

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: February 22, 2011

+ **W.P.(C) 932/2007**

Om Prakash-II Petitioner
Through: Ms. Praveena Gautam and Mr. Rohit
K Modi, Advs.

-versus-

Delhi Society for Prevention
of Cruelty to Animals & Ors Respondents
Through: Mr. Rajeev Awasthi with Ms. Sonia
Arora, Advs.

**CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in Digest? yes

Veena Birbal, J.

1. By way of present petition under Article 226 of the Constitution of India, petitioner seeks quashing of memorandum dated 2nd January, 2007 and subsequent order issued by respondent no. 1 dated 15th January, 2007 thereby appointing an Inquiry Officer and has also prayed for issuance of directions to respondent no. 1 for clearing all his dues from 11.04.1996 till date and to grant him annual increments and promotion with all consequential benefits.

2. Briefly the facts of the case are as under:-

On 25th July, 1979, petitioner was appointed as a Constable with

respondent no.1. Petitioner has alleged that a false case was registered against the petitioner and three others on 11th April, 1996 vide FIR no.19/96 under section 7 read with section 13 of the Prevention of Corruption Act with the allegation that on the said date, petitioner and three other employees of respondent no. 1 were present at the Ring Road, ITO and petitioner had accepted illegal gratification of Rs.500/- from the complainant Abu Talib as a consideration for not challaning and impounding the vehicle carrying chickens from Murga Mandi, Gazi pur to Rajouri Garden, Delhi.

On 6th August, 1996, respondent no. 1 placed the petitioner under suspension until further orders under Rule 10(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that a case in respect of criminal offence was under investigation and petitioner was detained in custody for a period exceeding 48 hours. On 9th May, 1997, the suspension order against the petitioner was revoked with immediate effect by respondent no.1. Thereafter, vide office order dated 1st December, 1997, petitioner and the other persons were informed that their services would be utilized for other duties such as telephone duty, gate duty, ambulance duty etc. The aforesaid order was later superseded vide another office order dated 22nd February, 1999, by which petitioner was assigned the duties of Naib Court and he continued to discharge the said duties from 22nd February, 1999 to 11th October, 2001.

The charges under Section 7/13 (1) (d) read with 13 (2) of Prevention of Corruption Act were framed against the petitioner and other three officials of respondent no. 1 by the learned Special Judge,

Delhi. During the trial, prosecution examined its witnesses. The learned Special Judge after going through the evidence, acquitted the petitioner and others vide judgment dated 11th August, 2005.

Petitioner informed about his acquittal to respondent no.1 vide letter dated 3rd January, 2006 and also sent a copy of judgment with it and also demanded balance salary and annual increments and promotion which were earlier not granted to him on account of pendency of criminal case against him. Thereafter, petitioner sent reminders on 24th January, 2006, 6th March, 2006, 25th September, 2006 but nothing was given to him. No departmental proceedings were initiated against the petitioner from 11th April, 1996 to 31st December, 2006 and all of a sudden, on 2nd January, 2007, petitioner was served with a memorandum for holding a departmental inquiry on the basis of same facts and documents in which he has been acquitted after full-fledged trial. Petitioner sent a reply dated 11th January, 2007 to the said memorandum and requested that it would be unfair and unjust to hold an inquiry against him after a period of 10 years on the same set of witnesses and documents in which he has been acquitted by the criminal court. However, reply of the petitioner was not considered and an Inquiry Officer was appointed vide orders dated 15th January, 2007 to inquire into the charges levelled against him. Aggrieved with the same, the present petition is filed.

3. Counsel for the petitioner has contended that the initiation of departmental proceedings after delay of about 11 years from the date of alleged incident is bad in law and is liable to be quashed. Learned counsel has submitted that alleged incident of bribe took place on 11th

April, 1996. Pursuant thereto a case was registered vide FIR No.19/96 P.S. Anti Corruption Branch wherein petitioner has already been acquitted by the criminal court on 11th August, 2005 whereas charge-sheet of alleged misconduct is issued on 02.01.2007 i.e. after a gap of about 10 years of alleged incident. It is contended that the delay is unexplained as such departmental proceedings are liable to be quashed.

It is further contended that the Memorandum/Article of charge dated 2nd January, 2007 contains the identical charge in respect of which petitioner has already been acquitted by the criminal court of competent jurisdiction as such fresh departmental inquiry cannot be directed to be instituted against the petitioner on the same set of facts and evidence on which the criminal case was registered against him and the evidence is also common in both the cases.

Learned counsel for petitioner has also contended that there is also malafide of Office Superintendent of respondent no. 1 in initiation of departmental proceedings against the petitioner. It is contended that against co-accused persons, alleged to have been involved with petitioner in the aforesaid criminal case who are also employees of respondent no. 1, no departmental proceedings have been initiated by respondent no.1 and the same have been initiated only against the petitioner. It is contended that the same has been started to harass the petitioner.

