

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.154/95

Dt. of order: 22-5-95.

Laddu Lal Saini

: Applicant

Vs.

Union of India & Anr.

: Respondents

Mr.Virendra Lodha

: Counsel for applicant

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER. HON'BLE MR.O.P.SHARMA, MEMBER (ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Laddu Lal Saini has prayed that the following orders/memoranda issued to the applicant may be quashed and that the respondents may be restrained from holding any disciplinary enquiry against the applicant and in any case from passing any final orders till the disposal of the application:

- i) Annx.A1 dated 20.10.93 being the memorandum issued by Narcotics Commissioner of India provisionally holding that the proceedings under Rule 14 of the CCS(CCA) Rule should be initiated against the applicant.
- ii) Annx.A2 dated 15.8.94 being the charge sheet issued to the applicant under Rule 14 of the CCS(CCA) Rules.
- iii) Annx.A3 dated 30.1.95 being the order of appointment of Inquiry Officer.
- iv) Annx.A4 dated 30.1.95 being the order regarding appointment of the Presenting Officer.
- v) Annx.A5 dated 10.2.95 being a notice from the Inquiry Officer to the applicant.
- vi) Annx.A6 dated 9.2.95 being the order under Rule 18 of the CCS(CCA) Rules regarding common proceedings against the applicant and two others.

The applicant has further prayed that he should be granted promotion to the post of UDC against the vacancy of the year 1985 with consequential benefits.

2. The facts of the case as stated by the applicant are that he was appointed as an LDC in the Department of Narcotics by order

dated 3.9.1973 and he joined duty on 15.9.73. He was placed under suspension by an order dated 20.3.85 on account of a criminal offence against him which was under investigation. The applicant was reinstated on revocation of suspension by order dated 21.7.88 and was posted in the office of the Deputy Narcotics Commissioner, Kota (Annex.A13). He was acquitted by the competent Court of law in the criminal case vide the order dated 17.12.92 passed by the Chief Judicial Magistrate, Bundi (Annex.A14), with the finding that no case had been made out against the applicant under Sec.384 IPC. By an order dated 23.9.93 (Annex.A15), the Dy. Narcotics Commissioner, Kota granted full pay and allowances for the period of suspension as per FR 54-B(3) and the period of suspension was treated as spent on duty for all practical purposes.

3. The applicant was thereafter promoted as UDC by order dated 17.6.94 (Annex.A16). In 1985, a DPC for promotions to the post of UDC from amongst LDCs was held. The applicant's name was also considered but since at the relevant time a criminal case was pending against him, his name was kept in a sealed cover. Vacancies for promotion to the post of UDC have to be determined on yearwise basis. As per his seniority, he was entitled to promotion as UDC from the date persons junior to him were promoted with all consequential benefits. His immediate junior was promoted as UDC on officiating basis from 28.11.79. The applicant was at least entitled to promotion from the year 1985, when the DPC met for making regular promotions to the post of UDC.

4. Further, according to the applicant he was surprised to receive memorandum dated 20.10.93 (Annex.A1) from the Appellate Authority (Narcotics Commissioner of India, Head of the Department) whereby in exercise of powers under Rule 29(1) of the CCS (CCA) Rules, the said authority revising the earlier order dated 23.9.93 (Annex.A15) decided to hold disciplinary proceedings against the applicant. Since the applicant had already been promoted to the post of UDC during the intervening period, he did not submit any reply to Memorandum, Annex.A1. Thereafter, a charge sheet dated 18.8.'94 (Annex.A2) was served upon the applicant containing the

