

Central Administrative Tribunal
Principal Bench

O.A.No.2037/93

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri R.K.Ahooja, M(A)

New Delhi, this the 21st day of July, 1999

Vimal Chandra Pandey
S/o Shri R.N. Pandey
Working as Asstt. Commissioner
Office of Commissioner of Food &
Supplies and Consumer Affairs, Delhi
R/o A-6 Transit Hostel
2 Battery Lane
Rajpur Road, Delhi

....Applicant

(By Advocate: Shri A.K.Behera)

Versus

1. Chief Secretary
Delhi Administration
5, Sham Nath Marg,
Delhi-110 054
2. Secretary
Ministry of Home Affairs
North Block, New Delhi
3. Secretary
Union Public Service Commission
Dholpur House,
Shahjahan Road, New Delhi

.....Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant, a member of Delhi Andaman Nicobar Island Civil Service (for short 'DANICS'), was tried in the Court of Special Judge on the basis of FIR No.9/82 dated 26.2.1982 under Section 5(2)/47 of Prevention of Corruption Act and Section 161 of I.P.C.. The applicant was acquitted. However on the basis of certain observations made by the trial Court a memorandum was issued to him in the following terms:

"That without prejudice to the outcome of complaint case No.246/2 against Shri Pandey, he is charged of having committed misconduct, showed

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undesirable action and irregularity in undertaking upon himself the job of recovering the balance of alleged loan of his brother and failed to maintain absolute integrity, maintain devotion to duty and acted in a manner which is unbecoming of a Government servant and thereby violated sub-clauses from (i) to (iii) of sub-rule 1 of rule 3 of CCS(Conduct) Rules, 1964."

2. On denial of the charge by the applicant, an enquiry under Rule 16(1)(b) of CCS (CCA) Rules, 1965 was ordered. The Enquiry Officer in his report concluded as follows:

"The main contention of Sh. V.C.Pandey had been that any stand taken by the accused can hardly be taken as evidence unless its truth is otherwise established and the earlier statements recorded in court in proceedings under the prevention of Corruption Act cannot be relied on in Departmental Inquiry. Even if it is taken that the earlier statement made cannot be taken as evidence in the Departmental Inquiry, in the present case the charges are based on the judgement of the Hon'ble Judge who has passed strictures against the delinquent official. This fact has been well brought in the proceedings by way of statements recorded from the complainant Sh. R.C.Malik and the judgement pronounced cannot be taken lightly. Relying solely on this point, I find that the charges are established against Sh. V.C. Pandey." (emphasis supplied)

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3. On the findings of the Enquiry Officer the disciplinary authority imposed the penalty of censure. It is aggrieved by this order of penalty that the applicant has now come before this Tribunal. The respondents despite notice issued on 4.5.1994 did not file any reply till today.

4. We have heard the counsel on both sides. Shri A.K.Behera, learned counsel for the applicant has pointed out that as per the report of the Enquiry Officer which has been reproduced above, the only ground for the finding against the applicant has been the observations made by the trial judge in the criminal case against the applicant. He submitted that the proceedings in the criminal trial cannot be transformed into the disciplinary proceedings and the penalty cannot be imposed solely on the basis of such observations. In support of this contention he placed reliance on the judgement of Bangalore Bench of this Tribunal in Shri A.K.Singh Vs. Union of India & Others, (1996)34 ATC 137.

5. We have carefully gone through the aforesaid judgment of the Co-ordinate Bench. We find that after dealing extensively with the case law on the subject the Bench came to the conclusion that if no oral evidence is produced in the departmental enquiry independent of High Court judgement, it has to be held that the penalty was based on no evidence and was therefore invalid. The Bench also observed as follows:

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"The judgement could not be taken as a conclusive proof in the departmental enquiry. It is not necessary there must be both oral or documentary evidence but in the present case, some oral evidence was required to sustain the charge in the absence of which the charge could not be said to be proved and that necessity arose more emphatically as the applicant had denied the findings said to be contained in the judgment.

6. In the said orders of the Tribunal the Bench also quoted the observations made by Shri Mathew, J in J.Spadiagam Vs. State of Kerala, (1970) KLT 1047 to the effect that a departmental enquiry must reach and sustain its conclusion on the evidence led before it after investigating the facts itself without being hampered by the finding of a Criminal Court.

7. In the present case the finding of the enquiry officer is solely based, in his own words, on the observations of the criminal court. The findings reached by the disciplinary authority can therefore be not sustained because no independent evidence was produced in the disciplinary authority despite the denial made by the applicant.

8. The learned counsel for the respondents points out that an appeal prepared by the applicant is still pending and therefore the matter could be remanded for a decision by the appellate authority. We observe that this OA was filed and admitted in 1993. The question involved here is a question of law, and we find ⁱⁿ that

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the decision of this Tribunal in Shri A.K.Singh's case (Supra) a definitive finding on this question. Therefore we do not consider it necessary that the matter be remanded back for consideration by the appellate authority at this late stage.

9. In view of the above discussion, we allow the OA. The disciplinary authority's order is set-aside. There shall be no order as to costs.

R. K. Ahooja
(R.K.AHOOJA)

MEMBER(A)

V. Rajagopala Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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