SUPREME COURT OF INDIA

S.Bhaskar Reddy

Vs.

Superintendent of Police

C.A.No.10592 of 2014

(V.Gopala Gowda and C.Nagappan JJ.)

28.11.2014

JUDGMENT

V.GOPALA GOWDA, J.

1. Leave granted.

2. Aggrieved by the impugned judgment and order dated 07.02.2011 passed in W.P. No. 28464 of 2008, by the then High Court of Andhra Pradesh at Hyderabad, the appellants have filed this appeal, framing certain questions of law, urging various legal grounds in support of the same and praying to set aside the impugned order and restore the order dated 27.11.2008 of the Andhra Pradesh Administrative Tribunal at Hyderabad (in short "the Tribunal") passed in OA No. 2767 of 2007.

3. Brief facts of the case are stated hereunder for the purpose of examining the rival legal contentions urged on behalf of the parties and to find out whether the impugned judgment warrants interference by this Court in exercise of its appellate jurisdiction.

4. The appellants herein were appointed as Armed Reserve Constables by the Superintendent of Police Chittoor, Andhra Pradesh. They were transferred on deputation basis to the Office of the Superintendent of Police, Railways, Guntakal, to discharge their duties in that establishment. While they were on deputation with the Railway Police, it is alleged that they were implicated in a murder case and the charge

memo was issued to them on 11.09.2004. The Deputy Superintendent of Railway Police was appointed as an Enquiry Officer to enquire into the charges against them. On 13.06.2005, the Enquiry Officer after affording an opportunity to the appellants submitted his enquiry report. Subsequently, they were repatriated to their parent department. On 27.03.2007, the borrowing department-the first respondent herein passed the orders of dismissal of both the appellants from the services of the police department.

5. The appellants, aggrieved by the orders of dismissal passed against them by the first respondent filed original application before the Tribunal urging various legal grounds. The case of the appellants before the Tribunal was that the order of dismissal passed against them by the first respondent is a major penalty, as enumerated under Rule 9 (ix) of the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1991 (in short 'the Rules') and that the first respondent being the borrowing authority has no competence to pass orders of dismissal against the appellants. Only the second respondent, who is the lending authority, has got the competence under Rule 30 of the Rules.

6. The Tribunal after considering the factual and rival legal contentions and appreciating the material evidence on record set aside the orders of dismissal passed against the appellants.

7. Aggrieved by the order, the Superintendent of Police, Railways, challenged the correctness of the judgment and order passed by the Tribunal before the then High Court of Andhra Pradesh by filing a Writ Petition under Articles 226 and 227 of the Constitution of India urging certain legal grounds.

8. The High Court allowed the writ petition after interpreting the first proviso to Rule 16 of the Rules stating that the first respondent is the competent authority to pass the order of dismissal against the appellants as they were working in the Railway Police wing at Aanthapur District at the time of occurrence of the said criminal acts. Hence, this appeal by the appellants.

9. Ms. S. Janani, the learned counsel on behalf of the appellants has contended that the appellants were appointed in the Office of the Superintendent of Police, Chittoor, which is entirely a separate unit of appointment and they were sent on deputation to

the Office of the Superintendent of Police, Railways, which is a separate legal entity altogether. The transfer as referred to in the first proviso to Rule 16 of the Rules is not applicable to the fact situation for the reason that the words "transfer on deputation" does not mean to say that they were transferred to the Railway unit of the police department, which is the Central Government Department as the Railway Police wing is required to be manned by the Andhra Pradesh Police. Hence, the first proviso to Rule 16 of the Rules is not applicable and Rule 30 of the Rules should have been applied to the case of the appellants as the first respondent being the borrowing authority has conducted enquiry through its enquiry officer. Therefore, the borrowing authority is not the competent Disciplinary Authority to impose the major penalty of dismissal on the appellants as provided under Rule 9 clauses (vi) to (ix) of the Rules. The enquiry records should have been transmitted to the parent department, which is the Disciplinary Authority to consider the enquiry report and pass appropriate orders as provided under Rules 9 and 10 of the Rules.

