

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

OA 351/1229/2018

Date of Order: 09.10.2018

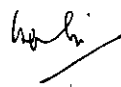
Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Mohammed Tahir,
S/o Late Mohammed Umar,
R/o Round Basthi,
Aberdeen village,
Port Blair,
Working as Assistant Director of Fisheries,
Now posted at South Andaman Division,
Port Blair – 744 101.

Applicant.

Versus

1. Union of the India,
Service Through the Secretary,
Ministry of Agriculture,
Department of Fisheries,
New Delhi – 110108.
2. The Lt. Governor,
Andaman & Nicobar Islands,
Port Blair – 744101.
3. The Chief Secretary,
A&N Administration,
Port Blair – 744101.
4. The Secretary (Fisheries),
Andaman and Nicobar Administration,
Port Blair – 744101.
5. The Director of Fisheries,
A&N Administration,
Port Blair – 744101.



6. Inquiring Authority,
Secretary (Fisheries)
Andaman & Nicobar Administration,
Secretariat, Port Blair – 744101.

... Respondents.

For the Applicant(s) : Mr. S.Samanta

For the Respondent(s) : Mr. S.Sen

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has come up in third stage of litigation before this Tribunal as a sequel to O.A.No. 62/A&N/2013 disposed of on 09.06.2015 and O.A.No. 4/A&N/2016 dismissed on 14.03.2016. Specific relief sought for in this O.A. are as follows.

"8. (a) To set aside and quash the letter issued by the Assistant Secretary (Vigilance) vide no. Fisheries-24/2010-Vig dated: 05-06-2018.

(b) To pass an order directing the respondent authorities to drop the departmental proceeding initiated against the applicant vide memorandum no.2-92/2011-Estt/DF/100 dated: 11-01-2013.

(c) To set aside and quashed the memorandum no.2-92/2011-Estt/DF/100 dated: 11-01-2013.

(d) To pass an order directing the respondent authorities to release all consequential benefits and promotion benefits to the applicant which was held up due to the proceeding initiated against the applicant.

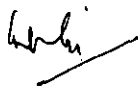
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(e) To pass such other order or orders as this Hon'ble Court may deemed fit and proper in the interest of justice."

2. This matter has been taken up at the admission stage wherein both Ld. Counsel for the applicant as well as Respondents are present.

3. The case of the applicant, as submitted by the Ld. Counsel, is that the applicant was working as Assistant Director (Fisheries), South Andaman Division, Andaman and Nicobar Administration and, on 19.04.2010, on the basis of a complaint alleging that the applicant was demanding bribe for renewal of permit and renewal of crew ID cards, the Anti-Corruption Unit initiated a case under Section 7/13(1)(d)/13(2) under the Prevention of Corruption Act and the applicant was arrested for the said offence. On completion of the investigation, police had submitted charge sheet. While the said case was pending for adjudication before the Special Judge at Port Blair being Special Case No.1 of 2010, and after a lapse of 3 years, the Respondent authorities initiated a disciplinary proceeding against the applicant vide memorandum dated 11.01.2013 on the same allegations as levied in the criminal case.

That, the applicant had requested for stay of the departmental proceedings till the disposal of the criminal trial on the ground that as the facts and witnesses in the both cases were same and as the defence of



the applicant in the criminal proceedings will be disclosed, the applicant would be badly prejudiced if the departmental proceedings were allowed to continue.

The applicant, thereafter, moved the Tribunal in O.A.No. 62/A&N/2013 which the Tribunal disposed of on 09.06.2015 directing the Respondents to pass a reasoned order by taking into consideration the judgments referred to by the Tribunal in the said order. The Tribunal had further directed that no final order should be passed in the disciplinary inquiry till disposal of the representation. Thereafter, the Respondent authorities issued an order on 26/29.12.2015 in which Disciplinary Authority decided to continue with the disciplinary inquiry irrespective of the criminal case and appointed a new Inquiry Officer to continue with the disciplinary inquiry.

