

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.08.2018

CORAM
THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.27523 of 2017
and
W.M.P.Nos.29417 of 2017 and 325 of 2018

- 1.Union of India, rep.by
The Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
- 2.The Director,
Directorate of Enforcement,
Ministry of Finance,
6th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-110 003.Petitioners

-vs-

- 1.P.V.Balasubramani
- 2.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the second respondent pertaining to the order dated 06.04.2017 made in O.A.No. 310/01763/2014 and quash the same.

For Petitioners : Mr.G.Rajagopalan,
Addl.Solicitor General of India
Assisted by Ms.G.Hema

For Respondents : Mr.Giridharan for
M/s.Giridhar & Sai for R1

R2 - Tribunal

ORDER

(Made by HULUVADI G.RAMESH, J.)

The first respondent herein was appointed as Assistant Enforcement Officer in the Directorate of Enforcement on 15.06.1974 and was promoted as Enforcement Officer in 1982 on ad hoc basis and on regular basis with effect from 1986. Alleging that during a search conducted by the Officers of Enforcement, Hyderabad in 1994, it has been revealed that the Enforcement Officers including the first respondent herein had received Rs.5,000/- as illegal gratification from the accused in the FERA case, the first respondent was issued with charge memo dated 13.09.1998 and an enquiry was conducted in which it was found that the charges were not proved. But, the second appellant, the disciplinary authority, disagreed with the Enquiry Officer's Report, for which the first respondent submitted a detailed representation on 16.06.2004. Thereafter, there was no communication for a period of two years and the charges were dropped. In these circumstances, another charge memo dated 14.08.2006 was issued, which contained the same charges. The said charge memo was challenged before the Central Administrative Tribunal, Chennai in O.A.No.789 of 2006 and the Tribunal quashed the charge memo by order dated 07.06.2007. The said order of the Tribunal was challenged by the Disciplinary Authority before this Court in W.P.Nos.24958 and 25097 of 2009 and the same were dismissed, against which an SLP was preferred before the Hon'ble Supreme Court in SLP No.30138 of 2011 and the same was dismissed as withdrawn on 05.04.2013 with liberty to proceed further with the departmental enquiry. The first respondent also got retired on 31.08.2009. Even though provisional pension has been granted to him, no other retiral benefits such as gratuity were granted. The first respondent, in the mean while, also got acquitted in the criminal case, by order dated 09.04.2014 in C.C.No.2 of 2005 on the file of the III Additional Special Judge for CBI Cases, Hyderabad. In these circumstances, the first respondent submitted a representation to the second appellant on 22.04.2014 and the same was rejected on 03.07.2014.

2. With the above background, the first respondent filed an application before the Central Administrative Tribunal, Chennai Bench in O.A.No.310/01763/2014 to quash the order dated 03.07.2014 rejecting his representation and for a direction to pay all retiral benefits to him including gratuity, regular pension and benefit of commutation of pension together with interest at 12% per annum with effect from 31.08.2009 with arrears of pension and all other consequential benefits. The Tribunal, rejected the original application by order dated 06.04.2017 with a direction to settle all retiral benefits as

prayed for by the first respondent, within a period of two months.

3.Challenging the order passed by the Tribunal, the appellants have now come up with this writ petition.

4.The learned Additional Solicitor General of India appearing for the appellants/ Department has submitted that there is no bar for simultaneous proceedings, viz. Departmental enquiry and trial of a criminal case, and that the standard of proof required in a departmental proceeding is not the same as required in the criminal case and hence even an acquittal in the criminal case does not bar departmental proceedings. As per Rule 69(c) of the CCS (Pension) Rules, no gratuity shall be paid to the Government servant until conclusion of the departmental or judicial proceedings and issue of final orders thereon.

5.The learned counsel for the first respondent has submitted that the Tribunal has considered the matter in proper perspective and has passed the impugned order on the ground that not taking decision in departmental proceedings for a long period amounted to dropping of disciplinary proceedings and charges against the first respondent and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.This Court has passed an order in the present writ petition on 29.01.2018 with a particular direction directing the appellant to seek clarification/order from the Hon'ble Supreme Court, without expressing any opinion on the issue, as regards the factual situation at this stage. In this connection, an order dated 06.07.2018 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C)No.9102/2018 has been produced before us, in which it is seen that the said order passed by this Court has been set aside and without expressing any opinion, the matter has been remanded back to this Court for reconsideration on merits and passing appropriate orders. Accordingly, this writ petition has been posted before us.

