

SUPREME COURT OF INDIA

Shashi Bhusan Prasad

Vs.

Inspector General Central Industrial Security Force

C.A.No.7130 of 2009

(N.V.Ramana,J., Mohan M.Shantanagoudar and Ajay Rastogi,JJ.,)

01.08.2019

JUDGMENT

Ajay Rastogi,J.,

1. This appeal is directed against the final judgment and order dated 17th July, 2008 passed by the High Court of Orissa dismissing the writ petition filed by the appellant.

2. The brief seminal facts which may be relevant for consideration of the present appeal are that while serving as Constable in Central Industrial Security Force (in short “CISF”) Unit, Rourkela Steel Plant, Rourkela, a criminal case was instituted against the appellant in Plantsite P.S. Case No. 378 of 1992 under Section 25(1) of the Arms Act and he was arrested on 30th November, 1992 on the allegation that he had provided a country made revolver to Subash Chandra Agarwalla, who murdered his aunt with it, giving rise to Sessions Trial No. 188/41 of 1993. At the same time, for a gross misconduct being committed by him in discharge of his duties, disciplinary proceedings were initiated against him by serving a Memorandum along with the charge-sheet dated 9th February, 1993 under Rule 34 of CISF Rules, 1969.

3. After holding disciplinary inquiry in terms of the procedure prescribed under the scheme of Rules, 1969, the Inquiry Officer after due compliance of the principles of natural justice, recorded a finding of guilt and the charge against the delinquent appellant stood proved as it reveals from the report of Inquiry(Annexure P-4 of the paper book) dated 27 th April, 1994. After copy of the inquiry report was made available to the appellant and after affording him an opportunity of hearing, the Disciplinary Authority concurred with the finding recorded by the Inquiry Officer and while upholding the guilt inflicted him with a penalty of dismissal from service vide Order dated 21st May, 1994. It may be relevant to note that the Sessions Trial No. 188/41 of 1993 was also proceeded against him and it reveals from the record that since the material prosecution witnesses stood hostile, he was acquitted by the competent Court of jurisdiction vide judgment dated 12th September, 1995.

4. Being dissatisfied with the order of dismissal passed by the Disciplinary Authority, the

appellant preferred departmental appeal primarily on the ground that since he has been acquitted in the criminal case which is based on the same set of facts and evidence, the order of dismissal passed by the Disciplinary Authority is not legally sustainable. The appeal was rejected by the appellate authority vide order dated 24th April, 1996 which was further assailed before the Revisional Authority that also met with the fate of its dismissal. That came to be challenged in a Writ Petition before the High Court under Articles 226 and 227 of the Constitution of India. The High Court of Orissa, on appraisal of the material on record and taking note of the submission alleged by the appellant of his acquittal in the criminal trial vide judgment dated 12th September, 1995 still had faced the order of dismissal by the Disciplinary Authority being not sustainable but the High Court after examining in totality the facts and circumstances of the case, dismissed the writ petition vide judgment dated 17th July, 2008 which is a subject matter of appeal before us.

5. The main thrust of submission of learned counsel for the appellant is that since both the criminal/departmental proceedings were based on same set of facts and evidence, and after he has been acquitted by the Court of competent jurisdiction vide judgment dated 12th September, 1995, the Disciplinary/Appellate Authority was under an obligation to give precedence of the judicial proceedings and in the given circumstances, inflicting penalty of dismissal from service based on the report of inquiry was not legally sustainable and further submitted that the error has not only been committed by the departmental authorities but also by the High Court in not appreciating the submission made by the appellant in its right earnest and in the given circumstances, the judgment impugned dated 17th July, 2008 deserves to be interfered by this Court.

6. In support of his submission, learned counsel for the appellant has placed reliance on the judgment of this Court reported in *M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Ors*¹. and *G.M. Tank Vs. State of Gujarat and Ors*²

7. Per contra, learned counsel for the respondents, on the other hand, while supporting the finding recorded by the High Court under the impugned judgment dated 17th July, 2008 further submits that the charge in a departmental inquiry and in the criminal case stood against the appellant were totally different, in the criminal case he was charged for committing an offence under Section 25(1)(a) of the Arms Act, while in the departmental inquiry, the charge was of a delinquency which he committed in discharge of his duties in handing over an unlicensed fire arm with ammunitions(a country made revolver) concealed in a brief case at the residence of Constable S.P. Patel on 19th November, 1992 which has facilitated Subash Chandra Agarwalla (accused) in a criminal case against in committing an offence under Section 302/392 IPC and under Section 27 of the Arms Act.

8. According to the learned counsel, both the allegations are based on different sets of facts and evidence having no co-relationship and once the appellant has been held guilty in a disciplinary inquiry has been rightly punished with the penalty of dismissal from service, having no nexus with the judgment of acquittal passed by the Court of competent jurisdiction.

9. Learned counsel further submits that what being urged by the appellant has been

examined by the High Court and this being the settled principles of law that in a disciplinary inquiry one has to proceed on the “preponderance of probability” whereas in the criminal case, the charge is to be “proved beyond reasonable doubt” being based on two sets of fundamental principles which has been examined by the High Court in extenso needs no interference by this Court.

