

CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI,

ORIGINAL APPLICATION NO.131/2015

connected with

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DATED : 1st day of August 2017

Coram:HON'BLE JUSTICE DINESH GUPTA MEMBER(J)

HON'BLE SHRI R.RAMANUJAM MEMBER(A)

OA No. 131 of 2015

Shri Pradeep Vishnu Angachekar,

age 62 years Retired Assistant

Commissioner of Central Excise

(Service Tax), Pune - 1,

residing at A/6, Hill View

Co-op Housing Society Ltd.,

Near Devdaya Nagar, off

Pokhran Road No.1,

Thane (West)– 400 606.

..Applicant

(By Advocate Shri. S.V. Marne)

Versus

1. Union of India,

Through the Secretary,

Ministry of Finance,

Department of Revenue,

Central Board of Excise & Customs,

North Block, New Delhi - 110011.

2. Commissioner of Central Excise,

Pune-IV. ICE House, 41/A,

Sasoon Road, opp- Nadia College,

Pune-411001.

..Respondents

(By Advocates Shri V.S. Masurkar)

Connected with

OA No. 264 of 2015

Shri Vidhyadhar Vasudev Joshi

Superintendent of Central Excise,
Pune-IV r/a A/6, Rajashree Garden,
Sihangad Road, Nityanand Hall Lane,
opp. Hingane Khurd Post Office,
Hingane Khurd, Pune-411 051. ... **Applicant**

(By Advocate Ms. S.V. Gokhale)

Versus

1. Union of India.

Through the Under
Secretary to the Govt. of India
Ministry Of Finance Room No.615,
6th Floor, 'C'- Wing, HUDCO
Vishala Bhikaji Kama Place.
R.K. Puram, New Delhi-110066.

2. Commissioner of Central Excise,
Pune-IV. ICE House, 41/A,
Sasoon Road, opp- Nadia College,
Pune-411001. ... **Respondents**

(By Advocates Shri R.R. Shetty)

Connected with

OA No. 354 of 2015

Smt Vinaya Ajay Kale

Inspector of Service Tax,
L & T), Office of Principal Commissioner
of Service Tax I.C.E. House, 41 / A,
Sasoon Road, Pune - 411 001
(R/o : "Om", 10 Amruteshwar Society,

3 ***OA No. 354/2015***
 with
 OA No. 264/2015
 with
 OA No. 131/2015

Near Gadgil Udyan,
Padmavati Pune - 411 009) **...Applicant**

(By Advocate Ms. S.P. Saxena)

Versus

1. The Union of India,
through The Secretary
Ministry of Finance,
North Block,
New Delhi - 110 001.

2. The Commissioner Central Excise

Pune - III Commissionerate,
C E House 41 / A
Sassoon Road,
Pune - 411001. **...Respondents**

(By Advocates Shri R.R. Shetty)

Order Reserved:- 06.07.2017
pronounced on :- 01.08.2017.

O R D E R

Per: Hon'ble Shri Justice Dinesh Gupta, Member (J)

O.A. 354 of 2015, O.A. 264 of 2015 and
O.A. 131 of 2015 have been filed by the
respective applicants under Section 19 of the
Administrative Tribunals Act, 1985. The
above OAs were heard together as the
applicants' cases are based on common facts and
for common reliefs. Applicants have prayed for
quashing of the Memorandum of Charge-sheet
dated 02.09.2014, 02.09.2014 and 14.10.2014

respectively and the facts of the case are almost identical. Hence, all these three OAs are decided by this common order.

The applicants claimed following reliefs:-

"(a) to allow the application.
(b) to quash and set aside the impugned Memorandum/ Charge-sheet dated 02.09.2014, 02.09.2014 and 14.10.2014 respectively.
(c) to pass any other order which may be just and equitable in the facts and circumstances of the case."

2. The facts of the case, so far as all the three applicants are concerned and identical in nature and it is stated by the applicants that Shri. Pradeep Vishnu Angachekar (hereinafter known as Applicant No. 1) another applicant Shri. Vidhyadhar Vasudev Joshi (hereinafter called to as Applicant No. 2) and Smt. Vinaya Ajay Kale (hereinafter called as Applicant No. 3). All applicants are initially appointed in the office of Central Excise (Service Tax) Pune 1. While the Applicant No. 1 working as Assistant Commissioner, Applicant No. 2 was Superintendent and Applicant No. 3 was posted as Inspector of Service Tax. In the year 2012, it appears that the Inspector

