

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00480/2017

Date of CAV : 21-08-2018
Date of Order : 11-09-2018

Between :

J.Sreenivasa Rao S/o J.Venkoba Rao,
Aged 59 years,
Occ : Senior Audit Officer, O/o The Principal Accountant
General (G&SSA) for the State of Andhra Pradesh and
For the State of Telangana, Saifabad, Hyderabad.
R/o H.No.3-1-57/1, New Shivapuri colony,
Road No.1, L.B.Nagar, Hyderabad – 500 074.Applicant

AND

1. Union of India represented by
The Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
Indraprasta Head Post Office,
New Delhi – 110 002.
2. The Principal Accountant General (Audit) &
Disciplinary Authority,
Telangana, Hyderabad.
3. The Deputy Account General (Admn.)-cum-
Inquiry Officer, O/o The Accountant General (A&E),
Andhra Pradesh, Hyderabad.Respondents

Counsel for the Applicant: Mr. KRKV Prasad

Counsel for the Respondents : Mr. V. Vinod Kumar, Sr. CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 to call for the records pertaining to Charge Memorandum No. PAG(G&SSA)/CoC/DC-1/8-263/2014-15/28, dated 15.07.2014, Memo No. PAG(Audit)/CoC/DC-1/8-263/2017-18/07, dated 11.05.2017, Office Order No.4 issued vide proceedings No.PAG(T.S)/CoC/DC-1/8-263 & 264/2017-18/10, dated 12.05.2017 and Inquiry Officer's letter No. DAG(A)/DP-3/2017-18/13, dated 13.06.2017 and declare the action of the 2nd respondent in proceeding with the disciplinary inquiry on the very same allegations which were the allegations in CC No. 18 of 2012 after the applicant's acquittal from the said criminal case as illegal, arbitrary and is in violation of principles of natural justice and set aside and quash the Memo dated 11.05.2017 along with Memorandum dated 15.07.2014 and Office Order dated 12.05.2017 and grant all consequential benefits treating that no disciplinary proceedings are pending against the applicant and pass such other order or orders as may deem fit and proper in the circumstances of the case and in the interest of justice.

2. The brief facts of the case are that the applicant is working as Sr. Audit Officer under the control of the 2nd Respondent . A CBI case vide RC 02 of 2012 under section 7 of Prevention of Corruption Act, 1988 has been registered against the applicant on the basis of a complaint received from the staff of S.G.P.R. Government Polytechnic, B. Thandrapadu, Kurnool.

Thereafter the applicant was kept under deemed suspension with effect from 25.01.2012. The 2nd Respondent caused independent investigation by nominating two Senior Audit Officers, who submitted their report on 12.03.2013 by not specifically stating any allegations against the applicant.

3. After completion of the investigation, the CBI filed Charge Sheet in the Court of Principal Special Judge for CBI Cases, Hyderabad in CC No.18/2012 under section 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, against the applicant and also against one P. Rama Rao. The 2nd Respondent issued the impugned memorandum dated 15.07.2014 initiating parallel disciplinary proceedings on the very same allegation of demand and acceptance of illegal gratification based on the very same evidence relied upon by the CBI and also appointed an Inquiry Officer ordering common proceedings against the applicant and the said Mr.P.Rama Rao. By filing OA No.21/178/2015, the applicant obtained stay on the departmental proceedings. Thereafter the above said OA was disposed of with directions vide orders dated 05.04.2017. Based on the directions in the above said OA, applicant submitted representation dated 28.04.2017 and the same was disposed of vide memo dated 11.05.2017 refusing to drop the disciplinary proceedings. The applicant submits that as he has been acquitted in the Criminal Case vide order dated 20.04.2016, the impugned order dated 11.05.2017 and appointing the Inquiry Officer vide order dated 12.05.2017 are not correct. Hence this application.

4. The Respondents have filed their reply statement stating that as the

Disciplinary Authority not convinced with the reply submitted by the applicant denying the charges framed against him initiated departmental inquiry under Rule 14 of CCS (CCA) Rules, 1965 and common proceedings were decided upon as per sub-rules (1) and (2) of Rule 18 of CCS (CCA) Rules, 1965. The Respondents also submit that the disciplinary case initiated against the applicant is in inquiry stage and the inquiry proceedings will be held confidentially and accordingly the depositions made by the witnesses, if any, listed in the charge memo would be kept confidential. Hence the departmental enquiry would not prejudice by any means the defence in the criminal case. The Respondents also submit that placing the applicant under suspension is an administrative action and not based on the directions of the CBI. It is also stated in the counter affidavit that the CBI, vide letter dated 16.11.2012 requested the department not to rely on their evidence / documents for initiating Regular Departmental Action against the applicant and another official. It is submitted that the Charges were framed against the applicant based on the evidence gathered by the department.

