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20

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JODHPUR BENCH AT JODHPUR**

**OA 147/2009**

Dated this the 13<sup>th</sup> day of April, 2011

**CORAM**

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER  
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

H.A. Siddiquee son of Shri Gulam Ahmed  
Aged about 59 years resident of K.170  
Gali No.7 Devi Road, Chandna Bhakar,  
Jodhpur at present employed on the post of  
Senior Accounts Officer (TRA) in the office of GMTD,  
BSNL, Janta Super Market, Mehsana-384001. ...Applicant

(By Advocate Mr.J.K.Mishra)

Vs.

1. Bharat Sanchar Nigam Limited, through its Chairman,  
And Managing Director, Corporate Office,  
Bharat Sanchar Bhawan, Harish Chandna  
Mathur Lane, Janpath,  
New Delhi-110 001.

2. Chief General Manger,  
Telecommunications, BSNL  
Rajsthan Circle, Sardar Patel Marg,  
Jaipur-302008.

3. Chief General Manager Telecommunications,  
BSNL, Gujarat Circle, Telephone Bhawan, C.G.Road,  
Navarangpur, Ahmedabad-6. ...Respondents

(By Advocate Mr.Vijay Bishnoi)

**ORDER**

**Hon'ble Mr. Justice S.M.M. Alam, Judicial Member**

Applicant M.A.Siddiquee presently employed on the post of Senior Accounts Officer (TRA) in the Office of the GMTD, BSNL, Mehsana has preferred this Original Application for grant of following reliefs:

“(i) That the impugned charge sheet dated 25./1.2005 (Annexure.A/1) issued by the 2<sup>nd</sup> respondent and all subsequent proceedings thereof including letter/communication dated 1.6.2009 (AnnjexureA/2) may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits including as if the impugned disciplinary proceedings were never in existence.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded.”

2. The brief facts of the case are as follows:

The applicant was initially appointed to the post of LDC on 7.7.69. Thereafter he was promoted to the post of Jr.AO, Accounts Officer and to the post of Senior Accounts Officer. Vide letter dated 18.8.2004 he was promoted to the post Chief Accounts Officer but he same was kept in abeyance in sealed cover since the applicant was placed under suspension in connection with a criminal case instituted against him by the CBI vide FIR dated 30.6.2004 for which Charge

-3-

Sheet dated 13.1.2005 was filed before the Special Court CBI, Jodhpur (Annexure.A3). Thereafter the applicant was issued with a Charge memo for major penalty under CCS (CCA) Rules, 1965 vide Memo dated 25.1.2005 on the allegation that while he was working as public servant in the capacity of officiating Chief Accounts Officer in the office of GMT Telecom District, BSNL, Nagore had demanded and accepted a bribe of Rs. 2000/- from Shri Megh Singh Bhaskar for clearing the pending bills of M/s Telecom Engineering and Service Centre, Sikar pertaining to the annual general maintenance of MARR System of Merta City. and that by doing so he committed gross misconduct and failed to maintain absolute integrity and acted in a manner unbecoming of public servant and he thereby contravened the provisions of Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rules, 1964. It is stated that the above charge sheet has been issued on similar allegation and on the same set of facts which were basis of criminal case instituted by CB and all the witnesses are also same.

3. Further case is that during the criminal charge ten witnesses were examined on behalf of the persecution and 23 documents were produced in evidence and thereafter the judgment was pronounced and by the judgment dated 30.3.2009 (Annexure A4) the applicant was acquitted from all the charges levelled against him. During the trial of the said criminal case it was revealed that actually the complaint was not intended against the applicant rather it was intended against one Shri Rathie an employee of the same

department. It was also found that the amount paid to the applicant was not in connection with any bribe.

4. It has further been said that although the memo of charges along with articles of charges were issued vide order dated 6.10.2006 but even after several sittings on 10.11.2006, 27.12.2006 and 23.7.2008 no substantial progress has been made in the disciplinary enquiry. It has been stated that the subject matter of the memo of charges dated 25.1.2005 (Annexure.A1) issued in connection with departmental proceedings relates to the same incident and based on the same set of facts and law on which the criminal case was filed. The list of witnesses as mentioned in Annexure.A4 of the Charge Memo as well as the name of the witnesses given in the charge sheet are almost same and on similar facts and similar evidence the entire prosecution case was thrown out by the criminal court and the applicant was acquitted and so on similar charges and on similar set of witnesses it will be unjust, unfair and rather oppressive to allow the departmental proceedings to continue. The applicant vide notice for demand of justice dated 12.4.2009(A9) prayed to drop the departmental proceedings but vide letter dated 1.6.2009 (Annexure.A10) the respondents turned down his request and so the applicant had no alternative except to file the OA for quashing and setting aside the entire departmental proceedings.