10. Alternatively, the counsel for the appellants has contended that neither the Tribunal nor the High Court has examined the legal aspect in relation to the order of honourable acquittal passed by the First Additional District Judge, Ananthapur, in the Sessions Case No. 326 of 2005 by its judgement dated 25.06.2007 after regular trial was conducted against them. In support of this contention the learned counsel has placed strong reliance upon the judgments of this Court in the cases of Capt.M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.[1] and G.M. Tank v. State of Gujarat and Ors.[2] in support of the proposition of law on honourable acquittal of the delinquent employees against such order of dismissal.

11. The said legal contention has been strongly rebutted by Mr. Guntur Prabhakar, the learned counsel on behalf of the respondents placing strong reliance upon the interpretation made by the High Court on the first proviso to Rule 16 of the Rules stating that Rule 30 of the Rules is not applicable to the fact situation by placing reliance upon the counter affidavit filed by the Principal Secretary of the Home Department, Government of Andhra Pradesh, Hyderabad, wherein he has sworn in to the fact that the appellants were originally appointed as Armed Reserve Constables in Chittoor District by the second respondent and subsequently transferred on deputation to Railway Police Guntakal, Anantapur on tenure basis. Though, the second respondent is the appointing authority of the appellants but the first respondent of the Railway Police is also the disciplinary authority along with the second respondent.

12. It is further contended that the first respondent has conducted enquiry on the charges levelled against the appellants after they were suspended from service, after following Rule 8 (1) (c) of the Rules. The appellants were repatriated to their parent unit under order of suspension issued by the Additional Director General of Police, Railways.

13. The first respondent after following the due procedure under the Rules, in exercise of the statutory power conferred upon him under the first proviso of Rule 16 of the Rules, vide G.O.Ms. No. 284 dated 07.07.1997 issued the final orders of dismissal of the appellants from their service vide proceedings C.No.123/OE-PR/2004 dated 05.03.2007 and the copies of final orders sent to the Superintendent of Police, Chittoor vide C.No.123/OE-PR/2004, dated 17.03.2007, for service on the appellants. Therefore, the High Court has rightly held that the first respondent is the competent Disciplinary Authority to impose any one of the major penalties on the Police personnel on the proved charges of misconduct under Rule 9 clauses (vi) to (ix) of the Rules.

14. With reference to the above legal contentions urged on behalf of the parties, we have examined the findings and records recorded in the impugned judgment by the High Court to answer as to whether the first respondent is the competent Disciplinary Authority to pass an order of dismissal against the appellants or not and for what relief they are entitled in their proceedings.

15. To answer the above contentions raised before us, it would be necessary for us to refer to the first proviso to Rule 16 of the Rules which reads thus:

> "16.Disciplinary authority in case of promotion or transfer of a member of a service and on reversion or reduction therefrom:-
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> (1) Where, on promotion or transfer, a member of a service in a class, category or grade is holding an appointment in another class, category or grade thereof or in another service, State or Subordinate, no penalty shall be imposed upon him in respect of his work or conduct before such promotion or transfer except by authority competent to impose the penalty upon a member of the service in the latter class, category, grade or service, as the case may be. This provision shall

apply also to cases of transfer or promotion of a person from a post under the jurisdiction of one authority to that of another authority within the same class, category or grade; Provided that the authority which may impose any of the penalties on a member of the Andhra Pradesh Police Subordinate Service or the Andhra Pradesh Special Armed Police Service or the Deputy Superintendent of Police or Assistant Commissioner of Police in category 2 and the Inspector of Police in category 4 of the Andhra Pradesh Police Service in cases not involving promotion or appointment by transfer, shall be the competent authority having jurisdiction over such member at the time of commission of such act or omission, as the case may be or any authority to which it is subordinate;

Provided further that in case of a member of the Andhra Pradesh Police Subordinate Service or the Andhra Pradesh Special Armed Police Service, an Officer superior to the competent authority may, for reasons to be recorded In writing, transfer a record of enquiry in a disciplinary case from the competent authority to any other authority holding the same rank for disposal."

