

# SUPREME COURT OF INDIA

State of West Bengal

Vs.

Sankar Ghosh

C.A.No.10729 of 2013

(K.S.Radhakrishnan and A.K.Sikri,JJ.,)

28.11.2013

## JUDGMENT

**K.S.Radhakrishnan,J.,**

SLP(Civil)No.29808 of 2010

1. Leave granted.

2. We are, in this case, concerned with the question whether the respondent, who was dismissed from service following disciplinary proceedings, is liable to be reinstated on acquittal by a criminal court on the ground of identity of charges in the departmental as well as criminal proceedings.

3. The respondent was working as a Sepoy in the 2nd Battalion of the Kolkata Armed Police. At the time of the incident, he was working as a Sepoy on deputation in the Traffic Department of Kolkata Police. He was arrested by the police in connection with Khardah P.S. Case No.383 dated 12.11.2013 and charged for the offences under Sections 392, 395 and 412 of the Indian Penal Code read with Sections 25 and 27 of the Arms Act for his complicity in the commission of a dacoity using a motor cycle bearing Registration No.WB-24/F-3050. On his arrest, he was produced before the Sub-Divisional Magistrate, Barrackpore, and he was remanded to police custody till 28.11.2003 and then to judicial custody till 30.3.2004. Later, he was released on 1.4.2004. The department placed the respondent under suspension w.e.f. 26.11.2003 and was later served with a charge sheet on 1.6.2004. The operative portion of the charge sheet reads as follows :-

“You Sepoy 14610 Sankar Ghosh of 2nd Bn., K.A.P. working on deputation to Traffic Department, Kolkata Police, presently under suspension w.e.f. 26.11.2003 F.N. are charged with gross misconduct unbecoming of a member of the Kolkata Police Force in that :-

- 1) You were arrested on 26.11.2003 by Khardah P.S. for your direct complicity in commission of dacoity vide Khardah P.S. Case No.383 dated 12.11.2003 u/S. 392 IPC adding Section 395/412 CPC and 25/27 Arms Act by using a motor cycle T.V.S. Victor Blue coloured bearing Regd No.24F/3050
- 2) You were produced before the Ld. SDJM Barrackpore on the same day (26.11.03) and resumed P.C. till 28.11.2003 and then to J.C. till 30.3.2004. You were released from Dum Dum Central Jail on 1.4.2004.
- 3) It appears from the record that you have no stay out permission from the competent authority and you were involved in the criminal case in the jurisdiction of Khardah P.S. and also arrested from outside the Kolkata Police jurisdiction.
- 4) You being a member of the disciplined force, your involved in such type of heinous crime tarnished the image/prestige of the Kolkata Police force in the estimation of the members of the public in large. You are hereby directed to state whether you plead guilty to the charges or want an open enquiry into the matter. Your written reply should reach within 7 (seven) days of the receipt of this charge.

Deputy Commission of Police Traffic Department, Kolkata.”

4. The respondent replied to the charge sheet and a detailed enquiry was conducted by the Enquiry Officer. On conclusion of the enquiry, the Enquiry Officer after perusing the materials on record and after hearing the parties drew up his report on the enquiry on 10.11.2004. The Enquiry Officer found the respondent guilty of the charges levelled against him. The Disciplinary Authority, after considering the Enquiry Report as well as after hearing the respondent, concurred with the views expressed by the Enquiry Officer and ultimately decided to impose the penalty of dismissal from service. The respondent was, therefore, served with the notice to show cause as to why he should not be dismissed from service. A detailed reply was submitted by the respondent. After considering the reply, the Disciplinary Authority dismissed the respondent from the Police Force w.e.f. 27.12.2004. The respondent then filed an appeal before the Appellate Authority.

5. The Appellate Authority gave a personal hearing to the respondent on 28.2.2005. The Appellate Authority after having noticed that the order of dismissal was not passed by the appropriate authority, set aside the order and left it to the appropriate authority to pass appropriate orders based on the Enquiry Report. The Deputy Commission of Police, 2nd Battalion, Kolkata Armed Police, who is the competent authority, after considering the entire matter passed a final order dismissing the respondent from service w.e.f. 2.6.2005. Against the said order, the respondent filed an appeal before the Appellate Authority i.e. the Joint Commissioner of Police (A.P.), Kolkata Police. The Appellate Authority after considering the entire matter, rejected the appeal vide its order dated 25.8.2005.