-5-

5. On filing of the application notices were issued to the respondents and in compliance of the notice the respondents appeared and filed reply of the OA. As per their reply their preliminary objection is that the application is barred by limitation as the cause of action to file the OA arose to the applicant on 25.1.2005 when the charge memo was issued. It has been further contended that though the applicant was acquitted by the criminal court in the criminal trial but that cannot be a ground of dropping the disciplinary proceedings against the applicant as it is settled provision of law that decision of criminal trial cannot affect the proceedings of the departmental enquiry because the departmental proceedings are totally independent proceedings and each requires to be considered in the backdrop of its own facts and circumstances. It has been further stated that there is no legal bar to proceed with the departmental enquiry inspite of the fact that the acquittal is recorded in the criminal charge and so the OA should be dismissed on this ground alone. The other facts mentioned in the OA with regard to initiation of criminal proceedings on same charges which are levelled in the charge memo and the acquittal of the applicant in respect of those charges have not been denied in the reply.

6. Shri J.K.Mishra advocate appeared on behalf of the applicant and Shri Vijay Bishnoi, advocate appeared on behalf of the respondents and argued the case.

-6-

7. During the course of arguments learned advocate of the applicant submitted that it has not been denied by the respondents in their reply that the charges on which the applicant was tried before the CBI Court and the charges levelled against the applicant in the charge memo issued in connection with initiation of disciplinary proceedings against the applicant are same and so under such circumstances the Apex Court in its several decisions has held that where the charges are identical and the delinquent employee had already been acquitted on those charges by the criminal court the disciplinary proceedings should not be resorted to. In support of his argument the learned advocate of the applicant has placed reliance upon the decision of the Apex Court reported in *2008 (4) SCC Page.1 in the case of Union of India and others Vs. Norman Singh Sekhawat*. He has further placed reliance upon the decision of the C.A.T. Bombay Bench given in the case of *Madan Damodar Sanap and others Vs. Union of India and others reported in 2011(1) SLJ 268 CAT Bombay*.

8. On the other hand the learned advocate of the respondents submitted that initiation of departmental proceedings is permissible even after the judgment of acquittal is recorded by the criminal court in connection with similar nature of charges. He has submitted that the acquittal of delinquent by the criminal court would not preclude an employer from taking action in the disciplinary proceedings if it is otherwise permissible.

-7-

9. On considerations of the arguments advanced on behalf of both sides, we have no doubt that the initiation of departmental proceedings is permissible even after the judgment of acquittal is recorded by the criminal court. But the Hon'ble Apex Court in a catena of its judgments has held that where the charges in criminal case and the charges levelled in departmental proceedings are absolutely identical ordinarily the disciplinary enquiry should not be resorted to. To support our view we would like to refer some of the judgments of the Hon'ble Apex Court in this regard. In the case of *Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited and another reported in X-1999(3) AISLJ (SC) 152* the Hon'ble Apex Court while dealing with the question as to whether the departmental proceedings can be legally continued even after acquittal in criminal case, held at Para 33 in the following manner:

" There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles there from. The findings recorded by the Inquiry Officer a copy of which has been placed before us, 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 recovery. They were the only witness 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 witness 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

-8-

appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the exparte departmental proceedings, to stand."

10. In the case of G.M.Tank Vs. State of Gujarat and another, reported in XI-2006(3) AISLJ 312 the Apex Court while dealing with the question whether after honorable acquittal of the employee in criminal case holding him guilty of same evidence by disciplinary authority was fair or not, the Apex Court at Para 20 held in the following manner:

"It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges levelled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C.Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar(verbatim) set of facts and evidence. The appellant has been honorably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice."

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-9-

11. Thus the above referred two judgments of the Apex Court clearly lays down the law that where under similar charges and on similar evidence relied by the prosecution an employee had been acquitted in a criminal case it is unjust and unfair that on similar facts and evidence he should be proceeded in a disciplinary enquiry and punished. The judgments of the Apex Court shows that in both the cases the Apex Court set aside the dismissal of the delinquent employees.

