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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 798/93

DATE OF JUDGMENT: 1.3.94

BETWEEN:

M.Saraswathi Prasad

.. Applicant

A N D

The Deputy Commissioner of
Income Tax, Vijayawada Range,
Central Revenues Buildings,
Bandar Road, Vijayawada,
Krishna District.

... Respondent.

APPEARANCE:

COUNSEL FOR THE APPLICANT(s): Mr.G.V.R.S.Vara Prasad

COUNSEL FOR THE RESPONDENTS: Mr.N.R.Devraj

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN



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J U D G E M E N T

I AS PER SHRI V. NEELADRI RAO, VICE-CHAIRMAN I

Heard Shri G.V.R.S. Varaprasada Rao, learned counsel for the applicant and also Shri N.R. Devaraj, learned standing counsel for the respondents.

2. The applicant joined service in the Income Tax Department as L.D.C. on 26.8.81. A case was registered against the applicant and some others for the offence under Section 411 of I.P.C. The applicant was suspended from service with effect from 29.9.82 as per order dated 4.10.82. He was acquitted for the said offence on 2.9.85 vide order dated 2.9.85 in CC No. 233/82 on the file of 4th Addiltional Judicial First Class Magistrate, Vijayawada. The criminal appeal No. 83/1986 was dismissed on 4.2.86. Under Rule 5 of Temporary Service Rules, the applicant was removed from service by order dated 17.3.86. The said order was set aside on 17.9.91 by this Tribunal in OA 289/90. The applicant was reinstated as per order dated 22.6.93 and he joined duty on 30.6.93.

3. The applicant was suspended on 5.7.93 pending initiation of departmental proceedings on the basis of the same allegations for which the applicant was acquitted in CC 233/82 by the 4th Additional Judicial Magistrate First Class, Vijayawada. This OA was filed praying for

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declaration that the ~~same~~ respondent is not competent to initiate departmental proceedings against the applicant under CCS CCA Rules on the same allegations/charges on which the criminal proceedings ended in acquittal on merits and for further declaration that the impugned order of suspension dated 2.7.93 is illegal, arbitrary and contrary to the rules and for treating the period of suspension of the applicant from 5.7.93 till reinstatement as on duty for all purposes.

4. By Interim order dated 26.7.93, the order of suspension dated 2.7.93 was set aside. By the same order the respondents are restrained from issuing a charge memo. until further orders in this OA.

5. The applicant was prosecuted along with some others under Section 411 of I.P.C. as per CC No. 233/82 on the file of 4th Additional Judicial Magistrate First Class, Vijayawada, ^{on} ~~on~~ the basis of the allegations that he along with others was found in possession of stolen property. The alleged stolen property does not belong to the respondent's office. Thus it is a case of prosecution for the allegations unconnected with the duties of the applicant. As per Rule 3 of CCS Conduct Rules, 1964, the act or ~~or~~ conduct of the Government servant may amount to mis-conduct, if the act or conduct of the Government servant makes it unsafe for the employer to retain him in the service or if the act or conduct of the Government servant is such that the employer cannot rely on the faithfulness of his employee.

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Hence it is stated for the respondents that if it is established that the applicant was found in possession of stolen property, even though it is not the property of the respondent, it is unsafe for the respondent to retain the applicant in service and the respondent cannot rely on the faithfulness of the applicant and hence even though the alleged conduct is unconnected with the official duties of the applicant, still it is a case of mis-conduct coming under Rule 3 of the Central Civil Services Conduct Rules and as such, the respondent can initiate disciplinary action against the applicant for the alleged possession of stolen property.

6. But the learned counsel for the applicant submitted that the judgement in CC 233/82 discloses that it is a case of acquittal of the applicant on merits and hence on the basis of the same allegations, the respondent cannot initiate disciplinary action. In support of the said contention, ATR 1988 (1) CAT 102 Judgement of this Bench and 1991 (1) SLJ 458 Judgement of Cuttack Bench are replied upon.

