

REPORTABLE
*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA No. 287/2011

Reserved on: 25th August, 2011
% Date of Decision: 21st September, 2011

Om Prakash Appellant
Through Mr. K.C. Mittal, Advocate.

VERSUS

Delhi Society For Prevention of Cruelty
Of Animals & Ors. Respondents
Through Mr. Rajiv Awasthy, Adv. with
Ms. Sonia Arora, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether 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 the Digest ? Yes.

SANJIV KHANNA, J.

Om Prakash has filed the present intra court appeal impugning the decision dated 22nd February, 2011, dismissing Writ Petition (Civil) No. 932/2007. Learned counsel for the appellant has submitted that the enquiry proceedings/chargesheet should be quashed as the same was issued in January, 2007, after delay of 11 years and relates to an alleged incident dated 11th April, 1996. The

second contention raised is that on the same allegations, the appellant

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was prosecuted in CC No. 59 of 1998 and was acquitted vide judgment dated 11th August, 2005. Relying upon ***G.M. Tank vs. State of Gujarat***, (2006) 5 SCC 446, it is submitted that the criminal charge and the charge in the departmental proceedings are identical and witnesses are the same, therefore, it is highly unjust and unfair that the respondent No.1 should continue with the departmental proceedings.

2. Similar contentions were raised before the learned Single Judge who by the impugned decision rejected the contentions of the appellant. Learned single Judge has recorded that the enquiry proceedings have concluded but the disciplinary authority has not passed the final order in view of the interim stay order.

3. The appellant was appointed as a constable with the Delhi Society for Prevention of Cruelty to Animals, respondent No. 1 herein. The job assigned to the appellant was to check offenders violating the provisions of the Prevention of Cruelty to Animals Act, 1960. On 11th April, 1996, against the appellant and three others FIR No. 19/96 was registered under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988. On 6th August, 1996, appellant was placed under suspension. On 9th May, 1997, the suspension order was revoked but the appellant was assigned work which did not involve public dealing.

The trial court has acquitted the appellant and three others in the case
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under the Prevention of Corruption Act holding, inter alia, that the prosecution has not been able to prove the case beyond reasonable doubt. However, in the aforesaid decision, the trial court has mentioned as under:-

“8. Now I proceed to narrate the evidence referred to by both the sides during the course of arguments. PW-5 Abu Talib is the complainant. He has deposed that on 11.4.96 he was driving truck No. DDL 3599(Tata 407) which he used to ply from Ghazipur Murga Market to Rajouri Garden and on that day he was bringing the Tata 407 loaded with murgas and was going via Ring Road, ISBT to Rajouri Garden then SPCA officials met him near ITO bridge at Ring Road. He then deposed that the officials of SPCA were four in number who stopped his truck and accused Om Prakash demanded Rs. 500/- from him as a bribe and said that in case of non-payment of money he told him that the vehicle will be impounded. He further deposed that accused Om Prakash accepted Rs. 500/- from him. He also deposed that prior to 11-4-96 also SPCA officials used to stop his truck and had been demanding money ranging from Rs. 200/- to Rs. 500/- which he used to pay out of helplessness as in case of non-payment his birds which he used to carry in his truck used to be impounded and so he informed about all that to his employer Nihal Chand who then lodged a report. He further deposed that although the complaint was signed by him but, in fact, the same was lodged by Nihal Chand. He also deposed that at the time of lodging of the complaint no private person was present. He then deposed that before his truck was stopped on 11.4.96 he had been given two notes of Rs. 500/- each by the police officials out of which he had paid one note to Om Prakash which police

recovered from his shirt pocket. He thereafter deposed about some of the post-raid proceedings conducted at the spot.

9. The complainant was cross-examined by the public prosecutor since he did not identify remaining three accused but during his cross-examination also complainant did not say anything against other three accused, namely, Jagvir, Jai Singh and Sunil Kumar.

10. PW-6 is Nihal Chand. He has deposed that in the year 1996 he was running a business of selling chicken and mutton at Tagore Garden. He then deposed that Abu Talib was his driver and they purchased hens from Gazipur market. He further deposed that SPCA officials used to harass him and his driver while they carry hens from Gazipur to Tagore Garden. He also deposed that on 11-4-96 he along with his driver Abdul Talib was coming in his vehicle Tata 407 from Gazipur and was going to Tagore Garden and some SPCA officials stopped their vehicle near ITO and took Rs. 500/- from his driver. He then deposed that in their vehicle some police officials were also sitting from Gazipur and money was taken by accused Om Prakash on that day and some more persons were with him at that time. He further deposed that he lodged a complaint with anti-corruption branch about ten days prior to 11-4-96 and the money which his driver gave on 11-4-96 to the accused was provided to them by anti-corruption branch officials. He also deposed that after money had been given to Om Prakash the police officials sitting in their vehicle arrested Om Prakash and his associates. Thereafter he deposed about some of the post-raid proceedings conducted in the office of anti-corruption branch. This witness was cross-examined by the public prosecutor and during his cross-examination he admitted the fact that while after parking his

vehicle he reached the spot Inspector Banta informed him that Cl.Om Prakash had taken Rs. 500/- from his driver and had kept the same in his front shirt pocket.”

