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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. ~~63/89~~ 631/89 198
T.A. No.

DATE OF DECISION 31.8.90.

Nelson Motis. Petitioner

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

Versus

Union of India and ors Respondent

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

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The Hon'ble Mr.

G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr.

M.Y.Priolkar, Member(Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement ? X
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(G.Sreedharan Nair)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH
NEW BOMBAY.

631/89
O.A. 631/89.

Nelson Motis Applicant.
versus.
Union of India and others... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicant- Shri D.V.Gangal, Advocate.

For the respondents- Shri P.M.Pradhan, Advocate.

Date of hearing- 29.8.90.

Date of Judgment and order- 31.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :-

The applicant, a Turner 'A', under the respondents was proceeded against by the issue of a Memorandum of Charges dated 7.4.1981 for acts subversive of discipline and unbecoming of a Government servant, constituting gross misconduct. There were 7(seven) articles of charges, of which Articles I to 4 related to certain acts alleged to have been done by the applicant on 17.3.1981 while Articles 5 to 7 were in respect of certain acts stated to have been done on 23.3.1981. The applicant denied the charges. An enquiry was conducted. The Inquiry Officer reported that the charges are established. The Disciplinary Authority accepting the report of the Inquiry Officer, by the order dated 4.2.1984 imposed upon the applicant the penalty of removal from service. The appeal preferred by the applicant was rejected by the order dated 8.10.1985.

2. The applicant filed O.A. 401/87 before this Tribunal assailing the order imposing the penalty. That application was heard alongwith O.A. 261/86 and O.A. 400/87- two other applications filed by the colleagues of the applicant - against whom also disciplinary proceedings were initiated and penalty was imposed. By the order dated 30.9.1988,

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the Tribunal quashed the order imposing the penalty, for violation of Article 311 of the Constitution of India, following the decision of the Full Bench in P.K.Sharma vs. Union of India. The Bench took note of the fact that criminal proceedings were initiated against " all the three applicants which ended in acquittal," and hence observed that in case the respondents decided to continue with the proceedings, this fact also shall be kept in view in deciding whether ^{the} proceedings should be dropped or not.

3. By the order contained in the communication dated 11.5.1989, the 2nd respondent informed the applicant that his case was considered in the light of the observations of the judgment of the Tribunal and that it has been decided to continue ~~with~~ the disciplinary proceedings.

4. By the order dated 10.5.1989 issued by the 2nd respondent, it was ordered that the applicant shall be deemed to be under suspension under subrule(4) of Rule 10 of the CCS(CC&A) Rules, 1965, for short, the Rules, from the date of removal from service, namely, 4.2.1984 till the date of reinstatement pursuant to the order of the Tribunal, namely, 16.2.1989.

5. The applicant has assailed both these orders. In respect of the order ~~for~~ the proceeding with the enquiry, it is contended that since the applicant has been acquitted in the criminal proceeding, the departmental proceedings cannot be continued. As regards the order relating to the deemed suspension, the plea is that sub-rule (4) of Rule 10 of the Rules is arbitrary and unreasonable and is ultra vires of Articles 14 and 16 of the Constitution of India.

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6. In the reply filed on behalf of the respondents, the reliefs claimed by the applicant are resisted. It is pointed out that the charges in the departmental proceedings and in the criminal proceedings were entirely different, and, as such, the departmental proceedings can be continued. It is pointed out that actually the departmental proceedings were completed earlier and the penalty was imposed on the applicant by the order dated 4.2.1984, while the judgment of the Magistrate was delivered only on 13.11.1987. As regards the challenge against the order of deemed suspension and the contention regarding the validity of sub-rule (4) of Rule 10 of the Rules, the respondents stated that in view of the decision of the Supreme Court in Khem Chand vs. Union of India, AIR 1963 SC 687, ^{it is} ~~they~~ cannot be accepted.

7. The attack against the order of the 2nd respondent dated 11.5.1989 under which the decision was taken to proceed with the enquiry may be considered first. There is nothing in the order ⁱⁿ ~~of~~ OA 401/87 precluding the respondents from proceeding with the enquiry. The order imposing the penalty was quashed on the sole ground that the copy of the report of the Inquiry Officer was not furnished before the penalty was imposed. It was made clear by the Bench that on any of the other contentions no opinion is being expressed. Of course, it was observed that before the Disciplinary Authority decides as to whether the proceedings should be dropped or not, the fact that the criminal proceedings initiated against the applicant have ended in acquittal has also to be kept in view.

8. The impugned order discloses that the observation of the Tribunal was taken into account by the 2nd respondent before deciding to continue ~~with~~ the proceedings. Hence, the order cannot be faulted.

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9. Counsel of the applicant submitted that when the applicant has been acquitted in the criminal proceedings, departmental proceedings cannot be continued. I am unable to accept this proposition. Indeed, it has been held in a number of decisions of this Tribunal that despite the acquittal in the criminal proceedings, it is open to the Disciplinary Authority to continue ~~with~~ the disciplinary proceedings or even to initiate disciplinary proceedings. The only exception is where the charges before the criminal court and the imputations in the disciplinary proceedings are identical, being based on the same set of facts, and sought to be established by the same witnesses and/or documents.

10. The respondents have mentioned in the reply at para 5(b) the scope of ¹⁵charge before the criminal court and the points for determination which arose therein. It was only in respect of certain incidents that took place on 23.3.1981. The allegation was that the applicant was a member of an unlawful assembly and alongwith others wrongfully confined some officers, and also in furtherance of their common intention committed mischief by breaking the glasses of the window of the factory. As stated earlier, Articles 1 to 4 of the Memorandum of Charges issued against the applicant did not at all relate to any act on 23.3.1981. No doubt, Articles 5 to 7 were in respect of certain acts stated to have been done on 23.3.1981. But, it cannot be said that they are the same acts which led to the criminal proceedings and were the subject matter of the charge in the criminal court.

