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Central Administrative Tribunal, Principal Bench

O.A. No. 1096/2004

New Delhi this the 25th day of January, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Hon'ble Mr. S.K. Naik, Member (A)

Shri R.N. Madan
Enforcement Officer
(Under Suspension)
R/o Samaj Kalyan Co-operative Group
Housing Society,
New Delhi.

.....Applicant

(By Advocate: Shri R.K. Handoo.)

Versus

1. Union of India
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.

2. Director,
Enforcement Directorate,
6th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.

3. Shri S. Sunniah
Dy. Director,
Enforcement Directorate,
Gallery # 10-A, Jam Nagar House,
Akbar Road, New Delhi-110 011.

... Respondents

(By Advocate: Shri N.S. Mehta.)

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman(J)

The applicant has filed this OA for quashing of the disciplinary proceedings initiated against him vide Memo dated 14.10.1999 on charge enclosed therewith (Annexure A-1) and his reinstatement in service.

2. The applicant was working as Enforcement Officer in the Enforcement Directorate at New Delhi. On a complaint of one Shri Deepak Gupta that the applicant was demanding illegal gratification of Rs.1 lakh for not involving him as a conspirator in a case of FERA violation by one Shri Raman Mehta of M/s Pretty Women, the CBI officers, laid a trap and allegedly recovered on 9.7.1997

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bribe money of Rs.15,000/- said to have been given by Shri Deepak Gupta to the applicant out of Rs.1 lakh demanded by the applicant.. A criminal case for offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, was registered against him. Simultaneously, the aforesaid Directorate also initiated disciplinary proceedings against the applicant under Section 14 of the CCS (CCA) Rules, 1965 for violation of Rule 3 (1)(i), (ii) and (iii) of the Central Civil Service (Conduct) Rules, 1964. The applicant challenged the disciplinary proceedings by filing OA No.523/2000. The OA was disposed off by order dated 1.3.2001 whereby the departmental proceedings initiated against the applicant by memo dated 14.10.1999 were stayed on account of the pendency of the criminal case against him. However, liberty was given to the department to approach the Tribunal for starting the proceeding again if the trial in the criminal case was unduly prolonged.

3. The applicant was tried in the criminal case by the Special Judge, Delhi. Vide judgment dated 1.9.2003, the applicant was acquitted. The operative portion of the order, relied upon by both the parties, is reproduced below:-

“52. In the facts and circumstances of the case as discussed above, I feel that benefit of presumption u/s 20 of the Act cannot come to the aid of the prosecution. Having considered the rival submissions made on behalf of the contending parties, examining the evidence especially that of the complainant which contradicts prosecution case materially and substantially, I find that it shall not be safe to rely upon the uncorroborated testimony of the complainant. It admits several anamolies in the prosecution case, which are highlighted by the Learned Defence Counsel in the cross-examination put to him and which cumulatively render his entire deposition unworthy of reliance. I find the entire evidence adduced by the prosecution, an uninspiring of confidence. Hence, I feel satisfied that the prosecution has failed to bring home the guilt to the accused beyond reasonable doubt in this case. The accused is entitled to such a benefit in a criminal prosecution. Giving benefit of doubt, I, therefore, acquit the accused Shri R.N. Madan of the charges framed against him. His bail-bonds are also discharged. He is ordered to be set at liberty forthwith”.

4. After the conclusion of the criminal trial, the respondents decided to continue with the disciplinary proceedings vide communications dated

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12.2.2004 and 16.2.2004. The applicant informed the disciplinary authority of his acquittal in the criminal trial but the authorities were not desisted from proceeding with the inquiry. Hence this OA.

5. In the counter, the respondents have justified the disciplinary proceedings. It is submitted that the applicant was given benefit of doubt and that there was no legal bar to the holding of the disciplinary proceedings against him.

6. In the rejoinder, the applicant reiterated his own case, *inter alia*, submitting that the charge in the departmental proceedings and the charge in the criminal case were absolutely identical and the evidence and the material documents, which were to prove the charge, were also exactly similar. It was, therefore, contended that the disciplinary proceedings conducted on the similar charge using the same evidence, as was before the Special Judge, Delhi, in the criminal case, will not only be disastrous to service jurisprudence in regard to the departmental proceedings but would also be against the concept of rule of law.

7. We have given careful consideration to the rival contentions raised at the bar and have meticulously gone through the record.