Further, the G.O.M Nos. 676 and 487 dated 09.11.1990 and 14.09.1992 respectively, issued by the Section Officer, Home Department, A.P. Secretariat, Government of Andhra Pradesh and Appendix IV on Rule 14 (2) and Rule 34 (1) III in the amendment to the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1991 attached therewith, considers the first respondent as the competent Disciplinary Authority to pass an order of dismissal against the appellants.

16. The respondents have made available the appointment orders of the appellants in D.O.No.1122/92 (A1/1250/276/91) in July, 1992, wherein it is specifically stated that they were required to give an undertaking to the second respondent to serve in the Railway Police for a period of 5 years and were required to undergo necessary training at APSP Battalions and were further required to report before the RIAR, Chittoor for duty on 22.07.1992. The transfer order D.O.No.1102/2003 (C/1/8552/495/02) and D.O.No.444/ 2003 (A1/8552/495/02) were issued to the appellant Nos. 1 & 2 dated 16.07.2003 and 25.03.2003 respectively; as per the undertaking given to the Police Department to serve the Railway Police for a period of five years.

17. The alleged mis-conduct was said to have been committed by the appellants while

they had been working in the Railway Police at Anantapur Department. The disciplinary proceedings were initiated against them by the first respondent by appointing the Enquiry Officer as he was the competent officer to pass an order to initiate the disciplinary proceedings against the appellants as per the G.O.Ms No.284 dated 07.07.1997 and Appendix IV, referred to supra. Therefore, merely because the word "deputation" is used in the transfer order issued to the appellants by the second respondent, it cannot be said that first proviso to Rule 16 of the Rules is not applicable to the case on hand. In this regard categorical statement of fact is sworn to in the affidavit filed by the Principal Secretary to the Home Department of Andhra Pradesh, it is stated that the Railway Police, CID, Intelligence and Police, Training Colleges are the specialised branches of the Police Department, they are part and parcel of the Police Department. This statement of fact sworn by the Principal Secretary of the Home Department has to be accepted in view of the fact that the appellants and similarly placed police constables have given an undertaking to the second respondent that they would serve in Railway Police for a period of five years during their tenure of service in the police department. Therefore, it is not open for them to contend that the Railway Police is not a part of the Police department of the State of Andhra Pradesh but the department of Central Government. No doubt, Railways is the department of the Central Government, but the appellants were posted to work as Railway Police by way of transfer order to give police protection to the Railway property and commuters and look after other incidental matters. Therefore, the finding of the High Court in its judgment, on the contentious issue regarding the competency of the first respondent by placing reliance upon first proviso to Rule 16 of the Rules is correct in law. Further, Rule 30 of the Rules upon which strong reliance has been placed by the appellants' counsel has no application to the fact situation for the reason that the appellants were not transferred to the Railway department, which belongs to the Central Government but worked in the Railway Police wing which is one of the specialised wing of the Police Department of the State of Andhra Pradesh as stated in the affidavit by the Principal Secretary of the Home department. The appellants were required to function under the Railways as per their undertaking given to the department and therefore they were transferred to the Railway Police, which is one of the specialised wing and hence it cannot be contended by them that the Railway wing is under the control of the Central Government. The High Court in view of the facts as stated above with reference to the first proviso to Rule 16 of the Rules has rightly set aside the findings recorded by the Tribunal in its judgment by correctly interpreting Rules 16 and 30 of the Rules. In view of the foregoing reasons, the same does not call

for our interference in this appeal as we are of the view that the police personnel of the Police Department of Andhra Pradesh are required to serve in the Railway Police. Accordingly, we hold that the legal contentions urged on behalf of the appellants that the second respondent is the competent Disciplinary Authority and not the first respondent by placing reliance on Rule 30 of the Rules is rejected as the same is erroneous in law.

18. Now, we have to examine the alternative plea urged on behalf of the appellants that the orders of dismissal passed against them are liable to be set aside in view of the judgment and order passed by the Criminal Court after the trial in which proceeding the appellants were honourably acquitted, when the charges in both the proceedings are almost similar. The decisions of this Court referred to supra, upon which strong reliance is placed by the learned counsel for the appellants are aptly applicable to the case on hand.

