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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 67/2003
रोपनी

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DATE OF DECISION 23.3.2004

Shri Mahesh Kumar Jawa Petitioner

Mr. S.P. Sharma Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Kuldeep Mathur Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. G.R. Patwardhan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

See
(G.R. Patwardhan)
Adm. Member

One copy
(J.K. Kaushik)
Judl. Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 67 / 2003

Date of decision: this the 23rd day of March, 2004

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. G.R. Patwardhan, Administrative Member

Shri Mahesh Kumar Jawa S/o Shri Chhotu Ram, Sepoy, Aged 35 years, R/O Pabu Basti, behind HUDCO Quarter, Lal Sagar, Jodhpur. Hall-Sepoy, Custom Range, Raisinghnagar.

...Applicant

(Rep. By Advocate Mr. S.P. Sharma, for the applicant)

v e r s u s



- (1) Union of India through the Secretary, Ministry of Finance, Deptt. Of Revenue, Govt. of India, North Block, New Delhi.
- (2) Additional Commissioner (P&V), Office of the Commissioner, Central Excise, Jaipur-I, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
- (3) The Superintendent (Vig.), Office of the Commissioner, Central Excise, Jaipur-I, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
- (4) The Superintendent (Inquiry Authority), Custom & Central Excise, Jaipur-302005.
- (5) Assistant Collector, Central Excise & Customs Dept. Customs Division Sriganganagar.
- (6) Assistant Collector, Central Excise & Customs Deptt. Customs Range, Raisinghnagar.

...Respondents

(Rep. By Advocate Mr. Kuldeep Mathur, for the respondents)



ORDER

PER J.K. KAUSHIK, JUDICIAL MEMBER

Shri Mahesh Kumar Jawa has filed this Original Application for the following relief:

" 8. h) The impugned memorandum of charge article vide dated 17.01.2002, issued by the respondent No. 2, may kindly be quashed and set aside.

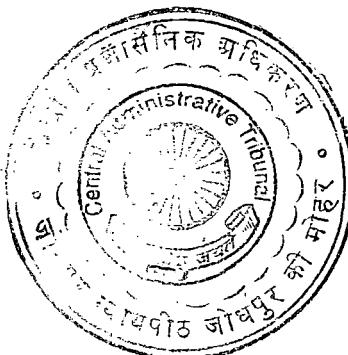
i) The respondent may kindly be directed to drop the disciplinary proceedings, against the applicant, so as to allow the applicant to discharge his duties peacefully with dedication.

j) The respondent may kindly be directed to pay the salary to the applicant for the period of suspension, w.e.f. from 12.4.94 to 08.12.94, with all consequential benefits.

k) Any other appropriate relief which this Hon'ble Tribunal deem just and proper in the facts and circumstance of the case may be passed in favour of applicant.

l) The original application of the applicant may be allowed with the cost".

2. The facts leading to filing of this case, as may be succinctly put, are that the applicant was initially appointed to the post of Sepoy in Central Excise and Custom Department. In the year 1994, an FIR was lodged on 14.01.1994 with the Police Station, Kotwali, Barmer. The name of the applicant was foisted and he was implicated in the matter with the allegation that 8 Jerry Canes of acetic anhydride were stolen by one Shri Jumma with the assistance of applicant and another Sepoy, Hukma Ram, who were guarding the Malkhana. On the mid-night another Guard



was on duty but his case was covered by saying that he was having pain hence he slept on duty and no action was initiated against him. Subsequently, challan was filed before the Learned N.D.P.S. Court, Jodhpur, which was contested by the applicant through his counsel. The applicant was placed under suspension on 12.04.1994. The applicant was discharged at the initial charge stage itself on 19.08.1994 for the reason that there appeared no nexus between the offence alleged and evidence collected by the Police. The suspension of the applicant was revoked on 08.12.1994 and thereafter he was posted in Custom Range, Raisinghnagar, where he continues to discharge his duties for over 8 years. After lapse of over 7 years, the applicant has been issued with a charge-sheet vide memo dated 17.01.2003, on the same set of facts which was the subject matter of the criminal case. The applicant protested against the same and submitted that the authority cannot proceed against the applicant on the same set of facts in which he came to be exonerated by the Criminal Trial Court but the Disciplinary Authority proceeded in the matter and appointed the Inquiry Officer.

3. The impugned order has been assailed on multiple grounds enunciated in para 5 and its sub-paras, which we shall deal a little later in this order.

4. The respondents have resisted the claim of the applicant and have filed an exhaustive reply to the same. A preliminary objection has been taken that the memorandum-dated 17.01.2003 is not covered by the definition of order as defined under Section 19 of the Administrative Tribunals Act, 1985 and the applicant would be at liberty to defend him during the course of inquiry proceedings. The Original Application as such is premature.

