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29/09/2011 [O.A 157/2011 & M.A 242/2011]

Mr. C.B. Sharma, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents

Heard.

The O.A. and M.A. are 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.

Jaipur, the 29th day of September, 2011

ORIGINAL APPLICATION No. 157/2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

K.L. Varlani son of Shri Gangu Mal aged about 49 years, resident of 21/296, Sai Sagar, Maloosar Road, Shukhadia Nagar, Ajmer and presently working as Postal Assistant, Ajmer Head Post Office, Ajmer Postal Division, Ajmer.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Rajasthan Southern Region, Ajmer.
4. Director Postal Services, Southern Region, Ajmer.
5. Senior Superintendent of Post Offices, Ajmer Postal Division, Ajmer.
6. Shri Prahalad Sharma, Inquiry Officer and Superintendent of Post Offices, Beawar Postal Division, Beawar.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief:-

- "(i) That entire record relating to the case be called for and after perusing the same letter dated 24.12.2010 (Annexure A/1) with the charge memo dated 12.04.2010 (Annexure A/2) be quashed and set aside with all consequential benefits.
- (ii) That respondents be further directed not to initiate any proceedings in the present mater and to act as per rules/procedure.

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- (iii) Any other order/direction or relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (iv) That the cost of this application may be awarded."

2. The present OA has been filed by the applicant with the prayer that the departmental inquiry/charge sheet may be dropped on the ground that criminal case filed against him has been closed on account of not taking any action by prosecution for more than six months as applicant served with charge memo on the same allegations in connection with so called misbehaving with the then Post Master, Shri P.D. Raigar and Shri P.D. Raigar filed complaint before local Police in the month of January, 2010, whereas charge memo dated 12.04.2010 (Annexure A/2) served upon the applicant. The request of the applicant to drop the charge sheet/ departmental inquiry has been rejected by the respondents vide letter dated 24.12.2010 (Annexure A/1). It is further stated that the applicant is office bearer of staff union belong to Postal Department and holding the post of Assistant Secretary and applicant regarding working of respondent no. 6 as Inquiry Officer apprised the respondents from time to time but respondent no. 6 is adamant to act against procedure.

3. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that a criminal case was registered against the applicant. The applicant made a complaint against Shri P.D.

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Raigar before the Local Police on 23.01.2010 (Annexure A/4). The applicant also apprised the respondent no. 5 and on the other hand, Shri P.D. Raigar with certain allegations against the applicant reported the matter to the authorities vide letter dated 23.01.2010 (Annexure A/5). Shri P.D. Raiger also filed a complaint before the local police on 25.01.2010 (Annexure A/6) alleging therein that the applicant misbehaved with him. Learned counsel for the applicant further submitted that the respondent nos. 3, 4 and 5 annoyed with the applicant due to union activities made up a case against him and served major penalty charge sheet under Rule 14 of CCS (CCA) 1965 on the allegations that applicant misbehaved with the then Post Master, Shri P.D. Rager, and on the same allegation, matter was also reported to the local police. Copy of the charge sheet has been annexed as Annexure A/2.

4. That respondent no. 5 being the disciplinary authority appointed one Shri S.D. Sheikh, Senior Post Master, Ajmer Head Post Office as Inquiry Officer and Shri Jaswant Singh, ASPOs (HQ), Ajmer as Presenting Officer. Both these officers were working under respondent no. 5. The applicant submitted his representation dated 15.06.2010 (Annexure A/9) stating therein that as per the facts & circumstances, departmental action is not at all justified and the same may be dropped. That during the pendency of the departmental proceedings, complaint made before the local police also came to an end, so applicant made a request on ~~date~~

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09.12.2010 (Annexure A/12) to respondent no. 5 to drop to the departmental action as both the actions were based on the same set of facts with the same witnesses but respondent no. 5 rejected the request of the applicant vide impugned order dated 24.12.2010 (Annexure A/1). Learned counsel for the applicant argued that nature of the charges against the applicant are not such as warrant disciplinary proceedings for major penalty. Therefore, charge sheet issued to the applicant vide letter dated 12.04.2010 may be quashed.

