

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1841 of 1994

Allahabad this the 15th day of Sep. 1997

Hon'ble Dr. R.K. Saxena, Member ( J )  
Hon'ble Mr. D.S. Baweja, Member ( A )

S.B. Rai S/o Kapil Deo Rai, R/o 490 Kailashpur (Chandpur)  
Alori, Allahabad.

Applicant

Advocate Sri G.D. Mukherjee

Versus

1. Union of India through Secretary, Ministry of Planning, Department of Statistics, Sardar Patel Bhawan, New Delhi.
2. National Sample Survey Organisation (Field Operation Division) Govt. of India 'C' Block III, Floor Hall 327, Pushpa Bhawan, Madangiri Road, New Delhi.
3. Regional Assistant Director, National Sample Survey Organisation Field Operation Division, 32-A, Stanley Road, Allahabad.

Respondents

Advocate Sri N.B. Singh

ORDER

By Hon'ble Dr. R.K. Saxena, Member Judicial

This is an application moved under Section 19 of the Administrative Tribunals Act, 1985 challenging the order of punishment dated 11.4.1994 whereby the pay of the applicant was reduced from Rs.1350/- to Rs.1290/- in the pay scale of Rs.1200-2040 for 3 years and with cumulative effect.

2. The brief facts of the case are that the applicant was posted as Upper Division Clerk (for short U.D.C.) under the respondent no.3. It appears that some embezzlement had

taken place and F.I.K. was lodged in Colnelganj Police station on 19.10.1979. The applicant was prosecuted under Section 409, 420, 407, 468 of I.P.C. He was also charge-sheeted for departmental action on 13/10/1978 and inquiry was started. It is stated that though he was acquitted in the criminal trial on 27.1.1990 yet the departmental <sup>against</sup> inquiry was proceeded <sub>him</sub> on the same facts and order of punishment was recorded. The appeal was preferred on 23.5.1994 but it was not decided till today. Ultimately the O.A. was filed on 08.12.1994. The grounds of attack are that the bank letters were not produced and the star witness - J.N. Sinha was not examined. Hence, this O.A. with the aforesaid reliefs.

3. The respondents have contested the case by filing the counter-affidavit of one K.S. Lal, Regional Assistant Director. It is averred that the applicant was involved in a grave charge of embezzlement and, thus, he was suspended by the Assistant Director- Shri J.N. Sinha. After finalisation of the criminal case, departmental proceedings were initiated and the impugned order of punishment was passed. It is stated that every opportunity to defend himself was given to the applicant, and inquiry was conducted fairly. The order of punishment passed by the disciplinary authority is stated to be just. It is specifically mentioned that all the documents were shown to the applicant and, thus, there was no ground to challenge the fairness of the inquiry. As regards non-production of Sri J.N. Sinha as witness, it is stated that since he had retired, he could not be produced.

4. The applicant filed rejoinder, reiterating  
....pg.3/-

the grounds which were mentioned in the O.A.

5. We have heard Shri Satyajeet Mukherjee proxy counsel to Sri G.D. Mukherjee, counsel for the applicant and Sri S.K. Anwar brief holder to Sri N.B. Singh, counsel for the respondents. We have also perused the record including the original file of the inquiry officer.

6. The crux of the arguments advanced by the learned proxy counsel for the applicant is that the applicant was acquitted on criminal charge and, thus, there was no justification for his being proceeded departmentally on those very charges. In this connection the reliance has been placed on the Judgment(annexure A-1) given by the criminal court in the case where the applicant was facing trial under section 409, 420, 467, 468 of I.P.C. The applicant was, no doubt, acquitted on 27.1.1990 but on the ground of benefit of doubt. The trial court had clearly held that the charges were not established beyond the shadow of doubt and thus, the benefit of doubt was given. It is well settled law that a judgment of criminal/trial court which is based on either benefit of doubt or non-production of material evidence, will not operate as bar for departmental action. If the charges are scrutinised on merits and the trial court comes to a conclusion that no charge was established, only then it is expected that the department will not proceed on with the inquiry. Even in that situation, such an acquittal will not operate as complete bar against the department for initiating departmental proceedings. Here before us the applicant was acquitted on the benefit of doubt. In our opinion the applicant cannot take shelter behind such an acquittal for not being proceeded against departmentally. Thus, this ground is not tenable.

