SUPREME COURT OF INDIA

The Managing Director State Bank of Hyderabad

Vs

P. Kata Rao

Appeal (civil) 2961-2962 of 2008 (Arising out of SLP (C) Nos. 14356-14357 of 2007)

(S.B. Sinha and D.K. Jain)

24/04/2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Appellant is aggrieved by and dissatisfied with a judgment and order dated 4.6.2007 passed by a Division Bench of the Andhra Pradesh High Court in Writ Appeal No. 627/628 of 2005 whereby and whereunder it refused to interfere with the judgment and order passed by a learned Single Judge of the said Court in WP No. 476 of 2001.

3. Respondent at all material times was an employee in the appellant Bank. He was placed under suspension on or about 13.8.1998. A departmental proceeding was initiated against him.

12 items of charges were drawn up; charge Nos. 11 and 15 whereof read as under:

"Charge No. 11: He authorized cash and transfer credits to the demand loan accounts against pledge of gold ornaments of Smt. P. Lakshmi, his wife, from out of proceeds of loan amounts released to two DIR and one cash credit borrowers. Thus he facilitated his wife to get undue pecuniary benefit by permitting unauthorized adjustments which were done with his prior knowledge. Charge No. 15: He sanctioned and released loans to his close relatives in contravention of H.O. Cir. No. ADV/98 of 1976 dated the 2nd December, 1976."

4. He was also proceeded against in a criminal case. He was acquitted of the criminal charges.

5. However, the departmental proceedings continued during pendency of the criminal proceedings as prayer for stay thereof was not acceded to. The Enquiry Officer found that all the charges apart from charge Nos. 1(a), 2(b), 3 were proved.

6. The Appointing Authority passed an order of dismissal. An appeal preferred thereagainst by the respondent was dismissed.

7. By an order dated 29.12.1995, the appellant was acquitted of the charges framed against him in the criminal proceeding under Sections 120B, 420 and 468 of the Indian Penal Code. He was also acquitted of the charges for alleged commission of offences under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act.

8. Respondent, however, was convicted under Section 477(A) of the Indian Penal Code as also under Section 5(1)(d) and 5(2) of the Prevention of Corruption Act. He preferred an appeal thereagainst before the High Court.

A Writ Petition was also filed questioning the said order of dismissal.

9. By an order dated 12.3.1999, a learned Single Judge of the High Court quashed the order of punishment and directed the disciplinary authority to issue a show cause notice indicating the modified punishment and pass an appropriate order.

10. A show cause notice was issued, pursuant to the said direction.

11. Again an order of dismissal was passed on 2.7.1999. An appeal preferred thereagainst was dismissed. Another writ petition was filed by the respondent aggrieved by and dissatisfied therewith.

12. The Criminal Appeal filed by the appellant came up for consideration before a learned Single Judge of the High Court and by a judgment and order dated 3.10.2001, it was held:

"... In such a case, it is difficult to believe that the appellant had any intention to benefit himself or other persons. It has to be noted that the above reasoning of the trial court is most perverse and without any material. In my considered view the trial court had jumped to the conclusion without any basis."

13. As regards, alleged commission of offence under Section 477A of the Indian Penal Code, it was stated:

"From the above discussion, I am of the considered opinion that the appellant could not have made the alleged entries willfully and with dishonest intention to defraud. It is certainly not the case of the prosecution that the appellant had independently committed the offence under Section 477-A I.P.C. and on the contrary the specific allegation of the prosecution was that there was conspiracy initially and as such a conspiracy has culminated into various offences attributable to all the accused and in particular of the offence under Section 477-A against the appellant.

Therefore, in view of the above observation made by the Apex Court and in view of peculiar facts and circumstances, in the instant case, it is unsafe to draw any adverse inference against the appellant that he committed the offence under Section 477-A I.P.C., inasmuch as the essential ingredients viz., 'willfulness' and 'intention' to defraud could not successfully be substantiated by the prosecution against the appellant. Admittedly the case of the appellant as stated in his examination under Section 313 Cr.P.C., that it was only a mistake committed inadvertently and from the above facts and circumstances and the evidence on record, the only inference that can be drawn is that the accused, no doubt, might have made some wrong entries, but the same cannot be termed as acts of willfulness and with fraudulent intention to falsify the accounts. Hence the appellant is entitled for an acquittal for the offence under Section 477-A I.P.C."

