IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

Original Application No. 021/1637/2015

Date of C.A.V. : 30.01.2018 **Date of Order : 13. 03.2018**

Between :

S. Vijay Kumar Lal,
S/o Dalchand Subbu Lal,
Aged 65 years,
Occ : Inspector of Income Tax (Retd),
R/o Hyderabad. … Applicant

And

Commissioner of Income-Tax-VI
'A' Block, 2nd Floor,
I.T.Towers, A.C.Guards,
Hyderabad. … Respondents

Counsel for the Applicant … Mr. K.Sudhakar Reddy, Advocate
Counsel for the Respondents … Mrs.K.Rajitha, Sr.CGSC

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)
Hon'ble Mrs.Minnie Mathew … Member (Admn.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant while working as Income Tax Officer in Warangal, a trap was laid by CBI on 31.07.2007 in consequence of a complaint given by PW-1 J.Samuel on 31.05.2007 stating that the applicant demanded him an amount of Rs.50,000/- for doing official favour in respect of the orders to be passed

regarding the Income Tax returns for the assessment year 2004-05 and 2005-06 respectively. The assessment relates to a Firm M/s Nezar Confectioneries and Agencies for which PW-1 and some of his family members are partners. In pursuance there of a complaint under Section 7 and 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 was registered against him alleging that he demanded an amount of Rs.50,000 from PW-1 and accepted an amount of Rs.30,000/- from him in the course of trap proceedings. After completing the investigation a charge sheet was filed against him and the said case was registered as C.C.No.6/2008 on the file of Principal Special Judge for CBI Cases, Hyderabad.

2. Soon after filing of FIR against the applicant under provisions of P.C.Act, 1988, the applicant was placed under suspension w.e.f. 31.05.2007 under Rule 10 of CCS (CCA) Rules, 1965 by proceedings dated 14.06.2007, 24.08.2007 and 25.02.2008. Ultimately the applicant was placed under deemed suspension till the date of superannuation on 31.05.2008. After filing of Criminal Case against the applicant, the department issued a major penalty charge sheet under Rule 14 of CCS (CCA) Rules, 1965. The applicant submitted representations dated 09.05.2008 and 03.12.2008 to the respondent not to initiate any disciplinary proceedings against him till the conclusion of the criminal case by the CBI Court. The same was not accepted. The applicant approached this Tribunal by filing OA.309/2011 to stay the departmental enquiry till the conclusion of the trial of the criminal case. In the said OA an interim stay of the departmental proceedings was granted. Subsequently the trial of the criminal case in C.C.No.6/2008 in the Court of Special Judge, CBI Cases, Hyderabad was completed and the case ended

in acquittal of the applicant by judgement dated 27.10.2015. After acquittal in the criminal case the applicant withdrew OA.309/2011 and filed the present OA praying for the relief to quash and set aside the departmental proceedings in Memo F.No.Susp/CIT-VI/07-08 dated 25.04.2008 issued by the respondent (Charge Memo contemplating departmental enquiry), on account of the acquittal of the applicant in the criminal case on merits by the Special Judge for CBI Cases, Hyderabad by his judgement dated 27.10.2015 in C.C.No.6/2008 on the ground that the criminal case and the proposed departmental enquiry are on the same set of facts, witnesses to be examined in both the proceedings are one and the same and that the acquittal is not on technical ground, but on merits.

3. The respondent filed reply statement contending inter alia that the proceedings in the criminal case and the departmental enquiry are entirely different. The standard of proof of guilt is also different and that the acquittal on the ground that the prosecution failed to prove the case against the applicant does not entitle him to seek the relief of quashing the Charge Memo issued to him in contemplation of the disciplinary enquiry by the department.

4. We have heard Mr.K.Sudhakar Reddy, learned counsel for the applicant and Mrs.K.Rajitha, learned Senior Central Government Standing Counsel for the respondent.

5. The short question arises for consideration in the present case is as to whether in the view of the order of the acquittal passed by the CBI Court against the applicant in respect of the aforementioned charges under the Prevention of

Corruption Act, the Charge Memo issued to him in respect of the very same charges for conducting departmental enquiry proposing to examine the very same witnesses can be quashed and set aside.

6. Though several judgements were relied on by the learned counsel on either side at the time of hearing of the matter, it suffice to refer to the case of ***G.M.Tank Vs. State of Gujarat and others (2006) 5 SCC 446*** wherein the Hon'ble Supreme Court after reviewing several of its earlier judgements enunciated the following legal position holding as under :

> 30. *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.*
>
> *31. 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.*

7. We have to examine the facts of the present case in the light of the ratio laid down by the Hon'ble Supreme Court in the above judgement.

8. In the case on hand none of the prosecution witnesses were treated hostile. The judgement was rendered by the learned CBI Judge on merits. The trial court pointed out several material inconsistencies and discrepancies which go to the roots of the matter. The trial court having regard to the serious infirmities and material inconsistencies in the very prosecution story and also that of the evidence of main witnesses unfolded at the trial, recorded a specific finding that no official favour was pending with the applicant (accused) at the relevant time and also that there was no occasion for him to demand any bribe. That trial Court pointed out that PW-1 admitted in the cross examination that the accused made all assessments in accordance with law and that Ex.D-2 and Ex.D-4 assessment orders were prepared in the course of regular discharge of duties by the accused. This apart the trial court recorded a specific finding that the cumulative effect of evidence forthcoming clearly makes out that the whole story sought to be projected by the prosecution is false and there was no apprehension of the accused in the manner stated by it nor there was recovery of tainted currency from the accused. It further pointed out that apparently PW-12 and his team

tried to project false events, which resulted in major discrepancies in presentation of evidence at trial. The trial court also expressed the view that there was neither demand nor acceptance of tainted currency notes by the accused from PW-1. It is further held that when the circumstances along with failure of the prosecution to prove prior demands of the accused on PW-1 for alleged bribe, are taken into consideration, it clearly makes out that a false case is foisted against the accused. The trial court went to the extent of stating that PW-1 who had grouse against the accused, on account of initiation of proceedings after due scrutiny of his returns for recovery of tax dues as per Ex.D-3 and Ex.D-4 apparently had misled CBI, as if the accused had made a demand for bribe and CBI officers had taken his version for granted that made them to proceed on with the trap against the accused and it proved to be a total and complete failure.

9. Therefore the acquittal of the applicant in the criminal case is not merely because the prosecution failed to prove his guilt beyond reasonable doubt, but by recording a specific finding by the trial Judge that the prosecution version is false and the accused was implicated by PW-1 as he did the assessments correctly in discharge of his duties. By proposing to hold departmental enquiry pursuant to the impugned charge memo dated 25.04.2008 the department seeks to prove the very same charge against the applicant. The charge is based on same set of facts in the criminal case and in the departmental enquiry which is in contemplation, the department cannot examine any new witnesses than those who were examined in the criminal case. The acquittal of the applicant in the criminal case is on merits and is honorable. According to applicant it became

final and the said assertion is not controverted by the respondents. In view of the law laid down by the Hon'ble Supreme Court if any departmental enquiry is allowed to be proceeded with on the basis of the impugned charge memo, it would be nothing but abuse of process of law. Therefore the Charge Memo has to be necessarily quashed.

10. Consequently, the Charge Memo dated 25.04.2008 is quashed and set aside. The OA is allowed. There shall be no order as to costs.

(MINNIE MATHEW) ***(JUSTICE R.KANTHA RAO)***
MEMBER (ADMN.) ***MEMBER (JUDL.)***

sd