IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.685 OF 2015

DISTRICT : NASHIK

Nandkumar Baburao Salunke.	)
Age : 59 years, Occu. : Agriculture,	)
Retired as Assistant Public Prosecutor,	)
R/o. At Post Rui, Tq. Rahata,	)
District : Ahmednagar.	)...**Applicant**

Versus

1.	The State of Maharashtra. Through the Addl. Chief Secretary, Home Department, Mantralaya, Mumbai - 400 032.	))))
2.	The Director of Prosecution, M.S, Barrack No.6, Free Press Journal Marg, Near Manora MLA Hostel, Nariman Point, Mumbai – 21.	))))...**Respondents**

Shri A.S. Deshpande with Shri V.P. Potbhare, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 02.02.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is made by an Assistant Public Prosecutor earlier called as Police Prosecutor to call into question the order of initiation of Departmental Enquiry (DE) by an order of 16.2.2015 which apparently was served on him after about a month or so and he retired on 30th April, 2015.

2. We have perused the record and proceedings and heard Mr. A.S. Deshpande, the learned Advocate with Mr. V.P. Potbhare, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

3. It is indisputable that on allegations that the Applicant demanded and accepted illegal gratification (bribe) for watering down a case against one Mr. Subhash B. Thakre of Aurangabad, was ultimately made to stand trial before the Court of Special Judge at Aurangabad vide Special Case No.19/2007 (The State of Maharashtra Vs. Nandkumar B. Salunkhe, dated 17.4.2010). By the judgment and order of the date just mentioned, the

Applicant came to be acquitted of the offence punishable under the various Sections of Prevention of Corruption Act, 1988. We have got on record a copy of the said judgment from Pages 49 to 98 of the paper book. The said judgment of acquittal was challenged before the Aurangabad Bench of the Hon'ble Bombay High Court. By the order on **Criminal Application No.3249/2010 (The State of Maharashtra Vs. Nandkumar B. Salunkhe, dated 17th January, 2012)**, the Hon'ble High Court was pleased to reject the State's application for leave to appeal. A copy of the said order is there from Pages 99 to 103 of the paper book).

4. The net result, therefore, was that as on 17.4.2010 and then 17.01.2012, the factual position that the case against the Applicant fell to the ground and he stood acquitted, became too solidified to brook any other argument. We are bound by not only the conclusions, but the reasoning of the Learned Special Judge. We have perused the judgment only to determine as to whether the judgment was rendered on technical grounds or by grant of what is called benefit of doubt or any such fact or factors that would make the acquittal less honourable than the honourable acquittal would convey. Now, up to internal Page 26 (Page 74 of the paper book), the Court of Special

Judge considered if the sanction to prosecute was legal and proper. It was held that it was invalid and illegal.

5. However, the Special Judge also dealt with the facts of the matter in extenso and closely evaluated the evidence of the complainant of the matter the above named Subhash Thakre. It so happened that Subhash Thakre was in premarital relationship with a girl that who he eventually married. When the Courtship was going on, there was some dispute resulting into an assault and the matter ultimately landed before the Court of a Learned Magistrate. It was alleged that the Applicant was conducting the prosecution in that Court. The facts were discussed in extenso by the Special Judge. It is not necessary to set out in great details, the facts and the determination. It would suffice to mention that the circumstances in the prosecution against the Complainant Subhash Thakre were such that he and his wife had decided to burry the hatchet, and therefore, for all one knows, she would not have spoken against her husband. The conduct of the said Complainant and in some measure of his wife was closely examined and it was found that there was no evidence of, "the demand" the proof whereof one of the chief ingredients to be proved in such matters before the Special Judges. The evidence of other witnesses

