

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.310/90

DATE OF JUDGEMENT: 16-7 1993

Between

Sri K.Sadanand .. Applicant

and

1. The Secretary to Government, u.o.t
Department of Posts, New Delhi
2. The Postmaster General, Hyderabad
3. The Manager, Mail Motor Service
(Postal) Hyderabad
4. T.Rosaiah, Inquiry Officer and
ASRM Hyderabad Sorting Hyderabad .. Respondents

Counsel for the Applicant :: Mr KSR Anjaneyulu

Counsel for the Respondents :: Mr NR Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SHRI
T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

This is an application filed by the applicant
herein under Section 19 of the Central Administrative
Tribunals Act, to declare that the charge memo issued by
the third respondent dated 26.10.89 is illegal and arbitrary
and set aside the same and direct the respondents to promote
the applicant as Driver for which he was selected on the
basis of test held on 19.4.89 and with all consequential
benefits and pass such other order or orders as may deem
fit and proper in the circumstances of the case.

T. C. M

..2

..2..

2. The facts which are not at all in dispute giving rise to this OA in brief, are as follows:

3. The applicant was having driving licence to drive medium motor vehicles. The said licence had been obtained by him on 5.7.1978. On 24.1.1983, the applicant was entrusted to drive vehicle No.ATT 1282 belonging to the respondents which is a medium motor vehicle. While driving the said vehicle and in the course of discharge of his duties, the applicant caused an accident. According to the respondents, the said accident has been caused (resulting serious injuries to the cyclist and later with death) due to the negligence and rash driving of the said vehicle by the applicant. Further according to the respondents, the applicant did not take the victim to the nearest hospital for immediate treatment. The police investigated the accident caused by the applicant and ultimately, charge sheeted the applicant of the offence under Section 304(A) and other offence(s) in the court of Third Metropolitan Magistrate, Hyderabad. As the prosecution did not produce the evidence, the applicant was acquitted in the said criminal case on 21.3.1985.

4. The applicant's case for promotion to the cadre of Driver was considered by the Departmental Promotion Committee which met on 2 19.4.89 and the findings of the DPC were kept in a sealed cover. Such a course of action had been followed by the respondents, as a Departmental Enquiry was contemplated and later on initiated as against the applicant under Rule-14 of CCS(CCA)Rules,1965 on 26.10.89. The applicant put in a representation dated 8.11.89 maintaining that in view of the acquittal in the criminal case and in view of the

T - C. M.

..3

22/09/

(BH)

long delay in initiating the disciplinary proceedings from the date of accident, that the charge memo issued against him was liable to be set aside. The applicant did not receive any reply to his representation. In the meanwhile, the Enquiry Officer proceeded as against the applicant in the said enquiry. So, the applicant submitted another representation dated 15.3.90 drawing the attention of the respondents to his earlier ~~xx~~ representation dated 8.11.89. As the said inquiry is still continuing, the applicant has filed the present OA for the relief(s) as already indicated above.

5- Counter is filed by the respondents opposing this OA.

6. We have heard in detail Mr KSR Anjaneyulu Counsel for the Applicant and Mr NR Devraj, Standing Counsel for the respondents.

7. Two grounds are raised in this OA on behalf of the applicant. These are-

- i) The action of the respondents in issuing a charge memo on the basis of the same allegation on which the charged official was discharged by the competent criminal court is impermissible.
- ii) The accident which is the basis for initiating disciplinary inquiry took place on 24.1.83. The criminal case, as already indicated had ended in acquittal on 21.3.85. The Departmental inquiry is initiated after a gap of 4 and 1/2 years i.e. on 26.10.89, after the acquittal of the applicant in the said criminal case.

320 X

So, it is maintained that in view of the inordinate delay in initiating the departmental enquiry from the date of acquittal of the applicant, that the charge memo issued as against the applicant is liable to be quashed. It is also further contended that, there is no justification in withholding the promotion of the applicant and, that the respondents are bound to act as per the recommendations of the Departmental Promotion Committee which met on 19.4.89 and whose recommendations were kept in a sealed cover.

8. We make it clear at the outset, that it is open to the Government, subject to the rules, to initiate both criminal and disciplinary proceedings simultaneously or one after the other. As already pointed out, the first contention raised on behalf of the applicant is, that it is a bar to continue the departmental proceedings as against the Govt. servant involved in a criminal case after his acquittal in the said criminal case. This question had been dealt by the Supreme Court of India in AIR 1984 SC 626 - Corporation of City of Nagpur Vs Ramachandra G. Modak wherein the Supreme Court has observed as follows:

".....This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. 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 charge or grounds or evidence but the fact remains however that merely because the accused is acquitted, the power of the authority

(Bb)

concerned to continue the departmental inquiry is not taken away nor is its (discretion) direction in any way fettered.".....
.....

