

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 28.11.2011

MA No. 332/2011 (OA No. 288/2010)

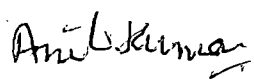
Mr. Amit Mathur, counsel for applicant.
Mr. T.P. Sharma, counsel for respondents.


MA 332/2011

Heard on the Misc. Application for restoration of the Original Application, and having considered the submissions made on behalf of the respective parties, and the reasons stated in the Misc. Application for seeking restoration of the Original Application, we are fully satisfied with the reasons stated and, thus, the Misc. Application for restoration of the Original Application stands allowed. The Original Application is restored to its original number and status. The Original Application is taken up for final disposal today itself.

(OA No. 288/2010)

Heard learned counsels appearing for the parties. The O.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.


(ANIL KUMAR)
MEMBER (A)


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

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 28th day of November, 2011

Original Application No. 288/2010

CORAM:

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

Chandra Bhan Singh
s/o Shri Natthi Lal,
r/o Basant Vihar Colony,
RIICO Road, Bharatpur,
Presently working as JTO
at Bharatpur (Raj.)

.. Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. Chief General Manager,
Rajasthan Circle,
BSNL, Ashok Marg,
C-Scheme, Jaipur
2. General Manager,
Bharatpur Division,
BSNL, Bharatpur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER (ORAL)

The present OA is preferred by the applicant with the prayer
that the memorandum dated 22.5.2010 and the departmental



inquiry pursuant to this memorandum dated 22.5.2010 may kindly be quashed and set aside.

2. The brief facts of the case are that in the year 2000, when the applicant was posted at Bayana, a criminal case was registered for revenue leakage. In pursuance to the criminal case, the Central Bureau of Investigation (CBI) filed FIR and subsequently challan. During pendency of the criminal trial, the applicant was placed under suspension vide order dated 4.12.2000 which was later on revoked vide order dated 24.12.2001. The Special Judge, CBI Cases vide its order dated 25.6.2008 acquitted the applicant from charges leveled giving him benefit of doubt as the prosecution failed to prove the guilt beyond reasonable doubt.

3. The applicant, after acquittal in criminal case, submitted representation to respondent No.2 for allowing him all consequential benefits. As respondent No.2 has not responded to his representation and it is also alleged that respondent No.2 threatened the applicant to initiate departmental proceedings into the matter.

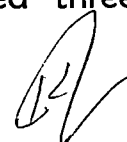
4. The respondent No.2 served memorandum to the applicant on 15.10.2008 on the same charges for which the applicant was acquitted by the criminal court of law and the memo has been replied by the applicant on 22nd October, 2008.



5. After issuance of the presidential order, respondent No.2 issued memo to the applicant seeking clarification in the matter of same charge in which the applicant has already been acquitted. Again the applicant replied the same vide letter dated 21.5.2010 and after that a memorandum of charge sheet was served to the applicant on 22.5.2010. In pursuance to the memorandum of charge sheet, enquiry was initiated and disciplinary action is pending against the applicant.

6. The main ground taken by the applicant to the memorandum of the charge sheet is that the enquiry is being conducted on the same charges which have been leveled in the criminal case and since the Trial Court has acquitted the applicant and the issue has already been settled, therefore, there is no justification for serving the charge sheet on the applicant at this stage.

7. Per contra, the respondents have submitted that during the period 2000-01 when the applicant was working as JTO, Roopbas with headquarter at Roopbas, under his jurisdiction, a heavy revenue leakage in C-DOT exchange Roopbas was observed by extending ISD facility illegality on non-STD/non-ISD No.43755 and 43723. Shri Bhawan Singh, the then SDEP Bharatpur had observed a threshold alarm in MBM C-DOT Bharatpur on Roopbas incoming circuits on 1.12.2000 at 1200 hrs. Accordingly, Shri A.K.Gupta, the then TDM Bharatpur immediately constituted three members



committee. The committee visited the Roopbas exchange immediately at about 13.30 hrs on 1.12.2000 and they took all observations and came to the conclusion that a very high order of revenue leakage in C-DOT exchange Roopbas was taken place which was managed in highly technical way by extending ISD facility illegally on non-STD/non-ISD No.43755 and 43723 and thus allowing misuse of ISD facility by subscriber of above said telephone numbers. For such leakage, the then JTO Shri C.B.Singh with headqauarter at Roopbas and Shri S.R.Meena the then SDE Roopbas and Bayana with headquarter at Bayana were fully responsible and they were recommended for a serious action to prevent such leakage.

