

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.1980/2018
with
OA No.2895/2018**

This the 6th day of August, 2018

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

OA No.1980/2018

Atul Dikshit S/o D. P. Dikshit,
Commissioner (Customs),
R/o D-II/347, Pandara Road,
New Delhi-110003.

... Applicant

(By Mr. Ajesh Luthra, Advocate)

Versus

1. Union of India through
its Revenue Secretary,
Ministry of Finance,
North Block,
New Delhi-110011.
2. Chairperson,
Central Board of Excise & Customs,
North Block,
New Delhi-110011.
3. Principal Chief Commissioner of Central
GST (Delhi Zone), C. R. Building,
I.P. Estate,
New Delhi-110002.

... Respondents

(By Mr. Hanu Bhaskar, Advocate)

OA No.2895/2018

Nalin Kumar S/o late K. J. Krishna,
Joint Commissioner of Customs & CGST,
Presently under suspension,
Office of Principal Chief Commissioner of CGST,
CR Building, I.P. Estate,
New Delhi.

... Applicant

(By Mr. A. K. Behera, Advocate)

Versus

1. Union of India through
Secretary (Revenue),
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110001.

2. The Chairman,
Central Board of Indirect Taxes and Customs,
North Block,
New Delhi-110001.

... Respondents

(By Mr. Vaibhav Gaumat for Shri Gyanendra Singh, Advocate)

ORDER**Justice L. Narasimha Reddy, Chairman :**

These two OAs raise similar issues, and except that in one of them an additional relief regarding an order of suspension is prayed for, the reliefs claimed are also similar. Hence, they are being disposed of through this common order. For the same of convenience, the applicant in OA No.1980/2018, i.e., Atul Dikshit, is referred to as the first applicant, and the one in OA

No.2895/2018, Nalin Kumar, is referred to as the second applicant.

2. The first applicant was working as Commissioner in the Inland Container Depot, Tughlakabad in the year 2014, and the second applicant was working as Deputy Commissioner under him. On 31.03.2014, an alert was received from the Director of Revenue Intelligence to the effect that five exporting firms controlled by one Mr. Sahdev Gupta, i.e., M/s Konark Exim Pvt. Ltd., M/s G. D. Mangalam Exim Pvt. Ltd., M/s Sidh Designers Pvt. Ltd., M/s Yomaya Traders Pvt. Ltd., and M/s DSM International, were released duty draw back amounting to several crores, contrary to the relevant clauses, and that necessary steps be taken to prevent the release of such duty draw back. On receiving that communication, the first applicant issued a reply, which read, "pl. informs DRI that SBs which have been scrolled in cannot be withdrawn or withheld now. For the SBs which are still pending however can be kept in abeyance". In view of this, the five exporting firms are said to have realized the duty draw back from Punjab National Bank to the extent of several crores.

3. The second applicant is said to have not exhibited proper care in pointing out the illegality in the order passed by his superior, i.e., the first applicant.

4. The CBI registered an FIR against the applicants and another, i.e., Sahdev Gupta, which, in turn, was tried as CC No.13/2015 in the Court of Special Judge-03 (P.C. Act) (CBI), Patiala House Courts, New Delhi. The applicants were placed under suspension. While the one ordered against the first applicant is being continued, after successive extensions, the suspension of the second applicant was revoked. The CBI Court pronounced its judgment on 07.10.2017 holding that the prosecution failed to prove the charge against the accused. Soon thereafter, the respondents, i.e., the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, issued charge-sheets dated 31.10.2017 to the applicants.

5. Though the text of the charges framed against both the applicants is different, the gist thereof is the acts of omissions on the part of the applicants in preventing the illegal duty draw backs. An additional allegation against the first applicant is that the premises owned by his wife were leased out to an institution headed by Mr. Sahdev Gupta, who in turn,

figured as accused No.3 in the CC case, and was controlling the firms which got the benefit of the duty draw back.

6. The first applicant filed the OA challenging the order extending his suspension, and the memorandum of charges. His another grievance is that though the suspension is being continued for the past three years, the subsistence allowance is being paid only at the rate of 50% of the basic pay. The second applicant filed the OA challenging the memorandum of charges dated 31.10.2017.

