

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.752/2018

Reserved On:02.08.2018

Pronounced On:11.10.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Shri D.J. Gupta
Retired Sales Tax Officer
Group 'B', Govt. of NCT of Delhi
S/o Late Shri S.C. Gupta
Aged 66 years
R/o 72, Vigyan Lok,
Delhi-110092.

...Applicant

(By Advocate: Shri Nilansh Gaur)

Versus

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Union Public Service Commission
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069.
3. Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Secretariat,
New Delhi-110002.

...Respondents

(By Advocate: Shri Sameer Sharma)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

The applicant, a retired Sales Tax Officer, filed the OA seeking quashing of the Annexures A-1 to A-3, i.e., withholding of 100% of

the monthly pension and 100% gratuity dated 22.12.2017, inquiry report dated 13.01.2015 and the UPSC advice dated 08.09.2016.

2. The facts, as narrated in the OA, are that while the applicant was working as Sales Tax Officer, he was served with Annexure A-3A Charge Memorandum dated 27.06.2011, on 29.06.2011, i.e., one day prior to his date of retirement. In pursuance of the said Charge Memorandum, a Departmental Enquiry was conducted against the applicant and the Inquiry Officer, vide the impugned Annexure A-2 Inquiry Report dated 13.01.2015 held the charge levelled against the applicant, as proved. The Corruption Case No.19/2013 in FIR No.12/2005 registered against the applicant and various others under Sections 7/12/13 of the Prevention of Corruption Act, 1988 read with Section 120-B IPC was ended in acquittal of the applicant and all others, vide the judgment of the concerned Criminal Court dated 11.03.2015 (Annexure A-6). However, the UPSC, vide its advice dated 08.09.2016 advised to impose the penalty of withholding of 20% of his monthly pension otherwise admissible to the applicant for a period of 3 years but the Disciplinary Authority, vide the impugned Annexure A-1 order dated 22.12.2017 imposed the penalty of withholding of 100% of the monthly pension and 100% gratuity on the applicant”.

3. Heard Shri Nilansh Gaur, learned counsel for the applicant and Shri Sameer Sharma, learned counsel for the respondents and perused the pleadings on record.

4. The charge levelled against the applicant, vide the Charge Memorandum Annexure A-3A dated 27.06.2011, reads as under:-

“STATEMENT OF ARTICLE OF CHARGE FRAMED AGAISNT SHRI D.J. GUPTA, THE THEN SALES TAX OFFICER, SALES TAX DEPARTMENT, GNCT OF DELHI.

Shri D.J. Gupta, while functioning as Sales Tax Officer, Ward-84 in the erstwhile Sales Tax Department (now Trade & Taxes Department) during the relevant period of posting committed gross misconduct in as much as he accepted illegal gratification offered by a bribe giver who approached him in his office to seek favour from him. The transaction of offer and acceptance was secretly video graphed and recorded by a News Channel ‘Aaj Tak’ and was also telecast which tarnished the image of Sales Tax Department.

Thus, the said Shri D.J. Gupta, the then STO by the above mentioned deliberate act failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant thereby violated Rule 3 of CCS (Conduct) Rules, 1964”.

5. In short, it is the case of the respondents that on 08.03.2005, a News Item was telecast on the channel (Aaj Tak) with the caption “Ghoos Mahal” wherein certain officials of Sales Tax Department including the applicant were shown as demanding/accepting gratification, in consideration for official favour/work.

6. It is relevant to note here that the applicant and all other officials who were shown in the said telecast were placed under suspension and an FIR No.12/05 was registered against them under the POC Act, 1988 read with section 120-B of IPC and that the applicant was dismissed from service vide order dated 05.10.2006, however, the said dismissal order was set aside by this Hon’ble Tribunal, permitting the respondents to proceed against the applicant and others before taking any disciplinary action against

them. In accordance with the same, the respondents initiated the impugned departmental proceedings by issuing the impugned Annexure A-3A Charge Memorandum dated 27.06.2011.