12. During the course of arguments, the applicant's lawyer has also placed reliance upon the decision of the Hon'ble Apex Court given in the case of *Union of India and others Vs. Norman Singh Sekhawat, 2008(4) SCC-1*. Para 24 of the said decision is relevant which also says that where the charges in criminal case and the charges in departmental enquiry are absolutely identical ordinarily the disciplinary enquiry should not be resorted to. Learned advocate of the applicant has also placed reliance upon the decision of the Bombay Bench of the CAT in the case of *Madan Damodar Sanap Vs. Union of India and others*. Paras 28 and 29 of the said decision are relevant in connection with this case which are being quoted below:

"28. After consideration of all the case law cited by both the sides, we note that it is now a settled proposition of law that when the departmental enquiry and criminal case are grounded on same set of facts and if the evidence produced in both is identical, then uncompleted and honorable acquittal of the delinquent employee, the departmental enquiry cannot be allowed to proceed. The

-10-

ratio of judgments in *G.M. Tank and Cap. M. Paul Anthony* has not been diluted by the Hon'ble Supreme Court in any of its subsequent judgments.

29. On the basis of minute enquiry into the nature of charges, details of evidence and findings of the Criminal Courts, the inescapable conclusion that emerges is that all the applicants have been honourably acquitted in their respective criminal cases. In most of the cases, specific findings about falsity of complaint or motive of complainant have been recorded by the Criminal Court. Though it is true that the purpose of conducting the two proceedings are different and the standard of proof is also different. However, under this plea of difference in the standard of proof, the respondents cannot be allowed to inquire into the very same allegations especially when the said allegations are not found to be true by the learned Criminal Court. The respondents are relying on the very same evidence in the departmental enquiry as was collected by the CBI and tested before the criminal Courts and they do not have any additional evidence to prove the charges in the departmental enquiry. We also observe that the departmental charge sheets in all these cases are pending for many years and some of the applicants have already retired."

13. After discussing the principles of law, as laid down by the Apex Court and other courts on the subject we have now to see whether in the instant case the charges leveled in the charge memo and the charges leveled against the applicant on which he was tried before the CBI Court were same and absolutely identical? The applicant at Para 4 at page 5 has incorporated the charge on the basis of which he was tried in the criminal case, which were as follows:-

(i) the accused Chief Accounts Officer, BSNL, Nagaur working as public servant, demanded Rs. 2000/- from complainant

1/30

-11-

Meghasingh Bhaskar on dated 27-28 May 2004 in the office of GMTD BSNL, Nagaur.

(ii) The accused Chief Accounts Officer BSNL Nagaur working as public servant, accepted illegal gratification of Rs. 2000/- on dated 1.7.2004 at about 12.30 hours by abusing his position.

At page 4 of the OA the applicant had also incorporated the allegation levelled in the charge memo (Annexure.A1) which is as follows:

“That he while working as public servant in the capacity of officiating Chief Accounts Officer in the Office of General Manager, Telecom District, BSNL, Nagaur had demanded and accepted a bribe of Rs. 2000/- as illegal money from Shri Megh Singh Bhaskar for clearing the pending bills of M/s Telecom Engineering and Service Centre, Sikar pertaining the annual general maintenance of MARR System of Merta City. By his above acts of commission, Shri H.A.Siddiqui committed gross misconduct and failed to maintain absolute integrity and acted in a manner unbecoming of a public servant and he thereby contravened provisions of Rule No.3(1)(i)(ii)(iii) of CCS Conduct Rules, 1986.”

The comparative study of the charges levelled in the criminal case for which the applicant was tried and acquitted and the charge levelled in the departmental proceedings seems to be identical as the applicant is facing only one charge of accepting bribe of Rs. 2000/- from Shri Megh Singh Bhaskar for clearing the pending bills. But it

1/31

- 12 -

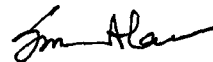
appears and is proved that this charge was not proved before the criminal court and the applicant has been acquitted on the said charge by the criminal court and so we are of the view that it would be sheer waste of time and futile exercise to allow the respondents to continue the disciplinary enquiry on the similar charge which charge was not established before the criminal court and he was acquitted of the said charge. Thus we are of the view that the applicant has got a good case in his favour and the reliefs as sought for can be granted, especially in view of the Annexure.A11 (letter dated 3.7.2009 of Shri R.B.Goswami, Dy.General Manager addressed to Shri Beerbal Prasad,Dy.CVO) annexed at page 98 of the OA whereby the department itself has recommended to drop the charges against the applicant.

14. In the result, we find merit in this application and as such the same is hereby allowed and Annexures.A1&A2 are quashed and set aside. Respondents are directed to drop the entire disciplinary proceedings at once which is pending against the applicant. As a result of this order the applicant will be entitled for all consequential benefits. In the circumstances of the case, there will be no order as to costs.

Dated this the 13<sup>th</sup> day of April, 2011



**SUDHIR KUMAR**  
**ADMINISTRATIVE MEMBER**  
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**JUSTICE S.M.M. ALAM**  
**JUDICIAL MEMBER**