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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2704/2003

Friday, this the 7th day of November, 2003

Hon'ble Shri Justice V.S.Agarwal, Chairman
Hon'ble Shri S. A. Singh, Member (A)

Rajiv Sharma
s/o Krishana Shankar Sharma
r/o D-220-B, Sector-IV
Lajpat Nagar, Sahibabad

...Applicant

(By Advocate: Shri M.K.Bhardwaj)

Versus

The Govt. of the National Capital Territory of Delhi

Through

1. The Chief Secretary
The Government of National Capital
Territory of Delhi
5, Sham Nath Marg, Delhi-7
2. The Divisional Commissioner
The Government of National Capital
Territory of Delhi
5, Sham Nath Marg, Delhi-7

... Respondents

O R D E R (ORAL)

Shri Justice V.S.Agarwal:

The purpose of the criminal proceedings is to prosecute and punish the person who is guilty of an offence. Departmental proceedings are initiated to maintain the discipline within the Department. The two do together not go on and on.

2. This question had been considered more often than once by the Apex Court. We, at this stage, refer, with advantage, to the decision of the Supreme Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Limited & another, JT 1999 (2) SC 456. The Supreme Court held that if the departmental proceedings are based on the same facts as in the criminal case, normally the

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departmental proceedings should be stayed. However, if there is an inordinate delay in proceeding of the trial, the departmental proceedings, even if stayed, can be revived.

3. In the present case before us, the applicant had been served with a notice on 18.12.1990 that in contemplation of departmental proceedings against him, he is being placed under suspension. A criminal case had also been registered against the applicant with respect to the offence punishable under Section 409 of Indian Penal Code. The court of competent jurisdiction acquitted the applicant on 26.4.1999. The applicant had earlier filed OA-1177/2001 which was decided by this Tribunal on 18.9.2002. In paragraph 6 of the order passed by this Tribunal, it was mentioned that the Tribunal was informed that the Department is contemplating for issuing charge-sheet to the applicant. The said original application was disposed of with certain findings which are not necessary for the present.

4. By virtue of the present application, the applicant seeks quashing of the charge Memo that has been served dated 24.4.2003 with consequential benefits. The articles of charge framed against the applicant read:-

"That the said Shri Rajiv Sharma, LDC, while functioning as Store-Keeper during the period from 30.08.89 to 12.12.90 in the office of Director (Panchayat), Tis Hazari, Delhi misappropriated the stores resulting shortage of seven number of Colour Televisions (Four of E.C. Make and Three of UPTRON make) noticed at the time of charge handed over by him to Shri B.S.Walia, UDC.

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The above act on the part of Shri Rajiv Sharma is violative of the provisions of Rule 3 of C.C.S. (Conduct) Rules, 1964 and hence the charge-sheet."

5. Learned counsel for applicant has argued:-

- a) when the applicant has been acquitted pertaining to the same facts, he should not be dealt with departmentally, particularly when the evidence which has already been considered is the same; and
- b) there is inordinate delay in initiation of the proceedings.

6. So far as the first plea of the applicant is concerned, our attention was drawn by the learned counsel to paragraph 34 of the decision rendered by the Supreme Court in the case of Capt. M. Paul Anthony (supra). Perusal of the same clearly shows that the Supreme Court was concerned with the facts where a statement of the witness had been considered and held to be not correct and thereupon, the said person was acquitted. It was this important fact that prompted the Supreme Court to record a finding that the evidence in both the matters is identical.

7. What is the position herein? In the present case, the perusal of the order passed by the learned Metropolitan Magistrate reveals that even the investigating officer had not been examined and there was no evidence produced to indicate that the applicant was in possession of the Televisions. Therefore, it is patent

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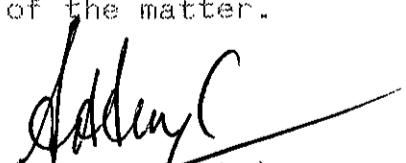
that the facts of the present case are totally different because there is a basic difference of ~~offence~~ ^{evidence} having been considered by the competent court and where the evidence is not produced. We have, therefore, as for present, no hesitation in rejecting the said contention.

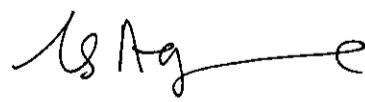
8. Reverting back to the second argument eloquently put forward, we do not dispute the proposition that where there is an inordinate delay in initiation of the criminal proceedings then prejudice is inherent because the alleged delinquent can complain that he cannot defend the departmental action in a proper manner. However, where the delay is explained by the nature of events, in that event, the above-said plea will have little application.

9. In the present case, we have already referred to above in the preceding paragraphs that departmental action was being contemplated after the acquittal of the applicant. This Tribunal was informed that they are contemplating for issuing the charge-sheet to the applicant. Thereupon, when the charge-sheet is served, it is patent that the delay is explained and the said proposition, so much thought of by the learned counsel, will have no application.

10. Resultantly, the petition being without any merit fails and is accordingly dismissed in limine.

11. However, by way of abundant caution, we make it clear that we are not expressing ourselves on the merits of the matter.


(S.A. Shah)
Member (A)


(V.S. Aggarwal)
Chairman

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