8. The learned counsel drew our attention to para 8 of the order of this Tribunal dated 1.3.2001 in OA 523/2002, which is as under:-

“ 8. As stated above, it is clear that in the present case, the departmental proceedings and the criminal proceedings are based on identical and similar set of facts and the charge in the criminal case against the applicant is undoubtedly is of a grave nature. It can also not be denied that complicated questions of law and facts are likely to be raised in this case”.

9. It is argued that the charges and the factual matrix of the criminal case as well as the departmental proceedings were absolutely identical and that the oral and documentary evidence were also similar barring a few witnesses which were to be produced before the criminal court for

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proving certain documents. The counsel has then drew our attention to paras 19, 20, 22, 29 to 31 and 37 of the judgment of the Special Judge, Delhi dated 1.9.2003 (Annexure A-4) where the Learned Trial Judge had narrated the statement of the complainant Shri Deepak Gupta and had discussed the evidentiary value thereof coupled with other prosecution evidence. He also read the operative portion of the order in para 52 of the judgment. It is argued that the complainant Shri Deepak Gupta had resiled from his statement and he was allowed to be cross-examined by the prosecutor and in the view of the Learned Special Judge, the presumption under Section 20 of Prevention of Corruption Act, 1988, could not be raised against the applicant and the prosecution had also failed to prove the charge. It is submitted that the trial court did give the benefit of doubt to the applicant – accused in the end, but careful reading of the evidence would convince that there was clear cut finding that the charge was not proved. It is submitted that as the departmental proceedings are also based on the same charge and any finding contrary to the finding recorded by the criminal court on the article of charge on the basis of exactly similar and identical evidence, would be against the service jurisprudence and the rule of law. For this reason, it is argued that the departmental proceedings be quashed.

10. The learned counsel for the applicant has cited ***Gopaldas Udhavdas Ahuja and Another Vs. Union of India and Others***, JT 2004 (5) SC 300; ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another***, JT 1999 (2) SC 456; ***Corporation of the City of Nagpur Civil Lines, Nagpur and Another Vs. Ramachandra G. Modak and Others***, AIR 1984 SC 636 and ***Shaikh Kasim vs. the Superintendent of Post Offices, Chingleput Dn. And another***, AIR 1965 Madras 502, in support of his argument.

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11. Conversely, the counsel for the respondents argued that the respondents had exercised the discretion in continuing the disciplinary proceedings against the applicant by a conscious decision, which cannot be interfered with, in the present proceedings. Drawing attention to the finding of the Learned Special Judge, in para 52 of the judgment, Annexure A-4, he has argued that the applicant was acquitted by the court on the ground that the charge could not be proved beyond all reasonable doubt and not that the charge was false. Referring to the judgment of the Hon'ble Supreme Court in Corporation of the City of Nagpur, Civil Lines, Nagpur Vs. Ramchandra G. Modak and Others (Supra), he argued that merely because the applicant has been acquitted in the criminal case, the power of the disciplinary authority to continue the departmental enquiry is not taken away nor is its discretion in any way fettered. He also argued that the conviction in a criminal case depended upon the proving of the charges by the prosecution beyond all reasonable doubt whereas in disciplinary proceedings, the finding is to be recorded on preponderance of the evidence.

12. The Hon'ble Supreme Court in Capt. M. Paul Anthony (Supra) in Paras 13, 34 and 35 observed as under:-

“13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basic for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. 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

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prosecution beyond reasonable doubts. 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."

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch Witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recover" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the *ex- parte* departmental proceedings to stand.

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 and burden of proof, would not be applicable to the instant case."

13. In Corporation of the City of Nagpur (Supra) the Hon'ble Supreme Court observed as under:-

"6. 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 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

to continue

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."

14. As the principles laid down in the above cited judgments are clear, there is little difficulty in holding that even after the acquittal of an employee in the criminal trial, the disciplinary authority has discretion to continue the disciplinary proceedings. Mere acquittal by criminal court would, thus not necessarily absolve the employee from disciplinary action on the same facts on which he stood criminal trial. However, where the disciplinary proceedings and the criminal cases are based on the same set of facts and the evidence in both the proceedings are common without being there variance, the continuance of the disciplinary proceedings, after a clear acquittal of the delinquent in the criminal case, would be against the service jurisprudence and an exercise in futility. Indeed, the acquittal should be substantially on the merit and on a clear finding that the charge, has not been proved by the prosecution on merit of the evidence, the acquittal should not be a result of mere technicality or doubt about veracity of evidence.