4. Thereafter, the trial court has referred to the statement of PW-8 Rajesh Kumar, the panch witness, who did not substantially support the prosecution case and has observed as under:-

“It is further deposed by the panch witness that the driver of the tempo told those persons ‘mey sewa kar doonga’ but they refused to accept the money on the ground that the officials of anti-corruption branch were roaming in that area. He also deposed that they all three again boarded the tempo and when their tempo reached near IG Stadium again four persons out of whom three were in Khakis and one in plain clothes got their tempo stopped and they all again got down from the tempo. He then deposed that driver of the tempo talked something with those persons but he could not hear their conversation but on reaching close to them he found the tempo driver saying those persons ‘mein aap ki sewa pani kar dunga, bar bar tempo na rukwaya karo’. Then one of them told driver to meet one of his colleagues there and he himself left. He also deposed that the driver had talked with one of those three remaining persons and was saying that he should accept the money from him and should not harass him time and again and on that the said person pointed towards another person out of those three persons and told the tempo driver to give the money to him and on this the tempo driver handed over the powder smeared currency note of Rs. 500/- to that person who accepted the currency note with his right hand and kept the same in the front pocket of his shirt in left pocket.”

5. The trial court has also referred to evidence of the Raid Officer,

Mr. S.K. Banta, PW-9, and observed :-

“PW-9 further deposed that one person namely Anil Kumar asked the driver of the vehicle (complainant) that he had not been paying ‘hafta’ and directed him towards accused Jai Singh. He also deposed that in the meantime Anil Kumar started the scooter asked the complainant to hand over the money to Jai Singh and drove the scooter towards ISBT. He further deposed that another person namely accused Jagbir asked the complainant to hand over the ‘hafta’ to the fourth person present there namely Kallu. He also deposed that complainant handed over Rs. 500/- note to the fourth person and at that moment the panch witness gave the pre-arranged signal on receipt of which raid party closed up and he challenged the person who had accepted the illegal gratification, disclosed his identity, as Inspector from anti corruption branch and told him that he had accepted illegal gratification of Rs. 500/- from the complainant and therefore he has to be searched. He then deposed that he offered him if he wished to search him he can do so but he declined that offer. He further deposed that he searched the shirt pocket of that person and found a currency note of Rs. 500/- from his pocket. He thereafter deposed about post-raid proceedings conducted at the spot which I have already narrated.”

6. Thereafter the trial court has given the following findings:

“13. This much is the evidence which learned public prosecutor referred to during the course of arguments. Abu Talib is the main prosecution witness. He has however, not fully supported the prosecution. He has deposed only against accused Om Prakash that it was he who had

demanded and accepted bribe from him. Even though the complainant deposed that there were three other persons of DSPCA also with Om Prakash but he has not identified other three accused to be those persons. He has also deposed that he had been regularly paying bribe to DSPCA officials before 11-4-96 (when these four accused were on duty at the time of trap) and about those payments he had informed his employer Shri Nihal Chand. However, Shri Nihal Chand when examined as PW-5 by the prosecution case has not claimed that Abu Talib had informed him about payment of bribe by him to DSPCA officials before 11-4-96. PW-6 has also deposed against accused Om Prakash and he also did not claim that other three accused were the colleagues of Om Prakash with him at the time of trap.

14. The complainant and Nihal Chand were both cross-examined by the public prosecutor as they had not fully supported the prosecution case. However, in that cross-examination also none of them implicated other three accused. Complainant in fact, categorically denied the suggestion of the prosecutor regarding the role of other three accused persons as per the initial prosecution case. He denied that he had paid money to accused Om Prakash at the instance of accused Jai Singh and Jagvir Singh and that other three accused were also with accused Om Prakash at the time of trap. He also denied that accused Jai Singh and Jagvir Singh were also arrested at the spot and Sunil was arrested from his office in his presence. So, evidence of the complainant and his employer who was also examined as an eye witness is of no help to the prosecution as far as involvement of accused Jai Singh, Jagvir Singh and Sunil Kumar is concerned.

