

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 3691/2017

This the 15th day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Om Prakash Rai, Aged 66 years,
Executive Engineer (Retd.) DDA,
B-25, Anand Vihar, Delhi-110 092.Applicant

(By Advocate : Mr. Gyanendra Singh)

Versus

1. Vice Chairman
DDA, Vikas Sadan, INA, New Delhi.
2. Director Vigilance,
DDA, Vikas Sadan, INA,
New Delhi.Respondents

(By Advocate : Ms. Sriparna Chatterjee and Mr. Rajeev Kumar)

O R D E R (O R A L)

Justice L. Narasimha Reddy, Chairman :

The applicant was working as an Executive Engineer with the respondents. On the basis of a trap said to have been laid against him by the CBI, a criminal case was registered and proceedings were initiated under the provisions of the Prevention of Corruption Act, 1988. Simultaneously, the respondents herein initiated the disciplinary proceedings by issuing the charge memo dated 14.03.2008. During the pendency of the criminal case,

the disciplinary proceedings seem to have been kept on hold. In, C.C No. 35/2012, the Special Judge, CBI, Central District, Tis Hazari, Delhi, acquitted the applicant through its judgment dated 30.09.2015.

2. The disciplinary authority appointed the inquiry officer and presenting officer through order dated 09.10.2017. This OA is filed challenging the charge memo as well as order dated 14.03.2008. The applicant contends that once the charge in the criminal case on the one hand and the disciplinary proceedings on the other hand are identical, and the acquittal in the criminal case is on thorough examination of the witnesses, there is no basis for the respondents to proceed against him. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **G. M. Tank Vs. State of Gujarat & Anr.** [(2006) 5 SCC 446].

3. Respondents filed counter affidavit opposing the O.A. According to them, the standard of proof that is required in the criminal case on the one hand and the departmental proceedings on the other, is totally different and mere acquittal in Criminal Case does not entail in dropping of the departmental proceedings. Reliance is

placed in the judgment passed by the Hon'ble Supreme Court in the **State of West Bengal and Others Vs. Sankar Ghosh** in C.A No. 10729 of 2013 decided on 28.11.2013.

4. We head Mr. Gyanendra Singh, learned counsel for applicant and Ms. Sriparna Chatterjee, learned counsel for respondents.

5. The charge framed against the applicant in the criminal case reads as under : -

“Charges

6. Charge for the offence punishable u/s 7 & 13(1)(d) read with section 13 (2) of the POC Act was framed against the accused on 19.9.2006. Points which emerge for determination in this case are as under :

(i) whether on 24th June, 2005 accused (working as Executive Engineer, DDA at Ashok Vihar, Delhi) demanded Rs.15,000/- as illegal gratification from complainant Sushil Kumar (PW-16), a DDA contractor to clear final bill of Rs.92,594/-.

(ii) Whether on 27th June, 2005 at 4.35 pm, accused again demanded and accepted a sum of Rs.15,000/- from the complainant (PW-16) as illegal gratification in his DDA office.

(iii) Whether accused obtained pecuniary advantage of Rs.15,000/- for the self from the complainant (PW-16) by corrupt or illegal means and by abusing his official position.”

6. In the charge memo dated 14.03.2008, the following Article of Charges are framed :

“Article of charges framed against Sh. O. P. Rai, Ex. Engineer, ND-XI, DDA.

Sh. O.P. Rai while working as Ex.Engineer, ND-XI, Ashok Vihar, New Delhi demanded and accepted bribe of

Rs.15000/- from Sh. Sushil Kumar (complainant) Contractor for setting his pending bill pertaining to the upgradation work contract of LSC Block-BH, Shalimar Bagh executed by him which was lying with Sh. O.P. Rai, Ex.Engineer.

Sh. Sushil Kumar, Contractor (complainant) was not willing to pay the bribe to Sh. O.P. Rai, Ex-Engineer, hence, he made a complaint to the O/o. SP/CBI/ACB, New Delhi on dt. 27.6.05. On the basis of the complaint, FIR No. RC-31(A) 05 was registered by CBI. Sh. O. P. Rai, Ex. Engineer, ND-XI, DDA has been trapped alongwith powder smeared GC notes of Rs.15000/- by the CBI/ACB, New Delhi.

By his above act Sh. O.P. Rai, Ex-Engineer, ND-XI, DDA exhibited lack of absolute devotion to duty and lack of absolute integrity thereby contravened Rule 4 1 (i), (ii), (iii) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 as made applicable to the employees of the Authority.”

7. In a criminal case, the prosecution examined as many as 24 witnesses. After discussing the evidence at length, the Trial Court held in para 30 as under :-

“30. To sum up, material on record adumbrated hereinabove, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification as well as acceptance thereof or abuse of his position by the accused. Evidence produced by the prosecution is insufficient and inconsistent to return a clear conclusion of guilt against the accused beyond the shadow of reasonable doubts. This Court finds that prosecution has failed to prove charges and therefore, the accused is hereby acquitted of the charges against him in this case. His previous bail bonds stand cancelled and surety discharged. Accused shall furnish his personal bond along with a surety bond in the sum of Rs.50,000/- each required U/S 437A Cr.P.C. File be consigned to Record Room.”

8. Therefore, it is not the case wherein the acquittal was on technical grounds, such as, absence of sanction for prosecution or lack of authority for the person who accorded sanction. It was a full fledged trial and the prosecution failed to prove the charge against the applicant.

9. We are aware of the law laid down by the Hon'ble Supreme Court in series of judgments that the standard of proof required in a criminal case on the one hand and in the departmental proceedings on the other, is substantially different.

10. In case, the charge levelled against the applicant, was the one framed independently, though on receiving the information, written or otherwise, which gave rise to the criminal case, mere acquittal in a criminal case does not entail in setting aside the charge memo. If on the other hand, the department did not have any material other than the one relating to the criminal case, totally different picture altogether, emerges.

11. We have carefully examined the entire record from this angle and to find out whether the charge framed by the respondents herein was independent of any material, such as, any complaint written or oral by an individual alleging that the applicant is demanding any bribe. However, nothing of that sort is available. Another aspect is that the department itself felt that they do not have any material or evidence and obviously for that reason, they kept the departmental proceedings on hold, so much so, the inquiry

officer was not appointed till the criminal case was disposed of.

12. In G.M. Tank's case (supra), the official memo issued by the DoP&T was quoted and thereafter several precedents were discussed. At the end, it was observed as under :-

“25. 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.”

Same situation exists in the instant case.

13. In **State of West Bengal & Ors. V. Sankar Ghosh** (2014) 3 SCC 610 relied upon by the respondents, the Hon'ble Supreme Court held that even where charges levelled against the charged employee in the departmental proceedings as well as criminal court are same, there cannot be automatic reinstatement on acquittal in the criminal case. The allegation made in that case was that the employee left the duties without permission, and was involved in a criminal offence; and that he tarnished the

image of the organisation by accepting bribe. These charges were held proved against the employee. Such is not the situation in the instant case.

14. It is brought to our notice that the applicant has since retired from service.

15. For the foregoing reasons, we allow this O.A and set aside the impugned orders challenged herein. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/Mbt/