

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2762/2014
MA 2362/2014

Reserved on 06.12.2018
Pronounced on 19.12.2018

**Hon'ble Mr. K.N.Shrivastava, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)**

N.M.Sharawat,
S/o Sh.Samar Singh Samar,
R/o 227-A, Pkt-1,Mayur Vihar,
Phase-1, Delhi-110091. ... Applicant

(By Advocate: Mr. M.K.Bhardwaj)

VERSUS

UOI & Ors. Through

1. The Secretary,
Ministry of Personnel, Public Grievances
& Pension, North Block,
New Delhi.
2. The Director,
Central Bureau of Investigation,
CBI Headquarters, CGO Complex,
Lodhi Road, New Delhi.
3. The Dy. Inspr. General of Police,
Economic Offences-III, 5-B,
4th Floor, CBI Headquarters,
CGO Complex, Lodhi Road,
New Delhi. ... Respondents

(By Advocate : Mr. Rajeev Kumar)

O R D E R

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. M.K.Bhardwaj, counsel for applicant and Mr. Rajeev Kumar, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(i) To quash and set aside the impugned order dated 14.06.2013 (A-1) and reinstate the applicant in service with all consequential benefits including arrears of pay.

- (ii) To declare the disciplinary proceedings initiated against the applicant vide charge memo dated 14.12.2009 as illegal and unjustified.
- (iii) To quash and set aside the order dated 10/11.06.2014 passed by appellate authority.
- (iv) To allow the OA with cost.
- (v) To pass such other and further orders which their lordships of this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant under Rule 8 of the Delhi Special Police Establishment (Subordinate Ranks) Discipline and Appeal) Rules, 1961 with respect to 4 article of charges for obtaining illegal gratification of Rs.9 lacs for influencing in the investigating officer for seeking favour for the accused persons. The details of the article of charges are as follows:

"Article 1

That said Shri N M Sehrawat, while functioning as Inspector of Police in CBI, EOU-VIII/EO III, New Delhi, during the period from March-April, 2006, failed to maintain absolute integrity and acted in a manner which is unbecoming of public servant in as much as he obtained illegal gratification of Rs.9 lacs from Shri Vijender Solanki through Dr Sushil Kumar Gupta the suspect of case RC-16/E-2005/BS&FC related to Ram Nagar CGHS Ltd., one of the Cooperative Group Housing Society (CGHS) scam cases, then under investigation with CBI, for influencing the investigating officer of the said case to seek favour for the accused persons of the case and thereby committed gross misconduct and thus contravened Rule 3 (1)(i) & 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article II

That during the period March-April, 2006 while functioning as Inspector of Police in CBI, EOU-VIII/EO III said Shri N.M. Sehrawat failed to maintain absolute integrity and acted in a manner which is unbecoming of public servant in as much as he, in collusion with Shri Nawal Singh Verma, pressurized, threatened and scared Shri R.K.Jain r/o 168,Surya Nagr, Ghaziabad UP and consequently

demanded and accepted illegal gratification of Rs.3 lakhs from Shri R.K.Jain in connection with preliminary enquiry relating to NCERT CGHS Ltd., for influencing IO of the case and thereby committed gross misconduct and thus Shri N M Sherawat contravened Rule 3 (1)(i) & 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article III

That during the March, 2006 while functioning in the aforesaid office, said Shri N M Sehrawat failed to maintain absolute integrity and acted in a manner which is unbecoming of a public servant in as much as he contacted, Shri D.S. Mann, Dy. S.P., CBI, ACB, New Delhi, investigating officer of case RC . 73(A)/2005/Delhi and sought favour from him for the accused in the said case and in collusion with and through Shri Jaideep Malik, obtained illegal gratification of Rs.5 lacs in the aforesaid case and thereby committed gross misconduct and thus Shri N.M.Sherawat contravened 3 (1)(i) & 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article IV

That during March, 2006 while functioning in the aforesaid office, said Shri N.M.Sehrawat failed to maintain absolute integrity and acted in a manner which is unbecoming of public servant in as much as he, in collusion with Dr. Sushil Kumar Gupta, Advocate and Shri P.Balachandran, Dy. SP CBI obtained illegal gratification from Shri Sandeep Sawhney in case RC EOU-1/2005A0010 to influence Shri Manoj Kumar, Inspector, CBI, EOI-1, New Delhi, investigating officer of the case and thereby committed gross misconduct and thus Shri N.M.Sehrawat contravened Rule 3 (1)(i) & 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964."

