

J U D G E M E N T

The instant application has been filed praying for quashing of the impugned charge sheet dated 23.01.90 issued by the respondent No.3.

As per the applicant, while he was working as warder at Sub-jail Contai, he was implicated in a criminal case being TR No.1 of 2009 before the Ld. Court of Special Judge, Purba Medinipur, Tamluk u/s. 8 & 9 of the Prevention of Corruption Act, 1988. However, subsequently after prolonged trial, he was honorably acquitted from the charges vide judgement dated 26.04.13 (Annexure A). In the said criminal case, he was leveled with a charge that he had demanded Rs.200/- as bribe for release of an accused, who was granted bail by the Ld. A.C.J.M., Contai.

As per the applicant, while he was put under suspension, the applicant was only paid 50% of his subsistence allowance. However, while reinstating the applicant into service vide order dated 16.01.14, his suspension period being 07.01.08 to 23.02.2012 was directed to be treated as confirmed and it was further ordered that the applicant shall not be entitled to anything more than what he had received during the suspension period. Being aggrieved with, the applicant had preferred OA 136 of 2014, which was disposed of by quashing the impugned order dated 16.01.14 with a direction to the respondent authorities to release all the consequential benefits to the applicant which the applicant is entitled for the period of his suspension treating the same as period 'Spent on duty'(Annexure B).

The said order was duly communicated for necessary compliance. However, the applicant was suddenly served with a charge sheet dated 23.01.19, wherein the applicant has been charged with self-same charge of receiving bribe of Rs.200/- with same sets of witnesses (Annexure D) and on the basis of self-same relied upon documents. Being aggrieved with, the applicant has preferred the instant application.

As per the applicant, the respondents never initiated any disciplinary proceeding though such purported allegations of taking bribe were known to them in 2008. One criminal case was filed against him and he was put under suspension during the period of 07.01.08 to 23.02.2012. However, the said criminal case was disposed of in favour of the applicant by honorably acquitting him from the charge of taking bribe. Even then the respondent had chosen not to prefer appeal against the said order. His suspension period was confirmed without granting him any consequential benefits. However, when the said action of the respondent was challenged before this Tribunal, the Tribunal vide their order dated 26.07.18 had not only quashed the said order dated 16.01.14 but also

observed that no disciplinary proceeding was initiated till 2018. Therefore, according to the applicant after a lapse of long 11 years, the respondents cannot proceed with the departmental proceeding on the self-same cause of action, which had already reached its finality by accepting the judgement dated 26.04.2013. Even no appeal has been preferred against the order by the Tribunal dated 26.07.18. Therefore, the impugned charge sheet is liable to be quashed for inordinate and unexplained delay and latches on the part of the respondents.

During the course of hearing, the counsel for the applicant has also referred the following judgements;

- i) P.V. Mahadevan -vs- Managing Director, Tamilnadu Housing Board reported in (2005) 6 SCC 636.**
- ii) Capt. M. Paul Anthony -vs- Bharat Gold Mines Ltd. Reported in (1999) 3 SCC 679, 2006 SCC (L&S) 1121**
- iii) G.M. Tank -vs- State of Gujrat (2008) 1 SCC (L&S) 1084**
- iv) Pandiya Roadways Corporation Ltd. -vs- M. Balakrishnan**

The respondents have filed their reply therein they have submitted that the departmental proceeding has been initiated against the applicant as the applicant was caught red handed by the authority while receiving the ratification from the family members of an inmate in Contai sub correctional home.

As per the respondents, there is no bar for conducting the departmental proceeding at any point of time while the employee is in service as there is no limit of period for initiating the disciplinary proceeding. Therefore, they have prayed for dismissal of the instant application. The applicant has filed rejoinder denying the contention of the respondents submitted earlier.

We have heard the parties and perused the records. It is noted that one criminal case was pending on the charge of taking bribe i.e. on the self same charge. After contesting by both the parties, Ld. Special Judge had acquitted honorably the applicant on merit and during the entire period, the respondents admittedly did not issued any charge sheet being fully aware of the charges. Even they have not preferred any appeal against the order of the Ld. Court below.

However, after being honorably acquitted from the criminal court, the applicant had approached the authority for revocation of suspension. But, instead of revoking the suspension order, the authority confirmed the suspension and the period of suspension was directed to be treated 'not spent on duty'. Being aggrieved with the applicant had earlier approached this Tribunal in OA No.146 of 2014 which was disposed of by quashing the impugned order dated 16.01.2014 with a direction to extend the service

benefit treating the period as “spent on duty”. In the said order, this Tribunal had clearly recorded that there is no disciplinary proceeding against the applicant even the suspension order was not reviewed and subsistence allowance was also not enhanced during the said period, whereas the suspension order was confirmed even after being honorably acquitted by the criminal court. In this background, it is observed that the respondents have issued the impugned charge sheet on the self-same charges, even the two witnesses i.e. Sri Subir Chatterjee, the then Controller of Contai Sub Correctional Home and Mokram Hembram, the then Warder of Contai Correctional Home were also the witnesses in the criminal case as PW 10 and PW 7 respectively.

The Hon'ble Apex Court in the case of **Capt. M. Paul Anthony**, (supra) has observed that if the facts and evidences in both the proceedings i.e. departmental proceedings and the criminal cases are the same without being any iota of difference, departmental proceeding cannot be allowed to be continued. In the instant case also, the charges framed against the applicant in both the departmental proceedings and criminal proceedings are same even the witnesses are the same and there is no iota of difference between the two proceedings and even the respondents did not file any appeal against the judgement of the criminal court, which had honorably acquitted him after observing inter alia;

“When all the factors as discussed above as well as the inordinate delay in lodging the F.I.R. are considered together, hollowness and lack of credibility of the prosecution case start ringing very loudly and powerfully. In such circumstances, I am constrained to hold that the prosecution has failed to prove beyond reasonable doubt that the accused being a public servant accepted Rs.200/- from a relative of Gouri Adak as gratification other than legal remuneration and he obtained for himself pecuniary advantage from a relative of Gouri Adak by corrupt and illegal means abusing his official position.

Point No.3. In the light of my whole discussion I am compelled to hold the accused not guilty to the charge under Section 8/9 of the Prevention of Corruption Act, 1988.

In the result, the prosecution case fails and the accused merits acquittal.

Hence.”

Further, though the respondents were very much aware of the whole incident of taking bribe of Rs.200 as alleged by them. From the very beginning as the criminal case was initiated at their instance.

However, they had chosen not to initiated disciplinary proceeding during long 11 years and when this Tribunal after quashing the impugned order of confirmation of suspension period vide judgement dated 26.07.2018, thereafter, the respondents have issued the impugned charge sheet dated 23.01.2019.

In the case of **P.V. Mahadevan**, supra, the Hon'ble Apex Court after considering the case of **State of M.P. -vs- Bani Singh 1990** has held;

“ 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.

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.”

In the instant case also the applicant was put under suspension for more than 11 years without any review of subsistence allowance and after being acquitted from the criminal case, the respondents have issued the charge sheet on the self-same cause of action without preferring any appeal against the order of acquittal as passed by the criminal court. In our considered view, the respondents had enough opportunity to initiate departmental proceeding during this long period

as they were aware of the incident long back. However, they had chosen not to proceed against the applicant except put him under suspension.

In view of the facts and circumstances, we have no hesitation to quash and set aside the impugned charge sheet dated 23.01.2019. Accordingly, the OA is allowed with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)