as well as the defense witness came to be evaluated and ultimately, the learned Special Judge held that the prosecution had failed to prove the case against the Applicant and on that reasoning, an order of acquittal which is quite clearly a clean acquittal, honourable acquittal as it is said, came to be rendered. That order was confirmed by the Hon'ble High Court in which Criminal Application, it was found that the matter was such as not even to merit placing under appellate scrutiny the order of the learned Special Judge. That indeed was the quality or lack of it of the case against the Applicant. It is, therefore, very clear that the vociferous pleas raised on behalf of the Respondents that the acquittal of the Applicant was not clean, is quite simply not worth the paper it is written on. In fact, if such was to be their stand, they ought to have at least briefly indicated in their Affidavits-in-reply the justification for holding that view which quite clearly is not there. We, therefore, have got no hesitation in concluding that the case against the Applicant before the learned Special Judge resulted in his honourable acquittal. There was no element of benefit of doubt, etc. to provide to the acquittal any lesser merit than an honourable acquittal. This aspect of the matter would have to be carefully borne in mind even as we proceed further.

6. In the above background, it will be found that neither in the immediate aftermath of the alleged incident culminating into the prosecution of the Applicant nor pending prosecution, any departmental action was taken. Immediately after the alleged incident, he has been placed under suspension but that suspension was ultimately revoked. Now, the Applicant would have retired on 30th April, 2015, and he has in the meanwhile actually retired. The Applicant immediately after the Hon'ble High Court's judgment in the Criminal Case sent in a representation on 13.10.2013 requesting to treat his period of suspension as a duty period which was apparently not even acknowledged farless responded to. But hardly one month before his retirement on 14.3.2015, he received a charge-sheet dated 27.02.2015. A copy of the said charge-sheet is there at Exh. 'D' (Pages 21 and thereafter). It was a three pronged charge pertaining to the self-same incident which was the subject matter of the Criminal prosecution. Though spread under three heads, the substance of the accusation was exactly similar to those that formed the basis of the prosecution. We were informed at the Bar that the said DE has been stayed. In any case, the matter is being finally decided expeditiously.

7. The relief sought herein is for quashing and setting aside of the DE, for a direction to treat the period of suspension as duty period and for interim relief.

8. The above discussion must have made it very clear that this is an OA wherein the DE came to be initiated almost on the eve of Applicant's retirement on superannuation. The accusations therein were exactly similar as those on which he came to be prosecuted and honourably acquitted. The order of acquittal of the learned Special Judge was of 17th April, 2010 and the Hon'ble High Court confirmed it on 17th January, 2010. Therefore, the departmental enquiry was sought to be initiated five years after the honourable acquittal by the learned Special Judge.

9. Although Mr. Deshpande, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents stuck to their guns firmly as mandated by their respective briefs, but in the ultimate analysis, the present facts are such to which the law laid down by the Hon'ble Supreme Court in **S. Bhaskar Reddy and another Vs. Superintendent of Police and another, (2015) 2 SCC 365** will be fully applicable. Pertinently, in that particular judgment, Their Lordships

were pleased to rely upon **G.M. Tank Vs. State of Gujarat (2006) 5 SCC 446** and **Cap. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679**. The law laid down is on the issue of the course of action to be adopted when on same set of facts, a criminal prosecution and DE are initiated and by the time, the DE culminates into some kind of a momentous order, the order of acquittal already holds ground and that order is of honourable acquittal as the term is explained by the Hon'ble Supreme Court by following earlier judgment in the matter of **Inspector General of Police Vs. S. Samuthiram (2013) 1 SCC 598** and in which connection, profuse reference was also made to **Cap. Paul Anthony (supra) and G.M. Tank (supra)**.

10. As **Bhaskar Reddy** (supra) needs to be read in some details, especially in so far as the law laid down therein and its applicability to the present facts is concerned. The first limb of that case pertained to the legality of an enquiry held by borrowing authority in a disciplinary matter, which was held by the Hon'ble Supreme Court in favour of the State. However, from Para 20 onwards, Their Lordships examined what was alternative plea requiring consideration of the validity of the order impugned in the context of the decision of the Court of criminal jurisdiction. It was made clear that the

charges in the DE as well as prosecution were, "almost similar". At one place, Their Lordships were pleased to observe that, "that they are almost similar and one and the same" (Para 21). It was then noted that in the prosecution, a categorical finding was recorded upon appreciation of evidence that the charge was not proved with regard to the offences that the said Government servant was charged with. Then the phrase, "honourable acquittal" was explained. In Para 23, Paras 34 and 35 of Paul Anthony (supra) came to be reproduced and we also need to do the same hereinbelow.

