

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

16

ORDERS OF THE BENCH

Date of Order: 08.08.2012

OA No. 224/2010

Mr. Kamallesh Sharma, proxy counsel for
Mr. Mahendra Shah, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

At the request of learned proxy counsel for Mr.
Mahendra Shah, counsel for applicant, put up the matter
on 07.09.2012 for hearing.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

07/09/2012

OA No. 224/2010

Mr. Mahendra Shah, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a
Separate order on the separate-
sheets for the reasons recorded
therein.

Anil Kumar

[Anil Kumar]
Member (A)

K. S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 7th day of September, 2012

ORIGINAL APPLICATION No.224/2010

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Nathu Lal Dhobi
s/o Shri Bheru Lal Dhobi,
r/o H.No. 97, Gali No.1,
Jhalana Katchi Basti,
Near MREC, Jaipur, at present
working in the office of SIB MHA,
Govt. of India, 2-B, Lawan Marg,
Jhalana Doongri, Jaipur

.. Applicant

(By Advocate: Shri Mahendra Shah)

Versus

1. Union of India
through its Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi.
2. The Joint Director and Appellate Authority,
Subsidiary Intelligence Bureau,
572, Mont Fort House (MHA),
Government of India,
Trivendrum.
3. The Assistant Director-cum Disciplinary Authority,
Subsidiary Intelligence Bureau,
Government of India,
2-B, Lavan Marg, Jhalana Ind. Area,
Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

Brief facts of the case are that the applicant was served with the charge sheet dated 23.11.2005 (Ann.A/2) under Rule 14 of the CCS (CCA) Rules, 1965 alleging therein that applicant got employment against the vacancies of Scheduled Tribe (ST) category despite being 'Dhobi' which falls under the category of Schedules Caste (SC) category.

2. The applicant submitted his reply to the aforesaid chargesheet and pointed out that when the Caste Certificate was issued by Tehsildar on 3.12.85 he was of 17 years and caste 'Dhobi' is specifically mentioned in the certificate itself. The applicant was not knowing the difference between SC & ST, therefore, on the basis of the aforesaid certificate he sought the employment earlier under the control of Joint Director, SIB, Jaipur w.e.f. 9.5.1991 and thereafter he was granted temporary status w.e.f. 1.9.1993.

3. Thereafter having conducted the disciplinary proceedings, the Disciplinary Authority passed order on 21.6.2006 whereby it was decided not to award any punishment to the applicant.

4. The applicant filed appeal against the order dated 21.6.2006 and the Appellate Authority vide order dated 15.7.2009 (Ann.A/1A) upon consideration of appeal observed that the applicant stated to have requested the Inquiry Officer to cross examine the custodian or those who prepared his service book of the officer, who attested it and the officer of SIB, Jaipur who conducted enquiry in the Tehsildar Office, Jaipur to ascertain the authenticity of his Caste Certificate, which was denied by the IO with the remarks



that it was not feasible and also not relevant at that stage. Having considered the averments made by the applicant in the appeal, the Appellate Authority was of the view that thorough/further examination is required in this case, therefore, the case was remitted back to the Disciplinary Authority for conducting de-novo proceedings.

5. In compliance of the order passed by the Appellate Authority, the applicant was again issued a charge sheet dated 5.3.2010 (Ann.A/1) on the same charges by the Disciplinary Authority.

6. Being aggrieved with the continuance of the disciplinary proceedings through the chargesheet dated 5.3.2010 in pursuance of the order dated 15.7.2009, the applicant has filed the present OA claiming the following reliefs:-

- i) the impugned disciplinary proceedings through impugned charge sheet dated 5.3.2010 in pursuance to the impugned order dated 15.7.2009 may kindly be declared illegal, invalid, unjustified and unwarranted and the same may kindly be quashed and set aside with all consequential benefits.
- ii) That the impugned order dated 15.7.2009 issued by appellate authority directing the Asstt. Director to hold the de-novo enquiry may also kindly be declared illegal and ab-initio-void being without jurisdiction with all consequential benefits.
- iii) That the charge sheet dated 5.3.2010 may kindly be declared illegal and invalid and therefore the same may kindly be quashed and set aside.
- iv) Any other relief which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of this case may also be passed in favour of the applicant.



