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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 116 OF 1994
Cuttack this the 24th day of August/94

Prayag Ram

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Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?

2. Whether it be circulated to all the Benches of the ~~CA~~ -
Central Administrative Tribunal or not ?

G. NARASIMHAM
VICE-CHAIRMAN
24.8.2000

24.8.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 116 OF 1994
Cuttack this the 24th day of August/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOMP, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

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Prayag Ram
Ex - L.S.G. Postal Assistant
D. P. Camp
Sunabeda - 3, Koraput

...

Applicant

By the Advocates

Mr. D.P. Dhalasamant

-VERSUS-

1. Union of India represented through
Chief Postmaster General,
Orissa Circle,
Bhubaneswar-751001
2. Director of Postal Services,
Sambalpur Region
Sambalpur - 768001

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Respondents

By the Advocates

Mr. A.K. Bose,
Sr. Standing Counsel
(Central)

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O R D E R

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MR .G .NARASIMHAM, MEMBER (JUDICIAL): In this Application filed on 13.1.1994, applicant, Ex-L.S.G. Postal Assistant prays for quashing of the order of punishment passed by the disciplinary authority on 24.4.1989 (Annexure-2) and order of the appellate authority (Annexure-3) dated 23.11.1989 confirming the order of the disciplinary authority with consequential service and financial benefits. Further he has also prayed for quashing of memo of charges dated 19.11.1986 under Annexure-1.

2. Facts not in dispute are that while the applicant was serving as Sub Post Master at D.P. Camp, Sunabeda from 5.6.1985 to 16.4.1986, cases of some misappropriation were noticed and he was served with charges dated 19.11.1986. While the disciplinary proceeding was in progress the matter was also reported to Police on 24.2.1988 which was registered as G.R. Case No. 104/88 on the file of S.D.J.M., Koraput. Out of the eight charges seven charges were proved in the disciplinary proceedings. The disciplinary authority, i.e. Director of Postal Services imposed the penalty of removal of the applicant from service by order dated 24.4.1989 (Annexure-2). The applicant preferred the departmental appeal. The appellate authority modified the punishment of removal from service to that of compulsory retirement vide order dated 23.11.1989 (Annexure-3). The trial in G.R. Case 104/88 ended on 31.10.1982 by the judgment of S.D.J.M., Koraput, (Annexure-4), who found the applicant not guilty and acquitted him of the charges under Section 409 I.P.C. Thereafter the applicant represented on 18.2.1993 to the postal authorities for his reinstatement on the basis of the judgment of acquittal by the Criminal Court. This was turned down in letter dated 3.6.1993 (Annexure-5). Thereafter this Application has been preferred.

3. The case of the applicant is that the charges on which he was proceeded departmentally were also the same in the criminal case under Section 409 I.P.C. Since he was acquitted in the criminal case on the basis of the same facts, the earlier orders of the departmental authorities holding the applicant guilty of the same facts would not further survive, because the conclusion of the Criminal Court would bind the disciplinary authority and the appellate authority as well. Hence refusal of the authorities to reopen the disciplinary case and consider the facts afresh is illegal, unsound, unsustained and not sustainable in law.

4. In the counter the facts alleged by the applicant in the Original Application are not disputed. But the Department's case is that under law even a criminal case as well as disciplinary proceedings on the basis of same facts can simultaneously proceed. Appreciation of evidence in a disciplinary proceeding is altogether different from the case before a Criminal Court and as such acquittal in a Criminal case does not necessarily mean that the employee concerned would be exonerated from the charges in a pending disciplinary proceeding. Moreover, in this case the order of acquittal was passed about three years after the passing of order by the appellate authority.

5. We have heard Shri D.P.Dhalasamant, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel appearing for the Respondents (Department). Also perused the records.

6. The prayers in the Original Application, as earlier stated are for quashing memo of charges dated 19.11.1986, order of the disciplinary authority dated 24.4.1989 and the order of the appellate authority dated 23.11.1989. This application was

filed on 31.1.1994, i.e., about seven years after the framing of memo of charges and four years after passing of the orders by the disciplinary authority and the appellate authority. Hence this Application is hopelessly barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Moreover, this inordinate delay of several years has not been explained through any petition for condonation of delay supported by an affidavit as required under Rule-8(4) of the C.A.T. (Procedure) Rules, 1987. Hence on this ground alone, this Application can be dismissed as time-barred.

7. As we see from the pleadings, according to applicant, cause of action arose on 3.6.1993 when the departmental authorities turned down his representation to reconsider the punishment orders on the basis of subsequently acquittal order passed by the Judicial Court. We are not inclined to accept this reasoning mentioned in the pleadings. We have carefully gone through the judgment of the Criminal Court. The applicant was acquitted under 'Benefit of Doubt'. Even if he would have been acquitted honourably, under law, departmental authorities were not bound to reopen the orders passed in the disciplinary proceedings much prior to acquittal. There is no such provision under C.C.A. Rules. This apart law is well settled even a disciplinary proceedings and a criminal case based on same facts can simultaneously proceed and even under such circumstances, ^{disciplinary process} ^{need not necessarily be stayed} ^{judicial} because of pendency of parallel criminal case. ^{Taken, rules of} ^{or} evidence and proof beyond reasonable doubts which are required in a criminal trial are not applicable to disciplinary proceeding. In a disciplinary proceeding charges can be established by mere preponderance of probabilities. Decision of the Apex Court in

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the case of Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Another reported in AIR 1998 SC 1416 relied on by the learned counsel for the applicant Shri D.P.Dhalasamant will not be of any help. That decision relates to the identical evidence(not same facts/similar facts) involved in the disciplinary proceedings as well as in the parallel criminal case. List of witnesses and documents mentioned in the memo of charges when compared it is greatly at variance with the list of witnesses and documents mentioned at the bottom of the judgment of the Criminal Court. In other words, the evidence adduced before the Criminal Court is not the very same evidence adduced in the disciplinary proceedings. This apart, in the Apex Court judgment the disciplinary proceeding was still pending by the time parallel criminal case ended in acquittal of the concerned employee, which is not the case of the applicant before us.

In the result, we do not see any merit in this Application which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

26.8.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//