Being aggrieved with the said order of the Respondent authorities, applicant had preferred another O.A. bearing No. 351/4/2016, which was dismissed on 14.03.2016. Thereafter, the applicant preferred a writ application before the Hon'ble High Court of Kolkata and the Hon'ble High Court was pleased to stay the departmental proceedings till completion of the criminal trial. The Special case was disposed of on 12.07.2017 in which the applicant was found not guilty on the ground that the Anti-Corruption Unit has miserably failed to bring home the

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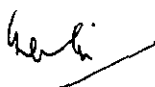
charge levelled against the accused persons and stating that the accused deserves acquittal from this case.

That, thereafter, the applicant had filed a representation before Respondent authorities for dropping of the proceeding initiated against him but the Respondent authorities decided to continue with the inquiry, and hence, being aggrieved, the applicant has approached the Tribunal in this round of litigation.

4. The Respondents, during admission hearing, furnished two orders dated 30.08.2018 wherein the Andaman and Nicobar administration had engaged a new Presenting Officer and a new Inquiring Authority on the ground of voluntary retirement of the earlier Presenting Officer and transfer of the earlier Inquiring Authority respectively.

5. The point of determination herein is whether the departmental proceedings initiated against the applicant vide memo dated 11.01.2013 can continue after his acquittal in the criminal case and, whether the decision of the Respondent authorities dated 05.06.2018 to continue the disciplinary proceedings irrespective of the acquittal in the criminal case is valid.

6. At the outset, we examine the communication dated 05.06.2018 annexed at Annexure-A/21 to the O.A., which is impugned in this instant O.A. The said communication is reproduced below:



"To
 Smti. Shashi Kaushal
 DANICS (JAG-I),
 (Inquiring Authority)
 Secretary (GA/Arch/H&E/SW)/
 CEO, Zilla Pishad, South Andaman,
 Andaman & Nicobar Administration,
 Port Blair.

Sub: Disciplinary proceedings initiated against Shri
 Mohammed Tahir, Assistant Director (Fisheries)-regarding.

Madam,

I am directed to invite a reference to this Administration's
 Order No. 689 dated 08.03.2017, wherein you have been
 appointed as Inquiring Authority to inquire into the charges
 framed against Shri. Mohammed Tahir, Assistant Director
 (Fisheries).

In this context, it is to say that Shri Mohammed Tahir,
 Assistant Director of Fisheries was acquitted by the
 Hon'ble Court of Special Judge vide its judgement dated
 12.07.2017 (copy enclosed). The acquittal was not on
 benefit of doubt rather, it was clear and honourable. It is
 also a fact that both the departmental proceedings and
 criminal trial exactly based on the same set of charges,
 facts, evidences and documents.

Although, Shri. Mohammed Tahir was acquitted in the
 criminal case by the Special Judge vide its judgement
 dated 12.07.2017 (copy enclosed) well before the
 pronouncement of judgement of Hon'ble High Court vide
 its judgement dated 18.07.2017 (copy enclosed), wherein
 Shri. Mohammed Tahir had challenged the Order passed
 by the Hon'ble CAT dismissing his request not to initiate
 disciplinary proceedings, as they were based on identical
 set of facts and allegations. But, the Hon'ble High Court
 vide its judgement dated 18.07.2017 (copy enclosed) had
 not given any relief to the petitioner and disposed off the
 application simply with the direction to approach the

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Disciplinary Authority for his grievances, who in turn, shall take further steps in connection with the pending departmental action in accordance with law.

In the meantime, Shri Mohammed Tahir, Assistant Director (Fisheries) vide his representation dated 17.07.2017 (copy enclosed) requested the Disciplinary Authority to drop the departmental proceeding initiated against him in view of the judgement dated 12.07.2017 passed by the Hon'ble Special Judge, A&N Islands.

However, in view of the instructions contained in Chapter 20 of "A complete Book on Disciplinary Proceedings" (copy enclosed) under "Special Procedure for imposing penalty on a Govt. servant", it clearly speaks that the departmental action is permissible after acquittal by a criminal court.