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11, Counsel of the applicant invited my attention to the decision of a Bench of this Tribunal in ^{M. Z.} ~~Par~~ Paricha and another v. Union of India / 1990 (2).SLJ (CAT) 242). It was stated that the applicants therein are the colleagues of the present applicant and that in view of their acquittal in the criminal proceedings, a Bench of this Tribunal quashed the decision of the respondents to continue the departmental proceedings against them. The decision is of no assistance to the applicant as it was clearly held therein that " it is clear from the record that the charges against the applicants in the criminal case as well as the charges against them in the departmental proceedings are based on the same facts". Incidentally, it is also to be pointed out that the Bench referred ^{to} the decision of the Supreme Court in Corporation of the City of Nagpur v. Ram Chandra G. Modak, (AIR 1986 SC 626) where it was held that merely because the accused is acquitted the power of the authority concerned to continue with the departmental enquiry is not taken away, nor is its discretion in any way fettered."

12. In view of the foregoing, the attack against the order of the 2nd respondent dated 11.5.89 to continue the disciplinary proceedings has to be repelled, and I do so.

13. I proceed to consider the second relief claimed by the applicant relating to the validity of the provision in sub-rule (4) of Rule 10 of the Rules. The sole ground on which the attack is made in the application is that it is violative of Articles 14 and 16 of the Constitution of India, as no guidelines have been given " as to when the disciplinary authority will exercise the discretion to treat the period between the dismissal and reinstatement as suspension". There is no merit in this plea. There is no element of discretion with the disciplinary authority in respect of the deemed suspension under the sub-rule as is wrongly

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assumed by the applicant. The sub-rule is in the following terms :-

" (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case".

The discretion conferred by the sub-rule on the disciplinary authority is only with respect to the question whether a further enquiry should be held against the Government servant, on the penalty of dismissal, removal or compulsory retirement from service imposed upon him having been set aside or declared or rendered void by the decision of a Court of Law. Before arriving at a decision on that question, the Disciplinary Authority is ordained to consider the circumstances of the case. When once the disciplinary authority considers the circumstances of the case and arrives at a decision to hold a further enquiry against the Government servant, the fiction of deemed suspension is automatic. The disciplinary authority cannot, in any case, prevent the operation of the fiction, since the provision in the sub-rule is that " the Government servant shall be deemed to have been placed under suspension" (emphasis added). There is also the aspect that the "deemed suspension"

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is not by the disciplinary authority but it is by the appointing authority. Though in some cases the disciplinary authority may be the appointing authority also, in considering the plea of the applicant, this aspect looms large to negate the same.

14. The only other ground on which the vires of the sub-rule is assailed is that as the Supreme Court has laid down that employees are entitled to full wages on acquittal by a criminal court, the aforesaid provision being contrary to the same, is unsustainable. There is no force in this plea, since, as stated earlier, the disciplinary authority is not precluded from continuing ~~with~~ the departmental proceedings despite the acquittal of the Government servant in the criminal proceedings. The provision in the sub-rule relates to the operation of a legal fiction on such continuance of the proceedings, despite the penalty imposed upon the Government servant having been set aside by a Court of Law. It is to be noted that the criminal proceedings, or the result thereof does not come into ^{the} picture at all.

15. It follows that the challenge against the validity of sub-rule (4) of Rule 10 of the Rules is unsustainable.

16. In this context, it is useful to refer to the decision of the Supreme Court in Khem Chand (supra) where the challenge against the constitutional validity of sub-rule (4) of Rule 12 of the CCS(CC&A) Rules, 1957, which was in pari materia with the provisions in sub-rule (4) of Rule 10 of the Rules, was repelled.

17. At the time of hearing, Shri D.V. Gangal, counsel of the applicant attempted to challenge the order dated 10.5.1989 on the ground that as the applicant was actually

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not under suspension when the disciplinary proceedings were initiated and the penalty was imposed, there is no scope for treating him under deemed suspension under sub-rule (4) of Rule 10 of the Rules. I have to observe that no such ground of attack has been made in the application. Evidently, the submission is not warranted by the terms of the sub-rule, for it does not prescribe that the Government servant should have been under suspension at the time of imposition of the penalty, for the operation of the fiction. Though it was stated by the counsel of the applicant that in the decision of a Bench of this Tribunal in N.V. Karwarkar v. Administrator, Goa, Daman and Diu, (ATR 1988(2)CAT 232), it was held that the deemed suspension contemplated in the sub-rule will come into operation only if the Government servant was already under suspension on that day, with respect, I am unable to subscribe to that view. In view of the decision of the Supreme Court in Khem Chand (supra), the issue was no more res integra, as it is seen that in that case, this was one of the points specifically urged, and after consideration found against. However, I do not think that a discussion in respect of the same is called for in the present case since the attack against the impugned order has been based on other grounds alone, and as such, there is no need for making a reference to the Hon'ble Chairman for constitution of a larger Bench for decision of the issue.

18. It follows that neither ^{of} the reliefs claimed by the applicant can be allowed. Though there are certain

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in the application,
other reliefs also claimed ~~by the applicant~~, they are only
incidental and consequential, and hence they also cannot be
allowed.

19. The application is dismissed.

[Signature]
31-8-1990
(G. Srēedharan Nair)
Vice Chairman.

S.P. Singh/
30.8.90.

I agree
y/h
me
31-8-1990
(M. Y. PRIOLKAR)
Member (Administration)