7. The impugned chargesheet as well as the order passed by the Appellate Authority is challenged on the ground that the Caste Certificate issued by the Tehsildar does not tantamount the misconduct because applicant submitted the same as it is without any interpolation. Caste 'Dhobi' is clearly mentioned and he did not misrepresent his caste. It is also challenged on the ground that continuation of disciplinary proceedings, despite pendency of criminal case on the same set of charges, which are to be proved by the same piece of evidence, is contrary to the settled legal position and, therefore, on the face of it, the disciplinary proceedings are illegal, and are liable to be quashed and set aside on this ground alone.

8. The learned counsel appearing for the applicant further submitted that the order dated 15.7.2009 ordering de-novo enquiry by the Appellate Authority at Trivandrum directing the Assistant Director at Jaipur, the Disciplinary Authority, to hold de-novo enquiry is also without jurisdiction because appeal itself was not maintainable in view of Rule 23(ii) read with Rule 27(ii) of CCS (CCA) Rules.

9. Not only this, the applicant has also challenged continuation of the disciplinary proceedings through the chargesheet dated 5.3.2010 on the ground that the same will amount to denial of natural justice and holding enquiry in the same matter on the same charges with the same evidence is not permissible because of the pendency of the criminal case on the same issue which is to be proved by the same evidence and having no difference in the



charges. In the present case, criminal case No. 776/2009, State vs. Nathu Lal is pending in the court of Judicial Magistrate No.17, Jaipur City, Jaipur.

10. In support of his submissions, the learned counsel appearing for the applicant referred the judgment of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd., reported in 1999 SCC (L&S) 810 and Indian Overseas Bank Vs. P.Ganesan and ors, reported in (2008) 1 SCC (L&S) 275.

11. We have heard the rival submissions of the respective parties and carefully perused the material available on record as well as the judgments relied upon by the respective parties.

12. The applicant has challenged the memorandum of charge sheet and the appellate order on two counts – first that during the pendency of criminal case enquiry should not be initiated pursuant to the charge sheet and, secondly on the ground that the Appellate Authority has seriously erred in remitting the matter for conducting de-novo proceedings against the applicant.

13. In the present case interesting fact is that vide Ann.A/3 dated 21.6.2006, the Disciplinary Authority having examined the fact that verification of Caste Certificate in respect of Shri Nathu Lal (applicant), Peon was made in compliance to a judgment of Hon'ble High Court of Delhi that the department should verify the authenticity of 'ST' certificate submitted by all those persons who secured employment on the basis of 'ST' certificate w.e.f. 1.1.1995 onwards and the CBI has been appointed as the nodal agency to monitor the progress of the implementation of the judgment.



Therefore, the Enquiry Officer has come to the conclusion that it is doubtful to prove the charge leveled against the CO for want of corroborative evidence in support from the record available with the Tehsildar, Jaipur. Since the CBI is investigating the case it would be fair to take appropriate action on the basis of its report. The original caste certificate of Shri Nathu Lal has been sent to IB, New Delhi for handing over to CBI. It is therefore, ordered not to award any punishment to the applicant. Although, the order passed by the Disciplinary Authority is in consonance with the relief claimed by the applicant in this OA, but the applicant filed appeal against this order dated 21.6.2006 before the Appellate Authority and the Appellate Authority vide its order dated 15.7.2009 remitted the case to the Disciplinary Authority of the applicant at SIB, Jaipur for conducting de-novo proceedings and being aggrieved and dissatisfied with the appellate order filed the present OA claiming the same relief as has been granted by the Disciplinary Authority on the basis of the report of the Enquiry Officer, not to award any punishment to the applicant till the investigation is completed by the CBI.

14. Now the question is whether the respondents can initiate disciplinary proceedings pending criminal trial, even though the disciplinary proceedings as well as the criminal proceedings are based on same grounds and same charges ?