Applicant No. 3 prepared an office note and draft show cause notice raising demand for service tax of Rs. 9,76,631/- in addition to the penalty in the case of Gandharva Restaurant. It appears that the said office note and draft show cause notice was pending for approval with Applicant No. 2 and it was yet to reach to the Applicant No.1. However, in the meantime a complaint was filed by Shri R.B. Gaikwad, one of the partner Gandharv Restaurant with the CBI alleging that the Applicant No. 2 & 3 were demanding bribe from him. However, there was no mentioned the name of Applicant No. 1 in the said illegal demand. On the basis of the said complaint, the CBI allegedly conducted a trap on 22.05.2012 on Applicant No. 2 & 3 and it was alleged that the Applicant No. 2 accepted an amount of Rs. 1,25,000/- from the complainant Shri Gaikwad. The Applicant No. 1 arrested on 22.05.2012 and Applicant No. 2 & 3 were also arrested. The Applicant No.1 was granted bail immediately. However, subsequently the Applicant No. 1 was placed under suspension. The Applicant No. 1 accordingly

retired on attaining the age of superannuation on 30.09.2012.

3. It is further stated that the CBI registered Special Case No.22 of 2012 in the Sessions Court Pune against all the three Applicants. The trial in the said special case was conducted and the Hon'ble Special Judge delivered his judgment and order on 31.12.2013 acquitting all the three applicants in respect of all the offenses alleged. The Hon'ble Special Judge held that the prosecution failed to prove the charges by cogent evidence. A copy of the Judgment and order dated 31.12.2013 was ready on 22.01.2014. However, before the issuance of the certified copy of the judgment, it appears that the CVO, CBEC sent proposal to the Central Vigilance Commission for initiation of major penalty proceedings against the Applicants. Immediately after receipt of certified copy of the judgment, the same was forwarded to the Respondents.

4. The Applicants submitted the application to the Respondent No.1 that it

is not permissible to hold departmental enquiry if the facts or allegations have been examined by Court of competent jurisdiction. The respondents in the meantime issued charge-sheet to the Applicant No. 2 & 3 and later on the charge-sheet was issued to the Applicant No. 1 also.

5. After objecting the sanction to initiate departmental proceeding against the applicants the applicant No. 1 challenged the sanction order as well as the memorandum of chargesheet.

6. It is further stated that on receipt of the said Charge-sheet dated 14.10.2014, Applicant No.1 made a detailed representation on 28.10.2014 relying on the judgment of their acquittal as well as relying on various judgments in similar cases. The Applicants requested for dropping of disciplinary proceeding that the disciplinary authority intended to proceed ahead by appointing Enquiry Officer and Presenting Officer.

Therefore, applicants have no option but to file these OAs.

7. Notices were issued to the respondents who is turns filed the response/ reply in all the three OAs.

8. In the case of Applicant No.1 the respondents have alleged that the respondents asked the applicant to file reply/ representation to the said charge-sheet and applicant submitted his reply but without waiting for the decision of the Disciplinary Authority he invoked the jurisdiction of the Tribunal. Hence, the OA filed by Applicant No. 1 is premature.

9. The respondents also relied upon the judgment reported in **(2013) 6 SCC 515**
in the case of Anant R Kulkarni v/s. Y P
Education Society and Ors.

10. The respondents further stated that the enquiry is yet to be held and the applicants have filed their representations and the Disciplinary Authority will take the decision in the

matter and convey it to the applicants. Thereafter the Statutory Appeal is available under the provisions of Rule 23 of the CCS(CCA) Rules, 1965 and thereafter revision under the provisions of Rule 29 of the above said Rules. Only then the Tribunal has powers of judicial review. Hence, it is stated that the present OAs are premature and the applicants have not exhausted the remedies available to him and the application does not merit acceptance in lieu of Rule 20(i) of the Administrative Tribunal Act.

11. The respondents have also relied upon the case law referred in the judgment reported in **1997 SCC (L&S) 1749** **in the case of Government of Tamil Nadu v/s. K.N. Ramamurthy.** The respondents have also relied upon the judgment reported in **1995 SCC (L&S) 374 in the case of Union of India & Anr. v/s. Ashok Kacker.** Although the respondents have relied upon the judgment reported in **1994**

SCC (L&S) 768 in the case of Union of India & Anr. v/s. Upendra Singh. Further the respondents have relied upon the judgments reported in ATJ 1995 (1) 299 in para 7 in the case of Transport Commissioner Madras v/s. A. Radhakrishnamoorthy and another judgment reported in 1995 (Supp) (4) SCC 235 in the case of Union of India v/s. Raj Kishore Parija.