15. In my view, and as was rightly submitted even by the learned counsel for accused Om

Prakash, evidence of complainant and his employer Nihal Chand is not sufficient for holding even accused Om Prakash guilty. Both these witnesses were highly interested witnesses and both of them had to be cross-examined by the prosecutor. Their evidence cannot be accepted in any case without corroboration from other independent and reliable evidence even in respect of accused Om Prakash. But that corroborative evidence is absent in this case. Prosecution had although examined one panch witness Rajesh Kumar as PW-8 but he has not corroborated the complainant and Nihal Chand regarding acceptance of money by Om Prakash. The panch witness, as noted already, had not claimed in his chief examination accused Om Prakash to be that person who had accepted Rs.500/- from complainant Abu Talib. He has not identified accused Jagvir Singh also as the associate of Sunil Kumar and Jai Singh. Although when cross-examined by public prosecutor the panch witness admitted that it was accused Om Prakash who had accepted Rs. 500/- from the complainant but when he was cross-examined on behalf of accused Om Prakash he again stated that he was unable to identify the person who had taken money from the complainant. So, panch witness cannot be said to be supporting prosecution case regarding acceptance of Rs. 500/- by Om Prakash from Abu Talib. This kind of a witness who change his version every moment cannot be called a reliable witness at all.”

7. After the judgment of acquittal was passed, the respondent examined, whether or not it was a fit case to initiate departmental proceedings. Thereafter, a memorandum of articles of charge dated 2nd January, 2007, was issued. In the memorandum two separate articles

of charges have been mentioned. The said articles of charge read as under:

“Statement of articles of charge framed against Shri Om Prakash-II, Constable, Delhi S.P.C.A. Enforcement Staff.

ARTICLE –I

That the said Sh. Om Prakash-II while working as Constable in the Enforcement Wing of Delhi S.P.C.A., on 11.4.1996 had accepted bribe of Rs.500/- from tempo driver Sh. Abu Talib who was transporting poultry birds from Murga Mandi, Gazipur to Rajouri Garden where Shri Nihal Chand was having his chicken – meat shop, for not challanning and impounding the vehicle together with poultry birds even on violating the provisions of the Prevention of Cruelty to Animals Act 1960. Thus Sh. Om Prakash-II, Constable did not adhere to the requirement of law and helped the tempo driver showing total disregard to existing laws with malafide intention.

ARTICLE – II

That during the above period and while working in the above said office, the said Sh. Om Prakash-II, Constable, accepted bribe of Rs.500/- for extending uncalled for favour to tempo driver who was transporting poultry birds in violation of the provisions of the Prevention of Cruelty to Animals Act 1960.”

8. It has been further recorded as under:

“Thus the said Sh. Om Prakash-II Constable misused his official position and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant thereby

contravening the provisions of Rule 3 of the C.C.S. (Conduct) Rules, 1964.”

9. Regarding the delay in initiation of departmental proceedings and quashing of the charge-sheet on the ground of delay, we are entirely in agreement with the findings recorded by the learned Single Judge in the impugned judgment. In the present case, it is apparent that the respondent No.1 had waited for the outcome of the criminal proceedings. The appellant was prosecuted under the Prevention of Corruption Act relating to the incident dated 11th April, 1996. In case the departmental proceedings had commenced along with the criminal proceedings, the appellant would have certainly raised the grievance that he cannot be forced to disclose his defence in the departmental proceedings as it would definitely affect his interest and defence in the criminal case. It may be recorded that the second stand of the appellant is that the criminal proceedings and the departmental proceedings are on the same facts. In these circumstances, it cannot be said that the departmental proceedings/ charge-sheet should be quashed on the ground of delay. Learned single Judge in this connection has relied upon ***Food Corporation of India vs. George Varghese & Anr.*** 1991 Supp (2) SCC 143, in which the Supreme Court has held that when the department has acted fairly by staying their

hands as soon as the prosecution was initiated, the employee cannot insist that after he is acquitted, the department should not initiate departmental proceedings. The Supreme Court noticed that in such cases normally a plea is taken that initiation of departmental proceedings amounts to and trying to overreach the judicial proceedings and the employee should not be constrained to file his reply as it could be used against him in the criminal proceedings. On the question of delay also, the learned Single Judge has relied upon ***State of Andhra Pradesh vs. N. Radhakishan***, (1998) 4 SCC 154 and ***U.P. State Sugar Corporation Ltd. & Ors. vs. Kamal Swaroop Tandon***, AIR 2008 SC 1235, in which it has been held that if unexplained delay has caused serious prejudice to the delinquent employee chargesheet/disciplinary proceedings may be quashed. However, this depends upon the complexity and the nature of the charge and the reason of delay which can be examined. At the same time, the basic principle of administration of justice is that an officer entrusted with a particular job has to perform his duty honestly, efficiently and in accordance with the rules. If he deviates from his path, he has to suffer a penalty warranted. When there is a gross inordinate delay in initiation or continuation of departmental proceedings and it can be shown that serious prejudice has been caused resulting in miscarriage of justice,

then depending upon the facts, keeping in view the nature of allegation, and the prejudice caused, departmental proceedings may be quashed. There is no proposition of law or rule of universal application that if there is a delay, the departmental proceedings must be necessarily quashed. For the reasons stated above, the first contention is rejected.