7. Both the applicants contend that once they have been acquitted honourably by the CBI Court, there was absolutely no basis for the respondents to issue the charge memorandum. It is also pleaded that except that there is change in language, the contents of the charges in the criminal case, on the one hand, and those in the departmental proceedings, on the other, are one and the same, and in that view of the matter, the initiation of departmental proceedings cannot be sustained in law. Reliance is placed upon certain precedents.

8. The first applicant contends that whatever may have been the justification for placing him under suspension

when the criminal case commenced and it was in progress, there cannot be any justification to continue his suspension, once it ended in acquittal. It is also contended that the suspension runs contrary to the guidelines issued in this behalf. In addition to that, he contends that even if the continuance of suspension has become inevitable, the subsistence allowance ought to have been revised, but he is being paid the same amount ever since the initial suspension, which was ordered three years ago.

9. On behalf of the respondents, a detailed counter affidavit is filed in OA No.1980/2018. It is stated that the allegations against the applicants are very serious in nature, and their acquittal in the criminal case cannot absolve them from the lapses in discharge of their duties. It is stated that the standard of proof required to prove the charges in a criminal case is substantially different from the one in departmental proceedings, and mere acquittal cannot wipe away the acts of misconduct on the part of an employee. It is also stated that the charges in the disciplinary proceedings initiated against the applicants are not identical to the charges in the criminal case, and serious lapses in discharge of duties, and acts unbecoming of Government servants are alleged in the departmental

proceedings, which cannot constitute the basis in a criminal case.

10. As regards suspension, it is stated that the first applicant was holding a very senior administrative position, and revocation of suspension at this stage, would certainly impair the investigation, which is in progress, in relation to the disproportionate assets held by him. It is further pleaded that the first applicant did not report to the appointing authority about leasing of the property by his wife to the beneficiary under the export licences.

11. Shri Ajesh Luthra, learned counsel, advanced arguments on behalf of the first applicant, and Shri A. K. Behera, learned counsel, argued for the second applicant. Both of them submitted that the very basis for initiation of criminal proceedings against their clients was the suspicion entertained by the DRI about the illegality of release of the duty draw backs to the five firms, and once the competent criminal court has acquitted them by undertaking a thorough discussion and recording findings on every charge, there was absolutely no basis for initiation of departmental proceedings. They submit that the very initiation of such proceedings after the acquittal in

the criminal case, would indicate the lack of *bona fides* in the entire exercise. By placing reliance upon certain precedents, the learned counsel submit that the subsequent departmental proceedings on the same allegations become totally untenable. It is also their submission that the CVC gave clearance for initiation of disciplinary proceedings against the applicants at a time when the criminal case was pending, and once the criminal case ended in acquittal, the entire matter needs re-consideration by the CVC, as well as the disciplinary authority.

12. Shri Luthra advanced arguments in relation to the order of suspension of the first applicant. He contends that the CBI itself recommended revocation of suspension after acquittal of the applicant in CC No.13/2015, and despite that, the suspension review committee extended the suspension through order dated 23.04.2018 (Annexure A-4). He submits that though there is reference to an inquiry as regards disproportionate assets against his client, there is hardly any progress in those proceedings for the past two years, and the continuance of suspension is totally unwarranted.

13. Shri Hanu Bhaskar, learned Central Government Standing Counsel, submits that the purport of the charges

framed in the criminal case is with reference to the relevant provisions of IPC, such as Sections 120B and 420, and provisions of the Prevention of Corruption Act, whereas in the departmental proceedings, it is with reference to the relevant conduct rules. He submits that the concerned agencies are taking steps to prefer an appeal against the judgment rendered by the criminal court, and even if the judgment in the criminal case becomes final, it does not become a ground to stall the departmental proceedings. By relying upon certain precedents, he submits that it is too well known that the departmental proceedings are to be decided on the touchstone of the propriety and legality of the acts of omission on the part of the employee, whereas in the criminal case, the factors such as *mens rea*, and conspiracy, become relevant. He further argued that the necessity to continue the suspension of the first applicant arose on account of the ongoing investigation into the disproportionate nature of his assets. It is also pleaded that since the first applicant is a very senior official in the department, revocation of suspension is likely to adversely affect the ongoing investigation.

14. First, we intend to take up the issue pertaining to the challenge to the charge-sheets issued against the applicants.