> "**23**. Further, in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. this Court has held as under :
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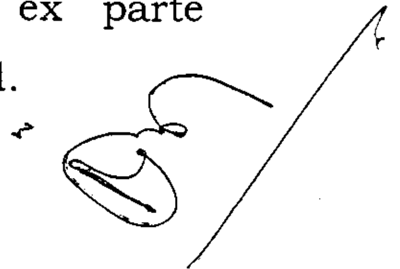
> > "34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom'. The findings recorded by the enquiry 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 enquiry officer and the enquiry 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 appellate 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 instance case."

11. In Para 24, Paras 20, 30 and 31 from **G.M. Tank** (supra) were reproduced. We shall also reproduce the same.

> "24. Further, the G.M. Tank v. State of Gujarat this Court held as under :
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> "20. .....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.

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet] factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigation Officer Mr. V.B. Raval and other departmental witnesses were the

only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charge were established against the appellant. The same witnesses were examined in the criminal case and criminal court on the examination came to be conclusion that the prosecution has not proved the guilt alleged against the appellant beyond and reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental 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 the

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 case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

(emphasis supplied)"

12. Considering the legal position such as it emanates from Paul Anthony and **G.M. Tank's** case, Their Lordships were pleased to hold in **Bhaskar Reddy** (supra) that in the matter such as this one, the departmental authority should follow the same course of action as was done by the Courts of Criminal jurisdiction. In as much as the facts herein are such to which the principles laid down in **Bhaskar Reddy** (supra) would squarely applied, we do not think it necessary to consider any academic aspect of the matter and general principles which are not applicable hereto. There can be instances wherein despite a particular finding of the Court for very strong reasons, the departmental authorities can still carry on with the DE,

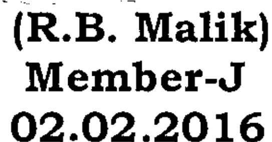
but that is not something which is applicable to this particular OA.

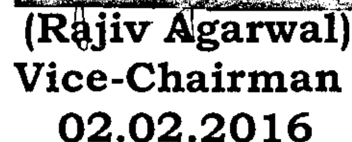
13. Now, in as much as we must follow the course laid down by as **Bhaskar Reddy** (supra), there is no need to make any further observation, but still we must note that we have been unable to comprehend as to why when nothing was done for five years and in fact, more if one went by the date of the incident, all of a sudden about a month before Applicant's retirement, the impugned DE should have been initiated. There are sufficient enough reasons to raise judicial eyebrows. Beyond that, we do not think it necessary to add anything more.

14. Now, even as the Applicant would want us to make an order of holding the period of suspension as duty period and for quashing of the DE, we find that we will have to act in accordance with the essence of the mandate of **Bhaskar Reddy** (supra) more particularly, Paras 27 to 29 thereof. The DE will have to be quashed and in the present set of facts, the Applicant would become entitled for his post retiral benefits and at the time of taking a decision thereon, a decision on how to treat the period of suspension would reoccur for the Respondents to deal with. That is because going by the record, it appears that at the time the impugned order was made, the DE which

was pending in the sense, it should be understood in the present context was the inhibiting factor. Now, this determination by us would remove that problem and the Respondents will have to now proceed further as if there was no DE pending and no impediment in the way of the Applicant.

15. In view of the foregoing, the DE initiated pursuant to the memorandum of charge dated 16.2.2015 (Exh. 'D') stands hereby quashed and set aside and consequently, the Respondents are directed to proceed in the matter as if no DE was ever pending against the Applicant and work out every aspect of Applicant's post retiral benefits including the period that he spent under suspension. The compliance to commence forthwith and it be completed in every respect within three months from today. The Original Application is allowed in these terms with no order as to costs.





(R.B. Malik)
Member-J
02.02.2016

(Rajiv Agarwal)
Vice-Chairman
02.02.2016

Mumbai
Date : 02.01.2016
Dictation taken by :
S.K. Wamanse.
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