6. The Additional Sessions Judge, Barrackpore, who was trying the criminal case levelled against the respondent and five other accused persons for committing the offence under 395/412 IPC read with Section 25(1)(a)/27/35 of the Arms Act, in the meanwhile found that the charges levelled against the accused persons including the respondent were not found proved and consequently vide judgment dated 7.12.2007 acquitted all the accused persons. The respondent on his acquittal in the criminal case filed O.A. No.3961 of 2008 before the West Bengal Administrative Tribunal. The Tribunal after perusing the judgment of the Sessions Court acquitting the respondent and others took the view that the said judgment should have a bearing on the decision of the Enquiry Officer regarding disciplinary proceedings. Holding so, the appeal was disposed of with a direction to the Disciplinary Authority to reinstate the respondent in view of the acquittal order passed by the Sessions Court in the criminal case.

7. Aggrieved by the said order, the State of West Bengal along with two others, filed W.P.S.T. No.570 of 2009 before the Calcutta High Court. The High Court dismissed the appeal upholding the order of the Tribunal, against which this appeal has been preferred.

8. Mr. Kalyan Bandopadhyay, learned Senior Advocate, appearing for the State of West Bengal submitted that the Tribunal and the High Court have committed an error in directing reinstatement of the respondent in service considering the mere fact that the respondent along with others was acquitted by the Criminal Court. Learned senior counsel submitted that the respondent was not honourably acquitted by the Criminal Court. The acquittal was by way of giving benefit of doubt since the accused persons could not be identified during the T.I. parade. Further, it was also pointed out that the High Court has not properly appreciated Regulation 4 of Chapter 19 of the Police Regulations of Calcutta, 1968, which was applicable to the respondent.

9. Mr. Nikhil Goel, learned counsel appearing for the respondent, submitted that the Tribunal and the High Court have correctly applied the ratio laid down by this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. [(1993) 3 SCC 679], Sulekh Chand & Salek Chand v. Commissioner of Police & Ors. [1994 Supp. (3) SCC 674] and G.M. Tank v. State of Gujarat & Ors. [(2006) 5 SCC 446] and ordered reinstatement of the respondent. Learned counsel also submitted that since the accused persons could not be identified in the TI Parade, their complicity could not be established. Consequently, the acquittal of the respondent was an honourable acquittal. Going by the various judicial precedents laid down by this Court, learned counsel submitted that the respondent was rightly reinstated in service and the order passed by the Tribunal as well as the High Court calls for no interference.

10. We may, at the very outset, point out that the respondent was a member of the disciplined force. He was working as a Sepoy in the 2nd Battalion of the Kolkata Armed Force and at the relevant point of time he was working as Sepoy on deputation with the traffic department of Kolkata Police. It is true that the respondent was dismissed from service due to his involvement in the criminal case, wherein he was charged with the offences under Sections 395/412 IPC and Sections 25/27 of the Arms Act. It is also the stand of the department that being a member of the disciplined force, his involvement in such a heinous crime tarnished

the image/prestige of the Kolkata Police Force in the estimation of the members of public in general. Before the Enquiry Officer from the side of the department, four witnesses were examined, including Jiban Chakraborty, the S.I. Police. Exh. A-3 to A-12 are the documents produced before the Enquiry Officer. PW3, S.I. Jiban Chakraborty, the Inspector of Police before the Enquiry Officer deposed as follows :

“During investigation he arrested some suspects into this case. In pursuance to the statement of the suspects he arrested the C.O. from his residence situated in 389, Milangarh, Natagarh under P.S. Ghosla (24 Pgs.-N) on 26.11.03 at 01.05 hrs. He prepared the arrest memo (Exhibit No.A5). He conducted in search at this residence and recovered a sum of Rs.10,000/- from his possession being the stolen recovered money of the said case. He also recovered the motor cycle bearing No.WB24F-3050 from his house. During investigation he also recovered one private car. He stated that both the motor cycle and the private car were used during the commission of the crime. During investigation he came to know that the O.C. is a Constable of Kolkata Police posted to 2nd Bn of Kolkata Police working on deputation traffic deptt. The C.O. was produced before the Ld. Court of SDJM, Barrackpore and was remanded to P.O. till 29.11.03 on further production, the C.O. was remanded to jail custody and enlarged on Bail on 30.3.04. After completion of investigation he submitted charge-sheet against the C.O. & others u/s 395/412 CPC, 25/27/35 Arms Act During cross examination, the P.W. stated that he seized motor cycle was registered in the name of Sri Swapan Ghosh and the same was seized from the possession of Swapan Ghosh. During cross examination the P.W. stated that it is not a fact that the C.O. has no complicity into the case. After thorough investigation & enquiry prima facie charge established against the C.O. and others.”

