

(2016) 01 CAL CK 0019
In the Calcutta High Court
Case No : WP No. 86 (W) of 2016

Anjan Biswas

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 409, Section 420

Citation : (2016) 1 CalLT 322 : (2016) 149 FLR 338 : (2016) LabLR 645 :
(2016) 6 SLR 514

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Soumya Majumder, Anindya Lahiri and Robi Kumar Dubey,
Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—1. The petitioner asserts that when an employee of a government or public body is simultaneously proceeded against in departmental and criminal actions on identical or similar charges, the employee's honourable acquittal in the criminal proceedings would, ipso facto, bring the departmental action to an end.

2. Only the rudimentary facts need to be noticed for the present purpose. By a memorandum of March 3, 2014, the petitioner, an assistant manager then posted at the New Jalpaiguri Branch of the Central Bank of India, was forwarded the articles of charge for having acted fraudulently and caused prejudice to the bank. Several counts of fraudulent transactions by debiting or crediting several bank accounts were listed. The memorandum indicated that the bank perceived that the petitioner indulged in the fraudulent transactions with an intention to defraud the bank, expose it to grave financial consequences and damage its reputation. The bank felt that the petitioner had failed to discharge his duties with the devotion or diligence or integrity or honesty befitting a bank officer. A statement

of imputation of misconduct in support of the articles of charge was appended to the memorandum. On December 13, 2013 a written complaint was lodged with the appropriate police station in respect of some of the same perceived fraudulent transactions, alleging that the petitioner had committed offences under Sections 409/420 of the Indian Penal Code.

3. The petitioner instituted WP No. 13315(W) of 2014 in this court on the ground that since the same acts or set of acts were the subject-matter of both the disciplinary proceedings and the then impending criminal trial as the charge-sheet had already been submitted, the two sets of proceedings could not be continued in tandem. Such petition succeeded and, by an order of June 3, 2014, the criminal court was requested to ensure that the trial was completed within a year of the communication of the order. The disciplinary proceedings were directed to remain stayed till the conclusion of the criminal trial.

4. The criminal trial has culminated in an order of acquittal of December 7, 2015. Buoyed by the success in the criminal proceedings, the petitioner insists that the disciplinary proceedings should now be arrested and the petitioner should not be subjected to the similar charges being reassessed.

5. The petitioner submits that once an employee has been acquitted of the criminal charges, it is not desirable to pursue the disciplinary action against him on a similar set of charges. In particular, the petitioner maintains, that when an employee has been honourably acquitted as the petitioner in this case, the disciplinary action should immediately be quashed and not permitted to be proceeded with any further as the finding of a judicial authority cannot be revisited by a quasi-judicial authority in the disciplinary proceedings.

6. In support of the petitioner's contention, several judgments have been cited, beginning with the one reported at , (2015) 2 SCC 365 (S. Bhaskar Reddy v. Superintendent of Police) where the honourable acquittal of the concerned employees in the criminal proceedings weighed with the court in setting aside the orders of dismissal passed in the disciplinary proceedings by accepting their plea for compulsory retirement. The petitioner has also relied on a judgment reported at , (2015) 3 SCC 101 (SBI v. R. Periyasamy) where the concurrent orders of the high court setting aside the employee's dismissal from service were reversed.

7. Since the two primary judgments placed by the petitioner referred to several other judgments, four of the precedents noticed in the 2015 judgments of the Supreme Court have also been cited by the petitioner for the completeness of the discussion. In the judgment reported at , (2006) 5 SCC 446 (G.M. Tank v. State of Gujarat), a criminal case had been brought against the employee under the Prevention of Corruption Act, 1947 several years after his dismissal from service for having properties disproportionate to his known sources of income. The order of punishment provided for the dismissal of the employee from service which was upheld by the single Bench and the Division Bench in the high court. However, before the Division Bench considered the appeal the employee had been

honourably acquitted of the criminal charges and the Supreme Court held that since the acquittal was "by way of complete exoneration and not by giving benefit of doubt", the Division Bench of the high court erred in overlooking such fact while affirming the order of punishment.

8. The judgment reported at , (1981) 2 SCC 714 (Corporation of Nagpur City, Civil Lines v. Ramchandra) has been placed for the discussion at paragraph 6 thereof as to the effect of an order of honourable acquittal in the criminal proceedings on the disciplinary action. A more recent judgment reported at , (2013) 7 SCC 685 (Commissioner of Police v. Mehar Singh) has been placed by the petitioner to emphasise on the meaning of the expression "honourable acquittal". A judgment reported at , (1964) 5 SCR 431 (R.P. Kapur v. Union of India) noticed in some of the other judgments cited, has also been carried by the petitioner to suggest that an honourable acquittal in the criminal proceedings should automatically result in the departmental action based on similar charges being dropped.