7. It was held by the Supreme Court in 1984 SC 626 that the "Question" whether or not the Departmental enquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal cases is a matter to be decided by the Department after considering

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the nature of the judgement given by the Criminal court. Normally where the applicant is acquitted honourably and completely exonerated of the charges, it is not expedient to continue a Departmental enquiry on the very same charges or grounds or offences. ~~XXXXXX~~ However, merely because the accused is acquitted, the power of the authority concerned to continue the Departmental enquiry is not taken away, ^{and} ⁱⁿ ~~when~~ it is the discretion of the concerned authority to decide whether disciplinary proceedings should be initiated against the employee in such cases. It is thus manifest that if the disciplinary authority intends to initiate or continue the departmental enquiry after the accused is acquitted in the criminal case on the basis of the very allegations in regard to which the departmental enquiry was already initiated or contemplated, it is necessary for the disciplinary authority to look into the judgement of the Criminal Court and the findings given therein before taking a decision to continue or initiate the departmental enquiry as the case may be. As the charge memo. is not yet given in this case, it is not known, as to who would be cited as witness, and what documents are going to be relied upon. Further it is evident from the decision of the Supreme Court that it is for the disciplinary authority to decide as to whether it is ^a case for continuation or the initiation of the departmental enquiry as the case may be. Though such decision is subject to judicial review, ^{it} ~~It~~ is not just and proper for the court/Tribunal to consider even

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before a decision is taken by the disciplinary authority, ~~to determine~~ as to whether there is justification for continuation/initiation of departmental enquiry. In view of the Interim order of this Bench, the respondent has not yet issued any charge memo.

8. The allegations referred to by the Respondents constitute a mis-conduct as referred to under Rule 3 of the CCS Conduct Rules and if such mis-conduct is established, proper punishment can be awarded. But whether it is expedient to initiate enquiry after the acquittal of the applicant in CC No. 233/82 by the 4th Additional Magistrate, Vijayawada is a matter for the decision of the respondents. The respondents ^{has} ~~have~~ to decide by keeping in view the judgement of the Supreme Court in 1984 SC 626 and after ^{perusing} ~~processing~~ the decision in 233/82 of 4th Additional Judicial Magistrate First Class, Vijayawada, ~~to consider~~ whether it is expedient to initiate enquiry in regard to the very allegations which were considered in the above CC. As already observed, it is subject to judicial review and hence it is open to the applicant if so advised to move this Tribunal, if charge memo. is going to be issued in regard to the same allegations.// We held as per the order dated 26.7.93 that there was no justification for suspending the applicant as per letter dated 2.7.93 and accordingly it was set aside. Hence that period of suspension should be treated as on duty and the applicant should be paid salary and other allowances for the said

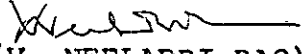
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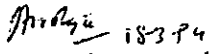
period and the subsistence allowance already paid can be adjusted towards the salary. ^{It has to be} ~~we had~~ made it clear ~~thus~~ that this order of treating the suspension period as on duty cannot be held as a finding to the effect that there are no grounds for initiation of disciplinary proceedings and it is a matter for the decision of the respondents as already observed.

9. The OA is ordered accordingly. No costs.


(V. NEELADRI RAO)
Vice-Chairman

Dated the 1st March, 1994
Open court dictation

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 18.3.94
Deputy Registrar(J)CC

To

1. The Deputy Commissioner of Income Tax, Vijayawada Range, Central Revenues Buildings, Bandar Road, vijayawada, Krishna Dist.
2. One copy to Mr.G.v.R.S.vara Prasad, Advocate, CAT.Hyd.
3. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
4. One copy to Library, CAT.Hyd.
5. One spare copy.

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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 MR. A. B. GORTHI : MEMBER (A)

AND

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

AND

THE HON'BLE MR. R. RANJARAN : MEMBER
(ADMN)

Dated: 1-3-1994.

~~ORDER~~ JUDGMENT:

M.A./R.A/C.A. No.

in

O.A.No.

T.A.No.

798/93
(W.P.No.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

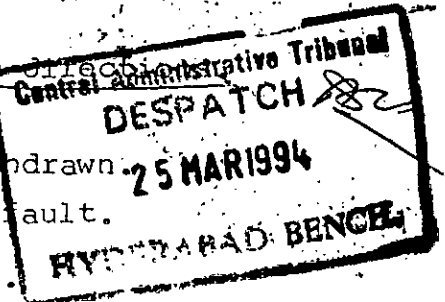
Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

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