7. Shri Nilansh Gaur, learned counsel for the applicant, in support of the OA averments, inter alia, raised the following grounds:-

(i) As per the Annexure A-3A Charge Memorandum dated 27.06.2011, Shri Dhirendra Singh (Pundhir), Reporter, T.V. Today Network Ltd. and Shri Jalaj Kathuria, Cameraman, T.V. Today Network Ltd. were shown as list of witnesses numbers No.10 and 11 and who are the only independent witnesses and who were said to have secretly video-graphed and recorded the alleged news item which was telecast with the caption "Ghoos Mahal" in the Aaj Tak New Channel on 08.03.2005, which was the basis and foundation for the sole charge levelled against the applicant. But the respondents have not examined the said PWs 10 & 11 in the enquiry and non-examination of the said witnesses is fatal to the prosecution case and on this ground alone, the whole disciplinary proceedings against the applicant are laible to be quashed;

(ii) The applicant and all others who were shown in the News Telecast of Aaj Tak channel with the caption "Ghoos Mahal" and against whom a Corruption Case CC No.19/2013 was filed were acquitted by the competent Criminal Court on 11.03.2015. The standard of proof required before the Criminal Court is beyond

doubt and whereas in a departmental enquiry, the same is only preponderance of probability, and once the Criminal Court, after a detailed enquiry and after examining all the witnesses including Dhirendra Singh (Pundir) and Jalaj Kathuria, i.e., the Reporter and Cameraman, who said to have recorded the video, after categorically holding that prosecution has failed to even remotely raise suspicion sufficient to put acquitted persons to trial and this evidence cannot be, in any manner be sufficient for conviction, discharged all the acquitted persons including the applicant from all the offences, the departmental authorities cannot hold that the charge is proved. But the Inquiring Authority even though the said crucial and only independent witnesses, i.e., PW-10 Dhirendera Singh (Pundhir) and PW-11 Jalaj Kathurai, were not examined, erroneously held that the charges stand proved against the applicant. The UPSC, the DOP&T and the disciplinary authority though on the date of their respective advice/orders, the judgment of the competent Criminal Court dated 11.03.2015, acquitting the applicant and all others, was available, again erroneously held that the charge levelled against the applicant is proved. He placed reliance on **G.M. Tank Vs. State of Gujarat and Others-(2006) 5 SCC 446;**

(iii) One Smt. Prabha Devi, who was functioning as Assistant Sales Tax Officer, and who was also shown in the very same telecast, and against whom identical charge was levelled, was imposed with penalty of withholding of 20% monthly pension for a period of 3

years only, whereas though the applicant was identically placed, he was imposed with 100% cut in pension and 100% cut in gratuity. Hence, the punishment imposed on the applicant is disproportionate to the charge levelled against the applicant and also he was discriminated in imposing the penalty;

(iv) The basis for the charge levelled against the applicant was an alleged CD whereunder a video recording was done showing that the applicant demanded/accepted gratification for official favour or work. But the Criminal Court, while discharging the applicant in the criminal case, categorically held that the said CD was inadmissible in evidence. This Tribunal also in OA No.2802/2013 dated 02.08.2016 in Constable Sanjay Kumar Dubey Vs. Commissioner of Police (Annexure A-9), held that even in departmental proceedings, the general principles of the Evidence Act cannot be dispensed with and when the CD itself was not admissible as an evidence, a tertiary evidence of the PW that he had seen the applicant accepting bribe is one of the scenes of the CD, cannot be the basis for concluding that the applicant was guilty. Since in the present case also the CD was not proved, the same cannot be treated as admissible evidence and holding the charge against the applicant proved basing on such a CD, is illegal;

(v) The UPSC, after considering the enquiry report and all the representations made by the applicant against the same, advised the Disciplinary Authority to impose a penalty of withholding of

20% of his monthly pension, but the Disciplinary Authority though gave an opportunity to the applicant against the advice of the UPSC, but without giving any further opportunity to the applicant before imposing withholding of 100% pension, is illegal. Reliance was placed on a judgment of the Hon'ble High Court of Delhi in W.P. (C) No.4711/2011 dated 09.09.2009 in R.K. Garg Vs. Union of India and Another; and

(vi) The impugned Annexure A-1 penalty order dated 22.12.2017 reveals that after obtaining the UPSC's advice, and after obtaining the representation of the applicant against the said advice, the 1st and 3rd respondents, i.e., Ministry of Home Affairs and the Government of NCTD, disagreed with the UPSC's advice regarding withholding of 20% cut in the monthly pension, decided to impose the penalty of withholding of 100% of monthly pension as well as 100% of gratuity, consulted the DOP&T and decided to impose penalty of withholding 100% of the monthly pension and 100% gratuity and accordingly imposed the same on the applicant. Once the opportunity given to the applicant was only against the proposed withholding of 20% of monthly pension only but once the Disciplinary Authority disagrees with the same, a further opportunity is required to be given to the applicant. But the impugned order passed without providing such an opportunity to the applicant, is liable to be quashed.