Both of them are issued charge-sheets on the same day, and the subject matter is by and large the same, except for certain details. For example, the principal charge against the first applicant is that he became instrumental in extending the benefits of the duty draw backs to the five firms, running into several crores, despite the alert being sounded by the DRI, whereas the charge against the second applicant is that he failed to point out the improper directions issued by his superior, i.e., the first applicant. In respect of the first applicant, a charge is made to the effect that the property owned by his wife was given on lease to an institution administered by Mr. Sahdev Gupta, and the said fact was not declared before the competent authority.

15. The main plank of argument is that the CC No.13/2015, in which both the applicants were tried on similar charges, ended in acquittal. The law in this behalf is fairly well settled. In case the charges in the criminal case, on the one hand, and the departmental proceedings, on the other hand, are identical, the documents relied upon by the prosecution in the criminal case and the departmental proceedings are the same, and the witnesses are cited in both the proceedings, the acquittal, if ordered in a criminal case, on merits would, by and

large, terminate the disciplinary proceedings. The cases of this category arise mostly when the raids are conducted, or a criminal act is said to have been committed by the concerned employees.

16. If, on the other hand, the acts of misconduct alleged against a delinquent employee give rise to the proceedings before a criminal court, on the one hand, and the departmental proceedings, on the other, and if the content of the charges in both the sets of proceedings are different, mere acquittal in a criminal case does not lead to the termination of the departmental proceedings. For example, if the allegation against the employee is that he granted a licence or passed an order in favour of a person contrary to law, by accepting illegal gratification, he becomes liable to be tried in a criminal case on the allegation of accepting bribe. He would also be liable to be proceeded in a disciplinary inquiry. The fulcrum of the charge in the criminal case would be as to whether he has received any illegal gratification. If that is not proved to the satisfaction of the court, the case may end in acquittal. However, in the departmental proceedings, even if the allegation as to acceptance of illegal gratification is to be kept aside, the one as to grant of licence or permit contrary to the relevant provisions

of law, remains. This can constitute the basis for departmental proceedings alone, and the criminal court does not have any occasion to address that at all. Therefore, the departmental proceedings need to be taken to their logical conclusion in accordance with law.

17. Except that, the emphasis varied depending upon the facts and circumstances of the case, this clear division was maintained by the Hon'ble Supreme Court. Even where it was somewhat looking to be different, it was mostly on account of the facts of the particular case. The clear distinction was never blurred, much less, wiped away.

18. Reliance is placed upon by the learned counsel for the applicants on the judgment of the Hon'ble Supreme Court in *G. M. Tank v State of Gujarat & others* [(2006) 5 SCC 446]. That was a case in which the criminal case, on the one hand, and the departmental proceedings, on the other, were initiated on the basis of a raid conducted by the anti corruption bureau against the employee. The Hon'ble Supreme Court referred to various judgments rendered by it earlier, including the one in *Capt. M. Paul Anthony v Bharat Gold Mines Ltd.* [(1993) 3 SCC

679]. Their Lordships summed up the discussion in para 30 as under:

“30. The judgments relied on by the learned counsel appearing for the respondents are 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 its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that 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 (*emphasis added*)."

Same was the situation in *Capt. M. Paul Anthony's* case.

19. In *West Bokaro Colliery (TISCO Ltd.) v Ram Pravesh Singh* [(2008) 3 SCC 729], the Hon'ble Supreme Court explained the law as under:

"20. The Tribunal has set aside the report of the enquiry officer and the order of dismissal passed by the punishing authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well-settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities (*emphasis supplied*)."

20. If the facts of the present OAs are analyzed in the above conspectus, it becomes clear that the acquittal in the criminal case does not result in the termination of the disciplinary proceedings. The charges in the criminal case were substantially different, and they were with reference to the provisions of the IPC and the PC Act. In the departmental proceedings, the lack of integrity on the part of the applicants

and their failure or complicity that resulted in enrichment of the export firms, is put as an issue, and those acts were mentioned as unbecoming of a Government servant. Though the learned counsel for the applicant pleaded that the criminal court has arrived at a conclusion that there was no loss to the Government at all, we are not prepared to accept the same. The reason is that firstly, there is no clear finding by the criminal court to that effect, and secondly, the issue could have been decided only by the Directorate of Revenue Intelligence, by issuing notices to the export firms, and not by a criminal court, which was deciding a different charge referable to the provisions of the IPC and the PC Act.