19. It is an undisputed fact that the charges in the criminal case and the Disciplinary proceedings conducted against the appellants by the first respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offences of IPC and SC/ST (POA) Act. Our attention was drawn to the said judgment which is produced at Exh. P-7, to evidence the fact that the charges in both the proceedings of the criminal case and the Disciplinary proceeding are similar. From perusal of the charge sheet issued in the disciplinary proceedings and the enquiry report submitted by the Enquiry Officer and the judgment in the criminal case, it is clear that they are almost similar and one and the same. In the criminal trial, the appellants have been acquitted honourably for want of evidence on record. The trial judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the offences punishable under 3 (1) (x) of SC/ST (POA) Act and under Sections 307 and 302 read with Section 34 of the IPC. The law declared by this Court with regard to honourable acquittal of an accused for criminal offences means that they are acquitted for want of evidence to prove the charges. The meaning of the expression "honourable acquittal" was discussed by this Court in detail in the case of Deputy Inspector General of Police & Anr. v. S. Samuthiram[3], the relevant para from the said case reads as under :-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

(Emphasis laid by this Court) After examining the principles laid down in the above said case, the same was reiterated by this Court in a recent decision in the case of Joginder Singh v. Union Territory of Chandigarh & Ors. in Civil Appeal No. 2325 Of 2009 (decided on November 11, 2014.

Further, in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. (supra) this Court has held as under:-

"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 there from". 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 appellant 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 instant case."

(emphasis laid by this Court) Further, in the case of G.M. Tank v. State of Gujarat and Ors.(supra) this Court held as under:-

"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 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 [pic]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 laid by this Court)

20. The High Court has not considered and examined this legal aspect of the matter while setting aside the impugned judgment and order of the Tribunal. The Tribunal has also not considered the same. We have examined this important factual and legal aspect of the case which was brought to our notice in these proceedings and we hold that both the High Court and Tribunal have erred in not considering this important undisputed fact regarding honourable acquittal of the appellants on the charges in the criminal case which are similar in the disciplinary proceedings.

21. We have answered the alternative legal contention urged on behalf of the appellants by accepting the judgment and order of the Sessions Judge, in which case they have been acquitted honourably from the charges which are more or less similar to the charges levelled against the appellants in the Disciplinary proceedings by applying the decisions of this Court referred to supra. Therefore, we have to set aside

the orders of dismissal passed against the appellants by accepting the alternative legal plea as urged above having regard to the facts and circumstances of the case.

22. Since we are of the view that the appellants are entitled to alternative relief, it would be appropriate for us in this case to pass an order of Compulsory Retirement for them from their service as provided under Rule 9 clause (vii) of the Rules taking their service from the date of their appointment. The said benefit should be extended to them from the date they are entitled under the Rules by taking into consideration the period spent in these litigation from the date of their order of dismissal till this date and pay all the monetary pensionary benefits including arrears of the same treating them as compulsorily retired from their service with effect from the date of judgment and order dated 25.06.2007 passed by the learned First Additional District and Sessions Judge, in the Sessions Case No. 326 of 2005.

23. This appeal is partly allowed in the following terms:-

(i) The appeal against the impugned judgment and order of the High Court in so far as the competency of the first respondent Disciplinary Authority is concerned, is accepted as the same is legal and valid. Accordingly, the issue is answered in favour of the respondents.

(ii) The orders of dismissal passed against the appellants are set aside, but they are not required to be reinstated in their service along with the consequential benefits including back wages. But in its place, we pass an order of compulsory retirement against them and pay the pensionary benefits including the arrears, treating them as compulsorily retired from their service with effect from the date of judgment and order passed by the learned First Additional District and Sessions Judge, i.e. with effect from 25.06.2007.

This order shall be given effect by the respondents within six weeks from the date of receipt of a copy of this Judgment and order.

[1] (1999) 3 SCC 679
[2] (2006) 5 SCC 446
[3] (2013) 1 SCC 598