8. Shri Sameer Sharma, the learned counsel appearing for the respondents would, inter alia, submits that:-

(i) The applicant was caught red handed in the secretly recorded video by Aaj Tak News Channel wherein he was shown as demanding/accepting gratification in consideration for official favour/work and was telecast publically in T.V. with the caption "Ghoos Mahal" on 08.03.2005. It was categorically proved that the person who was shown in the video was the applicant himself and the CFSL report confirmed the said fact and hence no further evidence is required to impose the penalty on the applicant.

(ii) There is no hard and fast rule that if a person was acquitted by the Criminal Court on the same charges, he cannot be punished in a departmental proceedings basing on the departmental enquiry report. The decision of the Hon'ble Apex Court in G.M. Tank (supra) has no application to the facts of the present case.

(iii) When the charge against the applicant was proved by way of the CD and the CFSL report thereto, non-examination of PWs 10 and 11, i.e., the Reporter and Cameraman of the News Channel is inconsequential.

(iv) Though the charges are identical and similar in nature, but the involvement and the gravity and the observations made by the Inquiry Officer makes lot of difference in imposing a particular penalty on a particular delinquent. Hence imposing a lesser penalty on Mrs. Prabha Joshi, cannot be a basis for imposing a lesser

penalty on the applicant and hence the contention of disproportionate punishment is to be rejected.

(v) The imposition of penalty is the prerogative and exclusive domain of the authority. The disagreement of the proportionality of the punishment cannot be equated with the disagreement of proving or not proving of the charges by the Inquiry Officer. Though the UPSC advised to impose the penalty of withholding of 20% monthly pension but the same cannot reduce the power of the Disciplinary Authority to impose whatever penalty suitable and required in the totality of the facts of the case. Hence, the decision in R.K. Garg (supra) has no application to this case.

9. Insofar as the submissions made in respect of the disproportionate punishment, we agree with the submission made by the learned counsel for the applicant that there cannot be any hard and fast rule that if the charge levelled against two employees is identical, the same punishment is to be imposed on both of them. The penalty is dependent on the gravity of the charge and the actual part played by a particular employee in an incident and the position he occupied, i.e., supervisory or subordinate etc.

10. It is true that the UPSC advised to impose the penalty of withholding of 20% monthly pension on the applicant, whereas the Disciplinary Authority imposed the penalty of withholding of 100% monthly pension and 100% gratuity on the applicant. The disagreement was not on the proving or not proving of any one or

more charges, but the same is on the quantum of punishment, which is the exclusive domain of the Disciplinary Authority, hence, we reject the submission made by the applicant's counsel on this aspect.

11. Further, it is also to be seen that the Disciplinary Authority has not acted, basing on the DOP&T opinion in imposing the penalty of withholding of 100% monthly pension but the said decision was taken by the Disciplinary Authority itself and then it consulted the DOP&T which also agreed with the view of the Disciplinary Authority and hence the DOP&T's opinion/view, which only agreed with the Disciplinary Authority's view, need not be supplied to the delinquent, before imposing the said penalty.

12. In G.M. Tank (supra), the appellant, an Overseer was charge sheeted, in pursuance of a report of the Anti Corruption Bureau with regard to his properties disproportionate to his known sources of income. A criminal case was also registered against him under the Prevention of Corruption Act, 1988 and basing on the departmental enquiry report, he was dismissed from service. But the criminal case filed against the appellant ended in his acquittal, by holding that the prosecution has failed to prove the charges levelled against the appellant. It was held as under:-

“15. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental

proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

16. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in **Paul Anthony's case** (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed”.