4. The stand of respondent is that petitioner was caught red handed while accepting bribe of Rs.500/- from complainant Abu Talib.

It is contended that petitioner has been acquitted by the learned Special Judge on 11.08.2005 on the ground that prosecution has not been able to prove its case beyond reasonable doubt as such benefit of doubt has been given to the petitioner. It is contended that there is no bar in initiation of departmental proceedings even if a person is acquitted in a criminal case. It is further contended that there is no inaction on the part of respondent as the respondent was waiting for the outcome of criminal case and on coming to know of the same, departmental proceedings were initiated against him. It is contended that petitioner was acquitted on 11th August, 2005 and same was communicated to respondent on 3rd January, 2006. Immediately file was sent to Law Department for opinion and thereafter process was initiated, record was traced and the charge sheet was given to the petitioner on 2nd January, 2007.

It is further contended that petitioner has committed misconduct by violating Rule 3 of the CCS Conduct Rules which require that a civil servant must maintain absolute integrity, devotion to the duty, etc. and consequences of departmental proceedings are distinct and separate from criminal proceedings. It is contended that petitioner is caught red handed in accepting bribe of ₹ 500/- and even if he has been acquitted, the same does not wipe out the right of employer to initiate against him as his integrity has become doubtful.

5. As regards the plea of quashing of charge sheet on the ground of delay is concerned, it may be mentioned that even if charge sheet was issued against the petitioner at the relevant point of time when the criminal case was instituted against him, the petitioner could have

definitely taken up stand that charge in departmental proceedings is same as that in criminal proceedings and both the charges are identical in nature as such petitioner can't be forced to disclose his defence in the departmental proceedings which would prejudicially affect his interest. The stand of respondent is also that they were awaiting for outcome of criminal case registered against petitioner.

The law laid down by the Supreme Court on the subject is discussed herein below:

In Food Corporation of India Vs. George Varghese & Anr 1991 Supp (2) SCC 143, the Supreme Court held as under:-

“We do not think that the Division Bench was not justified in refusing to interfere only on the ground of delay because the delay was not occasioned on account of inaction on the part of the appellant. The appellant acted fairly by staying its hands as soon as the prosecution was initiated. It did not proceed with the departmental enquiry lest it may be said that it was trying to overreach the judicial proceedings. If it had insisted on proceeding with the departmental proceedings. If it had insisted on proceedings with the departmental inquiry, the respondent would have been constrained to file his reply which could have been constrained to file his reply which could have been used against him in the criminal proceedings. That may have been branded as unfair. After the conviction the order of the dismissal was passed but immediately on the respondents being acquitted the appellant fairly set aside that order and reinstated the respondent and initiated departmental proceedings by suspending him and serving him with the charge sheet and the statement of allegations etc. It cannot, therefore, be said that the appellant was guilty of delay. It is true that between setting aside the order of dismissal and the service of the charge sheet, there was a time gap of about eight months but we do not think that can prove fatal.”

In State of Andhra Pradesh vs N. Radhakishan; (1998) 4 SCC 154, the Supreme Court held as under:-

“It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be determined each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the fact of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

In U.P. State Sugar Corporation Ltd. and Ors. vs Kamal Swaroop

Tondon; AIR 2008 SC 1235, the Supreme Court held as under:-

“26. In our opinion, Mahadevan does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would

seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must *necessarily* be quashed."

In Amar Singh Vs. N.S.C. Limited & Anr. 2002 III AD (Delhi) 854, this court has held that non institution of departmental proceedings until acquittal in criminal proceedings is a valid explanation for delay.

In the present case, the stand of the respondent is that they were awaiting for the outcome of criminal case and if the petitioner would have been convicted by the criminal court respondent would have dismissed him on that ground. However, as the same had resulted in acquittal, after the receipt of judgment of criminal case, necessary departmental steps as stated above were taken and thereafter memorandum of charge along with charge-sheet were issued to him. The respondent no.1 has also taken a stand that had the departmental proceedings been initiated at an earlier stage, petitioner would have taken the stand that the charge in departmental proceedings was same as that in criminal proceedings, as such cannot be forced to disclose his defence. Further, the petitioner has also not stated as to what prejudice would be caused to him in defending himself in the enquiry proceedings due to alleged delay.

Learned counsel for respondent has relied upon State of M.P. vs Bani Singh & Anr. reported in AIR 1990 SC 1308. The same is of no help of petitioner as in the said case no satisfactory reply was coming

to explain the delay. The other cases relied upon by learned counsel for petitioner are UOI & Ors. vs Naman Singh Shekhawat reported in (2008) 4 SCC 1; M.V. Bijlani vs UOI reported in (2006) 5 SCC 88. The aforesaid judgments are not applicable to the facts and circumstances of present case as such are of no help to petitioner.