The judgment of conviction and sentence under Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act was also set aside by the High Court opining that the prosecution had failed to prove the guilt of the accused beyond all reasonable doubts, holding:

"... In other words when the appellant was acquitted of all the charges including the charge under

Section 477-A, I.P.C. by this Court, it cannot be said that he committed the offence under the provisions of Prevention of Corruption Act."

14. The Writ Petition filed by the appellant against the order of dismissal passed against him came up for consideration before a learned Single Judge of the High Court. The High Court, while passing its judgment dated 7.02.2005, considered the totality of the circumstances.

As regards the correctness of the order of dismissal, it was opined:

".The said orders can in no way be considered to be a reason as such for a de novo consideration on the aspect of punishment and it is also to be noticed that reconsideration is only in respect of punishment and that too based on the earlier recommendations made in appeal. Therefore, necessarily it follows that the order of dismissal as was imposed earlier on 23.07.1994 could not possibly be repeated or restated much less reimposed. Necessarily it has to be any other punishment other than the order of dismissal or removal. Further, the specific direction is only to take a follow up action in terms of the directions given in the appeal on the earlier occasion. Thus, on a conspectus reading of the said directions, the only scope left for reconsideration is to once again take into consideration the earlier directions given in appeal and not otherwise, or to impose any other punishment much less dismissal order. Having regard to the aforesaid circumstances and also even taking into account totality of the circumstances vis-`-vis the allegations as made against him and also the clear acquittal of the petitioner on criminal side though it may not be binding, necessarily the respondents had to follow the earlier orders of this Court, since the same are not kept in view and the impugned orders are not in terms of the said order. Hence, the matter requires to be reconsidered afresh by the authorities. In the circumstances, it has to be held that the impugned orders of the respondents in dismissing the petitioner from service are not only contrary to the directions given by this Court on 12.03.1999 in W.P. No. 16833 of 1994, but also do not in any way commensurate to the gravity of the allegations as made or found against him."

It was directed:

"In the circumstances, both the Writ Petitions are allowed setting aside both the orders of respondents dated 02.07.1999 and 02.02.2000 and directing fresh consideration and disposal of the matter in accordance with law after giving notice and opportunity to the petitioner. The respondents are also directed to pay subsistence allowance and all such other allowances to which the petitioner is entitled during the period of his suspension from 01.08.1994 to 02.07.1999. No costs."

15. An intra-court appeal was preferred thereagainst. The Division Bench, in its impugned judgment dated 4.06.2007, opined:

"In the present case, we find that the enquiry officer had exonerated the respondent of charges 1(a), 2(b), 3 and 5, which pertain to misappropriation and deriving of pecuniary benefits by him. A perusal of the judgment dated 03.10.2001 passed by the learned Single Judge in Criminal Appeal No. 12 of 1996 makes it clear that the respondent was honourably acquitted with an unequivocal finding that there was neither any loss to the bank nor any pecuniary benefit was taken by the respondent. Thus, on the crucial issue whether the respondent is guilty of financial misfeasance and malfeasance, there is no conflict between the findings of the enquiry officer and the Court, which disposed of the criminal appeal. Since the learned Single Judge, who decided Writ Petition No. 16833 of 1994 and the appointing authority, which reconsidered the matter in the light of the

direction given by this Court, did not have the benefit of considering the judgment of acquittal rendered in Criminal Appeal No. 12 of 1996, the only appropriate course would be to direct the appellants to again consider the respondent's case and pass appropriate order in accordance with law. [Emphasis supplied]

It was directed:-

"In the result, Writ Appeal No. 627 of 2005 is dismissed and Writ Appeal No. 628 of 2005 is disposed of with the direction that the appointing authority shall reconsider the case of the respondent on the issue of quantum of punishment to be imposed on him and pass appropriate order within six weeks from the date of receipt of copy of this judgment."