7. It is also argued that there had been sufficient delay in filing the charge-sheet. This fact does not find corroboration from the material on record. The applicant himself mentioned in the O.A. that the charge-sheet for departmental action was dated 13/16.10.1978. The first information report was lodged with the Police on 19.10.1979. and the charge-sheet of criminal trial was submitted by the Police on 31.8.1983. In such a situation, when the charge is of serious nature and legally competent authority is investigating into the said charges and ultimately submitted the charge-sheet before a competent criminal court, the departmental proceedings are required to be stayed. Thus, if the charge-sheet for departmental action was prepared on 13/16.10.1978 and actual progress in the inquiry could be started only after the criminal trial was over, we do not find that this blame of delay can be thrown on the respondents. Thus, there is no merit in this argument as well.

8. The learned counsel for the applicant argues that the relevant documents particularly bank letters have not been shown or copies supplied to the applicant. Similarly Sri J.N. Sinha who was Drawing and Disbursing Officer and a prosecution witness was not examined in support of the charges. It was further contended that the applicant wanted to examine Sri J.N. Sinha as defence witness and, thus, he was not allowed to be called. We have gone through the report of the inquiry officer and find from the narration of the facts therein that all the documents mentioned in annexure -3 of the charge-sheet were brought on record and were marked as annexure S-1 to S-29. The inquiry officer further mentioned that no objection about the documents which <sup>were</sup> <sup>2</sup> brought on record, was raised by the charged

officer. It is, therefore, clear that this objection has been raised for the sake of objection.

9. It is evident from the report of the inquiry officer that Sri J.N. Sinha was the Drawing and Disbursing Officer and was of course not produced in support of the charges. The applicant had desired to produce said Sri J.N. Sinha as defence witnesses but when the occasion came, the applicant showed unwillingness to produce him as defence witness. In such a situation the blame cannot be thrown on the inquiry officer for not making an opportunity available for production of defence witness. We find that this ground too is not tenable.

10. The learned counsel for the applicant also argues that there is no evidence in support of the charge. Before we proceed to find out if really there is no evidence, we would like to glance at the charges which were framed against the applicant. There were 5 charges against him. First charge was that in the year 1977-78, the applicant had drawn an amount of Rs.362.20 for preparation of bank draft in the name of Shiv Kumar, Investigator but no bank draft was got prepared and fake draft number was shown in the record. The second charge was that two amount of Rs.100/- each for payment of T.A. advance to one V.B. Gupta were drawn in September, 1977 and only one amount of Rs.100/- was sent while other was misappropriated and kept with him till August, 1978. The third charge was that he had drawn an amount of Rs.2426.11 for getting the draft in favour of Devesh Mishra prepared but no amount was sent to the bank for the preparation of the draft and a fake number of draft was shown in the record. Similarly charge

No.4 is that an amount of Rs.3723.75 was drawn for obtaining the draft in favour of Sri V.P.N. Singh and Sri V.K. Tyagi but no bank draft was got prepared. The fifth charge is that the amount of T.A. bills for the months of May, June and August, 1977 of Om Prakash, Investigator amounting to Rs.117.15, Rs136.25, and Rs.115.55 was drawn from the bank but no draft was got prepared and no payment was made. On the other hand fake bank drafts were shown in the record. The inquiry was made from the bank and it was revealed through letters that no such amount was ever sent for the preparation of the bank drafts. These documents had already been brought on record. The entire case is based on the documentary evidence. We hardly find any substance in the argument of the learned counsel for the applicant that it is <sup>a</sup> case of no evidence. Also we do not find any deficiency if Shri J.N. Sinha, Drawing and Disbursing Officer could not be examined. In our opinion, the argument that it is a case of no evidence, is not supported by any material on record.

11. It has been pointed out by the learned counsel for the applicant that the appeal was preferred on 23.5.1994 but no decision was given even after the expiry of the period of 6 months and till 08/12/1994 when this O.A. was filed. During argument it is again stated that even upto that date, the appeal was not disposed of. This fact would have been relevant had we considered this aspect that the O.A. was bad for not exhausting the alternate remedy. In our opinion, by filing the appeal the applicant has done his job but if the appellate authority failed to dispose of within the prescribed period, the applicant could do nothing. Anyway non-disposal of appeal will not

7

debar us from deciding this case on merits.

12. All the points which had been raised by the learned proxy counsel for the applicant are taken into consideration by us and we find that the order of punishment which ought to have been more severe, does not suffer from any illegality. Also there is no procedural irregularity, and no violation of principle of natural justice is established. Thus, the O.A. stands dismissed. No order as to costs.

Member A

### Member (J)

/M.M./