11. This brings us to the second contentious issue whether the departmental proceedings should continue in view of the findings recorded by the trial court. For the sake of convenience and to examine this issue, we have quoted above the findings recorded in the criminal proceedings. It is well settled that the scope of the criminal proceedings and the departmental proceedings are distinctive. The standard of proof is different. The provisions of Evidence Act are not strictly applicable to disciplinary proceedings. In departmental proceedings, the rule of preponderance of probabilities applies whereas in criminal proceedings, the standard of proof is beyond reasonable doubt. The object of criminal proceedings is to see whether criminal offence has been committed and to punish the offender and not whether the employee should be allowed to remain in service. There is no statutory rule or provision which stipulates that departmental

proceedings cannot be opened or initiated after a decision of acquittal in the criminal case.

12. On the question of difference between the departmental proceedings and criminal proceedings and the effect thereof on the departmental proceeding in view of the judgment of acquittal, the Supreme Court in ***Divisional Controller, Gujarat SRTC Vs. Kadarbhai J. Suthar*** (2007) 10 SCC 561 has observed :-

“5. The orders of both the learned Single Judge and the Division Bench suffer from several infirmities. First and foremost, mere acquittal in a criminal case does not have the effect of nullifying the decision taken in the departmental proceedings. They operate in different areas of considerations. This position was recently highlighted by a three-Judge Bench of this Court in *NOIDA Entrepreneurs' Assn. v. NOIDA.*”

13. In ***NOIDA Entrepreneurs Association Vs. NOIDA*** (2007) 10 SCC 385, it has been held as under:-

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See *Tata Cellular v. Union of India* and *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh.*] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to *Kendriya Vidyalaya Sangathan v. T. Srinivas,*

*Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry and
Uttaranchal RTC v. Mansaram Nainwal.*

“8. ... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short ‘the Evidence Act’]. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or

applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

A three-Judge Bench of this Court in *Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya* (SCC pp. 704-05, para 8) analysed the legal position in great detail on the above lines.

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16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.”

14. The decision in the case of **G.M. Tank** (supra) deals with a peculiar situation where the same witnesses had appeared in the departmental proceedings and in the criminal case and two contrary finding were given in the disciplinary proceedings and the criminal case. In this regard, observations of the Supreme Court in paragraphs 30 and 31 have to be read along with observations made in paragraph 20. In the said paragraph, the Supreme Court referred to the evidence against

the employee-government servant in the departmental proceedings.

The said paragraph reads as under:-

“20. It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges levelled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of the PC Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.”

15. A similar issue has come up before us in LPA No. 730/2010 titled ***National Insurance Company Ltd. vs. Shri Sunil Kumar & Ors.***, decided on 29th March, 2011, wherein it has been held as under:-

“15. From the aforesaid enunciation of law, it can be stated with certitude that the scope, effect and consequence of a criminal trial and a departmental proceedings are distinct and different. Once the employer has reasonable basis regard being had to the sanctity, stability and the propriety of the administration and to avoid any kind of anarchy or chaos, it may be under an obligation to initiate departmental proceeding and simultaneously a criminal prosecution may be launched against the same delinquent employee. The circumstances should be such that there would be a warrant for directing stay of the disciplinary proceedings. It needs no special emphasis to state, the onus is on the delinquent employee that serious prejudice would be caused, if the parallel proceedings are allowed to continue. It is well settled in law that the burden of proof in a criminal trial is quite stringent, as an accused is entitled to benefit of doubt and the consequent acquittal, but the test of preponderance of possibilities in departmental proceedings is different. But regard being had to the nature of proof required in the departmental proceedings enquiry, a charged employee may not be entitled to exoneration. Regard must be given to the fact that in the departmental proceeding, the standard of proof is totally different. The cannons of service jurisprudence require that the departmental proceedings are put to an end as expeditiously as possible. The exception carved out is that the delinquent employee should be exposed to grave prejudice and the charges leveled against him should be so grave and involve complex questions of law and fact, so that it is undesirable and apposite to invite an interdiction in exercise of inherent jurisdiction by the Court. As has been stated by their Lordships, there cannot be any hard and fast rule or a strait jacket formulae and it depends upon many a factor and facts of each case.”

16. In view of the aforesaid findings, we do not find any merit in the present appeal and the same is dismissed without any order as to costs.

**-Sd-
(SANJIV KHANNA)
JUDGE**

**-Sd-
(DIPAK MISRA)
CHIEF JUSTICE**

**September 21st , 2011
kkb**