16. Mr. Soli J. Sorabjee, the learned senior counsel appearing on behalf of the appellant would submit that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration:-

(i) That the criminal court merely granted the benefit of doubt in favour of the respondent; and

(ii) Even an order of acquittal may not be a bar for passing an order of dismissal from service particularly keeping in view the fact that a bank employee is required to maintain strict integrity.

17. Mr. P. Kata Rao, the respondent appearing in person, however, would urge that both the departmental proceedings and the criminal case were based on the same set of facts. The charge of misconduct against him, it was urged, was based on violation of some procedural guidelines only and, thus, not grave in nature. It was pointed out that the learned Single Judge examined the entire records and it had been found that the respondent is not guilty of any malpractice and furthermore has not derived any pecuniary benefit. Even the charges of misappropriation, it was urged, have not been proved against him.

18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the Enquiry Officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment. There cannot, furthermore, be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/ or where the departmental proceedings had already been initiated or to continue therewith.

19. We are not unmindful of different principles laid down by this court from time to time. The approach that the court's jurisdiction is unlimited although had not found favour with some Benches, the applicability of the doctrine of proportionality, however, had not been deviated from.

20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another [(1999) 3 SCC 679], however, remains unshaken although the applicability thereof had been found to be dependant on the fact situation obtaining in each case.

21. The case at hand is an exceptional one. Respondent was a responsible officer. He was holding a position of trust and confidence. He was proceeded with both on the charges of criminal misconduct as also civil misconduct on the same set of facts, subject, of course, to the exception that

charges Nos. 11 and 15 stricto sensu were not the subject matter of criminal proceedings, as integrity and diligence, however, were not in question. Before us also it has not been contended that he had made any personal gain.

22. The High Court in its judgment categorically opined that he merely had committed some inadvertent mistakes. He did not have any intention to commit any misconduct. The purported misconduct on his part was neither willful nor there existed any fraudulent intention on his part to falsify the account. The High Court opined that the prosecution had failed to bring home the guilt of the accused beyond all reasonable doubts for the offences punishable under the provisions under the Indian Penal Code.

The judgment of the High Court states a definite view. It opined that the finding of the learned Trial Judge holding him guilty under Section 477A of the Indian Penal Code and the provisions of the Prevention of Corruption Act was perverse. The circumstances in favour of the accused, the High Court inferred, had wrongly been attributed against him by the Trial Judge.

23. A learned Single Judge of the High Court in his judgment dated 7.02.2005 only upon taking into consideration the observations made by the High Court in the said criminal appeal but also the other circumstances, brought on record, directed fresh consideration and disposal of the matter in accordance with the law upon giving an opportunity of hearing to the respondent. The Division Bench of the High Court, in the first round of litigation, noticed that the entire record had been perused by the learned Single Judge. It was found that the original authority had imposed a punishment of only stoppage of one increment with cumulative effect which was modified by the appellate authority into one of withholding of increment without cumulative effect and held that failure of the disciplinary and appellate authorities to take into consideration modified punishment has caused serious prejudice to the respondent.

24. It was furthermore noticed that in purported compliance of the directions issued by the learned Single Judge, the penalty of dismissal from service was re-imposed on the respondent.

25. The Division Bench, however, disagreed with the conclusion of imposition of stoppage of one increment. Even then it observed that in the facts and circumstances of this case the issue relating to dismissal of respondent needs reconsideration. It was directed:

"While doing so, the concerned authority shall keep in view the following factors:

(i) Both the disciplinary authority and this Court in Criminal Appeal No. 12 of 1996 found the respondent not guilty of charges of misappropriation, deriving the personal benefit for himself and causing loss to the bank.