12. In the another case of Applicant No. 2, respondents further stated that besides the points taken by them in earlier OA the Applicant No. 2 was caught red-handed while accepting a sum of Rs. 1,25,000/- from the complainant Shri. Gaikwad. Although, a proceeding was launched against him, the same resulted in acquittal as can be seen from the judgment rendered by the Hon'ble Session Judge, Pune dated 31.12.2013. The CBI has informed the respondents that they are seeking to test the said judgment by way of Writ Petition in High Court Judicature

at Bombay. The aforesaid notwithstanding, the respondents are well within their rights to pursue a departmental proceeding as the standard of proof required in a departmental proceeding is only that of preponderance of probability vis-a-vis the standard of proof required for conviction in a criminal trial. It is further submitted that the purpose of both the proceedings are entirely different. The respondents therefore respectfully submitted that they are well within their rights to pursue a departmental proceeding in respect of the same charge all the more so in the light of the fact that that an Appeal has been filed by the CBI in the Hon'ble High Court Judicature against the acquittal by the Session Court. The respondents also respectfully submitted that even after the acquittal, the departmental enquiry can be continued or held as has been laid down by the Hon'ble Supreme Court in a catena of cases.

13. In so far as the Applicant No. 3 response is concerned i.e. same in the case of other OAs.

14. The applicants have filed their rejoinder reiterating the facts as contended by him in his OAs.

15. Heard the learned counsels for the applicants Shri. S.V. Marne for Applicant No. 1, Ms. S.V. Gokhale for Applicant No. 2 and Shri S.P. Saxena for Applicant No. 3 also heard the learned counsels for respondents Shri V.S. Masurkar and Shri R.R. Shetty.

16. The main thrust by the applicants' counsels is in respect of charge-sheet issued by the respondents to initiate departmental enquiry against them. The main contention of the applicants' are that the applicants cannot be subject to any departmental enquiry in the light of the judgment of acquittal passed by the special judge CBI in a criminal case filed against them by the CBI. More so when the

acquittal was an honourable acquittal and the special judge acquitted the applicants in the absence of cogent evidence. The issuance of charge-sheet and the sanction order in case of Applicant No. 1 is absolutely illegal and ab initio void.

17. The impugned memorandum of charge-sheet issued essentially in respect of the same charge arising out of the same incident in respect of which the applicants were subjected to a criminal trial and have been acquitted therein. In the criminal trial, the charges against the applicants whereof demand and acceptance of illegal gratification of Rs. 1,25,000/- as a motive or reward for forbearing from recovering the Service Tax dues of M/s. Gandharva Restaurant. The charge of criminal conspiracy with accused No. 1 for obtaining gratification by corrupt or illegal means and by abusing his position was also leveled in the criminal trial. Even though the allegations have been split into 3

articles of charge in the impugned Memorandum of charge-sheet, all the 3 charges stem from the allegation of demand and acceptance of illegal gratification. The first charge is about demand and acceptance. The second charge is about attempting to cause loss to the Government exchequer by demanding and acceptance of illegal gratification. The third charge is about conniving with subordinate officers in demanding and acceptance of illegal gratification. Thus no charge independent of the alleged act of demand and acceptance of illegal gratification is leveled in the impugned Memorandum of Charge-sheet. The allegations of demand and acceptance, forbearing to recover service tax dues and criminal conspiracy with subordinate officers were also leveled in the criminal trial. Thus the charges in the criminal trial and in the departmental enquiry are exactly identical.

18. So far as the evidence comprising

of documents and witnesses are concerned the same are identical in the criminal trial and in the departmental enquiry. The department is proposing to produced the same document and proposing to examine the same witnesses as were produced and as were examined by the CBI in the criminal trial. The facts remains that the special judge has examined very same document and take it into consideration depositions of very same witnesses and recorded the verdict of acquittal in favour of the applicants.

19. The Disciplinary Authority has no right to record exactly contradictory finding to the one recorded in the criminal trial. The special judge take into consideration all the contradiction in the evidence suggesting setting up of false trap.

20. The learned counsel for the applicants draw our attention to some of the findings recorded by the special judge in his judgment and submitted that the

special judge based its findings mainly on the ground that the evidence is not reliable and also not cogent and while considering the above findings of the special judge the Disciplinary Authority cannot be permitted to again rely on the same evidence and come to altogether contradictory findings. Since the order of the special judge of acquittal is not a simple case of acquittal giving applicants benefits of doubt but is a case of clean and honourable acquittal.

21. The learned counsel further stated that the case of Applicant No. 1 the charge-sheet and the sanction order has been issued to the Applicant No. 1 in ignorance of the facts that the applicants had already been acquitted in the criminal trial.

