Justice B. Panigrahi, Chairman

In this case, the applicant has called in question about the propriety of the punishment imposed against him by reducing his pay by one stage in the time scale of pay till the period of his retirement from service.

2. The genesis of the case placed by both the parties is as follows:

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2(a). The applicant while working as Deputy Superintendent of Police (for short 'DSP') in ACU(I) Branch of Central Bureau of Investigation, New Delhi was entrusted with the investigation of the case against accused Brig. S.C.Vadhera, Former Secretary, Kendriya Sainik Board for alleged misappropriation of public funds.

3. The applicant claimed to have discharged his functions as Investigation Officer faithfully and diligently and finally submitted a chargesheet against the accused Brig. S.C.Vadhera. Thereafter, the learned Special Judge in Sessions Case No.CC-209/1994 passed an order of acquittal against the accused Brigd. S.C.Vadhera but simultaneously directed him to deposit a sum of Rs.50,000/- with the respondents.

4. The respondents have communicated the Article of Charge leveled against the applicant, which is reproduced hereunder:

"That Shri S.K. Dev while functioning as Deputy Supdt. of Police in CBI/CIU-I, New Delhi during 1.1.81 to 30.4.82 committed misconduct in as much as he did not complete the investigation of case No.RC.1/80-CIU-I and filed chargesheet without proper investigation leaving vital points of the case uninvestigated.

Thus, Shri S.K. Dev, Deputy Supdt. of Police, CBI failed to maintain absolute devotion to duty while working as Government Servant and, thereby said Shri S.K. Dev, Supdt. of Police, CBI contravened Rule 3(1)(i) of Central Civil Services (Conduct) Rules, 1964."

5. The applicant has submitted his statement of defence. Thereupon, an Inquiry Officer was appointed and after due enquiry, Inquiry Officer was of the view that out of eight charges, seven charges had not been proved. But one element of charge relating to non-examination of Major General G.N.Sinha was observed to have been partly proved and, therefore, he referred the matter to the disciplinary authority. The disciplinary authority too while agreeing with the observations of the inquiry officer held that the allegation against the Charged

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Official that he did not examine Major General G.N.Sinha is substantiated. Thereafter, the matter was communicated to the Union Public Service Commission, who also agreed with the view of the Inquiry Officer and proposed for imposition of penalty of reduction of pay by one stage in the time scale of pay till the retirement of the applicant. Being aggrieved by the aforesaid observations of the respondents, the applicant has filed this case.

6. Before appreciating the contentions of both the parties, certain uncontroversial facts are necessary to be incorporated here. Undisputedly, Brigd. S.C.Vadhera was the then Secretary of Kendriya Sainik Board. On the basis of a complaint made by his successor, Brig. V.S.Grover, a case was registered against Brig. S.C.Vadhera being Sessions Case No.209/1994 in which Brig. Grover, the complainant, was also examined. The complaint was properly investigated into by different Investigating Officers and finally a chargesheet was submitted by the present applicant. The accused Brig. S.C.Vadhera was working as Secretary, Kendriya Sainik Board during 1977-78 and retired from service with effect from 1.1.1979. It is alleged that the Government of India constituted a War Bereaved and Disabled Ex-Servicemen Special Relief Fund in the year 1973. A sum of Rs.5 crores was credited to the said Fund. Out of the said Fund, 4 crores were invested in securities and the balance was kept in fixed deposit in various banks. It is alleged that Brig. S.C.Vadhera opened S.B. Account No.2861 in Canara Bank in the name of Secretary, Indian Soldiers, Sailors and Airmen Board, Ministry of Defence, New Delhi. Donations to the tune of Rs.42,000/- were collected in the said bank account of which, Brig. S.C.Vadhera withdrew Rs.40,000/- on 1.12.1978. He also issued a Cheque for Rs.10,000/- on the same date which was allowed to be withdrawn. Thus, he did withdraw the total amount of Rs.50,000/-. His successor came to know about the said incident on 1.2.1979, who in turn, reported the matter to the respondent authorities. An

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enquiry was conducted whereupon a case under Section 409 of IPC read with Section 5(1)(c) and 5(1)(d) punishable under Section 5(2) of the Prevention of Corruption Act, 1947 was registered against Brig. S.C. Vadhera.

