

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble Dr. A. K. Chanda
Member (A)**

J U D G M E N T

-of-

Case No. 1503 of 2013

Santanu Roy ChowdhuryApplicant.

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. G.P. Banerjee,
Ld. Adv.**

**For the State Respondents:-Mr. A.L. Basu,
Ld. Adv.**

Judgment delivered on : 27th March, 2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“ a) Impugned orders of respondent authorities dated 13.05.2013 and 11.12.2013 are liable to be quashed and set aside. The malafide departmental proceeding after acquittal and after 14 years is liable to be quashed being malafide and contrary to law.

b) Any other appropriate order or orders direction or directions be passed as this Hon’ble Court may deem fit and proper.”

2. The case of the applicant is as follows:

i) As per the applicant, he was appointed as Lower Division Clerk to the office of the Deputy Director (R) Barrackpore, District North 24 Parganas and was subsequently on deputation to the office of the Rationing Officer of Bhatpara.

ii) In course of service on deputation, he was charged with the criminal case under Special Case No. 15/04 (originally case No. 15/1999 dated 10.03.1999) of Barrackpore P.S. u/s 409/419/468/120B/471/420 of the Indian Penal Code and was in custody for more than 48 hours. The applicant was also inflicted in another Special Case No. 21/2005 (originally 14/1999 dated 9.3.99) of Barrackpore P.S. u/s 467/468/471/409 of the Indian Penal Code.

3. However, in the Special Case No. 21/2005 (originally 14 of 1999), the applicant was acquitted by the Ld. Criminal Court vide order

dated 30.08.2011 (Annexure P/2). Subsequently, in the Special Case No. 15/2004 (originally 15 of 1999), he was also acquitted by the Ld. Criminal Court vide order dated 05.09.2011 (Annexure P/3).

4. After his acquittal from the criminal cases, the applicant made several representations for reinstatement but with no effect. Being aggrieved, he filed OA – 756/2012, which was allowed vide order dated 13.08.2012 with a direction to the authority to revoke suspension and to allow the applicant to resume his duty (Annexure P/4).

However, instead of implementing the aforesaid order dated 13.08.2012, the State filed a Misc. Application being M.A. No. 126/2012 praying for more time for compliance with was rejected by an order dated 18.10.2012 by directing the Respondents to allow the applicant to resume his duty (Annexure P/5). Consequently, the suspension order was revoked vide Memo. dated 31.10.2012 (Annexure P/6) and the applicant joined his duty on 09.11.2012 at Rationing Office, Bhatpara (Annexure P/7).

Thereafter, the Applicant filed a representation dated 20.02.2012 praying for promotion (Annexure P/8). In the mean time, Joint Director of Rationing, Barrackpore vide his communication dated 04.01.2013 asked necessary instruction whether the suspension period of the applicant would treated as on duty or not to the Administrative Officer, Headquarters (HQ), Director of Rationing (Annexure P/9). In return, the Administrative Officer, Headquarters directed the Joint Director of Rationing to prepare IFS under W.B.S. (ROPA) Rules, 2009, in favour of the applicant treating the entire period of suspension as on a duty vide Memo. dated 21.02.2013 (Annexure P/10). Again vide Memo. dated 25.02.2013, Administrative Officer,

Headquarters wrote to Joint Director of Rationing to fix pay of the applicant in terms of W.B.S. (ROPA) Rules, 2009 and subsequently the applicant was granted pay scale up to Rs. 5070/- vide Memo. dated 27.02.2013 response to the Administrative Officer, Headquarters Memo. dated 14.03.2013 (Annexure P/13). The Rationing Officer, Bhatpara forwarded A.P.R. of the applicant up to 31st March, 2013 vide Memo. dated 01.04.2013 (Annexure P/14). Subsequently, Joint Director of Rationing, Barrackpore fix the pay of the applicant including grade pay and increment up to 01.07.2012 vide Memo. dated 03.05.2013 (Annexure P/15).

But unfortunately the Director of Rationing issued Memorandum of Charge dated 13.05.2013 (Annexure P/16) alleging the similar charges of the erstwhile criminal cases of 1999 after a long gap of almost 13 years. Being aggrieved, he has filed the instant application.