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charge inter alia of extortion of a sum of Rs.1000/- from certain parties while he was on official duty on 12.12.85. The applicant replied to the charge sheet but the respondents without even going through the reply proceeded to appoint Inquiry Officer to hold enquiry against the applicant into the charges framed against him. The applicant's case is that he had been honourably acquitted of the charge by the Criminal Court on 17.12.93 and no appeal had been preferred against the judgment of the Criminal Court. Therefore, there was no justification for holding any enquiry against the applicant. The Dy.Narcotics Commissioner had already held vide order dated 23.9.93 that the charges levelled against the applicant had no substance and full pay and allowances were payable to him during the suspension period. Therefore the Narcotics Commissioner, acting as Appellate Authority, was not justified in taking a different view, stated in the memorandum dated 20.10.'93. Further, while six persons were involved in the matter and all were acquitted by the Criminal Court, disciplinary proceedings have been initiated against only the applicant and two others. Further, the applicant had been promoted after the issue of memorandum dated 20.10.93. According to him the entire disciplinary proceedings ~~are~~ initiated against the applicant are without justification and are, therefore, not sustainable in the eye of law.

5. During the arguments, the learned counsel for the applicant stated that the memorandum Annx.A1 dated 20.10.93 had been issued by the Narcotics Commissioner of India, acting as the Appellate Authority, exercising the powers of revision in terms of Rule 29(1) of the CCS (CCA) Rules, as the Disciplinary Authority in the applicant's case was the Deputy Narcotics Commissioner, ^{The} Kota. / Narcotics Commissioner had revised order Annx.A15 dated 23.9.93 by which the Dy.Narcotics Commissioner had held that since the Court had acquitted the applicant, the State had not filed any appeal against such acquittal and since there did not appear to be any strong evidence on the basis of which departmental proceedings can be initiated, ~~the Dy.Narcotics Commissioner~~ ~~has expressed his opinion that~~ full pay and allowances are payable

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to the applicant under FR 54 B(3) for the period of suspension. Therefore, the Narcotics Commissioner, acting as the Appellate Authority, was not justified in taking a contrary view while exercising his power of revision that disciplinary proceedings were justified against the applicant. He added that legally also the Appellate Authority could not exercise the power of revision under Rule 29(1) of the CCS (CCA) Rules. This is because, the Narcotics Commissioner who exercised the power of revision is also the Head of the Department and the Head of the Department is also empowered to exercise power of revision under Rule 29(1). Under Second proviso to Rule 29(1), the Head of the Department can exercise the power of revision only if the authority to which an appeal would lie is not subordinate to him. In other words, the Head of the Department and the Appellate Authority should not be the same person if power of revision ^{is} to be exercised by the Appellate Authority or the Head of the Department. Power of revision can be exercised by the Head of the Department only if the Appellate Authority is subordinate to him. In the instant case, the power of revision has been exercised by the Appellate Authority who is also the Head of the Department and an authority which combines both these powers ⁱⁿ itself cannot exercise the power of revision. To support his view he cited two judgments. One is of Delhi High Court, Kailash Prasad Sinha Vs. Union of India & Anr. 1985(1) SLR 24 and the other is the judgment of Madras High Court P. Sabesan Vs. the State of Tamil Nadu & Anr. 1986(1) SLR 69. Further according to him, once the applicant was granted promotion after the issue of the memorandum Annex.A1 dated 30.10.93 by which revision was proposed, the charges against him stood washed off. Also once the disciplinary authority had taken the view that no disciplinary proceedings were called for against the applicant, the Head of Department of the department has no justification for taking ^a contrary view. Finally, he added that the applicant had been singled out for disciplinary proceedings when there are five others also involved in the matter. He, therefore, prayed that Annex.A1 to A6 relating to disciplinary proceedings may all be quashed.

