

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL      ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 5th day of February 2001.

Original Application no. 832 of 1995.

Hon'ble Mr. Justice R.P.K. Trivedi, Vice-Chairman  
Hon'ble Mr. M.P. Singh, Administrative Member

Chhabi Lal Yadav, S/o Bairagi Yadav,  
T. No. 139/MM, Fitter (Skilled),  
Small Arms Factory, Kanpur.  
R/o G-1/381, Armapur Estate,  
Kanpur - 9.

... Applicant

C/A Shri Munnu Lal

Versus

1. The Union of India, through the Secretary, Ministry of Defence, (Department of Defence Production), New Delhi.
2. The Chairman/Secretary, Ordnance Factories Board, 10-A Auckland Road, Calcutta-1.
3. The General Manager, Small Arms Factory, Kalpi Road, Kanpur -9.

... Respondents

C/Rs Shri A. Mohiley

... 2/-



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O R D E R (Oral)

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

The facts giving rise to this OA are that the applicant Shri C.L. Yadav was serving as Fitter Skilled in Small Arma Factory, Kanpur. On 19.08.90 at about 8.30 a.m. he assault Dr. S.K. Jha and man-hand-led him for which disciplinary proceedings were initiated against him. After the inquiry, the inquiry report was submitted which was accepted by disciplinary authority and applicant was punished. He filed an appeal which was also dismissed and the penalty in reduction of pay scale as ordered by disciplinary authority was maintained. For the same incidence dated 19.08.90 a criminal proceedings were also initiated against the applicant under section 332, 353, 507 (2) and 384 of IPC. The applicant was tried in criminal case no. 163/91. The Matropolitan Magistrate, (II) Kanpur Nagar by order dated 15.2.93 acquitted the applicant of the charge on the ground that the offence could not be provide beyond the reasonable doubts. After the aforesaid judgment, the applicant filed an application for review of the order of punishment. As the application filed by the applicant was not decided by the respondents, he filed OA 1005/93 before this Tribunal which was disposed of by order dated 2.4.94 which is as follows :

"The petitioner shall make a copy of the representation (Annexure A-17) available to the respondents and respondents shall hear the petitioner and de the representation within a period of months from the date

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the petitioner submits a copy of the representation (Annexure A-17) to the respondents alongwith a copy of this order." This petition is accordingly disposed of at admission stage."

2. In pursuance of the order passed in the O.A., representation of the applicant has been rejected by order dated 4.8.94. Aggrieved by which the present OA has been filed.

2. Learned counsel for the applicant has submitted that the applicant has been acquitted by criminal court. The order of punishment passed by the disciplinary authority deserves to be set aside, as the judgment of the criminal court ~~had~~ <sup>in shall</sup> prevailed. He has placed reliance in a judgment passed by Mumbai Bench of this Tribunal in a case of M.Z. Parcha & Ors Vs. Union of India and others 1990 (2) AISLJ 242.

3. Shri Ashok Mohiley, learned counsel for the respondents on the other hand submitted that it is clear from the judgment of the criminal court dated 15.2.93 that the applicant was acquitted as the witnesses became hostile and did not support the prosecution of the case. It is also submitted that victim Dr. S.K. Jha was not examined before the criminal court who was injured witness.

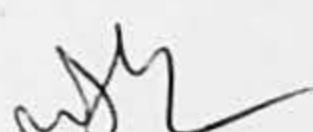
4. In these circumstances the correctness of the order passed in disciplinary proceedings cannot be doubted. It is also submitted that the scope and object of the criminal proceedings <sup>and</sup> the disciplinary proceeding ~~are~~ <sup>are</sup> one

entirely different. For this reason also the applicant  
~~is~~ not entitled for ~~reinstatement~~ of the proceeding on the  
basis of the order of acquittal passed by criminal court.  
He has placed reliance in case of State of U.P. Vs.  
K. Allabakash, 2000 SCC(L&S) 385 and Union of India &  
Others Vs. Behari Lal Sudhama 1997 SCC (L&S) 1076.

5. We have carefully considered the submission  
made by learned counsel for the parties. The facts  
of the case of M.Z. Parcha before Mumbai Bench of this  
Tribunal were entirely different. In that case a  
criminal court had already passed an order of acquittal  
and, thereafter, departmental authority wanted to  
initiate disciplinary proceedings which was not allowed  
and the proceedings were quashed and set aside. Here  
in the present case the disciplinary proceedings had  
already been concluded. The order of punishment was  
upheld by appellate authority and it was allowed to  
become final, as the correctness of the order was not  
~~questioned~~ before the Tribunal or any other court.. The  
representation was filed before the disciplinary authority  
after the order of acquittal obtained before the criminal  
court. In ~~my~~ <sup>our</sup> opinion the application has been rightly  
rejected. The Hon'ble Supreme Court in a case of UOI & Ors  
Vs. Behari Lal Sudhama has clearly stated that mere acquittal  
does not give rise to reinstate in the service. It is  
open to the appropriate authority to take decision  
whether the delinquent Govt. Servant can be taken into  
service or disciplinary action should be taken under  
relevant disciplinary or departmental service rules.

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In case of State of U.P. Vs. K Allabakash also Hon'ble Supreme Court held that , we make it clear that acquittal of respondents shall not constitute as a clear exoneration of the respondents for the allegation called for departmental proceedings, if any charge initiated against him. In the present cas, as already noted above, the judgment of acquittal is based on fact that witnesses did not support the prosecution ~~in the~~ case and complainant ~~who~~ Dr. S.K. Jha, <sup>who</sup> was crucial witness was not examined, whereas in disciplinary proceedings Dr. Jha was examined. The witness supported the case of the department, the applicant was found guilty of all the charges<sup>as</sup> Thus the applicant has rightly not been found <sup>entitled</sup> for the review of the order passed against him in disciplinary proceedings. The order dated 4.8.94 is well reasoned and does not suffer from any illegality. The O.A. is dismissed accordingly. No order as to costs.

  
Member-A  
Vice-Chairman

/pc/