You, being the Inquiring Authority may continue with the inquiry as per the instructions laid in the Disciplinary Proceedings and conclude the same expeditiously with specific recommendation on the question as to whether there is any substance in the charges or to drop the same keeping in mind the Acquittal Order dated 12.07.2017 (copy enclosed), as the Hon'ble Court has not pronounced about dropping of departmental proceedings against Shri. Mohammed Tahir, Assistant Director of Fisheries.

In this connection, it is stated that Shri. Mohammed Tahir, Assistant Director (Fisheries) is retiring from service on attaining the age of superannuation on 28.02.2019.

In view of the factual position, it is therefore requested to complete the inquiry in the disciplinary proceedings initiated against Shri. Mohammed Tahir, Assistant Director (Fisheries) and also ensure that prior to the retirement of Shri. Mohammed Tahir, the report may be submitted to the Disciplinary Authority at the earliest. Further, it is to say that if the inquiry is not yet completed, the present status of the case, as well as the time required for completing the inquiry may be intimated to the Vigilance Branch immediately, as Shri. Mohammed Tahir is on the verge of retirement.

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This issues with the approval of Competent Authority.

Yours faithfully,

(Assistant Secretary (Vig.)"

From the above mentioned communication, the following are inferred.

- (a) That, the acquittal was not on benefit of doubt rather it was clear and honourable.
- (b) Both the departmental proceedings and the criminal trial were based on the same set of charges, facts, evidences and documents.
- (c) Although the applicant had challenged the orders of the Tribunal dismissing his request not to initiate disciplinary proceedings as they were based on identical set of facts and allegations, the Hon'ble High Court vide their judgment dated 18.07.2018 had not provided any relief to the petitioner but had disposed of the same with the direction to the applicant to approach the Disciplinary Authority for redressal of his grievances, who in turn, was directed to take further steps in connection with pending departmental action in accordance with law.

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- (d) That, in view of instruction contained in Chapter 20 of "A Complete Book on Disciplinary Proceedings" under "Special Procedure for imposing penalty on a Govt. Servant", departmental action is permissible after acquittal by a Criminal Court.
- (e) That, the Inquiring Authority was directed to continue with the inquiry as per the instructions laid down in the disciplinary proceedings and to conclude the same expeditiously.
- (f) While concluding, the Inquiring Authority was to specifically recommend as to whether there are any substance in the charges or whether the same should be dropped keeping in mind acquittal order dated 12.07.2017.
- (g) Inquiring Authority was also directed to keep in mind that the applicant is due to retire from service on 28.02.2019.
- (h) The Inquiring Authority's report has to be submitted to Disciplinary Authority at the earliest given that imminent superannuation of the applicant.

The relevant extracts of the Vigilance Manual are perused, which lays down the following actions after acquittal:

"16.1. If the Government servant is acquitted by trial or appellate court and if it is decided that the acquittal should not be challenged in a higher court, the competent

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authority should decide whether or not despite the acquittal, the facts and circumstances of the case are such as to call for a departmental enquiry on the basis of the allegations on which he was previously charged and convicted. According to the ruling of the Supreme Court in *Nagpur City Corporation vs. Ram Chandra and other* [SC 396 of 1980-SLR 1981 (2)], even where the accused public servant is acquitted and exonerated of an offence, such acquittal does not bar a departmental authority from holding or continuing disciplinary proceedings against the accused public servant.

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16.4. If the court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant was charged, a departmental enquiry could be held on the basis of the same allegations if they are considered good and sufficient ground for departmental action. Departmental action could also be taken if the allegations were not examined by court, e.g., the discharge of the accused on technical grounds without going into the merits of the allegations, but if the allegations are considered good and sufficient for departmental action."

The effect of acquittal on a criminal case on departmental inquiry has also been laid down in DoP&T Office Memorandum dated 21.07.2016 (Annexure-A/23 to the O.A.), which is extracted as hereunder:

"7. The issue was explained in the following words by the Hon'ble Supreme Court in the following words in *Ajit Kumar Nag v. G M, (PJ), Indian Oil Corporation Ltd., (2005) 7 SCC 764*:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two

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proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt' he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.