In view of above discussion, it cannot be said that there was inaction or inordinate delay on the part of the respondent and the departmental proceedings are liable to be quashed as is alleged.

6. The other contention of the petitioner is that the disciplinary proceedings cannot be initiated against the petitioner when on same set of allegations, petitioner has been acquitted. The contention of learned counsel for respondent is that the two proceedings i.e. criminal and departmental have different objectives and both operate in different fields. The acquittal in criminal case does not debar the respondent in initiating the departmental proceedings. The judgments relied upon by learned counsel for respondent are as under:-

In Union of India and others vs Shri Bihari Lal Sadhana; AIR 1997 SC 3659, the court held that –

“5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent Government servant can be taken into service or disciplinary action should be taken under the Central Civil Service (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary Government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order

came to be passed but that does not constitute any stigma. Mere acquittal of Government employee does not automatically entitle the Government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise available. Since the respondent is only a temporary Government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a Government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.”

In *Ajit Kumar Nag vs G.M. (PJ)*, *Indian Oil Corporation Ltd.*; (1999)

8 SCC 90, (three-Judge Bench) judgment wherein it is held as under –

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two 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 the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the 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 a 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. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

In T.N.C.S. Corporation Ltd. & Ors. vs K. Meerabai, (2006) 2 SCC 255, it is held that –

“32. The scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other.”

In Secretary, Ministry of Home Affairs and another vs. Tahir Ali Tyagi reported in 2002-JT-Supp1-520, it is held that departmental proceedings could be initiated after acquittal in criminal proceedings. The Supreme Court has held as under:-

“Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.”

The Full Bench of Orissa High Court in Jaya Ram Pande vs. D.V. Raiyani and Others has held as under:-

“.....that an order of acquittal passed in a criminal case does not debar the disciplinary authority to initiate a disciplinary proceeding on the self-same charges and the same is re-affirmed. The only guiding factor for a departmental authority would be to find out whether it

would be expedient to continue a departmental inquiry in the facts and circumstances of a particular case where the accused stood his trial on the very same charges and the charges were completely exonerated and he was acquitted honourably. This could be a germane consideration for the departmental authority to take into account and decide whether the departmental inquiry would be continued or not, but the power of the authority to continue the same is not taken away nor the discretion has been fettered in any manner.”

7. In the present case though the petitioner has been acquitted by the criminal court but acquittal is by giving a benefit of doubt. The Learned Special Judge has held that evidence of complainant can't be accepted without corroboration. As noted in above judgments, the standards of proof in criminal proceedings are different from the standards of proof that are required to prove the alleged misconduct in the departmental proceedings. The objective of both the proceedings is also different. Considering the facts and circumstances of the present case, the contention of learned counsel for petitioner that acquittal in criminal case debars the Disciplinary Authority in initiation of criminal proceedings has no force.

The judgments relied upon by learned counsel for petitioner on the aforesaid contention have been gone through by me. The same have no applicability to the facts of the present case.

8. When the present petition was taken up for hearing on 06.03.2007, it was ordered that final order in the enquiry proceedings be not passed till further orders.

While hearing the present case, learned counsel for respondent has informed that inquiry proceedings have been concluded and final

order is not yet passed because of aforesaid order of this court.

9. In the facts and circumstances of the case and having regard to the nature of charge, I am not inclined to interfere in the inquiry proceedings at this stage. The inquiry report is also not before this court. No final decision is yet taken by the Disciplinary Authority. It is the prerogative of the Disciplinary Authority to look into the report and act further in accordance with the law. The learned Special Judge vide judgment dated 11.08.2005 has acquitted the petitioner after giving benefit of doubt. As per the stand of the respondent, inquiry proceedings were not initiated against the petitioner due to pendency of criminal proceedings against the petitioner and in view of the law laid down by Supreme Court as is discussed above, it cannot be held that the charge sheet was without jurisdiction or illegal. Having regard to the facts and circumstances of the case, the appropriate course of action will be to permit the disciplinary authority to look into the inquiry report and proceed further in accordance with law. Needless to say that in the event the disciplinary authority finds the petitioner prima facie guilty of charges, petitioner shall be at liberty to make representation against the inquiry report as per law laid down in *Managing Director, ECI vs K. Karunakaran*; AIR 1994 1074.

It shall be open to petitioner to raise all grounds including the prejudice, if any, on account of alleged delay and also the effect of acquittal in the criminal case. It is made clear that this court has not expressed any opinion on the merits of the charges in any manner. It will be also open to petitioner to take further action in the matter as advised in accordance with law.

The petitioner will also be at liberty to raise the plea of malafide as is alleged in the present proceedings before the Disciplinary Authority.

Considering the facts and circumstances of the case, it is not a fit case to exercise extraordinary jurisdiction under Article 226 of Constitution of India. The writ petition is dismissed leaving the parties to bear their own costs.

Veena Birbal, J

FEBRUARY 22, 2011
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