

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 565 of 2011

Monday, this the 09th day of April, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

D. Alim Manikfan,
Registrar of Co-operative Societies,
(Retired from Union Territory of Lakshadweep)
Residing at :- Divehi Palace, House No. 28/3026-A
Thuvassery Surendran Road,
Pottamal, Kuthiravattom (P.O),
Kozhikode – 673 016.

- Applicant

(By Advocate Mr. M.V. Thamban)

Versus

1. Union of India represented by
The Secretary, Ministry of Agriculture,
Department of Agriculture and Co-operation
Krishi Bhavan, New Delhi – 110 001.
2. Smt Chhavi Jha,
Director / Inquiry Officer
Ministry of Agriculture, GC Division
Department of Agriculture and Co-operation
Krishi Bhavan, New Delhi – 110 001.
3. The Administrator,
Union Territory of Lakshadweep
Kavaratti Island – 682 555.

- Respondents.

(By Advocate Mr. Millu Dandapani, ACGSC for R1&2
Mr. S. Radhakrishnan for R-3)

This application having been heard on 21.03.2012, the Tribunal
on 09.04.12 delivered the following:

ORDER

By HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A has been filed by the applicant challenging the disciplinary
proceedings initiated against him by the respondents simultaneously with that

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of criminal proceedings on the same subject matter. The applicant prays for a direction to the respondents to drop all the departmental proceedings against him on the basis of his acquittal by the CBI Court and to grant all retiral benefits with interest.

2. While the applicant was holding the post of Registrar of Co-operative Societies, Lakshadweep, he was given additional charge of Port Officer for the period from 1996 to 2004. Under the scheme called 'training in rating', the Lakshadweep Administration had been sponsoring candidates from Lakshadweep Islands to the recognised training institutes. After completing the training successfully, the candidates were issued with continuous discharge certificate (CDS) to enable them to get employment in merchant ships. There was a Circular No. 12/2003 dated 18.08.2009 issued by the Director General (Shipping) instructing not to admit the candidates sponsored through third parties. As the applicant allegedly violated the instructions contained in the above said circular by sponsoring 30 candidates for pre-sea training through an agent vide letter dated 13.10.2003, a CBI enquiry was initiated against him. The applicant was acquitted by the CBI Court vide Annexure A-5 judgement dated 25.08.2010. He retired from the post of Registrar of Co-operative Societies on 31.05.2007. The applicant was issued with a memo of charges on 12.10.2007. Even though the enquiry officer had submitted a report holding that none of the 3 charges against the applicant was proved, it was not accepted by the 1st respondent and a further enquiry was ordered. The enquiry officer submitted further enquiry report on 10.02.2011 in which she reiterated the earlier findings. Disagreeing with both the reports of the enquiry officer, the disciplinary authority held the charge-I as proved, Charge-II as partly proved and Charge-III as not conclusively



proved and the case was referred to the Central Vigilance Commission (CVC) on 26.04.2011 for 2nd stage advice. The CVC agreed with the recommendation of the disciplinary authority via letter dated 18.05.2011 and advised a suitable penalty in the form of cut in the pension to be decided by the disciplinary authority. Aggrieved, the applicant has filed this O.A.

3. The applicant contended that the memo of charges was issued to him by Annexure A-1 dated 12.10.2007 much after his retirement which is not permissible under the law. On the very same allegations in Annexure A-1, the CBI has filed a charge sheet before the CBI Court, Kavarati. He was acquitted by the CBI Court. The departmental action cannot be initiated in the year 2007 for an incident that allegedly took place in 2003-04. If an employee is acquitted in a criminal trial, he cannot be proceeded against in a departmental proceedings on the very same charges. The applicant has retired as early as 30.05.2007. A major part of his retiral benefits are withheld.

4. In the reply statement filed by the respondents 1 and 2, it was submitted that the sanction of the President under Rule 9 of the CCS (Pension) Rules, 1972, was obtained for initiation of disciplinary proceedings against the applicant under Rules 14 and 15 of the CCS (CCA) Rules, 1965. The enquiry officer vide report dated 22.12.2009 held all the 3 articles of charges against the charged officer as not proved. As the disciplinary authority disagreed with the findings of the enquiry officer, the case was remitted to the enquiry officer on 07.05.2010 for further enquiry. The enquiry officer submitted further enquiry report on 10.02.2011 in which she had reiterated the earlier findings. In accordance with the provisions of Rule 15(2) of the CCS (CCA) Rules, 1965, copies of both the enquiry reports alongwith

