

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.200/00035/2017

Jabalpur, this Friday, the 14th day of September, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Aalok Gupta, S.D.O.M (manager) S/o late Dr.B.N.P.Gupta,
Aged about 59 years, R/o RB-IV-406/A, Railway Colony,
Habibganj Bhopal (MP) **- APPLICANT**

(By Advocate – Shri Akash Choudary)

Versus

1. Union of India through its General Manager,
West Central Railway, Indira Market, Jabalpur
(M.P.)-482001

2. Chief Personal Officer, West Central Railway,
Indira Market, Jabalpur (M.P.)-482001 **- RESPONDENTS**

(By Advocate – Shri Vijay Tripathi)

(Date of reserving the order: 04.07.2018)

ORDER

By Navin Tandon, AM-

The applicant is aggrieved by issuance of charge sheet dated 25.11.2016 (Annexure A-1) while the criminal case on same charge was pending in CBI Court.

2. Though the case was not listed for hearing, the matter was heard finally with the consent of both the parties.

3. The brief admitted facts of the case are that a criminal case was lodged against the applicant bearing Special Case No.03/2013 by the Central Bureau of Investigation (for brevity 'CBI'), before the Special Judge (CBI), Jabalpur. During the pendency of this Original Application, the criminal case was decided on 15.02.2018 (Annexure RJ-1), in which the applicant was acquitted. In the said case the charges levelled against the applicant were of demand of illegal gratification of Rs.32,000/- for booking FTR Coach and accepting Rs.5,000/- in December, 2011 for the same purpose in his Union Bank of India account from Mr.Mukesh Agrawal.

3.1 A charge sheet dated 25.11.2016 (Annexure A-1) was also issued against the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 alleging similar charges as were framed by the CBI in the criminal case, that he while working as Deputy Chief Operation Manager (Coaching) had demanded illegal gratification to the tune of Rs.32,000/- to book a FTR Coach in the name of one Dilip Kumar Sharma and an amount of Rs.5,000/- was deposited for this purpose in his account by one Mukesh Agrawal at Madgaon Branch, Goa in applicant's Account No.554802010002472 with Union Bank of India, Lucknow Branch.

4. In the meanwhile the applicant after attaining the age of superannuation stood retired from railway services on 31.10.2017 from

the post of Senior DOM, Bhopal. After his superannuation, the PF amount was released on 31.10.2017 and insurance amount on 01.11.2017. However, the applicant has not been released other retiral benefits like encashment of leave salary of 300 days, composite transfer-cum-packing allowance, gratuity etc. and these amounts have been withheld by the respondents. The applicant has, therefore, filed a Misc. Application No.200/00097/2018 for release of retiral benefits.

5. In the Original Application, the applicant has prayed for the following relief:

“(8). Relief Sought:

In view of the averments made in the preceding para's the applicant pray for the following relief:

- (8.i)** Set aside the charge sheet dated 25.11.2016 (Annexure A/1). Command the respondent to release all the consequential benefits to the applicant as if the impugned charge sheet is never issued;
- (8.ii)** Any other order/orders, direction/direction which deems fit and proper in the facts and circumstances of the case may also be passed;
- (8.iii)** Award cost of the litigation in favour of the applicant.

6. The learned counsel for the applicant has contended in the rejoinder that the CBI Court has already honourably acquitted the applicant from the charges, since the prosecution has failed to substantiate charges against the applicant regarding demand of illegal gratification for the purpose of booking FTR Coach in the name of Shri Dilip Sharma. The CBI court has appreciated the working of the applicant in the entire episode and, therefore, the same does not constitute any misconduct

warranting any interference on the part of the respondents in issuing the charge sheet against the applicant. The charge sheet issued to the applicant is based upon the similar facts and circumstances on which the CBI Court has already acquitted the applicant. The entire story regarding demand of illegal gratification was cooked up story made by Shri G.D. Sharma, who in collusion with Shri Mukesh Agrawal tried to defame the applicant at the fag end of career. Shri Sharma was biased against the applicant inasmuch as Shri Sharma had directly obtained the receipt/bank transaction of Rs.5000/- and straightaway handed over to the CBI. The action of Shri Sharma was already deprecated by the Special Judge, CBI, Jabalpur in para 92 of the order. The statement of Shri G.D.Sharma has been disapproved by the CBI. Since 2011, said Shri Mukesh Agrawal is absconding and has not stepped into the shoes of prosecution to prove the prosecution story. Therefore, it is misleading on the part of the respondents to continue with the departmental enquiry after acquittal of the applicant on the same charges by the Special Judge, CBI.