(ii) The effect of the Judgment of this Court in Criminal Appeal No. 12 of 1996 in the light of the decision of the Supreme Court in M. Paul Anthony's case (supra) and G.M. Tank's case (supra).

(iii) Modified punishment of withholding of increment without cumulative effect imposed on the respondent is a minor penalty unlike the punishment of withholding of increment with cumulative effect, which was held to be a major penalty by the Supreme Court in Kulwant Singh Gill's case (supra).

(iv) While considering the proportionality of the punishment, distinction lies between the procedural irregularities constituting misconduct from the acts of misappropriation of finances, causing loss to

the institution, etc."

26. We do not see any reason keeping in view the peculiar facts and circumstances of the case to disagree with the said findings, although we would like to reiterate the principles of law to which we have referred to hereinbefore.

27. We may, however, notice that Mr. Sorabjee has strongly relied upon a decision of this Court in Commissioner of Police, New Delhi v. Narender Singh [(2006) 4 SCC 265] to contend that therein initiation of a departmental proceeding was upheld inter alia on the ground that although a confession made by an accused in a criminal proceeding would not be admissible having regard to Sections 25 and 27 of the Evidence Act, the same would not be a bar to proceed against him departmentally.

In that case it was held:

"13. It is now well settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed."

This court therein considered the nature of the confessions made by the delinquent officer and the implication thereof having regard to Sections 25 and 26 of the Evidence Act to hold that the Tribunal was not correct in holding that the confessional statement was not admissible in the departmental proceeding.

In G.M. Tank v. State of Gujarat and Others [(2006) 5 SCC 446], noticing a large number of decisions operating in the field, it was observed:

"30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. 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 there from. The Investigating 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 charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any 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 case1 will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

Each case, therefore, must be determined on its own facts.

28. However, we may notice that this Court, in State Bank of India and Others v. T.J. Paul [(1999) 4 SCC 759], noticed:

"7. The above orders were questioned in a writ petition. The learned Single Judge while allowing the writ petition held that the finding of the enquiry officer on Item 23 was that no financial loss was proved and if it was a case of not taking adequate "security" from the loaners and in not obtaining ratification as per Head Office instructions, these charges were not sufficient in view of Rules 22(vi)(c) and (d) read with sub-rule (vii) for imposing a penalty of dismissal or removal. Only a minor penalty could be imposed . As per the enquiry officer's report there was no actual loss caused by reason of any act of the employee wilfully done. There was no evidence of financial loss adduced before the enquiry officer. The finding that the respondent jeopardised the Bank's interest was based on no evidence. Penalty must have been only for minor misconduct. The SBI Rules were not applicable since the misconduct alleged related to the period of service in Bank of Cochin. The learned Judge observed that "punishment of removal" could not have been imposed as it was not one of the enumerated punishments under Bank of Cochin Rules. The writ petition was allowed, the impugned order was quashed. It was, however, observed that the Bank could impose punishment for minor misconduct as per rules of Bank of Cochin."

T.J. Paul (supra) was a case involving violation of the instructions of the Head Office as also gross negligence on the part of the delinquent officer. While holding that the same would constitute major misconduct referring to the case of Union of India v. G. Ganayutham [(1997) 7 SCC 463], it was opined:

"19In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves, namely, the rules of Bank of Cochin and the Court is merely insisting that the authority is confined to the limits of its discretion as restricted by the rules. Inasmuch as the rules of Bank of Cochin have enumerated and listed out the punishments for "major misconduct", we are of the view that the punishment of "removal" could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself to one or the other punishment for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of "removal" that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are "warning or censure or adverse remark being entered, or fine, or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service". The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one or the other punishment in para 22(v) other than

dismissal without notice."

29. As the respondent has merely been found to be guilty of commission of procedural irregularity, we are of the opinion that it is not a fit case where we should exercise our discretionary jurisdiction under Article 136 of the Constitution of India, particularly in view of the fact that the respondent has now reached his age of superannuation, and the appropriate authority of the appellant would be entitled to impose any suitable penalty upon him.

30. The appeals are dismissed. No costs.