8. The judgement of the Hon'ble Supreme Court in G.M. Tank us State of Gujarat (2006) 5 SCC 446 has reaffirmed the principles laid down in R.P. Kapur (supra). In G.M. Tank case, Court observed that there was not an iota of evidence against the appellant to hold that he was guilty. As the criminal case and the departmental proceedings were based on identical set of facts and evidence, the Court set aside the penalty imposed in the departmental inquiry also.

9. Ratio in the G.M. Tank judgement should not be misconstrued to mean that no departmental proceedings are permissible in all cases of acquittal or that in such cases the penalty already imposed would have to be set

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aside. What the Hon'ble Court has held that is no departmental inquiry would be permissible when the evidence clearly established that no charge against the Government servant may be made out."

Accordingly, the communication dated 05.06.2018 has been issued based on the directives of the Vigilance Manual and DoP&T Office Memorandum and hence cannot be said to suffer from legal infirmities. Further, the said communication also takes into consideration the imminent superannuation of the applicant and, therefore, directs expeditious conclusion of inquiry and specific recommendations thereon. The communication does not mandate the Inquiring Authority to arrive at any specific conclusion but directs the Inquiring Authority to specifically recommend on the issue as to whether there is any substance in the charge or whether the same should be dropped in view of the acquittal order of the Special Judge. As the communication dated 05.06.2018 is not prejudicial in any way against the applicant, we do not deem it fit to intervene with such communication, which we do not find to be suffering from any infirmity either in fact or law.

There are judicial pronouncements as to whether departmental inquiry can be continued if the criminal case was ended in acquittal; we rely on the ratio arrived at in the **Corporation of the City of Nagpur Civil Lines, Nagpur Vs. Ramchandra, (1981) 2 SCC 714, Commissioner of Police Vs. Narender Singh, (2006) 4 SCC 265, and**

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Gujarat SRTC Vs. Kadarbhai J.Suthar, (2007) 10 SCC 561.

Particularly, in the case of Ramchandra (supra), the Hon'ble Apex Court has held as follows:

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. The fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. The authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so."

In the communication dated 05.06.2018, the Assistant Secretary (Vig.) had advised the Inquiring Authority exactly on the above lines, i.e. Inquiring Authority is to recommend as to whether there is any substance in the charges or to drop the same keeping in mind the acquittal order.

In the case of **Suresh Pathrela Vs. Oriental Bank of Commerce, (2006) 10 SCC 572**, the Hon'ble Apex Court had emphasised that the acquittal in a criminal case should be no bar for drawing up the disciplinary proceedings against delinquent officer since the yardstick and standard of proof in a criminal case is proof beyond all reasonable

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doubt whereas in departmental proceedings it is preponderance of probability. Hence, acquittal in criminal proceedings does not automatically absolve the employee from charges levelled against him in departmental proceedings and does not debar the disciplinary authority from continuing with the departmental proceedings. In **Jayaram Panda Vs. D.V.Raiyani**, (1990) II LLJ 186 (Ori), a Full Bench of Orissa High Court has held that even if the delinquent is honourably acquitted, discretion is left with the authorities and if, in the facts and circumstances of the case, the authorities feel that notwithstanding the acquittal, a departmental inquiry is expedient, the Court should not ordinarily interfere. Similarly, in the case of **Nelson Motis Vs. Union of India**, (1992) II LLJ 744 (SC), a Three Judge Bench of the Hon'ble Supreme Court observed that irrespective of the acquittal of the appellant, the disciplinary proceedings could have been continued. Accordingly, in terms of the judicial dicta as stated above, we find no legal infirmities in the communication dated 05.06.2018 (Annexure-A/21 to the O.A.) and hence do not deem it fit to intervene therein.

7. We would, in continuation of the said communication, however, like to direct the Inquiring Authority to conclude the inquiry within a period of two months from the date of receipt of copy of this order and submit his recommendations to the Disciplinary Authority, who would

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thereafter arrive at a final decision within one month on receipt of such inquiry report given the imminent superannuation of the applicant.

With these directions, the O.A. is disposed of at the admission stage. There will be no orders as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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