6.1 The learned counsel also contended that the charge-sheet was issued to the applicant belatedly and, therefore, the same being bad in law deserves to be set aside by this Tribunal.

7. On the other hand, the learned counsel for the respondents submitted that the charge sheet is not liable to be quashed merely on the ground that the same had been issued at a belated stage as has been held

by the Hon'ble Supreme Court in the matters of **Secretary, Ministry of Defence Vs. Prabhash Chandra Mirdha**, (2012) 11 SCC 565 and **Union of India Vs. Raj Kishore Parija**, 1995 Supp (4) SCC 235.

8. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

9. As regards the reliance placed by the learned counsel for the respondents in the matters of **Prabhash Chandra Mirdha** (supra) their lordships have held thus:

“(12). Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings”.

Further, in the matters of **Raj Kishore Parija**(supra) their lordships have held thus:

“(2). Heard parties. There is no doubt that the employee was suspended from the year 1984 and the charge-sheet was served on him in the year 1988. The enquiry is not yet complete. The Tribunal was, therefore, right in ordering reinstatement of the employee. However, the Tribunal travelled beyond its jurisdiction in quashing the charges and the disciplinary proceedings themselves. We are informed that in pursuance of the order of the Tribunal the respondent-employee has been reinstated in service.

(3). We, therefore, quash that part of the order of the Tribunal by which the Tribunal had quashed the charges and the disciplinary proceedings, and permit the appellant-Union of India, if it so intends, to proceed with the enquiry. However, the appellant is directed to complete the enquiry within 6 months from today. The appeal is allowed accordingly with no order as to costs”.

9.1 On perusal of above decisions we find that there is no doubt about the settled law that proceedings are not liable to be quashed merely on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee, and that gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

10. In the matters of **Management of Bharat Heavy Electricals Limited Vs. M.Mani**, (2018) 1 SCC 285, relied upon by the learned counsel for the respondents, during the course of arguments, we find that in the said matter their lordships have held that criminal proceedings are initiated by State against delinquent employees in criminal court while departmental enquiry is initiated by employer under Labour/Service Laws/Rules against delinquent employee. In the said matter the appellant employer had conducted departmental enquiry in accordance with law independently of criminal case, wherein charge of theft against the delinquent employee was proved. Their lordships in the said matter held

that said finding was based on preponderance of probabilities and could be recorded by enquiry officer notwithstanding order of criminal court acquitting respondent. The relevant paragraph of the said order read thus:

“(33). In the case on hand, the appellant employer had conducted the departmental enquiry in accordance with law independently of the criminal case wherein the enquiry officer, on the basis of the appreciation of evidence brought on record in the enquiry proceedings, came to a conclusion that a charge of theft against the delinquent employee was proved. This finding was based on preponderance of probabilities and could be recorded by the enquiry officer notwithstanding the order of criminal court acquitting the respondents.”

11. We may now quote relevant paragraphs from the order passed by the learned Special Judge in Special Case No.3 of 2013 registered by the CBI against the applicant, as under:

“(92). इस प्रकार यह स्पष्ट है कि अभिकथित घटना के समय अभियोजन साक्षी गोपाल दत्त शर्मा (अ0सा010) अभियुक्त के वरिष्ठ अधिकारी नहीं थे। अभियुक्त के घटना के समय वरिष्ठ अधिकारी राजेश पाठक थे। सामान्य तौर पर किसी कनिष्ठ अधिकारी की भ्रष्टाचार में संलिप्त होने की सूचना प्राप्त होने पर सूचना वरिष्ठ अधिकारी को दी जाती है। ऐसा न करते हुये रोहितास (अ0सा027) के द्वारा गोपाल दत्त शर्मा (अ0सा010) को यह सूचना दी गई। रोहितास (अ0सा027) एवं गोपाल दत्त शर्मा (अ0सा010) पूर्व में आई.आर.सी.टी.सी. में कार्यरत होकर एक दूसरे के परिचित रहे हैं। इस तथ्य को दोनों ही साक्षीगण ने अपने प्रतिपरीक्षण में स्वीकार किया है। यदि तर्क निमित्त यह मान भी लिया जाये कि रोहितास (अ0सा027) को घटना के समय यह जानकारी नहीं थी कि अभियुक्त जिनके संबंध में उन्हें सूचना प्राप्त हुई है, के वरिष्ठ अधिकारी गोपालदत्त शर्मा न होकर राजेश पाठक थे,