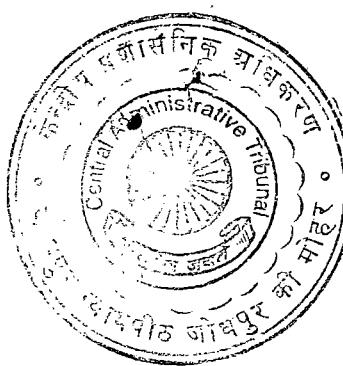
It is averred that article of charges framed against him are different from the charges in the Criminal Case. Shri Chatura Ram, Sepoy who had slept during the course of his guard duty has also been served with a memorandum-dated 16.01.2003 for the negligence on his part in the performance of his duty. There has been a serious case of lack of devotion to duty and disciplinary proceedings have been initiated against the applicant for the same. No order has yet been passed and only an inquiry has been proposed against the applicant. The grounds mentioned in the Original Application have been generally denied.

5. With the consent of both the learned counsel, we have heard the arguments advanced at bar for final disposal at the stage of admission and bestowed our anxious consideration to the pleadings and the records of the case.

[Handwritten signature]

6. Mr. S P Sharma, learned Counsel for the applicant has reiterated the pleadings of the applicant and submitted that after discharge of the applicant by the Criminal Court on merits, it is not permissible for the department to proceed with the enquiry on the basis of the same allegations and charges. He has submitted that the charge sheet relates to the same incidence and the charges are based on the same set of facts and are also to be substantiated by the same evidences/witnesses as were there in the criminal case. He has cited the decision of Supreme Court in case of **M Paul Anthony v. Bharat Gold Mines AIR 1999 SC 1416 para 34 and 35** in support of his contentions.

7. Mr. S P Sharma has next contended that the applicant was discharged from the criminal case as early as 19.4.94 and the incident also relates to the year 1994, the departmental proceedings are started only on dated 11.1.2003 i.e. after a lapse of over eight years. There has been inordinate delay in initiating the disciplinary case and there is no explanation forthcoming regarding such abnormal delay. He has submitted that a ground to this effect has been taken in para 5(d) in the Original Application for which no specific reasons have been given. The charge sheet cannot be also sustained on this count. It is also emphasised that on the date of incident another guard was on duty, but no action has been taken against him. He has cited numerous decisions in support of contentions that we shall deal a little later in our order



8. Per contra, Mr. Kuldeep Mathur, the learned counsel for the respondents has succinctly argued that the applicant was discharged in the criminal case without any trial and question of adducing any evidence did not arise. He has next contended that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. In the criminal case the charge against the applicant was for an offence under Section 379 and 120B of IPC and Section 9, 25A and 19 of NDPS Act whereas in the disciplinary proceeding he is charged for violation of Rule 3(1) (i) (ii) (iii) of CCS (Conduct) Rules and it can not be said that the charges in the criminal case as well as in the disciplinary proceedings are the same. As regards the case of Capt M Paul supra, the same cannot be applied mechanically to each case and facts and circumstances of each case shall have to be considered.

9. Mr. Mathur has further submitted that the proof required in a criminal case is supposed to be on the standard of 'beyond reasonable doubt' whereas in case of departmental proceedings it is 'preponderance of probabilities'. The evidences are yet to come in the departmental case. Thus it is cannot be said that there would be same evidences in criminal case as well as departmental proceedings. Thus the same does not support the case of the applicant. He has also contended that the applicant

has committed a grave misconduct and the proceeding against him cannot be quashed on ground of inordinate delay. Further, a charge sheet vide memo No. 16.1.2003, has also been issued to Shri Chatra Ram Sepoy who had slept on duty on the day of incident.

10. We have anxiously considered the submissions made by the learned counsel for the parties. In case of M Paul Anthony, supra the facts were that the petitioned in that case was imposed the penalty of removal from service in ex parte disciplinary case and subsequently he was acquitted in the criminal case grounded on the same set of facts and same evidences. But the instant case is distinguishable on facts as well as on law in as much as here it is case of discharge from a criminal case. The evidences are yet to come in the departmental case. Thus is cannot be said that there would be same evidences in criminal case as well as departmental proceedings. Thus the same does not support the case of the applicant

11. We shall refer to some of the decisions of the Hon'ble Supreme Court in the case **Deport Manager, A.P. Road Transport Corporation v. Mohd. Yousuf Miya and Others, 1997 SCC (L&S) 548.** In this case also the earlier decisions of the Apex Court in **Delhi Cloth & General Mills Ltd., Kusheshwar Dubey** and **State of Rajasthan v. B. K. Meena, State of Rajasthan v. B. K. Meena & Others, 1996 SCC**



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(L&S) 1455, and several other decisions were considered.

