

Prafulla Chandra Mohapatra

Vs

State of Orissa and Others

Civil Appeal No. 3824 of 1992

(N. M. Kasliwal, R. M. Sahai JJ)

17.09.1992

JUDGEMENT

KASLIWAL, J.:-

1. Special Leave granted.
2. This appeal is directed against the Judgment of the Orissa Administrative Tribunal dated 2-11-1991.
3. The facts in brief are that the appellant was working as Nizarat Officer in the Collectorate of Baripada in the State of Orissa. While working on such post the Additional District Magistrate on 24-5-1973 lodged a report about the cash amounting to Rs.30,877.53/- missing from the Collectorate's funds. The appellant found involved in the said matter was placed under suspension by an order dated 9-4-1974. The disciplinary proceeding was initiated against the appellant for the charges of misappropriation of cash and negligence in performance of duty on 7-10-1974. A criminal case under Section 409, I.P.C. was also instituted against the appellant and one Anil Chandra Patnaik who was working as Nazir at the relevant time. The appellant and the said Anil Chandra Patnaik were both convicted in the criminal case by the learned Chief Judicial Magistrate by order dated 28-9-1977. The appellant was dismissed from service on the basis of the aforesaid Judgment by order dated 12-1-1978.
4. The appellant filed an appeal against his conviction and sentence and was acquitted in appeal by the learned Sessions Judge by an order dated 11-5-1979. According to the appellant he was acquitted both on merits as well as on the ground of want of proper sanction. Leave to appeal filed by the State Government against the acquittal of the appellant was dismissed by the High Court on 9-10-1979. The appellant was reinstated in service by order of 18-4-1980 and the period during which he remained under suspension and dismissal was ordered to be treated as the period spent on duty. The appellant retired from service having attained the age of superannuation on 31-1-1981. The Government by order dated 20th April, 1981 restarted the disciplinary proceedings against the appellant. The representations made by the appellant to the State Government against the revival of the disciplinary proceedings were rejected and the Collector by letter dated 16th July, 1981 informed the appellant that the disciplinary proceedings would continue. @page-SC2210
5. The appellant in these circumstances filed a writ petition in the High Court on 26th September, 1981 challenging the action of restarting the disciplinary proceedings. The writ petition was

transferred to the State Administrative Tribunal in 1988. The Administrative Tribunal dismissed the petition filed by the appellant by order dated 2-11-1991. Aggrieved against the order of Administrative Tribunal the appellant has come before this Court in appeal.

6. It may also be necessary to state that Shri Anil Chandra Patnaik the alleged coaccused with the appellant in the criminal case and who was working as Nazir at the relevant time was convicted along with the appellant by the Chief Judicial Magistrate by a common Judgment dated 28-9-1977 as already mentioned above. The appeal filed by Anil Chandra Patnaik against his conviction was dismissed by the Sessions Court by order dated 11-5-79. Anil Chandra Patnaik then challenged his conviction by filing a revision in the High Court. The High Court not only acquitted Anil Chandra Patnaik but also made some observations which were made the basis for restarting the disciplinary proceedings against the appellant by the Government. It is also worthwhile to note that Shri Anil Chandra Patnaik alleged co-accused of the appellant after his acquittal from the High Court challenged the disciplinary proceedings initiated against him by filing a writ petition in the High Court. The said writ petition was transferred to the Administrative Tribunal in T.A. No. 651 of 1987 and the Tribunal allowed the said petition and quashed the disciplinary proceedings pending against Anil Chandra Patnaik.

7. We have heard learned counsel for the parties and have thoroughly perused the record. The Tribunal in its impugned order has been influenced by certain observations made by the High Court while acquitting the co-accused Anil Chandra Patnaik.

8. The Tribunal also held that it was well settled that a criminal and disciplinary proceeding can be continued on the facts of the same case, the standard of proof in the criminal trial being "beyond reasonable doubt" whereas the standard of proof in a disciplinary proceeding is "preponderance of probability". The Tribunal then took into consideration the fact that the appellant had already retired from Government service and as such the disciplinary proceedings if continued has to be converted to a proceeding under Section 10 of the Orissa Pension Rules where the punishment would be reduction or stoppage of pension. The Tribunal in these circumstances did not quash the revival of the disciplinary proceedings and took the view that the same should continue and be decided within six months. It was also directed to dispose of the proceeding under Section 10 of the Orissa Pension Rules quickly because the petitioner had superannuated in the year 1981 and was of 68 years.

9. In the facts of the present case the incident relates to May, 1973. The disciplinary proceedings were initiated on 7-10-1974 but were not continued presumably in view of the criminal case started against the appellant and the co-accused Anil Chandra Patnaik. It is important to note that so far as the appellant is concerned he was acquitted by the Sessions Judge himself by order dated 11-5-1979 and an application for leave to appeal filed by the State Government under Section 378, Cr. P. C. was rejected by the High Court by order dated 9-10-1979. Thereafter no action was taken to restart the disciplinary proceedings, on the other hand the appellant was reinstated in service by order dated 18-4-1980, and the entire period during which he remained under suspension or dismissal was ordered to be treated as on duty. Not only that the appellant was retired from service upon attaining the age of superannuation on 31-1-1981. The Government subsequently took a decision of restarting the disciplinary proceedings by an order passed on 20-4-1981. In our view it was not proper for the Government to restart the disciplinary proceedings being influenced by any observations recorded by the High Court in the case relating to the co-accused Anil Chandra Patnaik. It may be noted that so far as the present appellant is concerned he was acquitted by the Sessions Court and the special leave application was also dismissed by the High Court. We are also @page-SC2211 not convinced with the stand taken on behalf of the State Government that the acquittal of the appellant by the

Sessions Court was merely on a technical ground of want of proper sanction. A perusal of the Judgment of the Sessions Court shows that the acquittal of the appellant was based both on merits as well as on the want of sanction. The Sessions Judge clearly recorded a finding that there was no evidence to hold that the amount was transferred to the iron chest under double lock and, therefore, it should be held that there was no evidence to prove that the appellant Nizarat Officer Shri P. C. Mahapatra (appellant before us) was either entrusted with the aforesaid amount or had dominion over it. Be that as it may the Government having once allowed the appellant to be reinstated in service on 18-4-1980 and having allowed him to continue in service till his attaining the age of superannuation on 31-1-1981, there was no justification to restart the disciplinary proceedings on 20th April, 1981. It may also be noted that more than 11 years have elapsed to the retirement of the appellant and it would not be proper in the interest of justice to restart the disciplinary proceedings for an event of May, 1973 for which the appellant has already been acquitted in the criminal case right up to the High Court.

10. In the result we allow this appeal, set aside the order of the Orissa Administrative Tribunal dated 2-11-1991 and quash the order of restarting the disciplinary proceedings against the appellant. We further direct that the respondent State of Orissa shall take steps of paying the arrears of pension to the appellant within three months of this order. In the circumstances of the case no order as to costs.

Appeal allowed.

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