15. Now the facts of the present case may be tested on the touch stone of the principles of law as laid down by the Hon'ble Supreme Court in the above cited case.

16. The learned counsel for the applicant has read the judgment - Annexure A-4 extensively and drew our attention to the observation and the findings recorded by the Learned Special Judge, Delhi. The perusal of the judgment, particularly the portion where the court had discussed the evidence of Shri Deepak Gupta, complainant, would show that the complainant had adhered to his initial version given in the complaint and was coherent in the examination-in-chief except slight deviation

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regarding which he was allowed to be subjected to cross-examination by the prosecution. Furthermore, the Learned Court did not record the clear cut finding that the prosecution evidence was false and has not been able to prove the charge on which the delinquent official, the applicant herein, was tried. The statement of the complainant was not accepted as trustworthy since his position was in the nature of an accomplice and it was not safe to rely upon his testimony without some corroboration. The learned Court in para 51 of the judgment observed that "version regarding the acceptance of bribe is rather shaky and in such a situation the defence plea put forward by the accused, that in his absence the money had been planted in the drawer of his office table, appears to be plausible and, consequently, the appellant is entitled to the benefit of doubt". The presumption under Section 20 of the Prevention of Corruption Act against the accused could not be drawn. In para 52 of the judgment the Learned Single Judge further observed, " it shall not be safe to rely upon the uncorroborated testimony of the complainant" and " I find the entire evidence adduced by the prosecution as uninspiring of confidence". The court also gave the benefit of doubt to the applicant observing "I feel satisfied that the prosecution has failed to bring home the guilt to the accused beyond reasonable doubt in this case". The judgment would show that the prosecution evidence did not inspire confidence in the view of the learned Special Judge. The finding of the trial court, as such, was that the charge on which the applicant was tried was not proved "beyond reasonable doubt". The finding was not that the story of the prosecution was false.

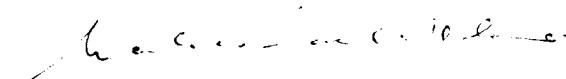
17. It is indeed true that this court in OA 523/2000 decided on 1.3.2001 had observed that the departmental proceeding and the criminal proceedings were based on identical and similar set of facts and the evidence to prove those charges was also substantially the same. But in

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the absence of a clear finding of the trial court that the charge against the applicant was false or that the complainant had made a false complaint, the inquiry/proceedings cannot be scuttled at the threshold. The disciplinary authority exercised its discretion in continuing the disciplinary proceedings which, by no stretch of reasoning, could be considered to be a transgression of the service jurisprudence and the rule of law. It is to be borne in mind that the evidence led by the prosecution to prove the charges in a criminal case is evaluated to record finding that the charges are proved to the hilt and beyond all reasonable doubt. Whereas doctrine of preponderance of evidence is to be applied for recording a finding in a disciplinary proceedings. At the same time as held in *Gopaldas Udhavdas Ahuja and Another Vs. Union of India and Others (Supra)*, if the basic facts in both the criminal case and the disciplinary proceedings were common and recovery of incriminating material was the same, the same witnesses examined in both the cases and the same charges were made against the accused and the delinquent, criminal court recorded a clear finding that the prosecution evidence did not prove the guilt of the accused (possession of incrementing material in that case) and the offence charged with it would not be prudent to allow the departmental proceedings to be conducted against the accused on the identical charges. It is not a case here.

18. The arguments of the learned counsel for the applicant that during the departmental proceedings same set of witnesses and documents would be produced and the Inquiry Officer or the disciplinary authority would not be able to record a finding contrary to the findings recorded in the criminal case as it would amount to sitting in appeal on the finding of the criminal court, to our view, has no force. It is noteworthy that the disciplinary proceedings are for violation of Rule 3 of the CCS (Conduct) Rules. The disciplinary authority would not be





debarred from deciding as to whether the applicant has violated the conduct rules or not? As the disciplinary authority had discretion in the matter, it had exercised its discretion, which cannot be called in question and subjected to judicial scrutiny in the present OA.

19. The result of the above discussion is that we do not find that any relief can be granted to the applicant at this stage by quashing the disciplinary proceedings in the present case. We accordingly dismiss the OA, leaving the parties to bear their own costs.

20. None of the observation made in this order, however, shall be considered to be an expression of opinion of this Tribunal on the merit of contention raised by the applicant in the disciplinary proceedings.

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

(J)

M. A. Khan
(M. A. Khan)
Vice Chairman

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