5. The Respondents contend that, (i) the applicant's acquittal in Criminal Charge is not based on merits but on the benefit of doubt as the prosecution failed to prove the case; (ii) the basis of approach, the burden of proof and appreciation of evidence in departmental Inquiry and in Criminal proceedings are different; (iii) acquittal in a Criminal Case is not a bar for disciplinary proceedings and (iv) disciplinary case initiated against the applicant is not based on the evidence gathered or supplied by the SBI, Hyderabad. The Respondents submit that the two-member team appointed

is for the purpose of preliminary investigation or in other words, a 'fact finding team'. Hence it is not in the capacity of inquiry officer to declare or indicate any adverse findings against the applicant. Only the Disciplinary Authority is empowered to examine the case and draft charges indicating misconduct, if any, against the applicant. In view of the forgoing submissions, the Respondents pray for dismissal of the OA.

6. We have heard Mr. KRKV Prasad, learned counsel for the applicant and Mr. V. Vinod Kumar, learned Sr Central Govt., Standing Counsel for Respondents, perused the records and material placed before us.

7. It has been submitted by the learned counsel for the applicant that since the applicant has been acquitted in the Criminal Case as per judgment dated 20.04.2016 by the CBI Court. Therefore the Departmental Proceedings pending against the applicant should be quashed as the allegations in both the cases are same and overall documentary evidence relied against him in both the proceedings are also same. On the other hand learned counsel for the Respondents submitted that since the CBI Court, as per judgment dated 20.04.2016, at para-111 had held that the accused are entitled for benefit of doubt and therefore they were acquitted, therefore the said judgment cannot be of any help for the purpose of claiming that the Departmental Proceedings should be quashed on that ground alone.

8. The learned counsel for the applicant in order to buttress his arguments had also submitted that during preliminary hearing made by the

Department it was found that no case has been made out against the applicant. The said report dated 12.03.2013 is filed as Annexure A-7 to OA. It was further submitted by the learned counsel for the applicant that in the Departmental Proceedings five witnesses were sought to be examined and out of them only three witnesses are common in the Departmental Proceedings as well as in the CBI case in question. On the other hand learned counsel for the applicant had submitted that all the documents relied upon in the Departmental Proceedings against the applicant were not relied upon in the Criminal Case. In the Departmental Proceedings, the Inquiry Officer have already been nominated after issue of the charge memo against the applicant. Ofcourse the charges in both the cases are same as seen from memorandum of charges dated 15.07.2014.

9. The learned counsel for the applicant in support of his submissions, relied upon decisions :-

- (i) CAT, Principal Bench, New Delhi, dated 02.06.2008 in the case of Ram Phool Meena, Sub Inspector in Delhi Police, Vs. Commissioner of Police, Delhi;
- (ii) Pradip Kumar Banerjee Vs. Airport Authority of India [2007 (3) CALLT 101 HC]
- (iii) Order dt.04.12.2007 in OA No.114/2007 of CAT, Hyderabad Bench;
- (iv) Judgment dt.14.3.18 in the case of UoI Vs. Naman Singh Shekhawat.

It is seen that the learned Principal Special Judge for CBI Case, Hyderabad, gave the finding in the order dated 20.04.2016 at para-111 that, 'the accused are entitled for benefit of doubt , holding to record an order of acquittal in their favour.' It is referred by this Tribunal in the context of the Disciplinary case pending against the applicant / delinquent. After going through the list of documents and list of witnesses as mentioned in the charge memo issued against the

delinquent applicant and comparing the same with the list of the documents and witnesses as produced in the Criminal case in question by the CBI as prosecutor, it cannot be said that all the documents and witnesses relied upon by the department are the same as relied upon in the CBI Court in the Criminal Case.

10. The standard of proof required in a domestic enquiry is preponderance of probabilities and that in criminal case the standard of proof required is beyond reasonable doubt. Though the very purpose of the courts is to do justice, there is no unbridled authority to do what is perceived to be just by abandoning propriety or judicial discipline or the principles that fasten to the exercise of adjudication. The court cannot presume, for instance, that in course of the inquiry in the departmental proceedings, no evidence would be produced to link the petitioner with the alleged misconduct. It is not for the court to rush to the conclusion that the petitioner may be punished. In the present case, the departmental proceedings is yet to commence. It is too early to predict the nature of evidence and materials that will be placed before the disciplinary authority, while holding enquiry. In such circumstances, it is very difficult to accept the contention of the learned counsel for the applicant for quashing the charge memo. In none of the judgments referred to above and relied upon by the learned counsel, it has been held that the findings of the Criminal Court is binding on the disciplinary authority, while proceeding with the departmental enquiry.

11. The facts and circumstances of the cases relied upon by the learned

- (i) dated 30.03.1999 in the case of Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd., & Anr (199 (2) SCALE 363);
- (ii) dated 26.04.1968 in Jang Bahadur Singh Vs. Baij Nath Tiwari (AIR 1969 SC 30) ;
- (iii) State of Rajasthan Vs. B.K.Meera (1996 AIR SCW 4160)

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