

(Reserved)

Central Administrative Tribunal, Allahabad Bench, Allahabad

O.A. No.331/01501/2012

This the 23rd day of March, 2021.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

Gauri Shanker Pandey, son of late Jagannath Pandey, r/o Type III, Quarter No. 105, Income Tax/Central Excise, Colony, Mawiya, P.O. Sarnath, District- Varanasi.

Applicant

By Advocate: Sri S.K. Vishwakarma

Versus

1. Union of India through the Secretary, Ministry of Finance (Department of Revenue), New Delhi.
2. Chief Commissioner of Central Excise, Lucknow zone, 7-A, Ashok Marg, Lucknow-226001.
3. Commissioner of Central Excise, Office of Commissioner of Customs, Central Excise & Service Tax, Allahabad.

Respondents

By Advocate: Sri R.C. Shukla

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The instant O.A. has been filed by the applicant, seeking the following reliefs and interim relief:-

Relief sought

- i) to issue a writ, order or direction in the nature of certiorari quashing the impugned memorandum of article of charges dated 23.9.2011 issued and served upon the petitioner by the respondent No. 3 (Annexure A-1 to compilation No. 1 of this petition).
- ii) to issue a writ, order or direction in the nature of mandamus directing the respondent Nos 2 & 3, not to proceed further in the disciplinary proceeding pursuant to

the impugned Memorandum of article of charges dated 23.9.2011 until criminal trial, which is based on the same alleged facts and evidences and witnesses as those are in the disciplinary proceedings , is finalized/completed.

- iii) to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.
- iv) to award cost of the petitioner in favour of the petitioner.

Interim Relief sought

In the facts and circumstances of the case, this Hon'ble Tribunal may be pleased to direct the respondent No. 3 not to proceed further in the disciplinary proceedings pursuant to the impugned memorandum of article of charges dated 23.9.2011, at this stage, during the pendency of the present O.A.

2. We have heard Sri S.K.Vishwakarma, learned counsel for the applicant and Sri R.C. Shukla, learned counsel for respondents and have carefully gone through the record.

3. The facts relevant for a proper adjudication of the controversy involved in this O.A. are that the applicant, while working on deputation in Narcotics Control Bureau, Patna, allegedly committed a misconduct. The allegations levelled against the applicant were that in the evening of 25.12.2010, the applicant was informed in writing by a Police informer that a truck, carrying Ganja, bearing registration No. BR IG 9329, was to proceed from Motihari District- East Champaran, Bihar. On receiving such information, the applicant hired a Scorpio Vehicle and in the late night on the same day, he proceeded to seize the truck, along with his 7-8 associates. He intercepted and captured the aforesaid truck along

with its Driver and Khalasi. The owner of the truck was one Sri Mohd.Jahangir Khan. From the aforesaid truck, huge quantity of Ganja was recovered. However, the owner of the said truck Shri Mohd. Jahangir Khan, lodged an FIR U/s 347/386/34 of Indian Penal Code, against the applicant and his associates with allegation that applicant was demanding Rs. 1-1/2 lakh from him as extortion money through cell phone for the release of his driver and Khalasi, both of whom were detained by them. It was further alleged that they had called the owner of the truck to come with money of Agmakuwan Bridge in the late night.

5. On the basis of aforesaid report of the owner of truck, a trap was laid by the police. The owner of the truck was directed to go to Agmakuwan bridge. Thereafter, the police surrounded the applicant and his associates at the meeting point. They were all arrested on 26.12.2010 at 10.30 hrs. and sent to jail on 27.12.2010. The applicant was placed under deemed suspension w.e.f. 26.12.2020, vide order dated 28.12.2020. The suspension order was revoked vide on 26.7.2011. In the meantime, the applicant was repatriated to his parent department i.e. Central Excise. Subsequently, the Narcotics Control Bureau, recommended disciplinary proceedings against the applicant for misconduct committed by him during his tenure with Narcotics Control Bureau, in pursuance of which ,the charge sheet was served upon the applicant on 23.9.2011 and inquiry officer was appointed on 17.8.2012. On the identical set of facts, a criminal trial was also simultaneously initiated against the applicant in pursuance of the FIR lodged by the Truck owner.

6. The applicant denied the charges levelled against him in both the cases i.e. departmental and criminal and moved an application for stay of the departmental proceedings, during the

pendency of the criminal case. His application was allowed by this Tribunal vide order dated 23.10.2012. The departmental proceedings continued to be stayed from 23.10.2012 and are still continuing as such, till today. Meanwhile, the criminal trial pending before the Additional Session Judge, Patna, was decided vide judgment and order dated 25.4.2019, whereby, acquitting the applicant from all the charges levelled against him U/s 201,202, 203, 347, 386 of Indian Penal Code and Section 20(B),(II), (B), 27 (A) , 29 NDPS Act.

7. After his acquittal from the Session Court in criminal case, the applicant filed a Supplementary Affidavit to bring all these facts on the record, along with the copy of judgment passed in criminal trial under NDPS Act and prayed that as he has been acquitted in the criminal case from all the charges, and since the disciplinary proceedings as well as the criminal proceedings were based on identical set of facts and identical evidences, were to be relied upon by the prosecution in both, and since the prosecution has failed to prove the charges levelled against the applicant, resulting in his acquittal from all the charges, the charge memo in the departmental proceedings, cannot survive any more and it deserves to be quashed. Therefore, prayer has now been made by the learned counsel for applicant to quash the charge memo in the departmental proceedings.

