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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 16TH DAY OF JANUARY, 2002

Original Application No.316 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Dev Raj Tewari, son of
Shri Surya Bali, G-I/T-56,
Armapur Estate, Kalpi Road,
District Kanpur.

... Applicant

(By Adv: Shri K.K.Mishra)

Versus

1. General Manager,
Ordnance Factory, Kanpur.
2. Director General,
Ordnance Factory,
Kanpur.
3. Union of India.

... Respondents

(By Adv: Shri P.Mathur)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has challenged the order dated 12.9.1992 by which he had been awarded punishment of reduction in salary in the time scale of pay Rs 1200-30-1560-EB-40-2040 for a period of 5 years with cumulative effect from the date of the order. It was also directed that applicant will not earn increments of pay during the period of reduction. This order of punishment was challenged in appeal. However, appeal has not been decided and is still pending.

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The facts in short, giving rise to this OA are that, applicant was serving as Senior Supervisor in ordnance Factory, Kanpur. In the intervening night of 11/12/6.1982 a theft was committed in the godown of the factory. In this theft a large quantity of Ferromolybdenum and 10 kgs pure nickle(in balls) was stolen. F.I.R was lodged and the case was investigated by police. Three persons namely, Agnoo Das, Hawaldar and Munni Lal were arrested on 19.7.1982 within the premises of the factory. Recoveries were made on pointing out of the aforesaid three persons. On the basis of the confessional statements of the above accused the applicant was also roped. He was arrested on 9.9.1982 showing recovery of 6 kgs of Ferromolybdenum valued at Rs200/- and he was charged u/s 411 I.P.C. On the basis of this involvement applicant was suspended from service on 18.6.1982. The trial court, however, after recording the evidence of the prosecution witnesses acquitted the applicant vide order dated 16.12.1986. On acquittal the order of suspension was revoked and applicant was reinstated in service on 3.7.1987. No action was taken on the basis of memo of charge dated 26.11.1983/8.12.1983. The applicant however was served with a show cause notice alongwith inquiry report dated 6.4.1992 of the incident and six years after acquittal of the applicant. The applicant filed reply as usual. The inquiry proceedings were concluded. The Enquiry Officer submitted his report on 11.12.1991. The Disciplinary Authority aggrieved with the finding of the Enquiry officer and by order dated 12.9.1992 punished the applicant as mentioned above.

Shri K.K.Misra learned counsel for the applicant has challenged the order on three grounds:

The first submission ^{that} is the charges in both disciplinary proceedings as well as before the criminal court were based on same set of facts and evidence and as the applicant was acquitted by criminal court, punishment in the disciplinary proceedings is wholly without authority and illegal. He has placed reliance ^{on the} of a judgement in a case CAPT.M.PAUL ANTHONY VS.BHARAT GOLD MINES LTD. AND ANOTHER, (1993) 3 SCC-679.

The second submission of the learned counsel for the applicant is

that the departmental action could not be taken on stale and old charges. The applicant was served with a memo of charges on 26.11.1983. It was kept pending for almost 9 years then the inquiry report was submitted and applicant was given a show cause notice why he may not be punished. It is submitted that the punishment on the basis of old and stale charges is ~~illegal~~, he has placed reliance on a judgement of this Tribunal in case of 'S.N.Dubey Vs. Union of India and Others (1995) 31 ATC-227.

The third submission of the applicant is that the allegations against the applicant ~~is~~ ^{were} vague and uncertain and no action could be taken on such information. The involvement of the applicant in the criminal case ^{was} on the basis of the confessional statement of the co-accused from whom the recovery was ~~made~~.

Shri Prashant Mathur, learned counsel for the respondents on the other hand, submitted that the applicant was not given clean and clear acquittal by the criminal court but he was given benefit of doubt and for this reason it was open to the departmental authorities to reconsider the matter departmentally and punish the applicant for the misconduct. It is also submitted that ~~it is not the case of~~ mere delay in concluding the disciplinary proceedings could ^{not} be basis for challenging the order of punishment. It is submitted that in a case like present, some delay is very natural and unavoidable. It is also submitted that charges against the applicant are not vague, they were clear and based on cogent evidence. The order passed does not suffer from any error of law.