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detailed reasons of disagreement by the disciplinary authority and a copy of CVC's 2nd stage advice were forwarded to the applicant on 14.06.2011 for submitting his representation on the same. The applicant vide his letter dated 04.07.2011 has submitted his representation which has carefully considered by the disciplinary authority and decided to refer the case to the Union Public Service Commission (UPSC) for their advice in regard to quantum of penalty. Hon'ble Supreme Court has held in various judgements, **State of Rajasthan vs. B.K. Meena and Others** [1996 (6) SCC 417], **Capt. M. Paul Antony vs. Bharat Gold Mines Limited** [1999 (3) SCC 679], **Kendriya Vidyalaya Sangathan and Others vs. T. Srinivas** [2004 (6) Scale 467] and **Noida Entrepreneurs Association vs. Noida** [JT 2007 (2) SC 620] that merely because a criminal trial is pending, a departmental enquiry involving the very same charges as is involved in the criminal proceedings is not a bar. As per Rule 9 of the CCS (Pension) Rules, 1972, the retirement benefits can be withheld either in full or part if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service. There is no violation of rules in disciplinary authority's order for further enquiry. All relevant documents were supplied to the applicant in time at each stage as required under CCS (CCA) Rules, 1965. The applicant retired on 31.05.2007 and a charge memo dated 12.10.2007 was issued to the applicant under sub clause (ii) of clause (b) of sub-rule (2) of Rule 9 of the CCS (Pension) Rules, 1972, which is well within the time. The charge sheet was issued within 4 years of commission of the irregularities. The learned Special Judge for CBI cases, Lakshadweep has held that having regard to the authoritative pronouncements cited by the counsel, at the most, it is only a matter for initiating disciplinary action against him for misleading the superiors. Therefore, the prayer of the applicant for dropping the disciplinary proceedings



in view of the judgement of the CBI Court and for releasing all retiral benefits has no merit.

5. The 3rd respondent in his reply statement submitted that an acquittal in the criminal proceeding is not a ground to drop the departmental action against the applicant as per CCS (CCA) Rules, 1965 and the disciplinary authority can take action against the applicant on the merit of the enquiry report.

6. The applicant in his rejoinder statement submitted that the memo of charges though issued on 12.10.2007 was received by him only on 15.10.2007 and hence the entire proceedings are time barred. It is not proper to initiate disciplinary proceedings and proceed with the same charges as on the same evidence in the criminal trial. There is no allegation to prove or proof or finding with regard to any loss caused to the Government. The CBI Court as well as the enquiry officer have categorically found that there was no loss to the Government. No charge is proved against the applicant in the disciplinary proceedings. Even the witnesses examined by the Hon'ble CBI Court are the only witnesses before the enquiry officer too.

7. In the additional reply statement filed by the respondents 1 and 2, it was submitted that the charge-sheet was issued on 12.10.2007 against the applicant which is within the limitation period of 4 years. The disciplinary authority had recorded the reasons for disagreement with the enquiry report.

8. We have heard Mr. M.V. Thamban, learned counsel for the applicant and Mr. Millu Dandapani, learned ACGSC for respondents 1 and 2 and Mr. S.



Radhakrishnan, learned counsel for the respondent No. 3 and perused the records.

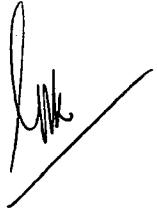
9. The applicant has sought quashing of Annexure A-3 order and all further proceedings pursuant thereto. We find that Annexure A-3 dated 07.05.2010 is an order of the Government of India remitting the case of the applicant to the enquiry officer to make further enquiry and report, in view of certain facts and circumstances of the case based on which the disciplinary authority felt that the enquiring authority should make further enquiry. In the enquiry report submitted by the enquiring officer on 22.12.2009, it was held that the charges against the applicant were not proved. Annexure A-3 order is not for a de novo enquiry by another enquiry officer. The same officer who conducted the enquiry was directed to consider certain aspects of the case and submit a 2nd enquiry report. The 2nd enquiry report was submitted on 10.02.2011. In both the enquiry reports, it was held that the charges were not proved. Both the enquiry reports alongwith the reasons for disagreement by the disciplinary authority and a copy of CVC's 2nd stage advice were forwarded to the applicant on 14.06.2011 for submitting his representation on the same. Vide his letter dated 04.07.2011, the applicant had submitted his representation. The disciplinary authority subsequently referred the case to the UPSC for advice in regard to quantum of penalty. Meanwhile, the applicant has filed this O.A. on 26.05.2011. The applicant could have challenged the institution of departmental proceedings against him in the year 2007 or 2008. In the present O.A, he is challenging the remitting of the case for further enquiry to the enquiring authority and sought other reliefs. Both the enquiry reports being in his favour what is to be challenged by the applicant, if he so desires, is the order of the disciplinary authority to be made after

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considering his representation dated 04.07.2011. It is premature at this stage for this Tribunal to interfere. Having regard to the fact that the applicant has retired on 31.05.2007, it is in his interest that the disciplinary proceedings are completed at the earliest. Accordingly, it is ordered as under:

10. The respondents are directed to complete the disciplinary proceedings against the applicant instituted on 12.10.2007 as early as possible, at any rate within a period of 60 days from the date of receipt of a copy of this order. The applicant will be at liberty to challenge the order of the disciplinary authority, if he so desires.
11. The O.A. is disposed of as above without going into the merits of the case. No costs.

(Dated, the 09th April, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.