7. In the aforesaid case, nearly 25 witnesses had been examined but finally the Special Judge acquitted the applicant with direction to deposit Rs.50,000/- with Kendriya Sainik Board (respondent). Incidentally, he made certain observations in his Judgement against the present applicant. As a reason thereof, a departmental proceeding was initiated in which the aforesaid punishment was inflicted.

8. Shri P.P.Khurana, learned senior counsel appearing for the applicant, has advanced an inexorable plea by stating that his client is quite innocent and unnecessarily he has been victimized by the order of the Special Judge. It has been submitted that the applicant acted as Investigating Officer at the fag end of investigation. Before that, the other Investigating Officers examined major part of the investigation but they too did not choose to examine Major General Sinha.

9. It has been further stated that had Major General Sinha been examined as prosecution witness, no improvement to the prosecution case could be made. Even otherwise, the case was fully proved even before the Special Judge who directed the accused Brig. S.C.Vadhera to deposit Rs.50,000/- which was illegally withdrawn by him. In that view of the matter, no material could have been available against the applicant for non-examination of Major General Sinha. In case there was any perfunctory investigation, the Court should not have acquitted the accused from the charges instead directed the prosecution to examine Major General Sinha. There could be no occasion to ask accused to deposit Rs.50,000/-. By directing the accused to deposit Rs.50,000/- would always mean that he was guilty of the offences. It might be true that the aforesaid vigilance case might have dragged over 17 years, for which the

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applicant cannot be made a victim. Due to several reasons, the trial of the criminal case got delayed but in this case, the applicant was not asked to explain unreasonable delay for conclusion of the case. The applicant was answerable for non-examination of Major General Sinha. In his statement of defence, he has clearly stated that had there been examination of Major General Sinha, it would have only duplication of work but it would not have added any value to the investigation. Since he had already examined the prosecution witnesses, including the complainant Brig. V.S. Grover, even, assuming that he had failed to examine the Major General Sinha, his supervisory authorities could have directed for taking such steps before submission of chargesheet. During the pendency of trial, if the examination of Major General Sinha was necessary, the prosecution should have filed an application for recording his evidence. All these steps have not been taken by the prosecution. Merely because Special Judge made certain incidental references in his order, the respondents could not have initiated departmental proceedings.

10. Mr. Tiger Singh, learned counsel appearing for the respondents while supporting the stand of his client, has taken us through the UPSC's advice whereby they suggested reduction of pay by one stage. While appreciating his contention, we have carefully gone through the observations of the UPSC and found that they only reproduced the observations of the Inquiry Officer.

11. Upon hearing the learned counsel appearing for both the parties, and on perusal of the Article of Charge framed against the applicant, it is found that 7 out of 8 charges have not been proved. Only on account of one charge that he failed to examine Major General Sinha, the applicant has been taken to task. The applicant had examined the complainant of the criminal case Mr. Grover. From his statement, it appears that while opening of bank account in Canara Bank, permission of Major General Sinha was taken. There is further no dispute

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that Brig. S.C.Vadhera had withdrawn Rs.50,000/- from the Bank. The accused was charged for an alleged misappropriation. The Special Judge was of the view that the accused had illegally withdrawn Rs.50,000/- from the bank but unfortunately, the Judgment ended with acquittal. The prosecution did not also make any effort to file the appeal against the order of acquittal. Non-prosecution of Major General Sinha, in fact, did not weaken the prosecution story. While examining the propriety of the punishment imposed in disciplinary proceedings, the findings of the criminal Court incidentally are bound to be gone into. The Tribunal is quite aware that it cannot act as an appellate authority. But, however, it cannot be oblivious to the situation of the observations made in the criminal case. Since seven charges have gone in favour of the Charged Official and the punishment was imposed only for non-examination of Major General Sinha, in our view, it did not support the prosecution story.

12. Besides, the supervisory authorities also were equally responsible for such non-examination of Major General Sinha and not only the delinquent official. Since it is a matter of 1977-78, at this stage, it appears to be unnecessary to reopen the issue. Furthermore, the Government's fund which was alleged to have been misappropriated by Brig. Vadhera, was directed to be refunded. In that view of the matter, the punishment imposed against the delinquent is not legal, valid and appropriate. Accordingly, the Original Application succeeds and the order of punishment imposed by the respondents is quashed and set-aside.

Chitra Chopra
 (SMT. CHITRA CHOPRA)
 Member (A)

B. Panigrahi
 (B. PANIGRAHI)
 Chairman

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