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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 14.12.2001.

1. O.A. No. 165/2001

Jai Ram Khatik son of Shri Beni Ram Khatik aged about 56 years resident of Qtr. No. 1, Type IV, Telecom Colony, Sumerpur, District Pali, at present employed on the post of S D E, Sumerpur, District Pali.

... Applicant.

connected with

2. O.A. No. 169/2001

K.L. Parihar son of Shri Laxaman Parihar aged about 45 years resident of C/o. Shri Navrat Mal Chauhan, Near Bus Stand, Jaitaran, Distt. Pali-Marwar, at present employed on the post of JTO in the office of Telephone Exchange, Jaitaran, Distt. Pali-Marwar.

... Applicant

versus

1. Union of India through Secretary to the Government of India, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur.
3. General Manager Telecom District Jodhpur, Kamla Nehru Nagar, In front of Somani College, Jodhpur.
4. General Manager Telecom District Pali-Marwar : 306401.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. B.L. Bishnoi, Brief holder for Mr. Vijay Bishnoi, 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 Shri Jai Ram Khatik (in OA No. 165/2001) is presently employed on the post of S D E, Sumerpur in Telecom Department in District Pali, while the applicant Shri K.L. Parihar (in OA No. 169/2001) is posted as JTO in the office of Telephone Exchange, Jaitaran, District Pali. Both of them have challenged the charge-sheet issued to them on 21.06.2001, Annexure A/1 to the respective applications issued by the General Manager, Telecom District, Jodhpur. Since common questions of law and facts are involved in both the applications, they are proposed to be decided together by this judgement.

2. A departmental enquiry has been initiated against both the applicants. Briefly stated, the charge against Shri Jai Ram Khatik, applicant in OA No. 165/2001, is that he has committed gross misconduct in the matter of execution of the work for laying underground cables in Chittorgarh by falsely showing 10% checking in the measurement book without indicating the specific place and measurement of checking and verified the bills of the contractor for the payment of the full work, whereas less work was executed at the site. The charge further states that he had shown undue favour to the contractor, connived with him, and allowed full payment without getting the work executed as per the specification and thereby caused loss to the Telecommunication Department and facilitated the contractor to draw full amount of contract against the less work done by him.

3. As against Shri K.L. Parihar, the applicant in OA No. 169/2001, the charge is that he had committed gross misconduct in the matter of execution of the work awarded for laying underground cables in Chittorgarh by digging trenches of lesser depth against the required depth of one meter and by not putting stone slabs as per specification in connivance with the contractor, M/s. Hadoti Tele Signal Contractor Co., Kota, and thereby put the Telecom Department to a huge loss and corresponding gain to the contractor. He facilitated in the drawal of the full amount for less work executed by the contractor. It was further alleged that Shri Parihar made false entries of 100% checking in the measurement book and shown 100% work executed.

4. Both the applicants were charged of having committed official misconduct in contravention of Rule 3 (1) (i) (ii) & (iii) of CCS Conduct Rules, 1964. The applicants have challenged the validity of the charge sheet primarily on two grounds, which were canvassed before us, firstly, that the applicants have been exonerated of the criminal charges and, therefore, they could not be departmentally proceeded against on the same set of facts and allegations; and secndly, the chargesheets have been signed and issued by an officer or the authority, who was not competent to do so. The respondents have repelled the above grounds to challenge the validity of the charge-sheet.

5. We have heard Shri J.K. Kaushik, learned counsel for the applicants, and Shri B.L. Bishnoi appearing on behalf of the respondents and have taken into consideration their respective submissions.

6. Shri J.K. Kaushik pointed out that the alleged charges against the applicant were the subject matter of investigation by the CBI;

that after investigation, the CBI submitted a final report which was accepted by the Special Judge, CBI, Jodhpur, on 21.11.2000 in final report case No. 2/2000. Shri J.K. Kaushik founded his submissions on the basis of the order of acceptance of the final report to urge that since CBI could not find any material to arraign the applicants as accused persons, the respondents are debarred from initiating departmental enquiry on the same facts and allegations. To fortify his contention, Shri J.K. Kaushik placed reliance on the oft-quoted decision of Hon'ble the Supreme Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Anr.**, AIR 1999 SC 1416. The learned counsel for the respondents seriously challenged the legal position as canvassed by Shri J.K. Kaushik and pointed out that the law as it stands is that there is no bar to initiate the departmental enquiry against the employee, who could not be prosecuted as the scope and the object of two parallel proceedings is entirely distinct and different. To begin with, we may observe that we are not impressed by the submissions made by Shri Kaushik and hasten to observe that the acceptance of the final report does not prevent the respondent-department from making enquiries departmentally according to rules in the matter of alleged misconduct on the part of the applicants. There can be no quarrel on the point that the disciplinary proceedings can be legally continued even where the employee is acquitted in a criminal case as the nature of proof required in criminal case is different from those in the departmental proceedings [**Nelson Motis vs. Union of India**, AIR 1992 SC 1981]. In **Capt. M. Paul Anthony's case (supra)**, various decisions of Hon'ble the Supreme Court, namely (i) **Delhi Cloth and General Mills Ltd. vs. Kushal Bhan** - AIR 1960 SC 806, (ii) **Tata Oil Mill Co. Ltd. vs. Workmen** - AIR 1965 SC 155, (iii) **Jang Bahadur Singh vs. Baij Nath Tiwari** - AIR 1969 SC 30, (iv) **Kusheshwar Dubey vs. M/s. Bharat Coking Coal Ltd.**, AIR 1988 SC 2118, (v) **Nelson Motis vs. Union of India (supra)**, (vi) **State of Rajasthan vs. B.K. Meena** - AIR 1997 SC 13 and