In 1976 (1) SLR 585 Marinarayan Dubbey Vs State of Madhya Pradesh and others, the Madhya Pradesh High Court held that- even after acquittal by a criminal court, a departmental enquiry can be held-
i) If acquittal by criminal court is on technical grounds.
ii) If the criminal case itself indicates the retention of Govt. servant as undesirable
iii) It can be held on a different charge although it may arise out of same facts
iv) Departmental authorities can punish on same facts for lesser charge which may not amount to criminal offence but may amount to grave dereliction of duties
v) If the acquittal is on the ground of giving the benefit of doubt. "

So, from the above said two decisions of the Supreme Court and Madhya Pradesh High Court, it becomes amply evident that, in fit and proper cases, the competent authority has always got powers to initiate disciplinary proceedings after the acquittal of the accused Govt. servant in a criminal case, where the acquittal is on technical grounds. In this context, it would be pertinent to extract the judgement of the Criminal court which is annexed as Annexure 4 to the OA.

"IN THE COURT OF THE III METROPOLITAN MAGISTRATE: HYDERABAD

Present: Sri V. Surender Rao, B.Com., LL.B.
I/C III Metropolitan Magistrate Hyd

21st Day of March, 1985

C.C.No.125/1983

State represented by
Inspector of Police, Tappachabutra PS .. complainant

vs

K. Sadanand, S/o Satyanarayana
25 yrs r/o Begam Bazar .. Accused

..6

T - S. M

5/18

..6..

This case coming on before me for hearing in the presence of the PPO for the State and of Sri BD Sharma Advocate for the accused and having stood over for consideration till this day, the court pass the following:

ORDER

1. Accused present. Summons of L.W.2 returned unserved as out of station and the prosecution did not get the evidence on earlier dates. Hence, the accused is discharged under Section 258 Cr.P.C.

Written and pronounced by me in the open court this the 21st day of March, 1985.

Sd/-
21.3.85
I/C III Metropolitan,
Magistrate Hyderabad

From the above judgement of the III Metropolitan Magistrate there cannot be any doubt about the fact that the accused had been acquitted purely on technical grounds. So, as already pointed out, in view of the facts and circumstances of the case, the Department has every right to proceed as against the applicant by initiating disciplinary proceedings. As a matter of fact, the contention of the respondents is that the applicant had been responsible for causing the accident on 24.1.1983 by rash and negligent driving of the vehicle. Whether the said allegation is proved or not is a matter that has got to be decided by the Disciplinary authority. But, as already pointed out the only question with which we are confronted in this OA is whether the Department has got powers to initiate the departmental inquiry as against the applicant after his acquittal in the said criminal case. In view of the above discussions, we do not have any doubt to come to the conclusion that the competent authority has got every power to issue the charge memo as against the applicant and we do not see any irregularity in the issuing of the said charge memo on the applicant on the same charges which

(58)

he was tried by the Criminal court. So, the prayer of the applicant to quash the charge memo of the 3rd respondent is liable to be rejected.

9. The second question that is raised is, with regard to the delay. Nodoubt, from the date of acquittal, there has been roughly 4 years delay in initiating the disciplinary proceedings as against the applicant. Delay in initiating disciplinary proceeding cannot be a ground to quash the charge memo issued as against the applicant. The applicant should be able to establish that in view of the delay in issuing the charge memo, that the applicant had been prejudiced in his defence. How the applicant had been prejudiced has got to be explained satisfactorily. In this OA, except the plea that there has been delay in issuing the charge sheet, and as such, the charge memo is liable to be quashed, no such plea as to how the applicant was prejudiced in his defence is made. This is a matter which the disciplinary authority should go into and consider whether the applicant had been prejudiced in his defence or did not have fair trial in the departmental inquiry due to the delay in the initiation of departmental inquiry?

10. The learned counsel appearing for the applicant relied on the following decisions in support of his contention that in view of the inordinate delay in initiating the disciplinary proceeding that the same is liable to be quashed.

1. 1990(2) ATJ 291 CAT Madras - J Albert Vs Inspector General of Police and another

T.C.H

21/10/

2. ATR. 1988(1) CAT 592 Bani Singh Vs Union of India and State of Madhya Pradesh

3. ATLT (SC) 239 The State of Madhya Pradesh Vs Bani Singh and another

4. 1990(1) SLJ 33 AP High Court S. Rama Rao Vs Food Corporation of India

5. 1990(1) SLJ (CAT)(Hyd) 173 E. Veda Vyas Vs Govt. of AP and another

6. Vol.II 1987 ATLT 245 (CAT)(Hyd) M.Nagalinga Reddy Vs Govt. of AP and others

7. 1980 SLJ 477(Guj) High Court Mohanbhai Dhungar Bhai Parmar Vs YB Zala and another

We have already held that whether due to the said delay in initiating the disciplinary proceeding any prejudice ^{whether} ~~to the applicant in his defence~~ has been caused is a matter that has got to be decided by the Disciplinary authority and we refrain from expressing any opinion with regard to the delay in initiating the disciplinary proceedings.