4. Along with the article of charge, statement of imputation of misconduct, list of witnesses and list of documents were furnished to the applicant. As the applicant did not admit the charges, an Inquiry Officer was appointed and departmental enquiry was held. The Inquiry Officer held departmental enquiry following the relevant procedural rules and principles of natural justice and examined 21 PWs and after discussing the depositions of the witnesses concluded that the charges levelled against the applicant were proved vide his enquiry report

dated 12.10.2012. The disciplinary authority after considering the representation of applicant against the enquiry report by reasoned and speaking order imposed a penalty of dismissal on the applicant vide order dated 14.06.2013. The applicant filed an appeal. The appellate authority vide its order dated 10/11.06.2014 dismissed the appeal by reasoned and speaking order. In the meantime, on the same set of facts and allegation and almost on the same set of list of witnesses, the criminal Court, namely, the Court of Dharmesh Sharma, Special Judge-8,CBI New Delhi District, New Delhi tried the accused for offences under Section 120-B IPC r/w Sections 8,9, 10, 12 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and after trial acquitted the applicant.

5. The counsel for the applicant vehemently and strenuously submitted that as the applicant has been acquitted by the criminal court on the same set of facts and allegations and examining almost the same witnesses, as such on the same set of facts holding departmental enquiry and imposing penalty by the impugned orders is bad in law. In support of his contention, the counsel for the applicant has relied upon the following judgments:

- (1) **G.M.Tank Vs. State of Gujarat and Others**
(2006 SCC (L&S) 1121).
- (2) **Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd.& Anr.** (JT 1999 (2) SC 456).

On perusal of para 31 of the judgment in the case of Tank (supra) it is clear that there is not an iota of difference between the facts and evidence in the departmental and criminal proceedings. Thus the said

judgment is based on the facts peculiar to that case. The said para 31 is extracted below:

"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 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's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

But in the instant case, in the criminal court, the applicant was tried for offences punishable under above noted various provisions of Prevention of Corruption Act, whereas the departmental enquiry is conducted for the misconduct or gross misconduct and for unbecoming of a Government servant and for contravention of Rule 3 (1)(i) & 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964. Though the facts may be the same and witnesses may be almost the same yet the standard of proof required in the department enquiry is that of preponderance of probability, whereas the standard of proof required in a criminal case is of very high level and that of proof of the guilt beyond reasonable doubt without a single chain in the entire prosecution story missing. The Hon'ble Supreme Court in the latest judgements in the cases of **Dy. Commissioner of Police New Delhi and Another Vs. Mehar Singh** (2013) 7SCC 685) and **Union of India Vs. Purushottam** (2015) 3 SCC 779) categorically held that standard of proof in the departmental enquiry and that in the criminal

cases are different. In the case of Purushottam (*supra*), the Hon'ble Supreme Court has held as follows:

"14.... The acquittal of an employee by a criminal court would not automatically and conclusively impact departmental proceedings: firstly, because of the disparate degrees of proof in the two, viz. beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries; secondly, criminal prosecution is not within the control of the concerned department and acquittal could be the consequence of shoddy investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the trial etc. and thirdly, an acquittal in a criminal prosecution may only preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the criminal Court must conclude that the accused is innocent and not merely conclude that he has not been proved to be guilty beyond reasonable doubt.

In view of the law laid down by the Hon'ble Supreme Court in the later cases referred to above, the contention of the counsel for the applicant cannot be countenanced.

6. The counsel for the applicant has not pointed out violation of any of the procedural rules or principles of natural justice in conducting the departmental enquiry.

7. In view of facts of the case narrated above and in view of the law laid down by the Hon'ble Supreme Court referred to above, the OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(K.N.Shrivastava)
Member (A)

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