9. There are two sides to an identical legal issue: whether criminal and departmental actions on similar charges can proceed simultaneously; and, the extent to which an order in one set of proceedings can affect the other. The propriety of staying departmental proceedings pending criminal trial founded on similar allegations has been recently discussed in an order of January 4, 2016 in WP 28039 (W) of 2015 (Tamal Chanda v. The State Bank of India). Several judgments were considered in rendering the opinion in Tamal Chanda where the prayer for staying the criminal proceedings was founded on the famous judgment reported at , (1999) 3 SCC 679 (Capt. M. Paul Anthony v. Bharat Gold Mines Limited). Without the judgment in Tamal Chanda laying down any strict rules as to when one set of proceedings ought to be stayed during the currency of the other, the issue was approached by ascertaining the nexus of the act of misconduct complained of with the usual line of duty of the concerned employee.

10. It must first be emphasised that several factors are relevant both for assessing whether one set of proceedings should be arrested during the continuation of another and for weighing the impact of the final outcome in one set of action on the other when both sets of proceedings are founded against the concerned employee on similar allegations. It is possible that the completion of the criminal investigation and the filing of the charge-sheet in the criminal proceedings prompts the court in a matter to stay the departmental action pending the criminal trial; though on the same allegations the departmental action may have been permitted to be concluded if the criminal proceedings appeared not to have ripened for a trial.

11. But it appears reasonable for the court to inquire into the nature of charges levelled in the parallel sets of proceedings: first to ascertain whether they are identical or similar and, if found similar, as to whether they have a direct nexus with the usual functioning of the charged employee or are incidentally connected therewith or are totally outside the usual line of duty of the employee. These

tests may be useful particularly as criminal trials are prone to inordinate delays and it is judicially recognised that orders of suspension cannot be continued indefinitely.

12. It is best to start with the obvious: that when a criminal complaint against an employee pertains to a different set of allegations than on which the disciplinary action is based, there is no case of parallel proceedings or the consequential need to arrest one till the conclusion of the other. But since the obvious may not always be apparent or easy to discern, the test will be whether the same set of facts form the basis of both the departmental action and the criminal proceedings, irrespective of the distinct natures of punishment that may result in if the charges are established.

13. It is possible that a criminal charge is brought against an employee in respect of a matter which is totally unconnected with his line of duty and the departmental action is initiated as a consequence of the criminal charge being brought against him. There may also be parallel criminal and departmental proceedings against an employee in respect of similar charges which are somewhat connected to his line of duty but do not arise directly in course of the official duties discharged by such employee. Then, there could be both civil and criminal consequences of a perceived act of misconduct directly in course of the official functions discharged by an employee which result in simultaneous departmental and criminal actions being pursued against him. The other parameters that ought to be taken into consideration in every individual case may depend on the nexus of the similar charges levelled in the departmental and criminal proceedings against an employee with his line of duty.

14. The dictum in *Tamal Chanda* is that apart from the other relevant factors that ought to be considered in assessing whether the departmental proceedings should be stayed pending the criminal trial when the charges levelled against the employee are similar, as to whether such charges have a nexus with the line of duty of the employee would have a bearing on the matter. In other words, if an employee is charged with murder in an incident away from the workplace, it may almost invariably be appropriate to stay the departmental action pending the criminal trial. But if a charge of illegal gratification is brought against an employee in both departmental and criminal proceedings, it may not be appropriate in every case to arrest the departmental action pending the outcome of the criminal proceedings; but the order of punishment if passed in the departmental proceedings may be made subject to reconsideration upon the honourable acquittal of the employee in the criminal trial. Again, where the charges in the departmental and criminal actions are based on the same set of allegations which have a direct nexus with the usual duties discharged by the concerned employee, the writ court should be loath to stay the departmental action pending the criminal trial; but again permit the departmental proceedings to be concluded and the punishment, if any, to be implemented subject to the right of the employee to have the punishment reconsidered if honourably

acquitted in the criminal trial.

