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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No.

783/89

198

DATE OF DECISION 12.12.1989

M.Z.Parcha & Another Petitioner

Mr.D. V.Gangal Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Mr.P.M.Pradhan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member(J),

The Hon'ble Mr. M.Y.Priolkar, Member(A).

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.783/89.

M.Z.Parcha & Another.

... Applicants

V/s.

Union of India & Another.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Mr.D.V.Gangal, advocate
for the applicant.

Mr.P.M.Pradhan, counsel
for the respondents.

Oral Judgment:-

[Per Shri M.B.Mujumdar, Member(J)] Dated: 12.12.1989

The applicants Mr.M.Z.Parcha and Mr.M.K.Budhkar are working as Labourer 'B' and Fitter 'B', respectively, in the Machine Tools Prototype Factory at Ambarnath. For some incident which had happened on 23.3.1981, a statement containing one article of charge was served on them along with memorandum dt. 15.5.1981. The charge was that on that date they had physically assaulted Mr.T.S.Srinivasan, Foreman, Works Inspection, while on duty. For the same incident the police had filed a charge sheet against the applicant and five others under sections 143, 147, 342 and 427 read with 149 of the Indian Penal Code in the Court of the Judicial Magistrate First Class at Ulhasnagar. The case was numbered as Criminal Case No.153/81. By an exhaustive judgment delivered on 13.1.1987, the learned Judicial Magistrate acquitted all of them including the applicants holding that the prosecution had failed to prove the charges against them beyond reasonable doubt. May it be noted that they were not acquitted by giving them benefit of doubt or on some technical ground. The State did not prefer

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appeal against ~~that~~ judgment. But before that, by order dt. 4.2.1984 the Disciplinary Authority i.e. the General Manager of the Machine Tools Prototype Factory, Ambarnath accepted the findings of the Enquiry Officer that the article of charge was proved and imposed the penalty of removal from service on the applicants w.e.f. the date of order. The applicants ^{had} preferred ^{an} appeal against that order, but that was dismissed on 18.10.1985.

2. The applicants then filed O.A. No.261/86 and 400/87 challenging ^{the} order of removal from service. Both these applications ^{as} well as another application bearing Original Application No.401/87 filed by Mr.Nelson J.Motis were heard together on 30.9.1988 by the Division Bench comprising of Mr.Justice K.Madhava Reddy, the then Chairman of the Tribunal and Mr.S.D.Prasad, Administrative Member. The Division Bench quashed the findings recorded in the departmental proceedings as well as the penalty imposed on the applicants ^{by} relying on the judgment of the Full Bench of this Tribunal in P.K.Sharma V/s. Union of India delivered on 6.11.1987. After stating the facts and some contentions the Division Bench passed the following operative order:

"Suffice to direct that the penalty imposed on the petitioner is set aside and that he shall be reinstated in service. However nothing said herein shall preclude the respondents from taking up the proceedings afresh in accordance with law. If on consideration of the facts and circumstances of this case the respondents choose to drop the proceedings, the matter ends there. In the event of the respondents deciding not to drop the proceedings they shall furnish a copy of the Inquiry Officer's Report to the Petitioner and give him an opportunity to make his representation before recording the findings. They shall also consider the other objections raised by the petitioner. In this context it will not be out of place to mention that the criminal case launched in respect of these very charges has by now ended in acquittal and that order has become final. That fact also shall be kept in view

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in deciding whether the proceedings should be dropped or not. Subject to the above observations, these applications are allowed and the findings on the charges and the penalty imposed are quashed. There will be no order as to costs."

3. By separate orders passed on 15.12.1989 both the applicants are reinstated. But by notice dt. 22.2.1989 the General Manager of the Factory informed the applicants that it was proposed to hold further inquiry in respect of the disciplinary proceedings. The applicants were further informed that it was proposed that they should be deemed to have been placed under suspension during the period from 4.2.1984, i.e. the date of removal from service to 17.2.1989, i.e. the date on which they had resumed duty, in terms of C.C.S. (CCA) Rules, 1965. The applicants submitted representations but these are not accepted and the applicants were informed by letters dt. 11.5.1989 that they may make representations, if any, against the report of the Enquiry Officer's report which were sent to them.

4. The applicants have filed this application on 1.9.1989 challenging the decision of the respondents to continue further departmental inquiry against them as well as the decision that the applicants should be deemed to have been under suspension during the period 4.2.1984 till 17.2.1989.

5. The respondents have filed their reply opposing the admission and interim relief.

6. We have just now heard Mr.D.V.Gangal, learned advocate for the applicants and Mr.P.M.Pradhan, learned advocate for the respondents.

7. By order dt. 12.10.1989 we have restrained the respondents from continuing with the departmental proceedings against the applicants until further orders. By order dt. 15.11.1989 we had adjourned the case to

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today for deciding the question of admission and interim relief, with a direction that if possible the application will be finally disposed of. As the facts are no more in dispute we now admit the application and dispose it of finally.