11. So far as the promotion of the applicant as Driver is concerned, the applicant believes that he was found fit for promotion by DPC which met on 19.4.89. Nodoubt, due to the pendency of the departmental inquiry the promotion had been held up. But, even though the promotion had been held up if the applicant ultimately succeeds in the departmental inquiry and had been found fit for promotion by DPC the applicant will be entitled for all benefits with retrospective effect according to the rules. So even though the promotion had been ~~with~~ withheld, we do not think that the applicant would be put to any loss if the applicant is exonerated of his charges in the departmental inquiry. We are informed across the

(60)

..9..

bar that departmental inquiry has reached a final stage and orders were not passed in view of the interim orders passed by this Tribunal on 11.4.90 directing the respondents not to pass final orders in the disciplinary inquiry till the disposal of this OA. As the OA is now disposed of, there should not be any ~~is~~ impediment in the way of the respondents in passing final orders ~~in~~ ^{only} the disciplinary ~~inquiry~~.

12. In the result, the OA is dismissed as devoid of merit. But, we direct the respondents to pass final orders in the disciplinary inquiry pending as against the applicant within 30 days from the date of communication of this order. Depending upon the outcome of the disciplinary inquiry and also taking into consideration the recommendations of the DPC the respondents shall pass appropriate orders with regard to the promotion of the applicant to the cadre of Driver. We make it clear that, anything said in the Judgement shall not be treated as expression of opinion on the merits of this case. Whether there is any acceptable evidence as against the applicant in the departmental inquiry to bring home the charges framed against the applicant or the delay in initiating the disciplinary proceeding had vitiated the inquiry and whether the applicant is prejudiced in his defence because of the delay in initiating the disciplinary proceedings are all matters to be decided by the disciplinary authority. Whatever we have stated in this OA constitute merely reasons

T. C. M. P.

..10..

27/10/90
JL

...10...

61

for our judgement. So, the disciplinary authority, without any way being influenced by any observation made in this judgement, shall decide the disciplinary matter pending against the applicant with an open mind. parties shall bear their own costs.

(T.CHANDRASEKHARA REDDY)
Member(Judl.)

A. B. GORTHI
(A. B. GORTHI)
Member (Admn)

Dated: 16-7-1993 1993

mv1

Deputy Registrar (J)

To

1. The Secretary to Government, u.o.f. India
Dept. of Posts, New Delhi.

2. The Postmaster General, Hyderabad.

3. The Manager, Mail Motor Service (Postal) Hyderabad.

4. T.Rosaiah, Inquiry Officer and ASRM Hyderabad Sorting
Hyderabad.

5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.

6. One copy to Mr. N.R.Devraj, Sr.CGSC.CAT.Hyd.

7. One copy to Library, CAT.Hyd.

8. One spare copy.

pv m

10th class
part 2 1993

Roneo
29/7/93

9 copies

C
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE M.A.B. GORTY : MEMBER (A)
AND

THE HON'BLE MR.T. CHANDRASEKHAR REDDY
MEMBER (J)

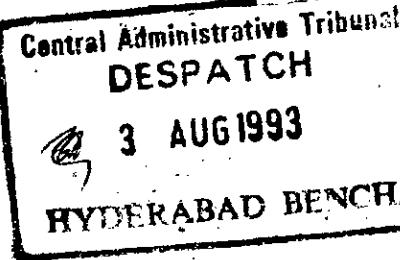
AND

THE HON'BLE MR.P.T.TIRUVENGADAM : M(A)

Dated : 16 - 7-1993

ORDER/JUDGMENT:

M.A. /R.A. / C.A. NO.



in
O.A. No. 310/90

T.A. No.

(w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with direction

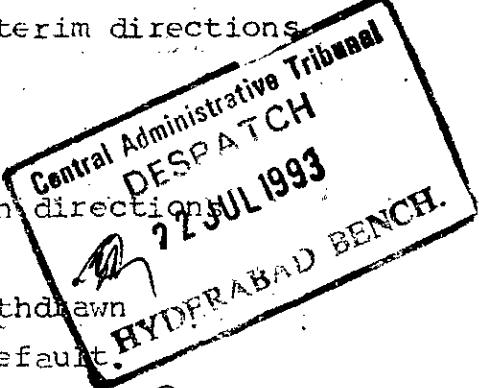
Dismissed

Dismissed as withdrawn

Dismissed for default

Rejected/ Ordered

No order as to costs.



pvm

19/7/93
1/2/93