22. The Disciplinary Authority ought to have taken into consideration the judgment of the criminal court before appointing enquiry officer and presenting officer. Applicant No. 1 has already

retired from service and respondents have his pensionary benefits withheld from last two and half year despite his acquittal.

23. The counsel further stated that the charge-sheet have been issued to the applicants after the lapse of more than 10 months without mentioning the reason for such delay. The applicants also relied upon para 15 of the Vigilance Manual and following judgments:-

"1. Capt. M. Paul Anthony V/s. Bharat Gold Mines Ltd. And another (1999) 3 SCC 679.

2. G.M. Tank V/s. State of Gujarat and another 2006 (2) SC SLJ 481.

3. Union of India and others V/s. Naman Singh Shekhawat (2008) SCC1.

4. Divisional Controller, KSRTC V/s. M.G. Mittal Rao 2012 (1) SLJ 155 (SC) .

5. N. Sukanna V/s. State of Andhra Pradesh 2015 AIRSCW 6764.

6. CAT Hyderabad Bench, Order dated 27.07.2007 in Shri A.A. Laxman Reddy S/o. A Ganga V/s. Commissioner Customs and Other.

7. CAT Hyderabad Bench, Order dated 06.08.2007 in OA No.s 313, 324 and 438 of 2007.

8. CAT Hyderabad Bench, Order dated 04.12.2007 in OA No. 114 of 2007 (V.

Shanmukeshwar Rao v/s. Commissioner, Customs and central Excise).

9. Madan Damodar Sanap and Others v/s. Union of India and other 2011 (1) SLJ 268."

24. In all these above said judgments the applicants emphasize the judgment in case of the G.M. Tank V/s. State of Gujarat and Ors. reported in AIR 2006 SC 2129 and submitted that in this case other judgment of the Hon'ble Supreme Court were also considered and finally the Court raised two issues for consideration. No.1 whether in the case of no evidence the employee can be dismissed from the service. No. 2 whether acquittal absolutely on merits amounting to clear exoneration of the appellant by the Special Court under the PC Act does ipso facto absolve the appellant from the liability under the disciplinary jurisdiction when the charges leveled against the appellant in the departmental proceeding and the criminal proceeding are grounded on the same set of facts, charges, circumstances and evidence and the Court observed that:-

"such facts and evidence in the departmental as well as the criminal proceeding 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 will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

25. The counsel also placed reliance heavily on the judgment of Hon'ble Supreme Court of India in the case of **Union of India and Ors. v/s. Naman Singh Sekhawat in Civil Appeal No. 140/2007 delivered on 14.03.2008.**

26. The counsel for the respondents submitted that in so far as Applicant No. 1 is concerned the applicant has filed his representation/ reply and the Disciplinary Authority is yet to take the decision whether to proceed with the enquiry or not. Hence, the OA is premature.

27. The counsel further submitted that in so far as Applicant Nos. 2 & 3 are concerned

the Disciplinary proceedings have been started and they are in the process.

28. The counsel further submitted that the disciplinary proceeding can go on inspite of the acquittal in the criminal case and it will not stop the departmental enquiry. The result of criminal proceeding cannot be compare with the departmental proceeding even though based on same evidences and the departmental proceeding and criminal proceeding are independent of each other and the facts and circumstances of the case are different.

29. The counsel also placed reliance on the various decisions of the Hon'ble Supreme Court of India in various cases i.e. **Baljinder Pal Kaur v/s. State of Punjab and Ors. (2016) 1 SCC (L&S) 217, S. Bhaskar Reddy & Anr. v/s. Superintendent of Police & Anr in Civil Appeal No. 10592 of 2014 decided on 28.11.2014.**

Judgment of Madras High Court in case of N. Ramakrishnan V/s. The deputy Inspector General of Police in WP No. 3898 of 2008 decided on 21.12.2012, R.P. Kapur v/s. Union of India & anr. reported in AIR 1964 SC 787 (V 51 C 101),

Corporation of the City of Nagpur, Civil Lines.

Nagpur & Anr v/s. Ramchandra & Ors. reported in
1981 SCC (L&S) 455, Nelson Motis v/s. Union of
India & Anr. reported in 1993 SCC (L&S) 13.

30. The counsel further stated that against the order of acquittal passed by the Session Judge Pune the CBI has already filed an appeal before the Hon'ble High Court and after condoning the delay appeal has been admitted for hearing on merits and it is still pending.

