

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA-541/2018
MA-1281/2019**

New Delhi, this the 06th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Gulshan Kumar,
Grade-1 (DASS)
S/o late Sh. Om Prakash,
R/o 31/239, Ashok Nagar,
Bahadurgarh, Haryana,
Aged around 47 years,
Group 'B',
Presently posted as:-
Section Officer, DC Office, North West,
Khanjawala, Delhi. ... Applicant

(through Sh. Sourabh Ahuja)

Versus

1. GNCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat, IP Estate,
New Delhi-110002.
2. Chief Vigilance Officer,
Directorate of Vigilance,
GNCT of Delhi,
4th Level, C-Wing, Delhi Secretariat,
New Delhi.
3. Assistant Director (Vigilance),
Directorate of Vigilance,
GNCT of Delhi,
4th Level, C-Wing, Delhi Secretariat,
New Delhi.
4. Inquiry Officer,
Directorate of Vigilance,
6th Level, C-Wing, Delhi Secretariat,

New Delhi. ... Respondents
(through Sh. Anuj Kumar Sharma)

ORDER(ORAL)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

The applicant is working as an officer of Grade-I in Delhi Administrative Subordinate Services. A trap was laid against him by the CBI on 09.05.2008. He was also placed under suspension after the FIR was registered. However, he was reinstated on 16.05.2011. The court which tried the case arising out of the trap, acquitted the applicant, through judgment dated 29.09.2014. The disciplinary authority issued a charge memo dated 26.07.2017. It was alleged that the applicant has demanded and accepted illegal gratification from a person, running a Fair Price Shop in Pitampura, Delhi, for not sealing his Fair Price Shop. This OA is filed challenging the said charge memo.

2. The applicant contends that the purport of allegations, the nature of evidence relied upon in the disciplinary proceedings is the same as the one in the criminal proceedings and once the concerned criminal court has acquitted him, there is absolutely no basis for initiating the departmental proceedings. It is also stated that there was undue delay in initiating the proceedings.

3. The respondents filed counter affidavit opposing the OA. It is stated that the acquittal of the applicant was by giving benefit of doubt and it was not an honourable acquittal. It is also stated that the State has preferred an appeal before the Hon'ble Delhi High Court, feeling aggrieved by the

acquittal, and that the parameters for deciding the disciplinary proceedings are substantially different from those in the criminal case. According to them, the applicant can put forward all his contentions in the departmental inquiry.

4. As regards delay, it is stated that the disciplinary proceedings were not initiated during the pendency of the criminal case, lest they are kept pending and the matter was dealt with on various levels, after the criminal case was disposed of.

5. We heard Sh. Sourabh Ahuja, learned counsel for the applicant and Sh. Anuj Kumar Sharma, learned counsel for the respondents.

6. It is a matter of record that the criminal proceedings were initiated against the applicant alleging acceptance of illegal gratification. The Trial Court acquitted the applicant by giving benefit of doubt. Though the learned counsel for the applicant submits that the acquittal was not merely on benefit of doubt, we do not touch this aspect and leave it to be dealt with at an appropriate stage, in accordance with law.

7. Normally, whenever an instance of this nature takes place, the criminal proceedings on the one hand and disciplinary proceedings on the other, are initiated simultaneously. At the same time, the departmental proceedings are kept on hold, awaiting the outcome of the criminal proceedings. It appears that the disciplinary authority has thought it fit not to initiate the proceedings and to keep them on hold. Instead, issued charge memo once the criminal case was disposed of. It is true that there is some delay in issuance of the charge memo even after the conclusion of the

criminal case. However, the matter is to be dealt with at various levels and a formal decision is to be taken. If those aspects are taken into account, the delay cannot be said to be abnormal or of such an extent, as to vitiate the proceedings.

8. So far as the merits are concerned, learned counsel for the applicant submits that the list of witnesses and the list of documents appended to the charge memo are the same as the one relied upon by the prosecution in his case. Even if that is true, the applicant can take advantage of the developments that have taken place in the criminal case, and for that matter, the judgment of the Trial Court also. However, the mere fact that the applicant was acquitted cannot be treated as a ground to set aside the departmental proceedings.

9. Reliance is placed upon the judgment of the Hon'ble Punjab and Haryana High Court in the case of ***Sushil Kumar versus Food Corporation of India & Ors., 2002 (7) SLR 664***. In that case, the disciplinary proceedings were set aside on the sole ground that the criminal court has acquitted the employee. Reliance was placed upon the judgment of Hon'ble Supreme Court in ***Capt. M. Paul Anthony versus Bharat Gold Mines Ltd. And Another***, (1999) 3 SCC 679. However, a perusal of the judgment in the said case itself indicates that the parameters to be applied on both the sets of proceedings are different and the discussion was mostly about the desirability or otherwise of continuing the disciplinary proceedings, even while the criminal case is pending. We do not find it as an authoritative precedent for the proposition that if the employee is acquitted in criminal case, the initiation

of disciplinary proceedings becomes untenable. In fact, such a proposition runs contrary to the law laid down by the Hon'ble Supreme Court.

10. We, therefore, do not find any merit in the OA and accordingly, the same is dismissed. We, however, leave it open to the applicant to plead all his contentions in the disciplinary proceedings including the developments that have taken place in the criminal proceedings.

Pending MAs, if any, stand disposed of.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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