

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 28/4/04

OA 191/2001

Kalyan Rao Kulkarni s/o Late Shri Anant Rao Kulkarni r/o 32, Shiv Colony,
Kisnan Marg, Tonk Road, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Department of Science & Technology,
Technology Bhawan, New Mehrauli Road, New Delhi.
2. Director General, Council of Scientific & Industrial Research, Rafi
Marg, New Delhi.
3. Director, National Environment, Engineering Research Institute, Nenru
Marg, Nagpur.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.Manendra Shan

For the Respondents

... Mr.Sohan Lal Sharma

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 is addressed against the order passed by appellate authority dated 8.11.2000, by which the punishment awarded by the disciplinary authority in a DE is sustained. The exact relief clause reads as under :

"that this Hon'ble Tribunal will be pleased to accept this application and the impugned order dated 8.11.2000 may kindly be declared illegal and the same may kindly be quashed and set aside with all consequential benefits."

2. Facts of the case as stated by the applicant are that the applicant was working as Lower Division Clerk (LDC). Due to contemplated disciplinary proceedings he was placed under suspension on 25.3.88. On 28.3.88, he was served with a charge-memo. The charges pertain to theft and embezzlement of amount of Rs.27850/- from the cash box of the office. On the same facts, as enumerated in the charge-sheet, a FIR was also lodged with the Police and subsequently a challan was filed in the Court. The applicant gave detailed reply to the memorandum of charges and also submitted some representations

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to the higher authorities., therein stating the facts of the matter. It is stated that Director of the Organisation at Nagpur persuaded and pressurised the applicant to admit the charges, which he could not resist and admitted the same on 12.4.88 in the date of 9.4.88. Thereafter on 26.4.88 the applicant received order dated 20.4.88, whereby penalty of compulsory retirement was imposed upon him, about which the applicant requested on 30.4.88 that his representation may kindly be looked into and order be passed afresh, but of no avail. The applicant then filed an appeal, which was not decided for a long time. He then approached this Tribunal by way of OA No.261/98. Before the OA was decided, the appellate authority decided the appeal vide impugned order dated 8.11.2000 (Ann.A/1). Thus, being aggrieved with the impugned order of the Appellate Authority dated 8.11.2000, this OA has been filed.

3. In the grounds it is stated that the impugned order is illegal and unjustified because on the same charges, as those framed in the DE and FIR was also lodged against the applicant, and that after appreciation of evidence advanced by the contending parties, learned court of Additional Civil Judge (Junior) cum Judicial Magistrate No.10 acquitted the applicant honourably vide order dated 31.5.96. Also that the order dated 8.11.2000 is non-speaking and decision in it has been taken without application of mind inasmuch appellate authority has gone by the decision of the Disciplinary Authority and rejected the contention of the applicant through one stroke of pen.

4. The respondents have submitted a detailed reply. They have raised preliminary objection about maintainability of the OA as barred by limitation. They have also elaborated that applicant was not only a LDC but was enjoined to perform duties connected with cash and accounts through orders dated 1.8.1979 (Appointment order) and 8.1.1980 (grant of Special Pay) annexed as Annexure R/1 & R/2 respectively, and as such he was getting Special Allowance of Rs.20/- per month for handling cash and as such

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was responsible for this aspect of the work. While functioning in this capacity he committed theft of Rs.27850/- during intervening period from 3.3.88 to 7.3.88. Vide Ann.R/3 FIR was lodged on 7.3.88. During investigation applicant was arrested by the Police and they also recovered full amount from his possession. In proof of this, Police report dated 21.3.88 is submitted as Ann.R/4. On the basis of these developments, applicant was placed under suspension on 25.3.88 and a charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued vide memorandum dated 28.3.88. The applicant submitted reply on 9.4.88 by Ann.R/5, in which he admitted the charges. In view of his making clean breast of the delinquency, disciplinary authority estopped the inquiry and imposed major penalty of compulsory retirement vide order dated 20.4.88 (Ann.A/2). In the meantime, the criminal case was charge-sheeted and during trial applicant filed an application dated 22.10.91 for impleading Shri A.K.Seth, Scientist & Head, NEERI Zonal Laboratory, Jaipur, as co-accused in the theft case. The trial court rejected this application on 4.2.91. During the period, applicant made several representations refusing penalty imposed upon him. After a lapse of six years applicant filed an appeal before Director General, CSIR, on 3.5.94, which was rejected as hopelessly time barred. Applicant then filed OA No.17/95 before this Bench of the Tribunal, which was also rejected vide order dated 11.9.95 being barred by limitation. On 31.5.96, the applicant was acquitted by the trial court. On the basis of this, he moved an application on 4.2.97 before the Director, NEERI, requesting him to withdraw the punishment order dated 20.4.88 and to reinstate him on duty with all consequential benefits. This application was also rejected as barred by limitation. The applicant then filed OA No.261/98 before this Bench of the Tribunal seeking direction to decide the appeal dated 3.5.94 but before the decision in this OA appellate authority had confirmed the penalty imposed by disciplinary authority through a speaking order dated 8.11.2000, the impugned order. Since appeal had been decided by appellate authority, this Tribunal dismissed the OA vide order dated 27.2.2001. It is then averred that punishment of compulsory

