

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.4448 OF 2014

New Delhi, this the 25th day of April, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Sh.Baljeet Singh,
Aged 55 years,
Ex-Driver, DTC,
S/o Sh.Lachhman Singh,
R/o Village & PO Bakarwala,
New Delhi

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Applicant

(By Advocate: Mr.S.K.Ambardar)

Vs.

Delhi Transport Corporation,
Through its Chairman,
DTC Headquarter,
IP Estate,
New Delhi

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Respondent

(By Advocate: Ms.Ruchira Gupta)

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Per Raj Vir Sharma, Member(J):

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- õi. to direct the respondent to reinstate the applicant in service by setting aside the Order bearing No.DKD/AI(T)/94/7391, dated 11.10.1994 passed by Depot Manager, Dichaon Kalan Depot, Delhi Transport Corporation, New Delhi-43, on the basis of acquittal

Order dated 10.3.2005 passed by the Court of Sh.Sudesh Kumar, M.M., New Delhi, in case FIR No.52/1993, U/s 379/411 IPC, PS Najafgarh, New Delhi, and the applicant be given full back wages with all consequential benefits treating as if he was never removed from service;

Pass any further and suitable order which this Honøble Tribunal may deem fit and proper in favour of the applicant.ö

2. Brief facts of the applicant's case are as follows:

2.1 The applicant was employed in Delhi Transport Corporation (DTC) as a Driver in the year 1982. In the year 1993, he was posted as Driver in Bichaon Kalan, DTC Depot. On 25.2.1993, an FIR No.52/1993 under Sections 379/411 IPC, PS Najafgarh, was registered against him on the allegations that on 24.2.1995 at 11.30 P.M., he committed theft by dishonestly taking away the bus No.DL-IP-9810 from the Depot without the consent of the competent authority. After completion of the investigation, challan/charge-sheet was filed against him in the criminal court.

2.2 On the basis of the said allegation, a charge sheet dated 11.3.1993 was served on the applicant and departmental proceeding was initiated by the respondent. On 16.3.1994 a notice was served on the applicant to show cause as to why he should not be removed from the services of the DTC. Thereafter, the punishment order dated 11.10.1994 was passed removing the applicant from the services of the DTC with immediate effect under Clause 15(2)(VI) of the DRTA 1952.

2.3 Thereafter the applicant filed a complaint under Section 33A of the Industrial Disputes Act, 1947, which was referred to the Industrial

Tribunal for adjudication. The learned Presiding Officer of the Industrial Tribunal No.1, Delhi, vide order dated 10.9.1999, dismissed the said complaint (ID No.3/95) on the ground of the applicant having failed to adduce evidence in support of his complaint.

2.4 The learned Metropolitan Magistrate, New Delhi, vide judgment dated 10.3.2005 passed in the said criminal case FIR No.52/93, acquitted the applicant of the offence under Section 380 I.P.C. on the grounds that the applicant was entitled to benefit of doubt and that the prosecution failed to establish its case against the applicant beyond reasonable doubt.

2.5 The learned advocate for the applicant served a legal notice dated 5.8.2005 calling upon the respondent to reinstate the applicant in service by setting aside the order dated 11.10.1994(ibid) and to pay to applicant the full back wages and consequential service benefits, treating as if he was never removed from service.

2.6 As the respondent failed to respond to the said legal notice, the applicant filed the present O.A. on 11.12.2014 seeking the reliefs as aforesaid.

3. In the above context, it has been contended by the applicant that the impugned order dated 11.10.1994 has been passed by the respondent without following due process of law. The respondent did not conduct any enquiry, before passing the impugned order dated 11.10.1994 removing him from service with immediate effect. In view of the judgment of acquittal,

dated 10.3.2005, passed by the learned criminal court, he stands exonerated of the charge in the disciplinary proceedings. Therefore, he is entitled to be reinstated in service with full back wages.

4. Along with his O.A., the applicant has filed MA No.3913 of 2014 seeking condonation of delay in filing of the O.A. In the M.A., it has been stated by the applicant that he could not file the O.A. within the prescribed period of limitation as he was suffering from acute depression and other ailments for a very long period due to the inhuman treatment meted out to him at the hands of the respondent. The respondent initiated a false and frivolous criminal case against him alleging theft of a bus. He has been acquitted by the learned criminal court. Despite acquittal by the learned criminal court, the respondent did not reinstate him in service. He got crippled and became a recluse all these years, and now after a prolonged treatment period, he is fit for the job. In support of the plea of his prolonged illness, the applicant has filed a medical certificate dated 3.12.2014 issued by one C.L.Koul, MBBS, MS, Surgeon, Specialist, J&K Health Services and several other papers of pathological tests, etc, outdoor prescriptions of private and government hospitals in respect of his medical treatment during the period 2012 to 2014. In the medical certificate granted by Dr.C.L.Koul on 3.12.2014, it has been certified that the applicant was known to him since July 2005. He had been treating him till 2012. He developed giddiness, unease and acute shivering when he was returning back from his pilgrimage to Mata Vaishnav Devi. He was admitted in Government Medical College

Hospital and was treated there for acute depression and schizophrenia. He was discharged after three weeks and used to visit the O.P.D. till December 2011. He was declared fit at the said stage. On perusal of medical records, it transpires that he has suffered various ailments from 2012 to October 2014 at Delhi. He examined him on 3.12.2014 and found him fit and healthy.