13. It is evident that the charge levelled against the applicant in the departmental enquiry as well as in the criminal case is one and the same and the basis and evidence and witnesses are also the same. The Criminal Court, while discharging the applicant from the criminal offences in its judgment dated 11.03.2015 observed as under:-

“Thus, the legal position emerges that the chip or the memory card which originally contains the recording is primary evidence and the CD of the same would only be the secondary evidence. In the present case, primary evidence is not available & secondary evidence has been rejected, as discussed in para no.4 above.

5.2 That leaves the court with the oral statement of Dheerender Pundhir and Jalaj, correspondent & camera person, respectively. For ready reference relevant portions of statement of Dheerender Pundhir are given hereinbelow: 5.2.1 First Statement dated 09.03.2005 can be translated to read as, 'We got information that officers and employees of Sale Tax Department, ITO openly accept bribe for dealing with Sale Tax related files. In this context, I along with Jalaj - Cameraman made video recording of STO/ ASTO and lower level employees of Sale Tax Department accepting bribe, which they were accepting for dealing with their official work.' 5.2.2 Second Statement dated 20.04.2006 is regarding handing over another copy of sting operation as contained in CD to the IO. State Vs., Karan Singh Yadav & Ors. Page No.11 of 13 5.2.3 In his third statement dated 12.09.2006, he has only described the manner of contents of the sting operation in the Feed Room, of news channel. He has stated that the recording from spy camera was transferred in a DV Tape and stored in the Feed Room. The video cassette handed over by him to the IO was prepared from the digital storage in the Feed Room. 5.3 A perusal of the first statement of Dheerender Pundhir reveals nothing more than a bald declaration that officials of Sale Tax Department were openly and without any fear accepting illegal gratification and that he had taken a shoot of such Sale Tax officials. However, Jalaj has not even so deposed. In my opinion, the statement of Dheerender Pundhir, which is merely, declaration about acceptance of bribe by officials of Sale Tax Department can not be sufficient evidence to put them to trial for offences punishable u/sec.7 & 13 of the [PC Act](#). Dheerender Pundhir has nowhere revealed the names or identities of the persons accepting bribe. He has not stated that there was any demand of bribe by those persons. He has also not revealed the identities of the bribe givers. IO has not recorded the statement of any person, alleging demand of bribe by the persons captured in videography. In the absence of any evidence regarding demand of bribe, which is sine qua non, the charge u/sec.7 of the [PC Act](#) is not maintainable. Similarly, in the absence of any witness specifically naming and identifying the accused persons to have demanded & accepted bribe, charge u/sec.13 of the [PC Act](#) also not be framed.

State Vs., Karan Singh Yadav & Ors. Page No.12 of 13 5.4 It is also not the case of the prosecution that any of the 33 accused persons had accepted bribe in conspiracy with each other. There, ofcourse, is no evidence that there was any meeting of mind or that they were acting in concert with each other. Charge u/sec.120B of [IPC](#) can also not be, thus, framed.

6.1 For the reasons detailed in paras 4 & 5 above, I am of the opinion that prosecution has failed to even remotely raise suspicion sufficient to put accused persons to trial. This evidence can not in any manner be sufficient for conviction. I, therefore, discharge all the accused persons for the offences u/sec.7 & 13 (i) (d) of the [PC Act](#) punishable u/sec.13 (2) of the PC r/w/sec.120 [IPC](#)".

14. Therefore, the acquittal of the applicant was based on the finding of the Criminal Court that there was no evidence at all but not on granting benefit of doubt. Even the Enquiring Authority, in its Enquiry Report observed that according to the CFSL, no conclusion could be drawn due to insufficient data. In the absence of any cogent evidence and in the absence of proof of any specific case of payment and acceptance of bribe from any specific person and in respect of any specific work/file, holding the charge against the applicant as proved, is illegal and against the settled principles of disciplinary enquiries. Hence, we reject the contention of the respondents' counsel that decision in **G.M. Tank** (supra) has no application to the facts of the present case and also hold that the finding of the Enquiring and Disciplinary Authorities, that the charge against the applicant was proved, is based on no evidence.

15. In the circumstances, and for the reasons mentioned above, the O.A. is allowed and the impugned orders are set aside with all consequential benefits. However, the applicant is not entitled for any interest or costs.

(A.K. Bishnoi)
Member(A)

(V. Ajay Kumar)
Member (J)

RKS