(vii) **Depot Manager, Andhra Pradesh State Road Transport Corpn. vs. Mohd. Yusuf Miyan** - AIR 1997 SC 2232, were considered. In all these cases, the primary question involved for consideration and determination by the Apex Court was whether on account of the pendency of the criminal charge or proceedings against the delinquent employee, the departmental proceedings should be stayed or on the acquittal of the employee concerned, they should be dropped. After reviewing the above referred decisions, the Apex Court in Capt. M. Paul Anthony (supra) arrived at the following conclusions:-

" (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

7. In the case of Capt. M. Paul Anthony (supra), the Superintendent of Police had raided the residential premises of the appellant and had recovered a mining 'sponge gold ball' weighing 4.5 grams and 1276 grams of 'gold bearing sand'. It was on this basis that criminal case was launched against him. On the same set of facts, constituting the raid and recovery, departmental proceedings were initiated against the appellant as the "recovery" was treated to

be a 'misconduct'. On the service of the charge sheet, the appellant raised an objection that the departmental proceedings may be stayed as the basis of these proceedings was the raid conducted at his residence on which basis a criminal case had already been launched against him. The findings recorded by the Inquiry Officer, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected the recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. The Apex Court took the view that it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand as by the pronouncement of the acquittal, the raid and recovery at the residence of the appellant were not proved. It was further observed that in the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing the agony since past 14 years despite having been acquitted by the criminal Court, fresh departmental enquiry cannot be directed to be instituted against him on the same set of facts. In this view of the matter, Capt. M. Paul Anthony was directed to be reinstated in service. The facts of the two cases before us are entirely different and, therefore, the law cited by Shri J.K. Kaushik is of no help to the applicants. The applicants were never prosecuted, charged, tried or acquitted by the criminal Court. The CBI had taken upon itself the task of investigation of certain complaints, of course, involving alleged misconduct and dishonesty on the part of the applicants and

others. On an investigation, it was concluded that sufficient evidence to connect the applicants with the criminal charge could not be collected and, therefore, the CBI submitted a final report, which was ultimately accepted. The acceptance of the final report does not in any manner negate or effaces the allegations of alleged misconduct, if any, on the part of the applicants. If the final report is accepted in a case by the investigating agency, it would not amount to an acquittal of a delinquent employee. It cannot be said that the allegations and the materials sifted by the CBI are identical to the allegations and materials, which may be brought about against the applicants in the departmental enquiry. As held in Nelson Motis case (*supra*), the nature and proof required in a criminal case are different from the departmental proceedings. The object of the two proceedings is also distinct. Since the applicants were never charged, tried or acquitted by the criminal Court, they cannot take the benefit of the order of the acceptance of final report submitted by the CBI to forestall the disciplinary proceedings. The department, in the circumstances, has the authoritative jurisdiction to initiate and continue the departmental proceedings against the applicants unmindful of the acceptance of the final report submitted by the investigating agency, i.e. CBI. As a matter of fact, in view of the gravity and seriousness of the allegations, it would be desirable and appropriate to initiate a departmental enquiry against the applicants and to bring it to a logical conclusion.