15. This Tribunal in OA No. 472/2009 vide order dated 21.4.2011 in the case of Atulesh Sharma vs. Union of India has already considered and decided this issue. In the aforesaid OA, this Tribunal



thoroughly considered the case of Capt. M.Paul Anthony (supra) which has been heavily relied by the learned counsel for the applicant referring para 22 of the judgment. In the above case, the Tribunal also considered the case of NOIDA Entrepreneurs Association vs. NOIDA and Ors reported in 2007 (10) SCC 385; G.M.Tak vs. State of Gujarat and ors. reported in 2006 SCC (L&S) 1121 and Kendriya Vidyalaya Sangathan and others vs. T.Srinivas reported at (2004) 7 SCC 442. In para 22 in the case of Capt. M.Paul Anthony, the Hon'ble Supreme Court observed as under:-

"22.... (i) Departmental proceedings and proceeding in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the

criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

16. In the case of NOIDA Entrepreneurs Association (supra), the Hon'ble Apex Court also considered the judgment rendered in the case of Union of India vs. Bihari Lal Sidhanta, 1997 SCC (L&S) 1076 wherein the Hon'ble Supreme Court observed as under:-

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employees does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether reinstatement or appropriate action should be taken as per law, if otherwise available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity of misappropriation of public money."

17. In the case of Kendriya Vidyalaya Sangathan and Others vs. T.Srinivas (supra), the Hon'ble Supreme Court also considered the



case of Capt.M.Paul Antony (supra) which has been relied upon by the applicant and having considered the ratio decided by the Hon'ble Apex Court in the case of M.Paul Anthony observed as under:-

"8. On a reading of M.Paul Anthony case it is noted that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, however, this Court notices that certain exceptions have been carved out to the said basic principle.

9. In State of Rajasthan v. B.K.Meena [1996 SCC (L&S) 1455] this Court held:

"The only ground suggested in the decisions of the Supreme Court as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. It means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability, 'desirability' or 'propriety', as the case may be, of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the Supreme Court's decisions."

18. Not only this, the Full Bench at CAT-Principal Bench in OA No.2816/2008 vide its judgment dated 18th February, 2011 has thoroughly considered the cases of Delhi Cloth and General Mills Ltd, vs. Kushal Bhan [AIR 1960 SC 806]; Deputy Director of Collegiate Education (Administration) Madras v. S.Nagoor Meera [AIR 1995 SC 1364] and also the judgment in the cases of Capt. M.Paul Anthony

as well as Kendriya Vidyalaya Sangathan vs. T.Srinivas (supra) and after considering each and every aspect and thoroughly examining the cases referred made the following observations:-

"9. In view of the discussion made above, we hold that there is no bar, express or implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case, and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedent over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential relief.

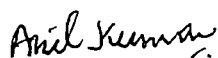
10. In view of our findings on the first issue, there would be no need to put on hold the final orders in departmental proceedings awaiting the decision of criminal court."

19. Having considered the ratio decided by the Supreme Court in the case of NOIDA Entrepreneurs Association and Kendriya Vidyalaya Sangathan vs. T.Srinivas and the decision dated 18.2.2011 of the Full Bench at CAT-Principal Bench, New Delhi, we are of the view that departmental proceeding can continue even if criminal trial is pending.

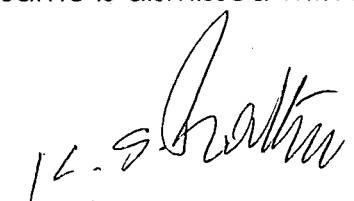
20. Now the question is whether the order passed by the Appellate Authority is without jurisdiction as the appeal was not maintainable against the order dated 21.6.2006 passed by the Disciplinary Authority ? When appeal is preferred by the applicant, the Appellate Authority has left no other option but to decide the same and the same has been decided in view of the settled principles of law, as discussed hereinabove, and we find no illegality

in the order passed by the Appellate Authority since the applicant himself has raised several objections against the Enquiry Officer being biased in his action during the proceedings and that he has not allowed to cross examine the witnesses to ascertain authenticity of his Caste Certificate and the same has been allowed by the Appellate Authority by remitting the case to the Disciplinary Authority to conduct de-novo enquiry giving all sort of opportunities to the applicant.

21. In view of the settled principle of law, in our considered view, there is no illegality in the order dated 15.7.2009, as already held by this Tribunal in 472/2009 decided on 21.4.2011 and in OA No.266/2012 decided on 14.8.2012 wherein the judgment of Capt.M.Paul Anthony was considered by observing that departmental proceedings can continue even if criminal proceedings are pending. Therefore, in view of the ratio decided by the Supreme Court in the case of NOIDA Entrepreneurs Association, Kendriya Vidyalaya Sangathan and Full Bench of CAT-Principal Bench, we find no merit in this OA and the same is dismissed with no order as to costs.



(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/