

Central Administrative Tribunal
Jabalpur Bench

OA No.814/04

Quoting this the 22nd day of June, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Viresh Saxena
S/o Late Shri Parmanand Saxena
Sub Divisional Engineer (E.S.)
Bharat Ratna Bhim Rao Ambedkar
Institute of Telecom Training, Jabalpur
R/o Jagdish Bhawan Hostel
Bharat Ratna Bhim Rao Ambedkar
Institute of Telecom Training
Ridge Road, Jabalpur.

Applicant.

(By advocate Smt.S.Menon)

Versus

1. Union of India through
Secretary
Department of Telecommunication
Ministry of Communication
Sanchar Bhawan, Ashoka Road
New Delhi.
2. Member (Services)
Telecom Commission
Ministry of Communications
Sanchar Bhawan, Ashoka Road
New Delhi.
3. Chief General Manager
Bharat Ratna Bhim Rao Ambedkar Institute of
Telecom Training
Ridge Road, Jabalpur.
4. Chief General Manager UP(W)
Telecom Circle, 1st Floor, M.D.A.Building
Meerut (U.P.)

(By advocate Shri S.A.Dharmadhikari)



ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) To quash the impugned memorandum of charge sheet dated 5.3.2004 (Annexure A5).
- (ii) To direct the respondents to treat the petitioner on duty i.e. for the period with effect from 11.12.2001 to 8.3.2004.


2. The brief facts of the case are that the applicant who was appointed as Junior Engineer on 8.6.1982 was subsequently promoted as Sub Divisional Engineer (Group 'B') Gazetted in the grade of Rs.7500-12000/-. He was implicated in a criminal case against an alleged incident on 26.9.2001 resulting in lodging of an FIR. On the basis of the criminal case, the applicant was detained in police custody on 26.9.2001 and after 48 hours of detention, he was placed under suspension vide order dated 11.2.2001 (Annexure A1). The said criminal case was decided by the Court of Special Judge, Anti Corruption, Meerut and vide judgment dated 12.5.2003 the applicant was acquitted. Soon after, the applicant submitted a representation to the Senior Deputy Director (Vig.) requesting for review of the order of suspension. Since the request was not acceded to, the applicant moved CAT, New Delhi through OA No.2298/03 and vide order dated 19.9.2003, the said OA was disposed of directing the applicant to submit a representation and on submitting a representation, the suspension order of the applicant was revoked by the respondents vide order dated 9.3.2004 (Annexure A4). During the pendency of the criminal case, no charge sheet has been issued by the respondents and after the acquittal, the applicant has been issued with a memo of charge (Annexure A5). The charge sheet was against the same set of charges already decided by the Special Court resulting in the applicant's acquittal. The memorandum of charge sheet deserves to be



quashed and also the period of suspension deserves to be regularized. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that Annexure A2 is the memorandum of charges, in which three charges were levelled against the applicant while the trial of the applicant was conducted and concluded by the Court of Special Judge, Anti Corruption, Meerut on the same set of charges and the applicant was acquitted on merit by the competent court vide judgment dated 12.5.2003. Learned counsel for the applicant has drawn our attention towards 1999 (3) SCC 679-Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and another, decided on March 30, 1999, in which the Hon'ble Supreme Court has held that "A. Service Law-Departmental Enquiry-Simultaneous continuance of criminal proceedings-Law on this point restated that scope of these two proceedings is different and they can be continued independently-But in the present case, keeping in view that both the proceedings were based on the same set of facts which were sought to be proved by the same witnesses viz. police and Panches and the court had already acquitted the appellant by rejecting the prosecution story, held, findings recorded against appellant in an ex parte disciplinary enquiry could not be sustained."

4. Learned counsel further argued that the court of special judge had discussed each and every aspect of the prosecution version and had also discussed the evidence adduced by the prosecution. This judgment cannot be said to have been passed on technical grounds. Hence after the pronouncement of the aforesaid judgment, the respondents could not have issued the charge memo on the same set of charges, as per law. The suspension of the applicant had been revoked by the respondents after the judgment of the Special Judge. Hence he should be treated as on duty with effect from 11.12.2001 to 8.3.2004. The applicant is legally entitled for the reliefs claimed.




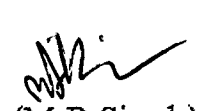
5. In reply, learned counsel for the respondents argued that the applicant has been acquitted by specials judge, Anti Corruption, Meerut on 12.5.03 partly on technical grounds/lack of sufficient evidence with police. There is no legal bar to the initiation of departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency/misconduct in criminal prosecution and departmental proceedings, as well as the standards of proof required in both cases are not identical. In criminal case, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings, proof based on preponderance of probability is sufficient for holding the charges as proved. The counsel further argued that in the judgment passed by the special judge, it is clearly mentioned that "prosecution has examined Anil Pandey and Adesh Sharma who are said to be alleged independent witnesses in whose presence the accused persons were arrested and cash was recovered but they have not supported the prosecution version and they have been declared hostile". Hence this judgment cannot be said to have been delivered on merits because only two independent witnesses were declared as hostile and so far as the ruling cited on behalf of the applicant is concerned, it is not applicable in this case. No findings are recorded against the applicant in an ex-parte disciplinary enquiry by the respondents. Applicant had submitted his representation against the charge sheet as he admitted himself in the OA and due opportunity had been given to him during departmental enquiry proceedings and suitable orders have been passed as per rules and law. Hence this OA is liable to be dismissed.



6. Heard learned counsel for the parties and perused the material brought on record. We have perused the judgment passed by the special judge, Anti Corruption, Meerut in which it is mentioned that "prosecution has examined Anil Pandey and Adesh Sharma who are said to be alleged independent witnesses in whose presence the accused persons were arrested and cash was recovered but they have not supported the prosecution version and they have been declared hostile". The arguments advanced on behalf of the respondents that the applicant cannot be said to have been acquitted and the judgment is not delivered on merit seems to be legally tenable and correct. We have perused the aforesaid ruling cited on behalf of the applicant. The respondents have not recorded any finding against the applicant in an ex-parte disciplinary enquiry proceedings so far. They have initiated the departmental proceedings by issuing a charge sheet and the applicant has submitted his reply against it. In the case of criminal trial, clinching and conclusive evidence is required while it is not required in departmental enquiry proceedings.

7. Considering all facts and circumstances of the case, we are of the considered opinion that the action of the respondents in initiating departmental proceedings against the applicant is neither illegal nor irregular. The OA has no merit and is dismissed. However, the respondents are directed to give proper opportunity of hearing to the applicant in the departmental enquiry proceedings and the applicant is directed to cooperate with the proceedings. *No costs.*


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman