

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1053/99

DATE OF DECISION: 29th March 2001

Shri Ashok Pundalik Bagul Applicant.

Shri V.V. Punwant Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri R.K. Shetty Advocate for
Respondents.

CORAM

Hon'ble Shri S.L.Jain, Member(J)
Hon'ble Ms. Shanta Shastry, Member (A)

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

(2) Whether it needs to be circulated to *no* other Benches of the Tribunal?

(3) Library. *yes*

S.L.Jain
(S.L. Jain)
Member (J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:1053/99

Thursday the 29th day of MARCH 2001.

CORAM: Hon'ble Shri S.L. Jain, Member (J)

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

Ashok Pundalik Bagul
Resident of 14,
Sanjay Colony,
Chincholi Dehu Road,
Pune.

...Applicant.

By Advocate Shri V.V. Punwant.

V/s

1. Union of India through
Cantonment Executive Officer
Pune Cantonment Board, Pune.
2. Defence Estate Officer,
Pune Circle, Pune. ...Respondents.

By Advocate Shri R.K. Shetty.

ORDER

{Per Shri S.L. Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985, to quash and set aside the memorandum / notice dated 22.11.1999 issued by Respondent No.1 (Exhibit A), to quash and set aside the enquiry proceedings proposed to be conducted by the Respondents against the applicant and to direct the respondents not to take any such action without hearing the applicant.

2. The brief facts of the case are: that at the relevant time the applicant was working as Cashier in the respondent No.2 office at Pune. In the year 1990, the respondent No.2 filed a

S.YK -

...2...

report with Bund Garden Police Station alleging that on 7.6.1988, one cheque for Rs. 55,926/- was entrusted to the applicant for remitting to Government Treasury in favour of C.D.A., Sadan Command, Pune. Instead of depositing the same, the applicant had withdrawn the said amount, utilised for his own benefit and also alleged that the applicant had also tampered with the cheque handed over to him to withdraw the amount. Charge sheet under Section 409, 467, 468, 471, 420 of IPC was filed, the RCC No. 23/96 was initiated and the applicant after trial has been acquitted. For the same incident again the respondents have commenced the disciplinary proceedings. Hence this OA for the above said reliefs.

3. On perusal of judgement in RCC No.23/96 in para 5 it is specifically mentioned that there is no question of considering mis-appropriation of cheque No.441036 dated 5.9.1989 in respect of an amount of Rs. 90,942.17. On perusal of the judgement it makes clear that the charges under Section 409, 467, 468, 471 and 420 of IPC were framed only in respect of cheque dated 7.6.1988. Perusal of the judgments further makes it clear that the Chief Judicial Magistrate, Pune has arrived to a conclusion that the applicant is not guilty of the charges levelled against him, but he has not arrived to a conclusion that the offence alleged against him is dis-proved. Suffice to say that the acquittal is based on principle that offence is not proved beyond reasonable doubts.

P.J.M.

4. The disciplinary proceedings is in respect of.

(1) Cheque dated 7.6.1989 (correct date is 7.6.1988) for Rs. 55,926/-, and

(2) Cheque dated 5.9.1989 for Rs. 90,942.17.

For the cheque mentioned above at serial No.(2) there was no criminal trial at all and in respect of cheque mentioned at serial No.(1) there is no honourable acquittal.

5. The learned counsel for the applicant relied on AIR 1999 SC 1416 Capt. M. Paul Anthony V/s Bharat Gold Mines Ltd. and another. On perusal of the same we are of the considered opinion that in the said case there was a judgement of Criminal Court and there was a finding recorded by the Enquiry Officer contrary to each other based on the same materials. The said situation does not exist~~s~~ in the present case. Further more as stated above there is no honourable acquittal of the applicant in the criminal case.

6. The learned counsel for the applicant argued that the incident is of 1988 and 1989 while the charge sheet has been issued on 22.11.1999, after a lapse of say about 11 years. He relies on 1999 II CLR 494 M. Chakrpani V/s Commissioner Corpn. of Madras and other decided by the Hon'ble High Court of Madras which lays down the proposition that if enquiry proceedings continue for considerably long time, ^{they are} liable to be quashed. The learned counsel for the respondents rightly argued that as the

J.CM:-

criminal case was filed the charge sheet was not issued to the applicant for the reason that when a criminal case is pending if a charge sheet is issued generally the applicant comes to the Tribunal seeking the relief to stay the proceedings till the completion of criminal proceedings. There appears to be a reason for not issuing the charge sheet and the said reasoning cannot be brushed aside based on good reasons. There is a delay in issuing a charge sheet, but the said delay is based on the ground of pending criminal trial, deserves to be ignored, particularly when the applicant claims that in view of the judgement of the criminal Court no further disciplinary proceedings can be initiated againsts him.

7. The learned counsel for the respondents relied on 2000(2) (CAT) AISLJ 227 J.B. Parel V/s Union of India and others in support of his reasoning as stated above.

8. The learned counsel for the respondents argued that the standard of proof in the criminal case is to prove the offence against the applicant beyond reasonable doubt while in disciplinary proceedings the standard of proof is preponderence of evidence. (1998 SCC (L&S) 148 Govind Das V/s State of Bihar and others). We agree to the said submission of the learned counsel for the respondents. In view of the judgement between by the parties in Criminal case i.e.RCC No.23/96, we are of the considered opinion that the said judgement cannot come in the way of the respondents in issuing the charge sheet to the applicant.

QJM -

9. During the course of argument, it is also brought to our notice by the learned counsel for the respondents and it is admitted by the learned counsel for the applicant that even in respect of judgement in RCC No.23/96, an appeal against acquittal has been preferred by the respondents, has been admitted for final hearing, after condoning the delay in filing the appeal.

10. There is no provision for initiating the disciplinary proceedings to afford an opportunity of being heard to the delinquent employee, the applicant cannot claim that he deserves to be heard before issuing the charge sheet.

11. In the result the OA is liable to be dismissed and is dismissed accordingly with no order as to costs.

Shanta S

(Ms. Shanta Shastry)
Member(A)

NS

S.L.J
(S.L.Jain)
Member(J)