तब भी गोपाल दत्त शर्मा को सूचना रोहितास द्वारा दिये जाने पर उन्हें यह सूचना राजेश पाठक अथवा रेल्वे के विजीलेंस शाखा को देना थी। ऐसा न करते हुये गोपालदत्त शर्मा द्वारा यह सूचना सीबीआई. को किन परिस्थितियों में दी गई यह स्पष्ट नहीं है। स्वयं गोपालदत्त शर्मा ने अनेकानेक शिकायत अन्य कर्मचारी/अधिकारी की प्राप्त होने के बावजूद केवल आलोक गुप्ता का प्रकरण ही सी.बी.आई. को रेफर किया जाना प्रदर्श पी0 28 में स्वीकार किया है। इस प्रकार अभियोजन साक्षीगण के कथनों के आधार पर ही गोपाल दत्त शर्मा (अ0सा010) के द्वारा विशेष रुचि अभियुक्त के विरुद्ध कार्यवाही करवाने में रुचि लिया जाना परिलक्षित है। यहां यह तथ्य विशेष रूप से उल्लेखनीय है कि तत्कालीन सी.पी. टी.एम. राजेश पाठक जो इस प्रकरण से संबंधित कार्यवाही में प्रारंभ से अंत तक रहे, का कोई कथन अभियोजन द्वारा घटना के समर्थन में नहीं कराया गया। जबकि स्वयं अभियोजन साक्ष्य से यह स्पष्ट है कि दिलीप कुमार शर्मा का आवेदन आई.आर.सी.टी.सी. द्वारा राजेश पाठक को ही प्रेषित किया गया था। इसके अतिरिक्त राजेश पाठक अभियुक्त के वरिष्ठ अधिकारी होकर प्रकरण के महत्वपूर्ण साक्षी थे।

(93). उपरोक्त न्याय दृष्टांतों के आलोक में आरोपी से रिश्वत की राशि बरामद हुई होना तथा आरोपी द्वारा स्वेच्छापूर्वक रिश्वत की राशि प्रतिग्रहित की गयी होना अभियोजन साक्ष्य से प्रमाणित नहीं पाये जाने से तथा आरोपी के द्वारा अभियोजन की साक्ष्य से ही धारा 20 की उपधारणा को खण्डित कर दिया गया होने से आरोपी के विरुद्ध धारा 20 भ्रष्टाचार निवारण अधिनियम 1988 की उपधारणा लागू नहीं होती है।

(94) अतः पूर्व में की गई विवेचना एवं न्यायदृष्टांतों में दिये गये मार्गदर्शन के प्रकाश में अभियोजन पक्ष अभियुक्त के विरुद्ध संदेह से परे यह प्रमाणित नहीं कर सका है कि आरोपी अलोक गुप्ता वर्ष 2011 में इंडियन रेल्वे ट्रेफिक सर्विस के अंतर्गत डिप्टी चीफ आपरेशन मैनेजर (कोचिंग) के पद पर दिनांक 26.12.2011 एवं 27.12.2011 के मध्य टेलीफोन से बातचीत के दौरान

मुकेश कुमार अग्रवाल उर्फ मुकेश कुमार गुप्ता निवासी बरपारा, जामा मस्जिद के पास, हिन्डौन सिटी जिला करौली, राजस्थान से एक एफ.टी.आर. कोच दिलीप कुमार शर्मा निवासी झाण्डु का पुरा, हिन्डौन सिटी जिला करौली राजस्थान के नाम बुक करने के लिये 32000/- रुपये रिश्वत की राशि की मांग किया एवं मुकेश कुमार अग्रवाल द्वारा 5000/- रुपये भुगतान करने का आश्वासन देने के पश्चात् दिनांक 27.12.2011 को अपने पद का दुरुपयोग करते हुये कोच मूवमेन्ट आर्डर आपरेशन डिपार्टमेन्ट जोनल आफिस जबलपुर से अपने अधीनस्थ कर्मचारियों से अभियुक्त अलोक गुप्ता द्वारा जारी कराया गया एवं उक्त मांग के परिप्रेक्ष्य में दिनांक 31.12.11 को अभियुक्त एवं अभियुक्त की पत्नी के नाम से संयुक्त खाता क्रमांक 554802010002474 यूनियन बैंक आफ इंडिया, जानकीपुरम शाखा, लखनऊ (उ०प्र०) में अभियुक्त के निर्देश पर मुकेश कुमार अग्रवाल द्वारा नगद 5000/- रुपये यूनियन बैंक आफ इंडिया, मडगांव शाखा, गोवा से जमा किये गये और उक्त मांग की पूर्ति में उक्त राशि 5000/- रुपये की राशि अवैध पारितोषण के रूप में वैध पारितोषण से भिन्न मुकेश कुमार अग्रवाल उर्फ मुकेश कुमार गुप्ता से प्राप्त कर आपराधिक अवचार कारित किया।