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retirement passed vide order dated 20.4.88 with full pension and gratuity benefits stands and now the applicant has once again approached the Tribunal through this OA to seek reinstatement with all consequential benefits, from which he is estopped. The same facts are elaborated in parawise reply. Grounds of illegality are denied on the basis of above facts and it is stated that applicant has been acquitted by trial court merely on technical grounds but the fact of misappropriation/theft of government money confessed by him to the Police and subsequent recovery of the amount, the fact of which was brought to the notice of respondents by Police report dated 21.3.88, and applicant's admission of guilt suo-moto without any pressure or persuasion prove the misconduct for which he was rightly imposed the penalty of compulsory retirement. The same has been upheld by the appellate authority on merits who also clarified that criminal proceedings and departmental inquiry are separate and distinct actions and of both can go on separately. Thus, question of violation of provisions of Constitution of India does not arise.

5. The applicant has filed a detailed rejoinder reiterating the facts enumerated in the OA and largely denying the reply by the respondents. His main contention against the impugned order is that in view of his acquittal by competent criminal court vide order dated 31.5.96 the appellate authority should have reinstated him in his job and granted all consequential benefits. He has also annexed copy of the order of the above criminal court dated 31.5.96.

6. The parties were heard at argument stage. While conceding that Departmental Action and trial can go on simultaneously, learned counsel for the applicant urged the Bench to consider this matter in the light of decision of the Supreme Court in case of Capt.M.Paul Anthony v. Bnarat Gold Mines Limited, JT 1999 (2) SC 456, as, according to him, facts and circumstances of these cases are similar and reliance on the decision of the Supreme Court would be appropriate. Learned counsel for the respondents, on

the other hand, contended that the two cases are not at all comparable and that the reply clearly shows that the action of the respondents is fully justified in facts and circumstances of the case.

7. We have given very careful thought to the contentions of the learned counsel for the parties. As far as facts of the case are concerned, there is not much dispute. It is true that departmental inquiry was completed on the basis of admission of guilt both in front of inquiry officer and prior to that confession to the Police and recovery of the money. The necessity of following detailed procedure of inquiry in these circumstances did not arise. As far as decision of Supreme Court in case of Capt.M.Paul Anthony (supra), we find that the circumstances of the two cases are very different. Firstly, Capt.M.Paul Anthony's case was decided ex-parte. Secondly, the delinquent officer in that case was not paid subsistence allowance due to which he could not participate in the departmental proceedings. For comparing the two cases it is important to peruse para-33 of this judgement, which reads as under :

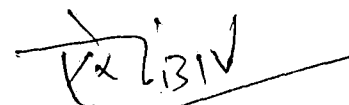
"33. Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex-parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings which were held ex-parte, stand vitiated."

In the present case, the circumstance in which the detailed inquiry was not held are entirely different. The applicant preferred appeal not once but twice and on both the occasions beyond the period of limitation but inspite of delay same has been disposed of through a detailed well reasoned order, which has been impugned in this OA. This case is different from Capt.M.Paul Anthony's case also in the fact that acquittal was long after the date of

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punishment of compulsory retirement and although the facts which are basis of Police investigation, trial and departmental inquiry are similar, the inquiry is regarding official misconduct which is different from criminal case instituted by the State for breaking the law of the land. The evidence and standard of proof required for each case is different. In departmental proceedings the measure of fixing the guilt is preponderance of probability but not ^{so} in criminal case. It is also very significant that the criminal court has acquitted the charged officer on a very technical ground, which perhaps the prosecution failed to prove to court's satisfaction but in departmental inquiry the same fact was proved beyond doubt on the basis of record. Further, in the order of the appellate authority various objections or grounds of appeal raised by the applicant have been considered and rejected through cogent reasoning. Thus the procedure adopted by the respondents cannot be faulted. From the facts of the case, it is clear that more than adequate opportunity was provided to the delinquent officer. The quantum of punishment can also not be considered harsh in the circumstances of the case. This Tribunal, therefore, finds no justification for it to interfere with orders of the respondents in the matter of such an old and grave delinquency as the same would result in serious consequences for the Organisation and society in general.

8. In the result, this OA is dismissed with no order as to costs.



(A.K.BHANDARI)

MEMBER (A)



(M.L.CHAUHAN)

MEMBER (J)