21. Reliance is also placed by the learned counsel for the applicants on a judgment rendered by a learned Single Judge of the Calcutta High Court in *Goutam Bhattacharjee v Kolkata Municipal Corporation and others* [Writ Petition No.420/2014, decided on 31.03.2016]. The learned Judge made an attempt to bring the case before him under the purview of the ratio laid down in *G. M. Tank's* case. Where we are a bit surprised is that the learned Judge has treated the judgment in *West Bokaro Colliery (TISCO Ltd.) v Ram Pravesh Singh*

(*supra*), as “A one line pronouncement”. The relevant para reads as under:

“11. A One line pronouncement in *West Bokaro Colliery (Tisco Ltd) v. Ram Pravesh Singh* reported in (2008) 3 SCC 729, cited by Mr. Behani “that it has repeatedly been held by this court that the acquittal in a criminal case would not operate is a bar to drawing up of a disciplinary proceeding against delinquencies” is to be considered as laying down a very broad and general proposition of law without taking into account, the embellishment made in the law by the other judgements. A similar statement of law was made in *Samar Bahadur Singh v. State of Uttar Pradesh* reported in (2011) 9 SCC 94 cited by Mr. Bihani. More or less the same general statement of law was made in paragraph-16 in *Noida Entrepreneurs' Assn. v. Noida* reported in (2007) 10 SCC 385 also cited by Mr. Bihani. In *Bistupada Das v. State Bank of Bikaner and Jaipur* reported in 2011 (5) CHN (Cal) 14 cited by Mr. Behani the acquittal was on “technicalities”. Hence departmental proceedings could continue. In *Pandiyan Roadways Corpn. Ltd. v. N. Balakrishnan* reported in (2007) 9 SCC 755, cited by the same learned Counsel some exceptions were carved out of the general principles of law laid down in *Kapur's case* and in *Capt. M. Paul Anthony's case*. I will read paragraph-21 of this judgement.”

With due respect to the learned Judge of the Calcutta High Court, that was not the way to brand or to describe the judgments rendered by the Apex Court.

22. It was urged on behalf of the first applicant that it was not possible for him to stop the release of the duty draw

backs, once the scrolls were uploaded. However, there is no answer for him as to why he did not intimate to the bank, and shifted the entire responsibility to the DRI. Another facet of the argument which was also advanced in the criminal court, is that the scroll of the five firms could not be separated, and the stoppage, if at all, would have been of the entire firms entered in the scroll of the day, and that in turn would have led to the department to pay interest on belated payment of the duty draw backs to other firms. This ground virtually resembles the case of not undertaking check of a group of individuals when an alert is received to the effect that there is a terrorist among them. The scrutiny agency cannot let off the terrorist by citing the reason that frisking or checking the group of persons would have resulted in hardship to them.

23. It is true that the nature of allegations against the second applicant is substantially different, and in a way, he was not directly responsible for the disbursement of the duty draw back. The text of the charge itself is different. There is no reason to believe that the disciplinary authority or the inquiry officer would not take that into account.

24. We are convinced that the case on hand attracts the ratio of the Hon'ble Supreme Court in *West Bokaro Colliery (TISCO Ltd.) v Ram Pravesh Singh*. Therefore, we are not inclined to interfere with the charge sheets.

25. Coming to the order of suspension, it is no doubt true that by and large a suspension must not be enforced beyond 180 days, or till the conclusion of the criminal case, if the situation warrants. Where, however, certain factors beyond the scope of a criminal case step in, the suspension would stand on a different footing. Further, higher the rank of the concerned employee in the administration, greater the risk of his influencing the proceedings. An additional factor would be about the extent of the loss caused to the exchequer, and the impact thereof on the other transactions. These factors did weigh with the suspension review committee, as is evident from the reasons mentioned in the order of continuance of suspension. No case is made out to interfere with the order of suspension.

26. Insofar as the plea of the first applicant as regards the enhancement of the subsistence allowance is concerned, there cannot be any second opinion that irrespective of the

nature of the charges pending against an employee, or the circumstances that led to his suspension, the upward revision of the subsistence allowance must be made with the continuance of suspension. The first applicant is entitled for revision of his subsistence allowance in accordance with law.

27. Therefore, OA No.1980/2018 is dismissed, upholding the charge memorandum dated 31.10.2017, and the order of continuance of suspension dated 23.04.2018. However, it is directed that the respondents shall revise the subsistence allowance payable to the applicant in accordance with the relevant provisions of law.

28. So far as OA No.2895/2018 is concerned, the same is dismissed, upholding the charge memorandum dated 31.10.2017.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/