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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1041/2004

New Delhi, this the 8th day of April, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

Pritam Das Ladhar
S/o Late Shri Arian Das
Dy. F.A. & C.A.O.
Headquarters Office
Northeast Frontier Railway
Maligaon, Guwahati (Assam)-781 001.
R/o 107, Nambari Colony
Maligaon: Guwahati – 781 001. ... Applicant

(By Advocate: Sh. M.S.Saini)

Versus

Union of India through

1. The Chairman, Railway Board-cum-Principal Secretary to the Govt. of India
Ministry of Railways
Rail Bhawan
New Delhi – 110 001.
2. General Manager
Northeast Frontier Railway
Headquarters Office
Maligaon, Guwahati – 781 001 (Assam).... Respondents

(By Advocate: Sh. H.K. Gangwani with Shri Rajinder Khatter)

O R D E R

By Mr. Justice V.S.Aggarwal:

By virtue of the present application, the applicant seeks a direction to the respondents to consider his case for promotion to the selection



grade and Senior Administrative Grade from the date his junior Shri R. Kashyap has been granted the benefit of promotion. He also seeks that the departmental proceedings should be taken to be closed on the basis of clear and honourable acquittal of the applicant by the competent Court and resultantly arrears and allowances should be paid to him.

2. Some of the relevant facts are that the applicant joined the Indian Railway Accounts Service. He was promoted as Divisional Accounts Officer and then to the Junior Administrative Grade. He was posted in the same capacity at Diesel Component Works, Patiala. On 16.6.1999, the applicant was involved in a case with respect to the offence punishable under Section 7 read with Section 13 of the Prevention of Corruption Act. On 9.2.2001, a Memo of Charges was served on the applicant and on 30.7.2002, the inquiry officer submitted his report.

3. The applicant contends that Special Judge, Patiala acquitted him on 23.10.2002. In the meantime, junior persons to the applicant had been promoted. The applicant contends that he is entitled to the promotion to the Senior Administrative Grade from the date his juniors have been so promoted. It is his plea that once he has been acquitted, he cannot be tried departmentally for the same charges and thus his case has to be considered to what we have referred to above already.

4. In the reply filed, it has been pleaded that in terms of Rule 209-D of the Indian Railway Establishment Code (Vol.1), appointments to the

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posts in Administrative Grades have to be made by 'selection on merit'. A very high level Selection Committee comprising of the Chairman, Railway Board, makes this selection. The recommendations of the Selection Committee are considered in the Ministry of Railways. The benchmark for promotion from Junior Administrative Grade to Senior Administrative Grade is 'Very Good'. An officer becomes eligible to be considered for placement in non-functional Selection Grade on completion of 13 years of Group 'A' service and on entering the 14th year as on 1st July of the year. The claim of the applicant has been rejected because of his performance and other factors. A major penalty chargesheet has been issued to the applicant on charges of demand and accepting bribe of Rs.200/-. Disciplinary proceedings were pending and are being finalised. On an earlier occasion, the applicant was not found suitable but later on keeping in view the above said facts, his claim has been kept in a sealed cover.

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

6. So far as ignoring the claim of the applicant from the year 1996 to 2000 is concerned, the applicant had taken indeed no action at the appropriate time and it appears that he was not interested at that moment in prosecuting his claim. Otherwise also, the claim must fail on the grounds of latches and delay.



7. The only argument advanced was that the applicant had been acquitted by the learned Special Judge, Patiala with respect to the offence punishable under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988. After he had been acquitted, departmental proceedings cannot be continued.

8. 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.

9. 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 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.

10. 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:

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“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.

11. 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."

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

13. 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 a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard

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of proof for proving the charge is preponderance of probabilities....."

14. 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.

15. Reverting back to the facts of the 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.

16. On broad principle that merely because the applicant has been acquitted and, therefore, the departmental proceedings must be dropped, cannot be accepted as a rule. In the present case, if the departmental proceedings are continuing, it cannot be termed that the same are illegal and necessarily must be dropped. It is for the authorities to consider whether they have any evidence in this regard pertaining to which no opinion need to be expressed.

17. The other argument advanced was that there has been an inordinate delay in the departmental proceedings and, therefore, they should be quashed.

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18. 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.

19. 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 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

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

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

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21. 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 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

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expeditiously. Perhaps, it would be appropriate if the Court looks into the records relating to the disciplinary proceedings also."

22. 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."

23. It is obvious from the aforesaid that delay cannot be taken to be a ground. It has to be termed on the touch-stone of prejudice, if any, is caused.

24. In the present case, the departmental proceedings had started only in the year 2001, when a criminal case was registered against the applicant. Otherwise also, when the proceedings were continued, it



cannot be termed, in the peculiar facts, that there is an inordinate delay much less any prejudice having been caused.

25. No other arguments have been advanced.
26. For these reasons, the Original Application being without merit must fail and is dismissed.

~~Deoar~~
(S.K.Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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