

(2018) 08 CAT CK 0051

In the Central Administrative Tribunal

Case No : Original Application No. 1444 Of 2018

M.N. Sharma

APPELLANT

Vs

Govt. Of NCT And Ors

RESPONDENT

Date of Decision : 24-08-2018

Acts Referred:

Prevention Of Corruption Act (POC) Act, 1988 — Section 7, 13(1)(d), 13(2)
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14

Citation : (2018) 08 CAT CK 0051

Hon'ble Judges : K.N. Shrivastava, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Ajesh Luthra, Harvinder Oberoi

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Heard Mr. Ajesh Luthra, counsel for applicant and Mrs. Harvinder Oberoi, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:

"(a) Quash and set aside the impugned Annexures placed at Annexure A/1 and A/2 above

(b) Direct the respondents to forthwith release the withheld retiral benefits of the applicant including his gratuity along with interest @ 15% p.a.

(c) Accord all consequential benefits

(d) Award costs of the proceedings; and

(e) Pass any other order/direction which this Hon'ble Tribunal deems fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

3. The relevant facts of the case are that proposing to hold departmental enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965, a charge sheet was issued to the applicant on 1.05.2017 for the following article of charge.

"That the said Sh.M.N.Sharma, Ad-hoc DANICS, while functioning as Sub-Registrar VI-C, Rampura, New Delhi during the year 1998, committed grave misconduct in as much as he demanded and accepted illegal gratification, through his subordinate, from a private person for registration of some document."

Along with the memorandum dated 1.05.2017 article of charge, statement of imputation of misconduct, list of documents and list of witnesses were served on the applicant. The applicant submitted reply and denying the charges. The respondents vide order dated 31.10.2017 appointed an Inquiry Officer to enquire into the charges and they also appointed a Presenting Officer.

4. The applicant had challenged initiation of the departmental enquiry as well as appointment of Inquiry Officer and the Presenting Officer. The case of the applicant is that with respect to the same charge on the complaint of the same complainant, CBI had registered a case RC-47(A)/98-DLI dated 27.08.1998 against the applicant under Section 7 of Prevention of Corruption Act (POC) Act, 1988. In the statement of imputation of misconduct, the facts leading to the above charge sheet have been stated which are as under:-

"On 28.08.1998, the raiding team of CBI, alongwith punch witnesses, visited the office of Sh.M.N.Sharma, Sub-Registrar, Rampura, New Delhi to trap him red handed. In the office of Sh. M.N.Sharma, the complainant requested him to reduce the amount of bribe, and Sh. M.N.Sharma agreed to reduce the demand by Rs.500/- Sh.M.N.Sharma directed the complainant to pay the bribe money to his Peon, Sh.Roshan Lal, and the complainant put the bribe money on the table, which was picked up Sh.Roshan Lal, who after counting the money, kept the same in his shirt pocket. Thereafter, Sh.M.N.Sharma signed the said documents which had been submitted by the complainant for registration, and handed over the same to the complainant. The CBI team caught Sh.M.N.Sharma and his Peon, Sh.Roshan Lal on the spot, and recovered the tainted bribe money from the possession of Sh.Roshan Lal, Peon. S/Sh. M.N.Sharma and Roshan Lal were arrested by the CBI. After conducting investigation in the matter, the CBI, filed charge sheet against S/Sh.M.N.Sharma and Roshan Lal in the court."

5. The Court of Smt. Pratibha Rani, Special Judge, Delhi (Annexure A/6) in the said case filed by CBI, vide its judgment dated 30.09.2005 held that the offence against the accused was established under Section 7, 13(2) read with 13(1)(d) of the PC Act. The applicant filed an appeal before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi vide its judgment dated 08.10.2010 reversed the judgment of the Trial Court and acquitted the accused mainly on the ground that the recovery and acceptance of money was not proved. Thereafter, the impugned charge sheet dated 1.05.2017 is issued for the article of charge referred to above.

6. Counsel for the applicant vehemently contended that as the charge sheet has been issued for the same charge in respect to which a criminal case was filed and in that case ultimately he has been acquitted by the Hon'ble High Court, the respondents are barred from initiating departmental enquiry with respect to the same allegations. In support of his contention, he relied upon the following judgments of Hon'ble Supreme Court, High Court/Courts and Central Administrative Tribunal.

"(1) Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and Another (1999) 3 SCC 679).

(2) G.M.Tank Vs. State of Gujarat and Anr. (2006) 5 SSC 446).

(3) Goutam Bhattacharjee Vs. Kolkata Municipal Corporation and Ors (WP No.420/2014) Manu/WB/0208/2016

(4) Bhag Singh Vs. Punjab and Sind Bank and Ors. (Manu/PH/0494/2005).

(5) State of Punjab Vs. V.K.Khanna & Ors (Civil Appeal No. 6963/2000).

(6) Union of India & Ors Vs. B.V.Gopinath (2014) 1 SCC 351).

(7) State of Madhya Pradesh Vs. Bani Singh (AIR 1990 SC 1308).

(8) Narinder Kumar Sharma Vs. Lt. Governor & Ors (OA No. 3716/2016)"

7. Counsel for the respondents, on the other hand, equally vehemently contended that the acquittal of the applicant in a criminal case does not debar the respondents from initiating the departmental enquiry. She has relied upon the law laid down by Hon'ble Supreme Court in the case of Union of India and Another Vs. Bihari Lal Sidhana (1997) 4 SCC 385).

8. In all the first four cases relied upon by the counsel for the applicant the trial courts in the criminal case have honourably acquitted the charged officer. But in the present case it is admitted fact that the trial court convicted the applicant in the said criminal case and he has been acquitted by the High Court on the basis of benefit of doubt and in view of law laid down by the Hon'ble Supreme Court in the case of Bihari Lal Sidhana (supra), there is no bar for holding departmental enquiry.

9. Counsel for the applicant further submitted that even after the judgment dated 8.10.2010 of the High Court, the respondents have initiated departmental enquiry in 2017 after a inordinate delay of about 7 years. In support of his contentions the counsel for the applicant relied on last two judgments submitted by him. In this regard, it is noticed that the respondents-department were not parties before the criminal Court. As such the judgment passed by the High Court on 8.10.2010 was not within the knowledge of the respondents, but it was only within the knowledge of the applicant. The applicant has neither made any averment in this regard nor has he brought to the notice of the respondents about the disposal of the criminal case by the High Court. It is also not known as

to when the judgment of High Court came to the notice of the respondents. In the circumstances, the respondents cannot be stated to be purposely delaying initiating the departmental enquiry nor can they be imputed with in-ordinate delay in initiation of the departmental enquiry.

10. In view of these facts, we are of the view that the respondents cannot be held responsible for the delay in initiation of the departmental enquiry. In the light of these facts and in view of the law laid down by the Hon'ble Supreme Court in the above stated case of Union of India and Another Vs. Bihari Lal Sidhana (supra) initiation of departmental proceeding is permissible. Hence, the OA is dismissed. No order as to costs.