5. Resisting the O.A., the respondent has filed a counter reply. It has been stated by the respondent that the O.A. is barred by limitation and is liable to be dismissed. The application for condonation of delay is liable to be dismissed inasmuch as it lacks material particulars explaining the delay of more than 20 years in filing the present O.A. After issuing the charge sheet, an enquiry was conducted and he was found guilty by the inquiry officer. Thereafter, a show cause notice was issued to which the applicant did not file any reply. The punishment of removal from service was imposed on the applicant as per the rules and regulations governing his service conditions and after following due process of law. He is seeking reinstatement after more than 20 years of his removal from service. The outcome of the criminal case has no bearing on the punishment of removal from service imposed on the applicant in the disciplinary proceedings on 11.10.1994. The punishment order dated 11.10.1994 attained finality on 10.9.1999 when the learned Industrial Tribunal dismissed I.D. Case No.3/1995 filed by the applicant against the said punishment order dated 11.10.1994. The learned trial court, vide judgment dated 10.3.2005, acquitted the applicant of the charge, by giving him benefit of doubt.

6. No rejoinder reply has been filed by the applicant refuting the stand taken by the respondent.

7. We have perused the records, and have heard Mr.S.K.Ambardar, the learned counsel appearing for the applicant, and Ms.Ruchira Gupta, the learned counsel appearing for the respondent.

8. Ms.Ruchira Gupta, the learned counsel appearing for the applicant, relied on the decision of the Honøble Supreme Court in **State of West Bengal and others Vs. Sankar Ghose**, (2014) 3 SCC 610, to contend that even if there is identity of charge levelled against the applicant before in the criminal case and departmental proceeding, the judgment of acquittal of the applicant by the criminal court has no bearing on the departmental proceeding or the order of punishment passed therein against the applicant, and the applicant's claim for reinstatement in service on the basis of the judgment of acquittal passed by the learned criminal court is untenable.

9. Admittedly, the order dated 11.10.1994 was passed by the respondent in the departmental proceeding removing the applicant from service with immediate effect. I.D.Case No.3/1995 filed by the applicant against the said order dated 11.10.1994 was dismissed by the learned Industrial Tribunal, vide order dated 10.9.1999, on the ground of his having failed to adduce evidence in support of his complaint. The applicant failed to challenge the said order dated 10.9.1999 passed by the Industrial Tribunal. In the criminal case FIR No.52/93, the learned criminal court passed the judgment on 10.3.2005 and acquitted the applicant of the charge, by giving

him benefit of doubt. Thereafter, the applicant served a legal notice dated 5.8.2005 calling upon the respondent to reinstate in service with full back wages in view of the judgment of acquittal passed by the learned criminal court. Thus, it is clear that if at all the applicant had any grievance, the cause of action arose on 11.10.1994 when the punishment of removal was imposed on him by the respondent in the departmental proceeding, on 10.9.1999 when the learned Industrial Tribunal dismissed ID Case No.3/95 filed by him against the punishment of removal from service, on 10.3.2005 when the judgment of his acquittal of the charge in the criminal case was passed by the learned criminal court, and also on the 5.2.2006, i.e., after expiry of six months of his legal notice dated 5.8.2005. Thus, the present O.A. having been filed on 11.12.2014 challenging the aforesaid order of punishment dated 11.10.1994 is hopelessly barred by limitation. After considering the pleadings/materials placed before us by the applicant in support of his prayer for condonation of delay in filing of the present O.A., we are not satisfied that the applicant had sufficient cause for not filing the present O.A. within the prescribed period of limitation. Therefore, MA No.3913 of 2014 is rejected. Consequently, the O.A. is liable to be dismissed as being barred by limitation.

10. Coming to the merits of the case, the applicant has not specifically rebutted the statement made by the respondent that after the charge sheet dated 11.3.1993 was issued to the applicant, an enquiry was conducted and he was found guilty by the inquiry officer. Thereafter, a

show-cause notice dated 16.3.1994, was issued by the disciplinary authority calling upon the applicant to submit his reply thereto, but the applicant did not submit any reply thereto. Accordingly, the punishment order dated 11.10.1994 was passed by the disciplinary authority removing him from service with immediate effect under Clause 15(2)(vi) of the D.R.T.A. 1952. Therefore, we do not find any substance in the contention of the applicant that the punishment of removal from service was passed by the disciplinary authority without following due process of law.

11. The applicant has not brought to the notice of this Tribunal any rule/regulation issued by the respondent stipulating that on acquittal of an employee, like the applicant, by the court in the criminal case, he/she gets exonerated of the charge, and the order of punishment passed by the disciplinary authority in the departmental proceeding becomes void, and he/she is entitled to automatic reinstatement in service.

12. It is now well settled principle of law that departmental inquiry and criminal proceedings can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding, particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of an employee in a departmental proceeding. In the present case, the applicant was proceeded against departmentally, and he was removed from service by way of punishment imposed on him by the disciplinary authority in the departmental proceedings, before he was

acquitted by the criminal court after giving him benefit of doubt. Such acquittal of the applicant in the criminal case would neither wipe out his misconduct which was proved in the departmental enquiry, nor would the same invalidate the punishment of removal from service imposed on him by the disciplinary authority in the departmental proceedings. Therefore, we do not find any substance in the contention of the applicant that in view of the judgment of acquittal dated 10.3.2005 passed by the learned criminal court, he stands exonerated of the charge in the departmental proceeding and is entitled to be reinstated in service with full back wages.

13. In the light of our above discussions, we dismiss the O.A. as being hit by delay and laches, and also as being devoid of merit. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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