8. The respondents have filed counter affidavit, whereby the prayer for quashing the charge memo and disciplinary proceedings has been vehemently opposed. It is contended that DOP&T ,New Delhi O.M. under F.No. 11012/6/2007-Estt (A) dated 1.8.2007, issued on the basis of observations of Hon'ble Supreme Court in the cases of State of Rajasthan Vs. B.K. Meena and others (1996-6

SCC 417) , Captain M. Paul Anthoney Vs. Bharat Gold Mines Limited (1996-3 SCC 679), Kendriya Vidyalaya Organization and others Vs. T. Shrinivas (2004 (6) Scale 467) , Noida Enterpreneurs Association Vs. Noida (JT 2007 (2) SC 620), specifically provides that only because on the same charges, a criminal case is also pending, the departmental proceedings cannot be prohibited. Penal proceedings and disciplinary proceedings are entirely different in substance. In the said O.M., it has been further observed that if there is delay in finalization of the criminal proceedings, the departmental proceedings can be started and it should continue so that if the charged officer is not found guilty by the court than the departmental proceedings should also be winded up speedily and if the charged officer is found guilty than the administration should also get rid of him as the case may be. It has been further provided categorically in para 4 of the O.M. that there is no bar in simultaneous taking of departmental proceedings and criminal proceedings, unless the nature of the crime is very serious involving complex question of facts and law.

9. It is next contended that Article III and Article IV of the charge sheet, do not apparently relate to any criminal offence. It is contended that the charge under Article III is about lack of integrity and lack of devotion to duty because the applicant did not inform his senior officers that he was going to intercept a truck loaded with Ganja. This act of omission raised a big question mark on the integrity of the officer leading to a conclusion that the omission was with some ulterior motive. The charge under Article IV is that the officer was on leave with effect from 25.12.2020 but even during this period, he conducted official tour and intercepted the truck loaded with Ganja. The Ganja was disposed off illegally and he demanded illegal gratification from the owner of truck in lieu of

release of Driver and Khalasi of the truck. All these acts of the Charged Officer performed during the period when he was on earned leave, are totally based on the facts available on records of the department. These charges do not involve any interpretation of law, therefore, the departmental proceedings may continue in view of the observations given by the Hon'ble Supreme Court and also circulated by the department.

10. It is lastly contended that the criminal proceedings and disciplinary proceedings may go on simultaneously and it is in the interest of justice and equity is also, so that as soon as criminal proceedings are finalized, the department should also be in a position to take the final decision in the matter.

11. In the Rejoinder reply and Supplementary Rejoinder reply, the applicant has reiterated the facts mentioned in the O.A.

12. Now, the issue to be decided in this O..A. is:-

“Whether the departmental proceedings, initiated simultaneously with the criminal proceedings based on almost same charges, against the same employee, can be put to an end in case of acquittal of that employee in criminal proceedings?”..

13. Having heard Id. Counsel for the parties, we find that the aforesaid issue is no longer res-integra. In a catena of judgments, Hon'ble Apex Court has laid down the clear guidelines in this respect, holding that acquittal in a criminal case does not bar the departmental proceedings.

14. In the case of **Noida Entrepreneurs Association Vs. Noida and others** , AIR 2007 SC 1161, Hon'ble Apex Court has held as under:-

"The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

15. In the case of **Union of India and another Vs. Bihari Lal Sidhana** , 1997 (4) SCC 385, Hon'ble Apex Court observed as under:-

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be re- instated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not

constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Re- reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

16. In **State of Rajasthan Vs. B.K. Meena and others , AIR 1997 SC 13**, the Hon'ble Apex Court has held as under:-

"There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are

established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.”

17. The applicant, by means of the present O.A. has sought the relief of quashing the charge memo. The law relating to quashing of charge memo has also been well settled through several judgments of various courts. The Principal Bench of Central Administrative Tribunal , recently in **O.A. No. 201/2019 (Anuradha Mookerjee Vs. Union of India and others)**, decided on 16.10.2019 in para 9 of the judgment, has laid down the criteria for the same as under:-

“The general principle is that whenever an employee or officer assails a charge memo, the courts or the Tribunals would be reluctant to interfere with the same, unless the factors such as listed as under exist:-

- i) The charge memo having been issued by an officer not competent to do so;*
- ii) The subject matter of the disciplinary proceedings is a fairly old and stale matter raked up at a stage when the officer or employee was due for promotion;*
- iii) Where even if the contents of the charges are taken as true, they do not constitute an act of misconduct; exist.”*

18. Now, testing the facts of the instant O.A., on the touchstone of above discussions, we find that there is no such allegation that charge memo has not been issued by an officer incompetent to do so or the matter of disciplinary proceedings is fairly old or any other ground legally available for quashing of charge memo. Therefore, the prayer for quashing the charge memo is refused. The applicant is directed to submit his reply to the charge memo within 3 weeks from today and the authority concerned is directed to decide the same expeditiously, in accordance with law and to conclude the disciplinary proceedings, after giving an opportunity of hearing to the applicant, within a period of 6 months from the date of receipt of certified copy of this order.

19. With the aforesaid directions, O.A. is disposed off. There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

HLS/-