11. The Enquiry Officer believed the evidence of PW3 and concluded that the charges levelled against the respondent were proved beyond any shadow of doubt, except the charge that the respondent stayed out without permission. PW3 had categorically stated that he conducted a search at the residence of the respondent and recovered a sum of Rs.10,000/- from his possession being the stolen money. He had also recovered the motor cycle bearing No.WB24F-3050 from the respondent's house which was used for the commission of the crime. During the investigation, he had also recovered one private car from the respondent's residence. Investigation revealed that both the motor cycle and the private car were used during the commission of the crime.

12. We have gone through the judgment of the Sessions Court. Sessions Court though acquitted the accused persons including the respondent, concluded as follows :-

“While there are vital evidence on the record regarding recovery of money, recovery of firearm, recovery of unused writing pad of Dr. R.P. Mitra, but the most vital missing link is the identification made by him in the TI Parade but because of the time lag between the date of incident and the date of TI Parade and the date of his statement u/s 164 Cr.P.C. (1.12.03) and the further time lag of about six days for the

TI Parade on 6.12.03 does not convince my mind to accept such evidence relating to identity of the accused persons during the trial could not be bridged by the prosecution through any evidence. The prosecution, therefore, fails as the identity of the accused persons has not been established before the Court during the trial.”

13. We, therefore, notice that both the Disciplinary Authority as well as the Sessions Court were of the view that there are vital evidence on record regarding recovery of money, fire arms and recovery of unused writing pad of Dr. R.P. Mitra, PW3, the SI deposed further that the money was recovered from the house of the respondent so also the motor bike as well as the car. The Sessions Court, however, had to acquit the respondent since Dr. R.P. Mitra could not identify him during the TI Parade. On going through the judgment of the Sessions Court, it cannot be said that the respondent was honourably acquitted.

14. In *Deputy Inspector General v. S. Samuthiram*<sup>1</sup> this Court in paragraph 24, 25 and 26 of the judgment has elaborately examined the meaning and scope of the “honourable acquittal” and held as follows :-

“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

15. The judgment of *S. Samuthiram* (supra) was later followed by another Bench of this Court in *Commissioner of Police, New Delhi & Anr. V. Mehar Singh*<sup>2</sup>

16. We indicate that the respondent could not lay his hand to any rule or regulation applicable to the Police Force stating that once an employee has been acquitted by a Criminal Court, as a matter of right, he should be reinstated in service, despite all the disciplinary proceedings. In otherwise there is no rule of automatic reinstatement on acquittal by a Criminal Court even though the charges levelled against the delinquent before the Enquiry

Officer as well as the Criminal Court are the same. On this aspect, reference may be made to para 27 of the judgment in *S. Samuthiram (supra)*, which reads as under:-

“27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.”

17. Regulation 4 of Chapter 19 of the Police Regulations of Calcutta, 1968, which is applicable to the case in hand, specifically provides that acquittal or discharge in a criminal proceeding shall not be a bar to award punishment in a departmental proceeding in respect of the same cause or matter. The said Regulation is extracted below for easy reference :

“4. Discharge or acquittal not a bar to departmental punishment. - An order of discharge or acquittal of a Police Officer shall not be a bar to the award of departmental punishment to that officer in respect of the same cause or matter.”

18. Above rule indicates that even if there is identity of charges levelled against the respondent before the Criminal Court as well as before the Enquiry Officer, an order of discharge or acquittal of a police officer by a Criminal Court shall not be a bar to the award of the departmental punishment. The Tribunal as well as the High Court have not considered the above-mentioned provision and have committed a mistake in holding that since the respondent was acquitted by a Criminal Court of the same charges, reinstatement was automatic. We find it difficult to support the finding recorded by the Tribunal which was confirmed by the High Court. We, therefore, allow the appeal and set aside the order of the Tribunal, which was affirmed by the High Court. However, there will be no order as to costs.

Judgment Referred.

<sup>1</sup>(2013) 1 SCC 0598

<sup>2</sup>(2013) 7 SCC 0685