

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

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Date of Decision : 26.3.2002.

O.A. No. 364/1999.

S L Asnani son of Shri Satram Das Asnani, aged about 44 years, resident of 17-E-484, Chopasni Housing Board, Jodhpur, at present employed on the post of Junior Engineer (Civil), in the office of C.P.W.D., Jodhpur Central Circle, Ratanada, near Indian Air Lines Office, Jodhpur.

... APPLICANT.

v e r s u s

1. Union of India through Secretary to Govt. of India, Min. of Urban Development, Central Public Works Department, Nirman Bhawan, New Delhi.
2. Superintending Engineer, C.P.W.D., Jodhpur Central Circle, Ratanada, near Indian Air Lines Office, Jodhpur.
3. Chief Engineer, Jaipur Northern Zone-III, C.P.W.D., Sector-10, Vidyadharnagar, Jaipur.

... RESPONDENTS.

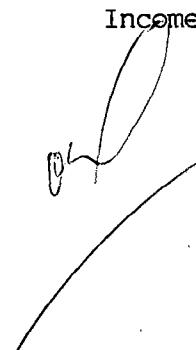
Mr. B. Khan counsel for the applicant.
Mr. Vinit Mathur counsel for the respondents.

CORAM

Hon'ble Mr Justice O. P. Garg, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Justice O. P. Garg)

The applicant Sh. S. L. Asnani, who was employed on the post of Junior Engineer (Civil) in the office of C.P.W.D., Central Circle, Ratanada, Jodhpur, was trapped on 26.03.1997 by the Central Bureau of Investigation (C.B.I., for short), when he demanded and accepted a sum of Rs. 10,000/- from Dr. Anil Kumar Dhussa for getting the valuation report of the property owned by Shri Dhussa made at a lesser amount through Income-tax registered valuer and for extending help during the course of appeal to the competent authority so that the Income-tax liability of Dr. Anil Kumar Dhussa may be reduced



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in appeal. A First Information Report (F.I.R., for short) No. 02(A)/97/SPE/CBI/Jodhpur dt. 25.03.1997, was registered against the applicant. A final report was submitted closing the criminal case with the observation that the Departmental Authorities may take disciplinary proceedings against the applicant. The final report was accepted on 05.08.1997. A petition was filed by the complainant, which was rejected.

2. A charge sheet dated 19.01.1998 (Annexure A-1), was served on the applicant alongwith the article of charge and statement of imputation against the applicant. After conclusion of the departmental enquiry, Shri Virendra Sharma Superintending Engineer, who was appointed as Enquiry Officer, submitted a detailed report of enquiry dated 05.08.1999, a copy of which is annexed to letter dated 23.08.1999 (Annexure A-9), by which the report of the enquiry was delivered to the applicant. The applicant submitted a detailed representation after receipt of the report of the enquiry. The Disciplinary Authority taking into consideration the report of the enquiry and the representation filed by the applicant as well as the circumstances attending the case concluded by order dated 04.11.1999 (Annexure A-2) that it was established beyond doubt that a sum of Rs. 10,000 was transacted between the complainant and the applicant. A major penalty which runs as follows was inflicted upon the applicant :-

" I, order that Shri S.L. Asnani, Junior Engineer, who is presently drawing pay of Rs. 7,425/- in the scale of Rs. 5500-175-9000 be reduced to lower time scale of Rs. 5000-150-8000 (corresponding to old pay scale of Rs.

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1400-40-1500-EB-50-2300) and his pay be reduced by 3 stages in the lower time scale (5000-150-8000) at Rs. 6,950/- for a period of 3 years with effect from 05/11/99. Further, Shri S.L. Asnani, Junior Engineer, will not earn increments of pay in the said lower time scale during period of such reduction and on the expiry of such period, the reduction will have the effect of postponing further increments of his pay. After a period of 3 years from the date of issue of this order, Shri S.L. Asnani, shall be restored to his present time scale i.e. 5500-175-9000 at a stage corresponding to his reduced stage of pay in the said lower time scale (Rs. 5000-150-8000)."

