

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:31/96

DATE OF DECISION: 01.03.2001.

Shri Pushpraj K. Andy Applicant.

Shri G.S.Walia Advocate for
Applicant.

Versus

Union of India and others. Respondents.

Shri R.K.Shetty Advocate for
Respondents

CORAM

Hon'ble Shri Justice Ashok C.Agarwal, Chairman.

Hon'ble Ms. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library. ✓

Shanta

(Ms. Shanta Shastry)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 31/96

THURSDAY the 1st day of MARCH 2001

CORAM: Hon'ble Shri Justice Ashok C. Agarwal, Chairman

Hon'ble Ms. Shanta Shastry, Member (A)

Pushpraj K. Andy
Formerly working as
Fitter Grade B
Ammunition Factory
Kirkee, Pune.

...Applicant.

By Advocate Shri G.S. Walia.

V/s

1. Union of India through
The General Manager,
Ammunition Factory
Kirkee, Pune.
2. Chief Executive Officer
Ordnance Factory Board,
Ministry of Defence
10-A Auckland Road,
Calcutta.

ORDER (ORAL)

{Per Ms. Shanta Shastry, Member (A)}

The case of the applicant is that he was acquitted by criminal Court on charges of committing theft. In respect of that a departmental enquiry was proceeded with and finally the applicant was dismissed.

2. The brief facts of the case are:

The applicant was issued a charge sheet on 1.6.1983 (pages 23 to 24 of the OA). The articles of charges are that the said P.K. Andy while functioning as Fitter 'B' grade

in R section of Ammunition Factory Kirkee Shri P.K. Andy was arrested by CID on 22.10.1982 at about 17.42 hours near Kirkee Bazaar while he was in unauthorised possession of 5 live cartridges of 7.62 mm. He had stolen those cartridges from L1 section of Ammunition Factory Kirkee and had sold them to outsider for Rs. 100 on 21.10.1982. This fact has been confessed during the enquiry conducted by D.G.M. and before CID Police Inspector Hundekari and other police personnel. Accordingly a charge sheet was issued to the applicant on 1.6.1983. After the charge sheet was issued there was also criminal case filed against the applicant bearing No. 670/82 on the same charge. The applicant was acquitted in that case on 16.10.1985. By then the departmental enquiry had not been completed. The applicant informed the concerned authorities that he had been acquitted; therefore the enquiry should not be proceeded with. However the respondents proceeded with the enquiry and after following the due procedure the disciplinary authority based on the enquiry report imposed the penalty of dismissal on the applicant on 20.12.1985 (page 41). The applicant preferred an appeal against the same, which was decided on 27.8.1990 (page 80). He further went in for review appeal, which was also dismissed, on 30.3.1992. But the applicant has filed this OA on 28.11.1995 with a prayer to set aside the

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impugned orders dated 20.12.1985, 3.9.1990, 29.4.1992 and 3.11.1995 and to declare the applicant has been on continuous service and as being entitled to all consequential benefits thereof. The applicant has also filed MP 16/96 for condonation of delay. The applicant has explained in detail as to how the enquiry had completely shattered him mentally and he was not in a sound frame of mind to immediately approach the Tribunal.

3. The applicant has also represented on 12.8.1995, much later the same was rejected on 3.11.1995.

4. The learned counsel for the applicant strongly argued that once the criminal court had acquitted the applicant ^{on the same charge} there was no reason to conduct the enquiry any further. He has relied on the judgement of the Hon'ble Supreme Court in the case of Captain Paul Antony and another V/s Bharat Gold Mines decided on 30.3.1999 reported in 1999 SCC (L&S) 810. In this case the Supreme Court while observing that there is no objection to simultaneously conducting departmental enquiry and criminal proceedings as the scope of these two proceedings is different and they can be continued independently, in the case under consideration keeping in view that both the proceedings were based on the same set of charges, same witnesses, the court having already acquitted by rejecting the prosecution case held that the charges recorded against the applicant in ex parte disciplinary enquiry could not be sustained. The counsel

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maintains that the present OA has identical facts and therefore based on this judgement the departmental enquiry against applicant should be set aside and he should be reinstated.

5. The respondents are maintaining that there is nothing wrong in proceeding with the departmental enquiry and it has been established that the applicant was guilty of the charge of theft. The learned counsel for the respondents has submitted the enquiry report and the assessment of evidence by the enquiry officer. Two witnesses were examined in this enquiry which was an ex parte enquiry and it has been proved beyond doubt that the applicant was in possession of 5 live cartridges and he also showed that where he had lifted them from. The learned counsel for the respondents has also placed reliance on the judgement of the Supreme Court in the matter of State of Bihar and others reported in 1998 SCC (L&S) 148. It was held in this case that acquittal from criminal case does not warrant setting aside order of termination of service on the same charge. Further the counsel pointed out that even in the case of Paul Anthony (Supra) on which strong reliance has been placed by the learned counsel for the applicant it has been observed that in para 32 it has been observed that in a peculiar circumstances of the case having regard to the facts the Supreme Court had directed no fresh departmental enquiry to be instituted against appellant on the same set of facts. It shows therefore that the Hon'ble Supreme

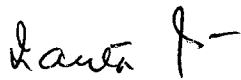
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Court had not insisted on departmental enquiry to be initiated considering peculiar circumstances of that particular case though law does not prevent simultaneously conducting the criminal case as well as departmental enquiry.

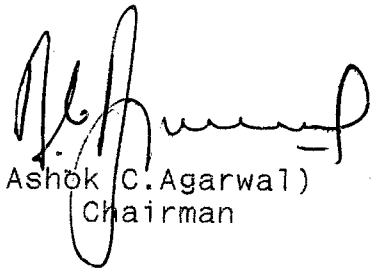
6. We have heard carefully and considered the pleadings put forth by the counsel for the applicant as well as respondents. We are inclined to condone the delay in view of the reasons given in the MP. In our considered view the scope of departmental enquiry and the criminal case are on a slightly different footing and there is nothing wrong in proceeding with the departmental enquiry even after being acquitted in criminal case. In this particular case there is also slight difference in the facts. The witnesses who were examined in the criminal case were different than the witnesses who were examined in the departmental enquiry though the enquiry was exparte. We have seen that the applicant had taken several adjournments and he chose not to be present at the relevant time. He is himself to be blamed for not cooperating in the proceedings by remaining away from the same. It has been clearly established on the evidence that the applicant has been found to be acquitted of the charges. It is not a case of no evidence though the learned counsel for the applicant harps on the fact that applicant was acquitted by the criminal court on merits even though in the

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departmental enquiry the applicant was found guilty. We are therefore unable to accept contention of the applicant that the departmental enquiry should not be proceeded with after the applicant has been acquitted by criminal court on merits. Therefore we donot consider it necessary to set aside the impugned order of dismissal. The OA is dismissed. No Costs.



(Ms. Shanta Shastry)
Member(A)



(Ashok C. Agarwal)
Chairman

NS

4/01/3/01
order/Judgement despatched
to Applicant/Respondent (s)
on 13/3/01

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