

Central Administrative Tribunal
Principal Bench

OA No. 3837/2016

New Delhi this the 16th day of November, 2016

Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

J.K. Katyal
S/o Late Sh. K.N. Katyal,
Aged about 60 years,
H.No. 5/7, First Floor,
Ramesh Nagar, New Delhi-110015
(Presently serving as Asstt. Engineer (C)
NDMC, N.Delhi) - Applicant

(By Advocate: Mr. K.L. Manhas)

VERSUS

New Delhi Municipal Council,
Through its Chairman,
Palika Kendra, New Delhi-110001 - Respondent

ORDER (Oral)

Dr. B.K. Sinha, Member (A):

Heard the learned counsel for the applicant, who has filed the present OA seeking the following reliefs:-

- “(i) To quash and set aside the impugned Memorandum of Charge/Chargesheet dated 13.04.2015 (A1) together with letter dated 24.08.2016 (A2) as well as all the orders passed in consequence thereof which affect the career of the applicant adversely.
- (ii) To direct the respondents to allow all the consequential benefits to the applicant.
- (iii) To pass any other order(s)/direction(s) as deemed proper in the circumstances of the case to meet the ends of justice.
- (iv) To award cost of this litigation to the applicant.”

2. The applicant is aggrieved with the memorandum of charge/chargesheet dated 13.04.2015 issued by the Chairman, NDMC, New Delhi – disciplinary authority, alleging omission and

commission on the part of the applicant when he was posted as Assistant Engineer in 2006-10. The applicant has challenged the chargesheet on the ground that he has been acquitted by the CBI Court on similar charges. However, the Hon'ble Supreme Court in **Depot Manager A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya, Etc.** [1997 (2) SCC 699] drawing distinction between departmental proceedings and criminal trial held as under:-

"We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of commission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may no be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these

circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304 A and 338 I. P. C. Under these circumstances, the High Court was not right in staying the proceedings.”

Likewise, this position has been reiterated recently in ***Avinash Sadashiv Bhosale (D) Thr. L.Rs vs. Union of India & Ors.*** [MANU/SC0798/2012.

3. The OA is, therefore, dismissed *in limine*. The applicant may raise other grounds before the inquiry officer, if so advised. No costs.

(Raj Vir Sharma)
Member (J)

(Dr. B.K. Sinha)
Member (A)

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