On account of the change in the pay scales, a modified order of punishment was passed on 24.11.1999 (Annexure A-3), which runs as follows :-

" OFFICE ORDER

In pursuance of office order No. 7(2)/jdCC/126 dated 4/11/99 and as per F.R. 29(ii) pay of Shri S.L. Asnani, Junior Engineer, who is presently drawing pay of Rs. 7,425/- in the scale of Rs. 5500-175-9000 is reduced to lower time scale of Rs. 5000-150-8000 (corresponding to old pay scale of Rs. 1400-40-1500-EB-50-2300) and his pay is reduced by 3 stages in the lower time scale (5000-150-8000) at Rs. 6,950/- for a period of 3 years with effect from 05/11/99. Further, Shri S.L. Asnani,

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Junior Engineer, will not earn increments of pay in the said lower time scale during period of such reduction on the expiry of such period, the reduction will have the effect of post poning further increments of his pay. After a period of 3 years from the date of issue of this order, Shri S.L. Asnani, shall be restored to his present time scale i.e. 5500-175-9000 at a stage corresponding to his reduced stage of pay in the said lower time scale (Rs. 5000-150-8000).



3. By means of this present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the charge sheet dated 19.01.1998 issued under Rule 14 of the CCS(CCA) Rules, 1965, penalty order dated 04.11.1999 (Annexure A-2) and the subsequent order dated 24.11.1999 (Annexure A-3), imposing the penalty of reduction to a lower time scale and reduction of three stages in the lower time scale of pay for a period of three years, with the prayer that the said orders be quashed and he be allowed all the consequential benefits.

4. A detailed reply has been filed on behalf of the respondents asserting that the enquiry has been made in accordance with provisions of law and since the disciplinary proceedings cannot be faulted on any ground, this Tribunal would not interfere in the matter.

5. Heard the Learned counsel for the parties.

6. On behalf of the applicant it was contended, firstly, that after the submission of the final report in the criminal case under the provisions of Prevention of Corruption Act by the C.B.I., no departmental enquiry on the same allegations could be initiated and secondly, that applicant has been punished in the departmental enquiry on flimsy grounds and consequently the applicant has been subjected to double jeopardy in the matter of punishment. In support of the second contention, reliance was placed on the decision of Delhi High Court in the case of Nand Kishore Katyal vs. Bank of India & Ors. 1989(3) SLR 48.

7. As regards the first point, it would not be out of place to mention that it is well settled proposition of law that the submission of the final report in a criminal case does not debar the employer from initiating departmental proceedings against its employee for the alleged misconduct. Mr. Vineet Mathur, Learned counsel for the respondents, pointed out that though it is a case of submission of a final report, there are a number of decisions which have gone even to the extent of laying down the law that even if after trial, the delinquent employee is finally acquitted of the criminal charge, the employer has a right to proceed departmentally against its employee. The contention of the Learned counsel for the respondents is not without force. There is a direct decision of Hon'ble the Rajasthan High Court in the case of R.S. Tanwar vs. Marwar Gramin Bank, Head Office, Pali and Ors., 2001 WLC (Raj.) UC page 154, in which after surveying the entire law on the point, it has been held that submission of a final report in a criminal case has no effect on

departmental enquiry. The nature and scope of a criminal case are distinct and different from those of a departmental disciplinary proceeding to and an order of acquittal, therefore, cannot conclude the departmental proceeding (Nelson Motis vs. Union of India and Ors., AIR 1992 SC 1981). In the State of Karnataka & Anr. vs. T. Venkataramappa, (1996) 6 SCC 455, the Apex Court has held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same offence for the reason that in a criminal trial, standard of proof is different and the case is to be proved beyond reasonable doubt but the same is not true in a departmental proceeding as such a strict proof of misconduct is not required therein. Similarly, in Senior Superintendent of Post Offices vs. A. Gopalan, (1997) 11 SCC 239, the Supreme Court held that in a criminal case the charge has to be proved by standard of proof "beyond reasonable doubt" while in departmental proceeding, the standard of proof for proving the charge is "preponderance of probabilities". There can be no doubt about the well embedded legal position that as the standard of proof in a criminal case and in the departmental enquiry is quite different, the acquittal or submission of a final report after investigation in favour of the employee in a criminal case cannot be a basis of taking away the right of the employer to deal with the erring employee departmentally.