6. We have heard the learned counsel for the applicant and have gone through the application and the annexures thereto and have also considered the rules and the judgments cited by the learned counsel for the applicant. We may first deal with the question whether legally the Narcotics Commissioner of India was justified in issuing memorandum Annx.A1 dated 20.10.93 provisionally coming to the conclusion that disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, for major penalty were called for against the applicant or not. Although in his order dated 20.10.93, the Narcotics Commissioner has stated that he has exercised the powers of revision as an Appellate Authority in terms of Rule 29(1), question arises whether this is in fact an order of revision under the said Rule. Under Rule 29(1) various authorities have been empowered to exercise the power of revision in respect of "any order made under these rules or under the rules repealed by Rule 34 of the CCS(CCA) Rules". Now what are the orders which can be made under the CCS(CCA) Rules? There are various types of order which can be passed under the CCS(CCA) Rules though mainly orders imposing penalty are passed under these rules. However, in the memorandum dated 20.10.93 all that the Narcotics Commissioner of India has stated in substance is that he disagrees with the Deputy Narcotics Commissioner that there is no evidence against the applicant and has thereafter provisionally come to the conclusion that proceedings under Rule 14 of the CCS(CCA) Rule are called for against the applicant. He has not passed any order relating to any penalty already imposed nor has he himself imposed any penalty. Nor yet has he passed any other final order. Memorandum dated 20.10.93 is in fact only a show cause notice to the applicant asking him to explain why disciplinary proceedings should not be initiated against him. The Dy. Narcotics Commissioner in Annx.A15 dated 23.9.93 of which memorandum Annx.A1 purports to be a revision had in fact only passed one formal order namely that full pay and allowances were payable to the applicant for the period of suspension. Other findings given by him in the said order were incidental to this order. The Narcotics

Commissioner of India has not modified or set aside order under FR 54(B)(3) passed by the Deputy Narcotics Commissioner. Thus it is obvious that although memorandum Annx.A1 purports to be an order of revision by the appellate Authority under Rule 29(1) of the CCS (CCA) Rules, in fact there is no revision as contemplated against these rules. A mere provisional conclusion that disciplinary proceedings are called for against the applicant and asking him to show cause why such proceedings should not be initiated against the applicant cannot be said to be any formal order of revision. In these circumstances, the judgments cited by the learned counsel for the applicant have no applicability. Therefore, the legal objection of the learned counsel for the applicant to memorandum Annx.A1 is not tenable.

7. The applicant had in fact been given the benefit of doubt by the Criminal Court while being acquitted. In a case in which a government servant is acquitted by a Court of law on being given the benefit of doubt, the government would be justified in initiating disciplinary proceedings against the government servant on the same charges which were the subject matter of the criminal case against the applicant. In this connection, reference may be made to the following observations of the Hon'ble Supreme Court in Corporation of City of Nagpur & Anr. Vs. Ramchandra G. Modak and Anr, AIR 1984 SC 656.

"The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal case is a matter which is to be decided by the department after considering the nature of the finding given by the Criminal Court. Normally where the accused is acquitted honourably and completely exonerated of the charges, it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However, merely because the accused is acquitted the power of the Authority concerned to continue the departmental inquiry is not taken away nor its discretion any way fattened."

Reference may also be made to the following observations of the Hon'ble Supreme Court in Sulekh Chand & Salek Chand Vs. Commissioner of Police & Ors. 1994 (5) SLR 742.

"... It is not in dispute that the proposed departmental enquiry is also related to the self same offence unless section 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge under Sec.5(2) became final and it is

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clearly indicated that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his ~~entitled~~ service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action ...".

In view of the above position of law as laid down by the Hon'ble Supreme Court, the respondents are justified in initiating disciplinary proceedings against the applicant even though the applicant had been acquitted by a Criminal Court of law, because the acquittal was on the basis of the benefit of doubt. It is well settled that standard of proof applicable in departmental proceedings is preponderance of probability where as that in criminal proceedings is proof beyond reasonable doubt. Hence, there is no bar to initiation of departmental proceedings against a government servant on the same charges which were the subject matter of the criminal case against him.