8. Now it is the time to consider the second ground put forth by the applicants to challenge the charge sheet. It is accepted at all hands that the applicants were posted in Telecommunication Department in district Pali, which comes under the charge of the General Manager Telecom District (GMTD, for short), Pali. There is no dispute about the fact that GMTD, Pali, being the disciplinary authority, was

competent to serve the charge sheet on the applicants. In the instant case, the charge sheet has been signed and issued by Shri A.K. Bhandari, who at the relevant time, i.e. on 21.06.2001 (the date of signing the charge sheet), was GMTD, Jodhpur. He had no disciplinary control over the applicants. Shri J.K. Kaushik maintained that since the charge sheet was signed and issued by an officer, who was not authorised to do so, the departmental enquiry against the applicant on the basis of an invalid and unauthorised charge sheet cannot be proceeded with. On behalf of the respondents, it was clarified that Shri A.K. Bhandari, GMTD, Jodhpur, was authorised to "look after" the charge of GMTD, Pali, in addition to his own duties till regular incumbent joins and in support of his contention, reliance was placed on Memo dated 03.05.2001 (Annexure R/1) signed by Shri S.N. Malpani, Assistant General Manager (Admn.) in the office of the Chief General Manager Telecommunications, Rajasthan Circle, Jaipur. The contents of the letter may be reproduced for ready reference:-

"In partial modification of this office memo No. STA/8-14/SAG/III/KW/161 dated 03.03.2001 Sh. A.K. Bhandari GMTD Jodhpur will look after the charge of G.M.T.D. Pali in addition to his own duties till regular incumbent joins, without any extra remuneration."

9. The learned counsel for the respondents took the emphatic stand that GMTD, Jodhpur, was required to perform duties of GMTD, Pali, in addition to his own duties and, therefore, for all practical purposes, he has to be treated to be functioning as GMTD, Pali, and therefore, the charge sheet signed by him cannot be faulted on technical grounds. We have given our thoughtful consideration to the matter. There can be no denying the fact that GMTD, Jodhpur, was not at the relevant time functioning as full fledged GMTD, Pali. The former was required by the letter aforesaid to "look after" the charge of the latter. The expression 'look after' simply means that the normal duties requiring urgent and immediate attention are to be

performed by the incharge-officer. If the GMTD, Jodhpur, could discharge all the fuctions, statutory or otherwise, in that event there was nothing to prevent to appoint him as full fledged GMTD for the two divisions of Jodhpur and Pali. The GMTD, Jodhpur, could exercise only administrative or financial powers, but could not exercise statutory powers. This aspect of the matter has been taken care of in paragraph 48 of the Posts & Telegraphs Manual Vol.III, Chapter 1, which deals with the procedure to be followed in disciplinary case against Government servants governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Para 48 of the P&T Manual may profitably be extracted as below:-

" 48. An officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament or Rules, Regulations and Bye-Laws made under various articles of the Constitution."

A bare reading of the above provision makes it clear that an officer, who has been appointed to perform the normal current duties in addition to his own duties in respect of the office which is lying vacant, though can exercise administrative or financial powers, he is not authorised to exercise statutory powers. The statutory powers mean those powers which flow from an Act of the Parliament or Rules, Regulations or Bye-Laws made under various articles of the Constitution. The CCS (CCA) Rules, 1965, undisputedly have statutory force. Rule 14 in Part VI of the aforesaid Rules deals with the procedure for imposing major penalties. Under sub-rule (4), the disciplinary authority has to deliver or cause to be delivered to the delinquent employee a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each articles or charges is proposed to be sustained, etc. The disciplinary authority is supposed to be a statutory authority which is enjoined to perform statutory duties or

exercise statutory powers. A regular GMTD, Pali, who had the power to exercise the statutory powers was the only person competent to act as disciplinary authority to issue and serve the chargesheets on the applicants. The GMTD, Jodhpur, who was authorised to 'look after' the work of GMTD, Pali, in his absence, though could exercise all administrative and financial powers, but was not competent to exercise the statutory power of signing and issuing the charge sheet. These are the functions which do not fall within the connotation of the expression "perform the current duties". By virtue of Rule 48 of the P&T Manual quoted above, the GMTD, Jodhpur, who was merely to 'look after' the work in the absence of the GMTD, Pali, was not the person competent to sign and issue a charge sheet on the applicants as it was one of the statutory functions, which could be discharged by the regular disciplinary authority, i.e., GMTD, Pali.

10. In view of the above, the submission made on behalf of the applicants that the charge sheets have been signed and served upon them are invalid and of no consequence is well merited. On the basis of the invalid, unauthorised and inoperative charge sheet, for the reasons stated above, further disciplinary enquiry would be otiose and of no legal effect.

11. In the result, both the OAs succeed and are allowed. The charge sheets Annexure A/1 dated 21.06.2001 in both the applications are hereby quashed. It is made clear that this order shall not prevent the competent authority to sign, issue and serve a fresh charge sheet on the applicants and to proceed with the departmental enquiry, according to law. No order as to costs.

Sd/-
(Gopal Singh)
Member (A)

प्राणिर राही प्रतिलिपि

Y. dated 1
19/12/01

Sd/-
(O P Gary)
Vice Chairman

R/copy
on 19/12/01
SJK
AD

Received copy
BMO
24/12

Part II and III destroyed
in my presence on 28/12/01
under the supervision of
section officer (J) as per
order dated 13/12/01

MRK
Section officer (Record)