A reference may also be made to a recent decision of this Tribunal dated 06.03.2002 in OA No. 69/2001 - Dr. Bhagwat Singh vs. U.O.I. & Ors., which provides a complete answer to all the submissions raised on behalf of the applicant.

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8. A reading of the order of punishment passed by the Disciplinary Authority on 04.11.1999 (Annexure A-2) and has modified by subsequent order dated 24.11.1999 (Annexure A-3), would indicate that the applicant has not been doubly punished for the same misconduct. In the case of Nand Kishore Katyal (Supra), it was found that there was imposition of two penalties i.e., one reduction to a lower grade and second to a lower stage in the same time scale for the same misconduct and it was in this background that it was held that double punishment for the same misconduct is not permissible. What has been discussed and decided in the case of Nand Kishore Katyal (Supra) is not applicable to the facts of the present case. The modified order dated 24.11.1999 (Annexure A-3) was again modified on 04.04.2000 (Annexure R-1 to the reply). This order was necessitated on account of the introduction of the Assured Career Progression Scheme by the Department of Personnel and Training w.e.f. 09.08.1999. A decision was taken to introduce the said scheme in respect of the Junior Engineers in C.P.W.D. and then existing three tier pay scales were abolished w.e.f. 09.08.1999 as contemplated in office memorandum dated 27.10.1999. The penalty imposed on the applicant as stood modified by the orders aforesaid is one composite penalty and it cannot be, therefore, argued that the applicant has been subjected to double jeopardy in the matter of punishment on the same charge.

9. There is no dispute about the fact that the Disciplinary proceedings were initiated against the applicant in accordance with the provisions of CCS(CCA) Rules, 1965.

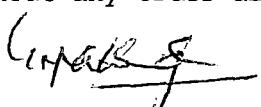
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The Officer who has imposed the punishment after taking into consideration the report of Enquiry and the representation of the applicant, was the person competent to impose the punishment. The applicant was given reasonable opportunity at all the stages of the enquiry which can not be assailed on any ground whatsoever. It has been held in a number of decisions of the Apex Court that this Tribunal cannot interfere with the order of punishment by invoking his powers of judicial review. If the Tribunal is satisfied that the procedure adopted by the Disciplinary Authority is consistent with the essentials of a fair trial and that the charged employee was not seriously prejudiced in any manner, no intervention with the conclusions arrived at by the Disciplinary Authority, both with regard to the factual matrix of the charges as well as the quantum of punishment is warranted. The Law is well established that this Tribunal cannot reappreciate, create evidence and substitute its findings to arrive at to the conclusion that the charge has not been proved. In this connection a reference may be made to the oft quoted decisions of the Apex Court in the case of B. C. Chaturvedi Vs. Union of India (1995) 8 JT (SC) 65, State of Tamilnadu Vs. T.V. Venugopalan, (1994) 6 SCC 302, Union of India Vs. Upendra Singh, (1994) 3 SCC 357, Government of Tamilnadu Vs. A. Rajapandian, (1995) 1 SCC 216 and Union of India Vs. B.S. Chaturvedi, (1995) 6 SCC 749 ; Tamil Nadu and Another Vs. S. Subramaniam, AIR 1996 SC Page 1232, ; Director General of Police and Ors. Vs. Jani Basha, 1999 AIR SCW 4802 as well as Syed Rahimuddin vs. Director General, C.S.I.R. and Others, 2001 AIR SCW 2388.

10. In our view, the conclusions arrived at by the Enquiry

Officer are quite sound, fair and just. The elaborate report of enquiry which is impartial in nature clinches the whole issue. The charge against the applicant is that he has demanded and accepted a sum of Rs. 10,000/- from Dr. Anil Kumar Dhussa, complainant, stand proved. The order of punishment which has a tinge of leniency cannot be said to be harsh or unconscionable.

11. The Original Application, therefore, turns out to be without any merit and substance. It is accordingly dismissed without any order as to costs.


(GOPAL SINGH)

Adm. Member


(JUSTICE O.P. GARG)

Vice Chairman

cvr/joshi