31. The counsel further submitted that departmental proceeding can go on and has no bearing on acquittal in criminal case and as acquittal was not an honourable one and only based on lack of cogent evidence or acquittal on the basis of non removal of doubts by the prosecution. Same set of evidence and facts are not related in the departmental enquiry and the departmental enquiry based on different sets of facts and the evidence will be different in order to prove the charges leveled against the applicants. Thirdly, a mere acquittal is not consequentially resulted in the dis-continuance of departmental proceeding.

32. After giving a considerable thought to the argument raised by the learned counsel for the applicants as well as the respondents it will be necessary to go through the legal position in this regard. On the basis of the judgments relied upon both the parties it can be safely said that in all cases where the criminal proceeding ended in a acquittal cannot be a ground of dis-continuance of departmental proceeding or the departments are being restrained for initiating the departmental enquiry.

33. It is also settled law that the departmental proceeding may go on if the acquittal is not an honourable acquittal. The Hon'ble Supreme Court in various cases held that the acquittal should be an honourable acquittal even if the judge has failed to mentioned that it is an honourable acquittal it has to be inferred from the findings and the language used by the judge.

34. It is also not disputed that the various judgments of the Hon'ble Supreme Court clearly held that the departmental proceeding

and proceeding in a criminal cases can proceed simultaneously hence there is no bar in they are being conducted simultaneously though separately.

35. It is also not disputed that the standard of proof in a criminal case is the proof beyond all reasonable doubts while the proof in the departmental proceeding is preponderance of probabilities quite often the criminal cases run in acquittal because witness declared hostile. Such acquittals are not acquitted on merit.

36. The Court also held in various cases that if an employee honourably acquitted by the Criminal Court no right is conferred on the employee to claim any benefit including reinstatement, reason is that the standard of proof required for holding a person guilty by the Criminal Court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case the onus of establishing the guilt of accused is on the prosecution and prosecution fails to establish charge in the criminal Court beyond reasonable

doubt the accused is assumed to be an innocent.

37. It is also settled law that the strict burden of proof required to established a guilt in a criminal case, while it is not required in the disciplinary proceeding and the preponderance of probability is sufficient.

38. The Apex Court also held that in some cases even the applicants is acquitted by the Criminal court but does not automatically given him right to ask for quashing of the departmental proceedings.

39. Thus, from the above discussion it is clear that in order to give benefit to the applicants it is necessary that applicants must prove that the acquittal of the applicants was a honourable acquittal and the departmental proceeding are based on the same set of facts, evidences, circumstances and other conditions.

40. Since, the respondents have already filed an appeal against the acquittal judgment of the Special Judge it will not be proper to make any comments on the merits of the criminal case. However, from the perusal of the judgments it is clear that it cannot said to be

a totally honourable acquittal.

41. Secondly, the proof of charges in the departmental proceeding are totally different from the proof of charges in the criminal proceeding. In the present case, the charges also include against the applicants are lack of devotion of the duty, integrity, resulting into the misconduct, failed to have proper supervision over the subordinate employees and as such the facts of the case of the applicants in the departmental enquiry are totally different and the evidence required to prove establish these charges are also be different. Only preponderance of probability will be sufficient to establish the proof against the applicants.

42. Since it has been brought to our notice that the disciplinary proceeding had already started. So far as the applicant Nos. 2 and 3 are concerned as such it will not be proper to make any comment on the merit of the disciplinary proceeding. So far as the applicant No. 1 is concerned the applicant has already filed his representation/ reply to the

charge-sheet and the Disciplinary Authority yet to take a decision whether to proceed with the enquiry or to drop the charges.

43. Hence, at this stage the Tribunal is not inclined to grant any relief to the applicants so far as the quashing of charge-sheet is concerned. All the three OAs are liable to be dismissed and they are accordingly dismissed.

44. However, before parting with the case. In the case of applicant No. 2 & 3 where the enquiry is under process and so far as the applicant No. 1 is concerned the Disciplinary Authority is yet to take a decision. It is expected from the Disciplinary Authority to take a decision whether to proceed with the enquiry or not and if in case the Disciplinary Authority proposed to proceed with the enquiry the same shall be conducted expeditiously and in case of the other applicants the Inquiry Officer will conclude the enquiry as expeditiously as possible preferably within a period of 09 months and it is also expected from the applicants that they all will also co-

operate with the Inquiry Officer in conducting the enquiry. However, it is made clear that we have not made any comment on the merit of the Disciplinary Proceeding.

45. Accordingly, the OAs are dismissed. No costs.

(Mr. R. Ramanujam)
Member (A)

(Justice Dinesh Gupta)
Member (J)

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