8.It appears that initially the first respondent was issued with charge memo dated 13.09.1998. Another charge memo dated 14.08.2006 containing the same charges, was served upon the first respondent. Thereafter, the first respondent filed an Original Application in O.A.No.789 of 2006 seeking to call for records relating to second charge memo in Order No.F.No.C-3/19/2002 dated 14.08.2006 and for a direction to promote him to the post of Chief Enforcement Officer with effect from 01.01.1998 with all consequential benefits including arrears of

pay and allowances and consideration for promotion to the next higher post on par with his juniors, before the Central Administrative Tribunal, Madras Bench. The Tribunal, after considering the facts and circumstances of the case, by order dated 07.06.2007, allowed the original application, giving liberty to the respondents therein to finalise the disciplinary proceedings based on the enquiry reports submitted in the first charge sheet dated 13.08.1998 against the first respondent. Liberty was also granted to the respondents therein to take appropriate decision within a period of three months from the date of receipt of a copy of the order. Against the said order, the Disciplinary Authority filed a writ petition before this Court in W.P.No.25097 of 2009. In the mean time, the first respondent retired from service on 31.08.2009.

9. In W.P.No.25097 of 2009, this Court, by order dated 27.01.2011, held that the Tribunal had given the directions only after taking into consideration the facts and circumstances of the case and after applying the ratio of the decisions of the Hon'ble Supreme Court and this Court, and accordingly dismissed the writ petition. Thereafter, the appellants filed a Special Leave Petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court, by its order dated 05.04.2013, directed the appellants herein to withdraw the SLP with liberty to proceed further with the Departmental Enquiry initiated vide Ref.No.C-3/29/97 dated 13.09.1998 in accordance with the law laid down by the Hon'ble Supreme Court in K.R.Deb v. The Collector of Central Excise, Shillong, reported in 1971 (2) SCC 102 and in such case, it would be open to the first respondent to take all grounds to defend the case. Thereafter, the criminal case filed against the first respondent ended in acquittal. The relevant portion of the judgment of the III Additional Special Judge for CBI Cases, Hyderabad in C.C.No.2 of 2005 dated 09.04.2014, is extracted hereunder:

"Similarly, Ex.D1 certified copy of Judgement reveals that A2 was not a witness in the said case. Further as rightly contended by learned counsel for A2 that on 26.6.96, A2 was transferred from Chennai to Hyderabad, that on 8.7.96, A2 reported at Hyderabad office as evidenced by Ex.D4 entry in Ex.D3 Service Book of A2. Whereas incident of A1 accepting illegal gratification took place on 27.6.1997 by which time, A2 was not in Chennai office and he was at Hyderabad office and by that date last witness was also examined in the criminal case. I, therefore, see there was no official favour pending with A2 in whatsoever as alleged by the prosecution. Similarly, the date of alleged demand of bribe by A2 is also not mentioned in charge sheet. In fact, there is no acceptable evidence adduced by the prosecution to show about the alleged demand of bribe by A2."

10. After acquittal from the criminal case, the first respondent made a representation dated 22.04.2014 to the authorities, requesting to release the retiral benefits, particularly gratuity and commutation of pension, together with interest at 12% per annum. The said request was rejected by the Government by proceedings in F.No.C-14011 /3/2014-Ad.ED(Pt.) dated 03.07.2014, against which the first respondent filed an Original Application before the Central Administrative Tribunal, Madras Bench in O.A.No.310/01763/2014 and the Tribunal, by order dated 06.04.2017, allowed the same in favour of the first respondent directing the appellants to settle all the retirement benefits including gratuity, regular pension, commutation of pension, etc., within a period of two months from the date of receipt of a copy of the order. Liberty was also granted to the first respondent herein to make a fresh representation to the authorities for his promotion within a period of two weeks. Challenging the said order, the present writ petition has been filed by the Department.

11. At this juncture, it would be appropriate to refer to the judgments of the Hon'ble Supreme Court as under:

(i) G.M.Tank v. State of Gujarat & another, reported in MANU/SC/8156/2006, wherein it has been held that when facts and evidence in departmental as well as criminal proceedings were same without there being any iota of evidence, acquittal from criminal proceedings would absolve employee from liability under disciplinary jurisdiction. The relevant portion of the judgment is extracted hereunder:

"16. In our opinion, such facts and evidence in the department 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 (MANU/SC/0225/1999) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

(ii) Capt.M.Paul Anthony v. Bharat Gold Mines Ltd. & another, reported in MANU/SC/0225/1999, wherein it has been held that when an employee is acquitted by a judicial pronouncement it would be unfair to allow the findings of the departmental proceedings to stand. The relevant portion of the judgment is extracted hereunder:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles there from.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

(iii) P.V. Mahadevan v. M.D., Tamil Nadu Housing Board, reported in MANU/SC/0483/2005, wherein it has been held that allowing the Department to proceed with the inquiry after a long lapse of time will be very prejudicial to the employee and keeping the higher Government Officials under charges of corruption and disputed integrity would cause irreparable agony and distress to the officer. The relevant portion of the judgment is extracted hereunder:

"16. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the

officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

17. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs."