8. After observing the gravity of the case, FIR No. RC2/2001 was lodged and the Criminal Trial Court has decided the case No.30/2001 on 25.6.2008 whereby the applicant and two other persons have been exonerated on the basis of benefit of doubt.

9. The learned counsel for the respondents further submitted that the memorandum of charge sheet which has been issued to the applicant is different than the charges mentioned in CBI case. The charge sheet was served based on heavy revenue leakage under his jurisdiction due to lack of supervision and regular monitoring in C-DOT exchange Roopbas was observed by the Committee by extending ISD facility illegally and non-STD/non-ISD numbers 43755 and 43723 of Roopbas Exchange. For such revenue leakage, the



Committee has made the concerned JTO and SDE fully responsible. Therefore, the department has rightly initiated the disciplinary proceedings against the applicant.

10. Further, in response to the submissions made on behalf of the applicant that the charge sheet has not been issued by the competent authority, it is stated by the respondents that as per the Under Secretary to the Government of India letter dated 4.11.2009 wherein he requested CGMT Rajasthan Circle, Jaipur to provide draft charge sheet against the applicant and Shri S.R.Meena, SDE for taking further action. As the applicant at that time did not absorb in BSNL, hence the competent authority could not issue charge sheet due to want of direction/instructions from DOT. The presidential order was delivered to the officer on 5.5.2010 for absorption, hence as per Rule 34 of BSNL CDA Rule 2006, the competent authority became empowered to issue charge sheet to the officer.

11. The learned counsel appearing for the applicant in support of his submissions placed reliance on the case of G.M.Tank vs. State of Gujarat and ors., reported in (2006) 5 SCC 446 wherein the Hon'ble Supreme Court has held that- Department enquiry- Acquittal in criminal trial – Sustainability of dismissal of employee concerned in case of- Departmental enquiry and criminal proceedings based on same set of facts, charges, evidence and witnesses – No evidence against employee to hold him guilty – Employee honourably



acquitted in criminal trial during pendency of proceedings challenging dismissal – Finding to contrary recorded in departmental proceedings in such case, held, unjust, unfair and oppressive – Dismissal order not sustainable – Hence set-aside.

12. The applicant also referred to the case of P.V.Mahadevan vs. M.D.Tamilnadu Housing Board, reported in AIR 2006 SC 207 wherein the Hon'ble Apex Court has held that Disciplinary proceedings-Initiation after 10 years of alleged misconduct-Sustainability-Proceeding initiated against appellant as Superintending Engineer after 10 years of irregularity in alleged transaction of sale- No explanation furnished for such inordinate delay- Appellant superannuating in meantime- Allowing respondent to proceed further with departmental proceedings at this distance of time- Will be very prejudicial to appellant- Keeping higher Government official under charges of corruption and disputed integrity- Would cause unbearable agony and distress to officer-Protracted enquiry should be avoided not only in interests of Government employee but also in public interest and inspiring confidence in minds of Government employee- Mental agony and sufferings of appellant due to protracted disciplinary proceedings- Would be much more than punishment- For mistake of department, appellant should not be made to suffer-Hence, charge memo issued against appellant quashed-Appellant entitled to all retiral benefits to be disbursed within three months.



13. Also referred to the case of State of M.P. v. Bani Singh and another reported in AIR 1990 SC 308 and the order passed by the CAT-Jodhpur Bench in OA No.147/2009 on 13th April, 2011 in support of his submissions.

14. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record as well as the judgments relied upon by the parties, the main challenge to the memorandum of charge sheet dated 22.5.2010 as well as the enquiry initiated in pursuance to the above memorandum is on the ground that for the incident pertaining to the year 2000 for which F.I.R. was lodged against the applicant and two others under Section 120-B, Section 420 IPC and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 and the Trial Court vide its judgment dated 25.6.2008 has acquitted the applicant giving benefit of doubt and after a lapse of about two years, the memorandum of charge sheet has been issued. Therefore, the learned counsel appearing for the applicant submitted that the charge sheet as well the enquiry proceeding deserve to be quashed and set-aside in view of the ratio decided by the Supreme Court in the case of P.V.Mahadevan (supra) wherein the Apex Court quashed and set aside the disciplinary proceedings initiated after 10 years of the alleged misconduct.



15. We have to consider the submissions whether after acquittal from the criminal charge, the respondents can initiate disciplinary proceeding or not?

16. The Hon'ble Supreme Court in the case of Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. and Another, reported in 1999 SCC (L&S) 810 held that there is consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except whether departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. Basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of the disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities. In a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Further stated that the scope of two proceedings is different and they can continue independently, but in that case keeping in view that both the proceedings were based on same set of facts which were sought to be proved by the same witness viz. police and Panches and that



the court had already acquitted the appellant by rejecting the prosecution story, it is held that finding recorded against the appellant in an ex-parte disciplinary enquiry could not be sustained.

17. But the view expressed by the Hon'ble Supreme Court in the case of Capt. M.Paul Anthony (supra) has been later on considered in the judgment rendered by the Supreme Court in the case of NOIDA Entrepreneurs Association vs. NOIDA and Ors., reported (2007) 10 SCC 385 wherein it is held that departmental enquiry is distinct from the criminal proceedings. Standard of proof required in departmental enquiry is not the same as required to prove a criminal charge. Even acquittal in criminal case does not bar departmental enquiry. Hence decision to drop departmental enquiry taken after consideration of enquiry report of CBI was held improper and quashed and departmental enquiry was directed to continue.

18. Applying the ratio of the Hon'ble Apex Court in the case of NOIDA Entrepreneurs Association (supra) on the facts and circumstances of the present case, it is not disputed that the Trial Court has acquitted the applicant alongwith two others by giving benefit of doubt as the prosecution failed to prove charge beyond the reasonable doubt. Although, the Trial Court was of the view that allegations are of serious nature, but since the prosecution failed to prove the charges beyond reasonable doubt, therefore, giving benefit of doubt, the applicant and two others were

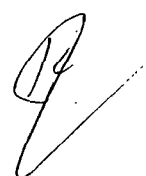


acquitted vide order dated 25.6.2008. Thereafter the Disciplinary Authority though it proper to initiate disciplinary proceedings against the applicant and issued memorandum dated 22.5.2010.

19. Even on comparative study of the charges leveled in the criminal case for which the applicant was tried and acquitted and the charges leveled in the departmental enquiry, both the charges are more or less same, but cannot be said to be identical as the departmental proceedings are initiated against the applicant on account of supervisory negligence and that he has not acted properly and has violated the provisions of Conduct Rules.

20. Thus, in view of the ratio decided by the Hon'ble Apex Court in the case of NOIDA Entrepreneurs Association (supra), there is no bar to initiate departmental proceedings even after acquittal in criminal case.

21. We have also considered the submissions made on behalf of the applicant that the departmental enquiry has not been initiated immediately after acquittal order. Since the original documents were seized by the CBI and were summoned by the Trial Court and these documents were requisitioned by the department and on availability of the original record from the Trial Court, the disciplinary enquiry was proposed to be initiated against the applicant. A Three Member Committee was also constituted to examine the matter and on recommendations of the Committee,



disciplinary proceedings were to be initiated against the applicant and pursuant to that charge sheet vide order dated 22.5.2010 was issued.

22. In view of the above fact, it cannot be said that there is inordinate delay as held by the Apex Court in the case of P.V.Mahadevan (supra) and thus, the ratio decided by the Hon'ble Supreme Court in the case of P.V.Mahadevan is not applicable in the facts and circumstances of the present case.

23. As observed hereinabove, we find no illegality in issuing the charge sheet and pursuant to that initiating enquiry proceeding against the applicant, and the same does not require any interference by this Tribunal. Consequently, the OA being bereft of merit deserves to be dismissed which is hereby dismissed with no order as to costs.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/