Agreeing with the decision in B. K. Meena, their lordships made the following observations:


 ". The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstance"

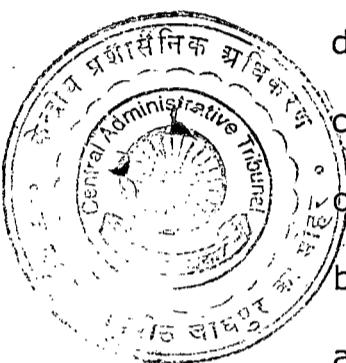
12. The standard of proof, the mode of enquiry and the rules governing the enquiry and the trial in both - the Criminal case and the Departmental enquiry are entirely distinct and different. In this connection, we may also refer to some more decisions of the Supreme Court on the point. **In AIR 1977 SC 1512 - State of Haryana v. Ratan Singh**, the Supreme Court observed that strict rules of evidence are not applicable to departmental enquiries and even hearsay evidence is admissible. Then, even in another case of **Maharashtra State Education Board v. K. S. Gandhi reported in 1991 (2) SLR 682 (SC)**, the Supreme Court observed that strict rules of evidence are not applicable in departmental enquiries.

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13. Scanning through all the judgments cited above, we have not been able to find that there is total prohibition imposed by the Apex Court in holding a departmental enquiry against a Government servant just for the reason that on the same set of allegations, one was even acquitted by the Criminal Court as his guilt not being proved beyond shadow of reasonable doubt. It is well settled law that the degree of proof required in a departmental proceedings and that is required to base the conviction of the accused in a criminal case are not same. In a criminal case unless the guilt of the accused is brought home beyond shadow of reasonable doubt, it is not possible to sustain a conviction. In a departmental proceedings decision is taken on the basis of preponderance of probabilities. Therefore, if the evidence available fall short of the required standard for conviction the Criminal Court has no option but to acquit the accused giving him the benefit of doubt. In a departmental enquiry a finding of guilt can be arrived at on the basis of preponderance of probability. Therefore, we are not convinced with the arguments of the learned Counsel for the applicant that because the applicant has been discharged, it is not permissible for the respondent to proceed with the enquiry. We do not find any impropriety or illegality with the impugned order on the this count.

14. It is in the context we have to see if the delay in initiating the domestic enquiry has prejudiced the applicant herein. This is



because delay defeats justice. An attempt to fix him up afresh on administrative grounds, even though could be genuine, after lapse of almost one decades is abnormally a belated action and provide signs of vindictiveness. In the absence of any valid explanation for the delayed action by 10 years and in the absence of any blame attributable to the applicant for the delayed initiation of the proposed departmental proceedings, could we be persuaded to accept the respondents' stand in going ahead with disciplinary case



15. The essence of the matter is that the Court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay. In considering whether delay has vitiating the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. These principles on the point have been lucidly enunciated in catena of judgements of the highest court of the country. To quote a few of them, a reference may be made to **State of Punjab and others V. Chaman Lal Goyal (1995) 2 SCC 570**, **State of A P V. N Radhakrishnan (1998)**

4 SCC 154, State of M P V. Bani Singh and Another 1990

(2) SLR 798. The same issue has been extensively dealt with by Rajasthan High Court in case of **Kuldeep Sharma V. State of Rajasthan & ors RLW 1999(1) 168.**

16. Now we venture to test the factors in favour of the applicant. Admittedly the applicant was not on duty on the relevant date and the person who was on duty on that date was found sleeping. It is also not certain as to on what date the actual theft has taken place. The basic charge against the applicant is that he did not check the seal/cheqa while taking over the charge and he connived with some of seploys of department and facilitated the theft. There is no direct evidence for the same. The other attenuating circumstances are that why the respondents waited for such a long time. Had the respondents been serious enough they would have shown some degree of promptitude so as to bring home the guilt but such course was not found expedient. There is not even a single word regarding reason for inordinate delay in initiation of disciplinary case and the same remains unexplained. It is also not the case of respondents that the applicant, even remotely, contributed for the delay. Thus it would be safe to reach to an inescapable conclusion neither the charges are so grave nor there is any other reasons so as to justify the continuance of the disciplinary proceeding till it reaches to a logical conclusion.

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17. We also find that the concept of speedy trial has also been propounded in criminal case by the apex court in **A R Antulay V. R S Nayak (1992) 1 SCC 225** and the principles enunciated therein are broadly applicable to the plea of delay in the disciplinary proceedings. Considering the entire facts and circumstances, we are of the firm opinion that there is sufficient justification in putting the disciplinary proceedings to an end in the instant case.

18. Before parting with this case, we would like to record our deep appreciations for the valuable help rendered by the learned counsel for the parties in making the disposal of this case convenient.

19. In the result, the O.A. is allowed. The departmental proceedings initiated vide order dated 17.1.2003 (Annexure A/6) and all subsequent proceedings thereof are hereby ~~are~~ is quashed. The respondents shall now take decision with regard to suspension of the applicant and are also directed to provide all consequential benefits as if no disciplinary proceedings were initiated against him. Costs made easy.

Signature
G.R. PATWARDHAN)
Adm. Member

Signature
(J.K. KAUSHIK)
Judl. Member

Kumawat

copy ^{re} to
~~Bhawan~~
Adv.
Sylhet

Mr
23/10/2013

Part II and III destroyed
in my presence on 23/10/13
under the supervision of
section officer () as per
order dated 18/10/13

D.R. Shrivastava
Section officer (Record) 23/10/2013