Q. 8. No doubt, the Narcotics Commissioner of India was an authority higher than the Dy. Commissioner of Narcotics and his taking a view in Annx.A1 dated 20.10.93 amounted almost to a direction to the Dy. Commissioner of Narcotics to initiate disciplinary proceedings against the applicant. The disciplinary proceedings thereafter were initiated against the applicant by the Dy. Narcotics Commissioner, by issue of charge sheet dated 12.8.94 (Annx.A2) and subsequent disciplinary action is being taken in pursuance of the said charge sheet. The applicant himself chose not to reply the memorandum Annx.A1 dated 20.10.93 calling upon him to explain why disciplinary proceedings should not be initiated against him. We do not find any legal infirmity in the initiation of disciplinary proceedings by the Disciplinary authority now, when the applicant himself chose not to give any explanation in response to memorandum Annx.A1.

9. Question now arises whether in view of the initiation of disciplinary proceedings by the Dy. Narcotics Commissioner at the instance of the Narcotics Commissioner of India, which is the appellate authority, the right of the applicant to prefer an appeal

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against any order passed by the disciplinary authority in the disciplinary proceedings would be prejudiced. The right of appeal available to the applicant will remain intact as the penalty if any will be imposed by the disciplinary authority. The memorandum Annex.A1 was issued by Shri K.Sethi, who was then functioning as Narcotics Commissioner. If by the time any penalty is imposed on the applicant, Shri Sethi is still the Narcotics Commissioner and therefore the appellate authority, the applicant will have a right to request the department to designate another officer or authority of comparable rank to act as appellate authority in his case. If however, Shri K.Sethi has been succeeded by another incumbent by ~~another incumbent~~ that time, no such problem would arise. We, therefore, ^{are} of the view that the applicant's right to appeal will in no way be taken away or abridged on account of the Narcotics Commissioner of India giving directions to the disciplinary authority to start disciplinary proceedings against the applicant.

10. The mere fact that the applicant was granted promotion after the issue of the memorandum dated 20.10.93 can by no stretch of imagination be interpreted to mean that the charges against the applicant stood washed off. When the applicant was granted promotion by order dated 17.6.94 as U.D.C, no formal charge sheet had as yet been issued to him. Therefore, the respondents could not have denied promotion to the applicant at that stage.

11. The arguments that the applicant has been singled out for disciplinary proceedings whereas certain others who were also similarly acquitted by the Court have been allowed to go scot-free is also not tenable. It is to be noted that disciplinary proceedings have been initiated in common proceedings against the applicant and two others involved in the same matter. If however, some others have also been acquitted by being given the benefit of doubt and disciplinary proceedings have not been initiated against them, it is the duty of the government to examine their cases also and to take appropriate action as may be justified in the circumstances of their cases. The duty of a Court of law is to act in such a manner that it promotes the cause of law and ensures

proper application of laws. To direct that no disciplinary action should be taken against the applicant merely because such action has not been taken against certain others similarly placed would amount to defeating the cause of law and of justice.

12. Accordingly, we hold that there is no infirmity in the disciplinary proceedings initiated, being taken against the applicant by orders Annxs.A1 to A6.

13. Regarding the applicant's prayer for grant of promotion from a date in 1985, it is clear that there is a misjoinder of causes in this application because if there were ever two causes which were distinct and clearly separable, these are disciplinary proceedings and promotion. It is not a case in which the applicant has asked for a promotion consequential on disciplinary proceedings being declared void etc. but he wants promotion as UDC as a separate and independent cause unrelated to the disciplinary proceedings initiated by the memorandum Annx.A2. Also the applicant's counsel did not argue during the hearing that he should be granted promotion w.e.f. a date in 1985. If the applicant wants to pursue the matter relating to non-grant of promotion from a date in 1985, he is free to file a separate application for that. As far as this application is concerned, the prayer for grant of promotion is not maintainable.

14. Accordingly, this O.A. is dismissed at the stage of admission.

(O.P. Sharma)
Member (Adm).

G. Krishna
(Gopal Krishna)
Vice Chairman.