As per the applicant since the applicant had already been acquitted in criminal proceedings on self-same cause of action and charges by a competent court of law, the respondents cannot initiate disciplinary proceedings after a long 13 years. The applicant has further submitted that the cause of action arose on 03.05.1999 and even he has been acquitted by the Contempt Court. Therefore, the respondents were already aware of the cause of action in the year 1999 and had also filed criminal case against the applicant, wherein he has been acquitted in the year 2011. In the above facts and circumstances, the respondents cannot take any action against the Applicant as it would amount to double jeopardy. Further, there is no cogent reason for such delay in initiation of departmental proceedings even when he had already been acquitted in the criminal case.

5. The respondents have filed their reply wherein they are more or less reiterated the same facts of the case as submitted by the applicant. However, according to the respondents, the applicant was acquitted from the aforesaid two criminal cases due to the lack of evidences. Therefore, as the charges are serious in nature, the respondents authority have rightly initiated the departmental proceedings.

The counsel for the respondents has further submitted that the charges leveled in the criminal case and the disciplinary proceedings are different. Therefore, there is no delay for the initiation of disciplinary proceedings. Thus, the respondents have prayed for dismissal of the instant O.A.

6. The applicant has filed his rejoinder wherein he has denied the statement made in the reply. It has been further submitted that though the said criminal case was initiated against the applicant by the department concern on the basis of written complaint lodged by one Shri Asim Basu, Assistant Director of Rationing, Barrackpore in O.A. back in the year 1999 however the disciplinary authority did not prefer to start of departmental proceedings against the applicant at the material point of time or soon thereafter when the law in this regard is very clear that both the criminal case and the departmental proceedings may continue simultaneously. But, after more than a decade, the authority concerned initiated the instant departmental proceedings against the applicant vide Memo. dated 13.05.2013 and that after two years from date of judgement of the Ld. Criminal Court without assigning any cogent reasons for such inordinate delay, which has caused prejudice to him. The applicant has also referred the case of P.V.Mahadevan (Supra) –Vs- MD. T.N. Housing Board reported in (2005) SCC 636.

7. We have heard both the parties and perused the record. It is noted that as per the applicant, the charges and evidences in the criminal and departmental proceedings are same and identical, thus, the respondents were very much aware of the cause of action in the year 1999. Therefore, when the applicant was acquitted from the criminal court in the year 2011, no departmental proceedings can be initiated on the self-same cause of action after more than a decade from the date of knowledge of cause of action without showing any cogent reasons for such inordinate delay even after two years from the acquittal. Thus, the respondents are not entitled to initiate such disciplinary proceedings as per settled law.

Whereas as per the respondents, the charges leveled in criminal case and the disciplinary proceedings are different, and therefore, there is no delay in the initiation of disciplinary proceedings. Moreover, the applicant was acquitted in two aforesaid cases due to lack of evidence though the charges are serious in nature. Therefore, the respondents had rightly initiated the departmental proceedings.

From the above facts and circumstances, we are of the opinion that though the charges leveled against the applicant in the departmental proceedings as well as criminal proceedings are very serious in nature. However, the action of the respondents never shows any seriousness to deal with such serious nature of allegation. Moreover, it is not the case the respondents that they were not aware of the said alleged forgery, if any, and came to know about it only in the year 2013. But, from the perusal of the judgement dated 30.08.2011 passed in Special Case No. 21/2005, it is noted that the said alleged forgery was detected by the Officer of the Barrackpore Treasury on 05.02.1999 and on the basis of the written complaint of the respondents the criminal case was initiated against the applicant before the Barrackpore P.S.

Though as per settled law, both the criminal proceedings and disciplinary proceedings can go side by side even if the cause of action is same. But in the instant case, it is observed that departmental authority did not take any proper steps in criminal proceedings and on that ground the applicant was acquitted. Even after two years of acquittal, the respondents did not take any action to initiate departmental proceedings, thus, even if, we accept the contention of the respondents that the charges in criminal proceedings and departmental proceedings are different, in that case also there was no bar to initiate disciplinary proceeding in the year 1999. Moreover, no reasons have been shown for such inordinate delay to initiate the departmental proceedings as the cause of action was already known to the respondents in the year back of 1999.

The Hon'ble Apex Court in use of

“State of M. P. –Vs- Bani Singh
reported in (1990) Supp SCC 738.”

has held, inter alia:

“The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation

for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal.”

Therefore, we have no option other than to accept the contention of the applicant that there is unexplained inordinate delay in initiation of the disciplinary proceedings for which no cogent reasons has been given by the respondents authority.

In view of the above, we quash and set aside the charge sheet dated 13.05.2013 and 11.12.2013 on the ground of inordinate unexplained delay.

Accordingly, the O.A. is disposed of with no order as to costs.

DR. A.K. CHANDA
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)