10. We have heard learned counsel for the parties and with their assistance perused the material available on record.

11. At the outset, it may be apposite to take note of the Article of charge which was imputed against him in the departmental proceedings: -

“No : 884481265 Constable Sashi Bhushan Prasad is charged with gross misconduct and serious breach of discipline unbecoming of a member of the armed force in that he handed over an unlicensed fire arm with ammunitions (a country made revolver) concealed in a brief case at the residence of No. 88441220 Constable S.P. Patel on 19.11.92 in the evening by suppressing the fact that the same was used in a case of murder in the same day.”

12. Disciplinary inquiry was held against him under Rule 34 of CISF Rules, 1969 for the gross misconduct and serious breach committed by him in discharge of his official duties in handing over unlicensed fire arm with ammunitions (a country made revolver) concealed in a brief case at the residence of Constable S.P. Patel on 19th November, 1992 and in support of the charge, the statement of PW-5 Smt. Laxmi Patel w/o Constable S.P. Patel was recorded. In the course of disciplinary inquiry, she had categorically stated that the appellant Constable came to her house in the evening and handed over small brief case to her for keeping it in the house. When she asked the appellant at the time of handing over of the brief case as to what it contained, the appellant replied that it contained clothes. When her husband came back from duty, she told him of the brief case handed over to her by the appellant for keeping it in the house. Her husband PW-4 Constable S.P. Patel also narrated the fact which was reported by his wife PW-5 Laxmi Patel when he returned back on 19th November, 1992.

13. There was further allegation against him that he had suppressed the fact that the country made revolver was used in the murder case the same day. After an independent inquiry was conducted by the Inquiry Officer the charge stood proved against him and it was confirmed by the Disciplinary Authority, after affording him an opportunity of hearing, and being a serious misconduct on the part of the appellant, which he had committed in discharge of duties, penalty of dismissal was inflicted upon him, after due compliance of the principles of natural justice in terms of the scheme of CISF Rules 1969 and that came to be confirmed on rejection of his appeal/revision by the Appellate/Revisional Authority and also by the High Court on dismissal of the writ petition vide judgment dated 17th July, 2008.

14. At the same time, in the criminal case which was instituted against him, the charge against the appellant was “Accused Sashi bhusan Prasad stands charged U/s 25(1)(a) of the

Arms Act. ”

15. So far as the charge in the departmental inquiry and the charge in the criminal case is concerned, indubitably it was different having been inquired on an independent set of facts and evidence in a departmental/judicial proceedings. That apart, the fact which reveal from the judgment of acquittal passed by the Court of competent jurisdiction dated 12th September, 1995 that Shankar Prasad Patel and his wife Laxmi Patel had appeared in a criminal case as PW-4 and PW-5 and both were declared hostile. Apart from that, the other material witnesses were also declared hostile and that was the reason for which the Court came to the conclusion that the prosecution failed to prove the charge against him while acquitting him vide judgment dated 12th September, 1995.

16. The facts noticed by us which have been inquired in a disciplinary inquiry and in the judicial proceedings indisputably are based on different allegations and the set of evidence not based on the same facts and circumstances and in the given situation, the very submission made by the appellant of taking the benefit of acquittal in a judicial proceedings instituted against him on the plea of having nexus with the disciplinary inquiry loses its foundation.

17. The scope of departmental enquiry and judicial proceedings and the effect of acquittal by a criminal Court has been examined by a three Judge Bench of this Court in *Depot Manager A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miua and Others*³. The relevant para is as under:-

“...The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the

departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings.”

(Emphasis supplied)

18. The exposition has been further affirmed by a three Judge Bench of this Court in *Ajit Kumar Nag Vs. General Manager (PJ). Indian Oil Corporation Limited, Haldia and Others*⁴, this Court held as under: -

“As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention

of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

(Emphasis supplied)

19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of 'preponderance of probability'. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court.

20. The judgment in M. Paul Anthonu case (supra) on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under:-

“The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

21. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and evidence having no nexus/co-relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the Inquiry Officer had held him guilty, he was punished with the penalty of dismissal from service.

22. The judgment in G.M. Tank case(supra) on which the learned counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the charge in the criminal case and departmental enquiry were different having no nexus/co-relationship based on different sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service.

23. It is not the case of the appellant that any error committed in the procedure prescribed under the scheme of Rules 1969 has been violated or opportunity to hearing has not been afforded or the principles of natural justice has been violated, in absence thereof, it is otherwise not open for the Courts to interfere in the disciplinary proceedings under its limited scope of review under Articles 226 & 227 of the Constitution of India.

24. Consequently, in our considered view, the appeal is without substance and is accordingly dismissed. No costs.

25. Pending application(s), if any, stand disposed of.

Judgment Referred.

¹(1999) 3 SCC 0679

²(2006) 5 SCC 0446

³(1997) 2 SCC 0699

⁴(2005) 7 SCC 0764