We have carefully considered the submissions of the counsel for the parties. In our opinion, in the facts and ^{case} circumstances of the present case respondents were not justified to hold a disciplinary inquiry in this ~~matter~~ as the criminal proceedings before the criminal court and the disciplinary proceedings before the respondents were based on same set of facts and same set of evidence. Hon'ble Supreme Court in case of 'Capt.M.Paul Anthony Vs.Bharat Gold Mines Ltd and Another(Supra) has held as under in para 13 of the judgement.

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".....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....."

We have considered the facts of the present case in the light of
the legal position propounded by Hon'ble Supreme Court. The
respondents in their affidavit dated 28.11.01 have themselves in
paragraph 4 have said that all the prosecution witnesses except Shri
Bahadur, the prosecution witness No.5 had given their statement in
support of the charge but the criminal court did not give any weightage
to their statements and acquitted the applicant on benefit of doubt.
This clearly demonstrates that the disciplinary proceedings against the
applicant as well as the trial in criminal court both were based on
similar set of facts and evidence were common. If the applicant was
acquitted by the criminal court on the basis of the same evidence, it
was not open for the respondents to use same evidence for awarding
punishment for misconduct.. It makes no difference that the applicant
was granted benefit of doubt. The fact remains that the evidence given
by the witnesses was not found reliable for recording conviction of the
applicant. The same witnesses could not be used for passing order of
punishment. In our opinion, applicant is entitled for relief on this
ground.

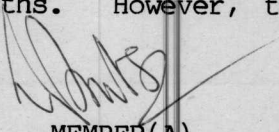
The other ground raised by the learned counsel for the applicant
is that the order is based on stale charge cannot be accepted. It is
not disputed that the memo of charge was served on the applicant in
1983. The delay is not in initiating the proceedings, but in
concluding the proceedings. The case cited by the learned counsel for
the applicant does not help him in the present case. If once the memo
of charge is served on a delinquent employee, he should try that the

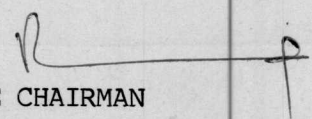
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disciplinary proceedings must be concluded at the earliest. If there was delay on the part of the respondents he could challenge it before the court. No step was taken by the applicant in this regard. ^{but} Conclusion of the inquiry and ^{where} ~~once there was~~ conclusion goes against him he could not challenge the same on this ground.

The third submission that the charge was vague also cannot be accepted, as the allegations are very clear and do not suffer from any vagueness.

For the reasons stated above, this OA is allowed. The impugned order of punishment dated 12.9.1992 is quashed. The applicant has already retired from service in 1994. The amount which has been deducted from the salary of the applicant shall be paid to him within four months from the date a copy of this order is filed. The pension of the applicant shall be recalculated and shall be paid to him with arrears within six months. However, there will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: Jan: 16th, 2002

Uv/

O.A. 316/93

(17)

O/R

M.A. NO 3000/02 with
Affidavit has been filed
by Sri A. Mohibey, Advocate,
Counsel for respondents.

Submitted for
order on 6-8-02.

J.A.
30/7/02

6-8-02

Hon. Maj. Gen. K. K. Srinivasulu A.M.

As learned advocates have
resolved to abstain from the
judicial work, none appeared
for the parties. Adjourned
to 11-9-02.

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O.A.No.316/93.

11.09.2002.

Hon'ble Maj Gen KK Srivastava, A.M.

Hon'ble Mr. A.K. Bhatnagar, J.M.

None for the applicant. Sri A. Mohiley,
counsel for the respondents.

M.A.No. 3000/02, is for granted ^{in the} further 3 months
time to the respondents for compliance of the
judgment of this Tribunal dated 16.01.2002.

Learned counsel for the respondents
submits that the order of this Tribunal dated
16.01.2002 has been challenged in the Hon'ble
High Court, Allahabad through Writ Petition
No 25996/02.. The Hon'ble High Court has issued
the notice on 5.7.2002, however, no stay
has been granted so far. Two ~~for~~ months further
time is granted for implementation of the
order of this Tribunal referred to above.



J.M.



A.M.

Manish/-