(95). अभियोजन की ओर से प्रस्तुत साक्ष्य के आधार पर आरोपी आलोक गुप्ता के विरुद्ध धारा 7 सहपठित धारा 13(1)(डी) एवं 13(2) भ्रष्टाचार निवारण अधिनियम 1988 के आरोप युक्तियुक्त रूप से सन्देह के परे प्रमाणित नहीं पाये गये हैं इसलिए आरोपी आलोक गुप्ता को सन्देह का लाभ देकर धारा 7 सहपठित धारा 13(1)(डी) एवं 13(2) भ्रष्टाचार निवारण अधिनियम 1988 के आरोपों से दोषमुक्त किया जाता है। उसके जमानत मुचलके भारमुक्त किये जाते हैं।

(96). आरोपी आलोक गुप्ता विचारण के दौरान न्यायिक अभिरक्षा में नहीं रहा है।

(97). प्रकरण में विवादित राशि 5000/-रु० पर आरोपी अथवा मुकेश अग्रवाल उर्फ मुकेश गुप्ता ने अपना कोई क्लेम नहीं किया है। अतः उक्त

राशि 5000/-रुपये अपील अवधि पश्चात् राजसात की जावे। प्रकरण में जप्तशुदा प्रदर्शित दस्तावेज अपील अवधि पश्चात् संबंधित विभाग को दस्तावेजों की प्रमाणित प्रतिलिपि प्रस्तुत किये जाने पर वापस किये जावें। अपील होने पर माननीय अपीलीय न्यायालय के आदेश का पालन किया जावे।”

12. On a minute perusal of the above order of learned Special Judge we find that in the said matter the prosecution had failed to prove the charge levelled against the applicant of demanding illegal gratification to the tune of Rs.32,000/- to book a FTR Coach in the name of one Dilip Kumar Sharma and depositing an amount of Rs.5,000/- for this purpose in applicant's bank account by one Mukesh Agrawal with Union Bank of India, Lucknow Branch and, therefore, the learned Special Judge has acquitted the applicant from the charge levelled against him, vide order dated 15.02.2018.

13. Learned counsel for the respondents highlighted the fact that the applicant has been acquitted on benefit of doubt.

14. In the matters of **G.M.Tank Vs. State of Gujarat and others**, (2006) 5 SCC 446, the Hon'ble Supreme Court held thus:

“(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.

(31). In our opinion, such facts and evidence in the departmental 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 the 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 case*** (infra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed”

15. In the matters of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.***, (1999) 3 SCC 679, there lordships have held thus:

“(13.) As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court,

which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

XXXXX

XXXXX

XXXXX

XXXXX

(35). Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case”.

16. In this case, we are given to understand that 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 applicant and the charge before the criminal court also seems to be one and the same. The learned Special Judge after examination of evidence came to the conclusion that the prosecution has not proved the guilt alleged against the applicant beyond any reasonable doubt and acquitted the applicant by

its judicial pronouncement with the finding that the charge has not been proved beyond any shadow of doubt.

17. Under these circumstances, it would be just and proper for the disciplinary authority to examine whether it would be appropriate to continue the pending departmental proceedings against the applicant after his acquittal in the criminal case.

18. In the result, the Original Application is disposed of with a direction to the disciplinary authority to decide the matter in terms of the observations made in the preceding paragraphs within a period of 90 (ninety) days from the date of communication of this order, and pass a reasoned and speaking order and communicate the same to the applicant. The applicant shall be at liberty to approach this Tribunal if he still feels aggrieved. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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