5. Learned counsel for the respondents argued that applicant has been issued charge sheet because he misbehaved and abused to Shri P.D. Raiger, the then Sr. Postmaster HO in the premises of Ajmer Head Post Office in the presence of staff of Ajmer Headquarter. He also made a complaint against Shri P.D. Raiger, the then Sr. Post Master Ajmer HPO to Police Than Sadar Kotwali in the capacity of Sub Postmaster Bhajanganj, Ajmer alleging misbehaviour by Shri P.D. Raiger with him. Shri P.D. Raiger, the then Senior Postmaster, Ajmer HO, has also made a complaint against the applicant, Shri Varlani to Police Thana, Sadar Kotwali, Ajmer as well as higher authorities alleging misbehaviour and abusing him by said Shri K.L. Varlani. Both the complaints received were got investigated through ASPO (North) Sub Division, Ajmer and as per inquiry report, the complaint made by Shri K.L. Varlani was found baseless whereas the allegation made by Shri P.D. Raiger, the then

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Senior Postmaster, Ajmer HO, against the K.L. Varlani for his misbehaviour and abusing in the premises of Ajmer HO were fully proved. Simultaneously, a FIR lodged by Shri P.D. Raiger was investigated by the Police and case No. 98/2010 was registered against the applicant under Section 107/116.

(3) CRPC in the court of ADM City Ajmer vide order dated 03.02.2010. The ADM City Ajmer vide order dated 21.10.2010 closed the matter on technical grounds that more than 6 months have been passed but inquiry has not been completed. Therefore, the criminal proceedings were dropped.

6. Learned counsel for the respondents further argued that law is well settled in this case. Even if a person is acquitted in a criminal case, the departmental proceedings can be held. He referred to a judgment of the Hon'ble High Court in DB Civil Writ Petition No. 6852/2011 (**Atulesh Sharma vs. Union of India**) wherein the Hon'ble High Court has held as under:-

"In our opinion, the Tribunal has rightly observed that the standard of proof required in the departmental proceedings is not the same, as required in the criminal proceedings and even if there is acquittal in the criminal proceedings, the same does not bar continuation of departmental proceedings and in coming to the aforesaid conclusion, reliance has been placed by the Tribunal on the decision of the Apex Court in the case of NOIDA Entrepreneurs Association (supra) wherein decision in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd.** (1999 SCC (L&S) 810) has also been considered. We find the decision of the Tribunal to be appropriate in the instant case of not staying departmental proceedings."

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Thus in view of the ratio laid down by the Hon'ble High Court, departmental proceedings need not be dropped just because the applicant has been acquitted in the criminal case. The applicant has ample opportunity to agitate before the Inquiry Officer of all his points which he is raising in the present OA. Therefore, the present OA being devoid of merit be dismissed.

7. Having heard the rival submission of the respective parties and on perusal of the documents on record, we are of the view that there is no ground to interfere with the charge sheet dated 12.04.2010 (Annexure A/2) and also the communication of the respondents to the applicant vide letter dated 24.12.2010 (Annexure A/1). Law is well settled on the point that departmental proceedings can continue even if there is acquittal in the criminal proceedings. There is no bar in the continuation of the departmental proceedings even if criminal proceedings come to an end. The ratio laid down by the Hon'ble High Court in the case of **Atulesh Sharma vs. Union of India** (supra) is squarely applicable in this case that the standard of proof required in departmental proceedings is not the same as required in the criminal proceedings and even if there is acquittal in the criminal proceedings, this does not bar the departmental proceedings.

8. Therefore, we are of the considered opinion that there is no need to quash the charge sheet. The departmental

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proceedings can be continued even if the criminal proceedings are dropped. The applicant will have ample opportunity to agitate before the Inquiry Officer and put up his points before the Inquiry Officer. Applicant has also stated that having regard to the nature of misconduct, disciplinary proceedings for major penalty is not required. In our opinion this point can also be agitated before the Inquiry Officer. Therefore, we are of the view that there is no need for quashing either the charge dated 12.04.2010 (Annexure A/2) nor the letter dated 24.12.2010 (Annexure A/1).

9. With these observations, the OA is dismissed with no order as to costs.

10. Since the OA is dismissed, therefore, MA No. 242/2011 for staying the disciplinary proceedings is also dismissed.

Anil Kumar
(Anil Kumar)
Member (A)

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

AHQ