(iv) *Sh.C.Sangkhuma v. State of Mizoram and Ors.*, reported in MANU/GH/0145/2000, wherein it has been held that not taking decision in the departmental proceedings for a long period amounts to dropping of disciplinary proceedings and charges against the employee. The relevant portion of the judgment is extracted hereunder:

"10. It is a matter of real concern that in the instant case, the inquiry report was submitted in September, 1992, the Petitioner submitted representation thereto in the month of March, 1993, but the Disciplinary Authority did not take any decision in the matter and only after the petitioner had retired, i.e. after about four years, issued Show Cause Notice and thereafter in the year 1998, took final decision in the matter. The Govt. of India, vide G.O.No.G.I.C.S. (Deptt of per) O.M.No.39/43/70-Ests(A) dated 8.1.1971 desires that the final decision by the Disciplinary Authority should be taken within a period of three months at the most from the receipt of inquiry report. Keeping the matters pending for orders for long as in the instant case and taking final decisions after the superannuation of a Government Servant in nothing but a mental torture and harassment to an employee. In fact, by not taking decision for such a long period amounts to dropping of Disciplinary Proceedings and charges against an employee. The Mizoram Public Service

Commission (MPSC) in its recommendation dated 26.8.98 (Annexure-VII) also observed that the decision of the Inquiry Report had inordinately been delayed due to which the Charged Officer had been put in mental restraint for a long period. The petitioner had attained the age of superannuation and now does not have any alternative sources of income for his family except his monthly pension. Considering the above points the Commission recommended that the mental, psychological strain and injury inflicted upon the petitioner for a long period of eight years amounted to no less than mental imprisonment and appear to be adequate penalty in the instant case, in alternative impugned pension deduction for a period of two years only."

12. Since the criminal case ended in acquittal and the authorities have not complied with the directions issued by the Hon'ble Supreme Court and kept the departmental proceedings in abeyance for a long period, the Tribunal has rightly dismissed the original application on the ground that pendency of departmental proceedings for a long time would amount to dropping the disciplinary proceedings. It has also been correctly observed by the Tribunal that acquittal from criminal proceedings would absolve the first respondent herein from liability under disciplinary jurisdiction, relying upon the decision of the Hon'ble Supreme Court in G.M.Tank v. State of Gujarat & Another, reported in (2006) 5 SCC 446 and in Sh.C.Sangkhuma v. State of Mizoram, reported in MANU/GH/0145/2000. Hence, we are not inclined to interfere with the impugned order passed by the Tribunal.

13. In view of the foregoing discussions, the impugned order passed by the Tribunal is confirmed and the writ petition stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs. The appellants are directed to settle all the retiral benefits to the first respondent, as directed by the Tribunal, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

KM

To

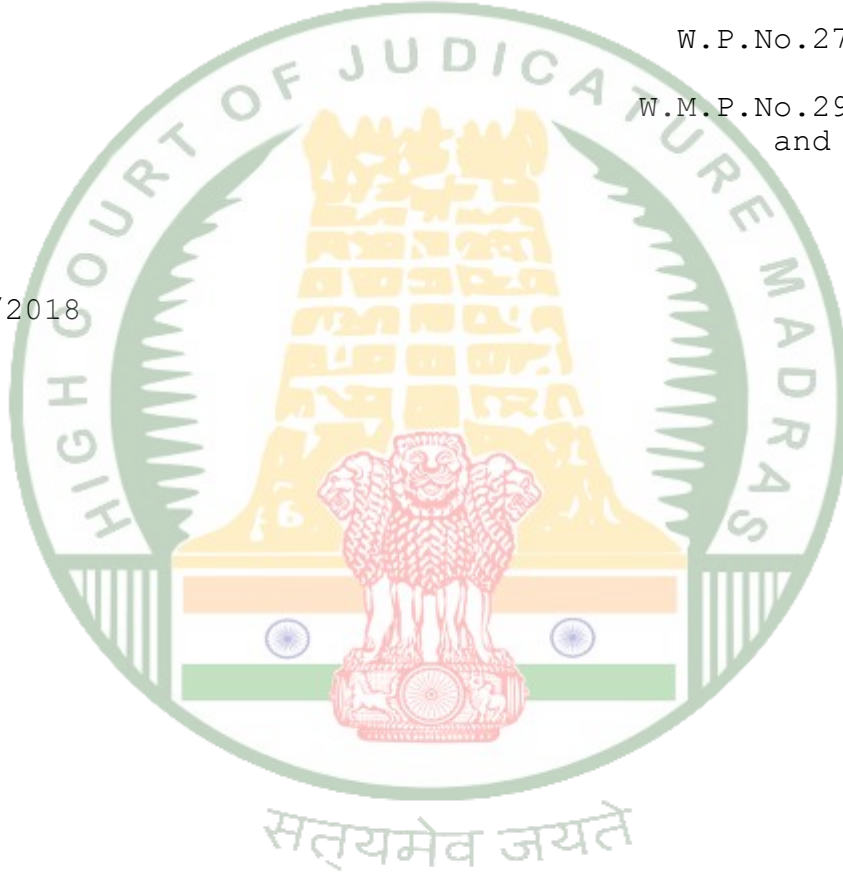
The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

+1cc to Mr.Giridhar and sai, Advocate, S.R.No.53566
+1cc to Ms.Hema Spl.P.P, Advocate, S.R.No.53781

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