8. It is clear from the record that the charges against the applicants in Criminal case No.153/81 as well as the charges against them in the departmental proceedings are based on the same facts. It is pointed out by the Supreme Court in Corporation of the City of Nagpur v/s. Ramchandra G.Modak A.I.R. 1986 S.C. 626, that normally, where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its ~~(discretion)~~ ^{is} in any way fettered. The Supreme Court has further pointed out that the concerned authority should take into consideration the fact that quite some time has elapsed since the departmental inquiry was started while deciding whether it would be really worthwhile to continue the departmental inquiry in the event of the acquittal of the accused.

9. The above judgment of the Supreme Court is relied upon by the Hyderabad Bench of this Tribunal in B.P.Mamdelu v. Chief Executive Nuclear Fuel Complex A.T.R. 1989(2) CAT 568. In para 6, the Division Bench has held that despite honourable acquittal by the Criminal Court the discretion remains with the disciplinary authority to continue with the departmental proceedings.

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But the discretion must be exercised judicially and some valid reasons should be given for differing with the conclusions of the criminal court. The bench has further held that such a decision would always be subject to judicial review. Mr. Pradhan showed us the relevant file. But we could not find any reason from the noting in the file why the Disciplinary Authority has decided to continue further with the departmental inquiry in spite of the acquittal of the applicants by Criminal Court and in spite of the fact that the incident has taken place in 1981. The show cause notice dt. 22.2.1989 also does not indicate any satisfactory reason in support of the decision to continue further with the inquiry. There cannot be any doubt that in view of the judgment of this Tribunal in O.A. 261/86 and 400/87 the respondents were not precluded from taking up the proceedings afresh in accordance with the law or from dropping the proceedings. In the present case they have decided to continue with the proceedings. But as already pointed out, that decision will be subject to judicial review by this Tribunal. After considering all the facts and circumstances of the case, we feel that it will not be in the interest of justice to allow the respondents to continue with the departmental inquiry against the applicants. We further feel that it will not be in the interest of the respondents' administration also to continue with the inquiry. We are, therefore, inclined to quash the decision of the respondents to continue with the departmental proceedings against the applicants.

10. As regards the second main prayer, viz. for quashing the order of respondents directing that the applicants should be deemed to be under suspension from

4.2.1984 to 17.2.1989 in terms of rule 10(4) of the CCS(CCA) Rules, 1965, we find that the point is directly covered by the decision of this Tribunal in N.V.Karwarkar v. Administrator of Goa, Daman and Diu & Ors. A.T.R. 1988(2) CAT 232. After considering the provisions of Rule 10(3) and 10(4) of the CCS(CCA) Rules, 1965 in the light of the judgment of the Supreme Court in Khemchand v. Union of India, A.I.R. 1963 S.C. 687 this Tribunal has held as under:


"To avoid discrimination in such a case the only course open is to interpret Rule 10(4) as it now stands in a manner consistent with the provision of the Rule 10(3). If that be so we must hold that the automatic suspension from the date of original punishment contemplated in Rule 10(4) will come into operation only if the delinquent Government Servant was already under suspension on that date as in Rule 10(3). This would resolve the apparent contradiction between 10(3) and 10(4) bearing in mind that the Supreme Court has upheld the validity of a provision similar to Rule 10(4) in Khemchand's case. We, therefore hold that the retrospective suspension of the applicant by the order dated 10.8.1984 purporting to be under Rule 10(4) of the CCS(CCA) was invalid and that such suspension can operate only prospectively i.e. on and from 10.8.1984 till the date of revocation of suspension. The applicant would be entitled to get full pay and allowances and increments due to him from time to time during the period 27.5.1979 to 9.9.1984. "

10. It is not disputed in this case that applicants were not under suspension when they were removed from service. Hence we have to hold that the deemed suspension of the applicants from 4.2.1984 to 17.2.1989 was not legal and proper. In result we pass the following order:

ORDER

The order dt. 11.5.1989 at Annexure 'A' to the application deciding to continue the Departmental Proceedings against the applicant is hereby quashed and set aside. The order

in the letters dt. 10.5.1989 at Annexure 'B' and 'B-1' to the application deciding to deem the applicants to be under suspension from 4.2.1984 to 6.12.1989 is also quashed and set aside with consequential benefits due to them according to rules including full wages for that period. Parties to bear their own costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).

Judgment dt. 12.12.89
Send to parties
on 16.2.90.
T. Lokesh

Judgment dt. 12.12.89
served on R. No. 2
on 17.2.90.
SSY
26/2/90

Judgment dt. 12.12.89
served on R. No. 1
on 22/2/90.
SSY
6/3/90