15. It appears that the same test of the nexus of the charge with the line of duty of the concerned employee may be apposite in assessing whether an order of acquittal in the criminal trial should result in the departmental action being quashed. The primary reasons for this is elementary: the standards of proof in the two sets of proceedings are completely different. The next reason is that the charge in the criminal proceedings may be wholly unconnected with the functions discharged by the concerned employee in the usual course of his duty and the charge may not have an effect of polluting the work atmosphere. Such a distinction must necessarily be made as personal enmity outside the workplace or reasons completely extraneous to the usual line of duties of the concerned employee may prompt a criminal case being filed against the employee. In such a situation, the acquittal of the employee of the criminal charge should, ordinarily, result in the departmental action following the order of acquittal; though if the charge is of sexual harassment or of moral turpitude, the employer must be left free to assess the facts by a different standard of proof than in criminal proceedings to ensure discipline, integrity and good behaviour at the workplace. But when the similar charges brought against an employee in both criminal and departmental proceedings have some nexus with the workplace or a direct nexus with the usual duties of the concerned employee, the order of acquittal in the criminal proceedings - honourable or otherwise - will only be a relevant consideration in the departmental proceedings. In any event, it cannot be said that as a matter of rule that an order of acquittal in the criminal proceedings - even if honourable - must result in the departmental action being dropped as no contrary view, on a different standard of proof, can be taken at the conclusion of the departmental action.

16. The judgments cited on behalf of the petitioner throw no light on such aspect of the matter and, in any event, lay down no rule that even an honourable acquittal in the criminal proceedings must result in the disciplinary action being altogether dropped. Jurisprudentially, the order on one set of proceedings should not affect the result in the other when similar charges are brought against an employee in both criminal and departmental proceedings. If similar charges are brought and, in the disciplinary action which is concluded before the criminal trial, the employee is acquitted of the charge on the test of preponderance of probabilities, it is highly unlikely that such employee may be found guilty in the criminal proceedings on the higher test of proof beyond reasonable doubt. But, generally, if the investigation in the criminal matter has culminated in charges being framed for the matter to be taken to a trial, the subsequent acquittal of the employee in the disciplinary action cannot prompt the court to drop the proceedings ahead of the trial. Similarly, if the guilt of the employee is not established in the criminal trial, unless the trial results in an honourable acquittal - which term is judicially defined - the order of acquittal may be taken into account in the departmental action, but it will not have the overwhelming effect of eclipsing the charge in the disciplinary action. In case the departmental action

has concluded before the criminal trial, the punishment that may have been suffered by the employee would require to be revisited only if the accused employee is honourably absolved of the charges at the conclusion of the criminal trial.

17. It is necessary, in such context, to ascertain the meaning of the expression "honourable acquittal" in service jurisprudence. In *Mehar Singh*, the Supreme Court observed that expressions as "honourable acquittal", "acquitted of blame", and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code and they had been coined by judicial pronouncements. The court noticed the majority view in the Constitution Bench judgment in *R.P. Kapur* "that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable" and attempted a definition of "honourable acquittal" in these simple words: "when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted." Such an order of acquittal was seen to be different from an "acquittal because witnesses turn hostile" and "acquittal based on benefit of doubt".

18. It is appropriate for the discussion that the high standards at the workplace set by the Supreme Court in *Mehar Singh* be noticed in somewhat greater detail, though that case pertained to the recruitment of constables in the Delhi Police and the decision hinged on a standing order that had not been expressly incorporated in the service rules. The legal issue framed by the Supreme Court at paragraph 18 of the report was "whether the candidature of the respondents who had made a clean breast of their involvement in a criminal case by mentioning this fact in their application/attestation form while applying for a post of Constable in Delhi Police, who were provisionally selected subject to verification of their antecedents and who were subsequently acquitted/discharged in the criminal case, could be cancelled by the Screening Committee of the Delhi Police on the ground that they are not found suitable for appointment to the post of Constable." The Court viewed the legal issue from the perspective of an existing employee facing criminal and departmental actions on similar charges. The judgment drew sustenance from the dictum in a judgment reported at , (2013) 1 SCC 598 (*Inspector General of Police v. S. Samuthiram*), where the acquittal of a police officer of a charge of eve-teasing in the criminal case was upon two material witnesses turning hostile, but the charge in the departmental action was established and the employee punished; with the Supreme Court reinstating the punishment despite it being set aside by the high court.

19. What emerges from the several authorities noticed herein is that when an employee is charged both in departmental and criminal proceedings on similar charges, anything other than an honourable acquittal in the criminal action would not have an impact on the departmental proceedings or in the subsequent assessment of the similar charge in the departmental proceedings. Even if the

similar charge in the two sets of proceedings may be unconnected with the line duty of the employee, the nature of the charge - for example, moral turpitude or sexual - may prompt the employer to pursue the departmental proceedings and a different result may ensue unless the acquittal in the criminal case is honourable.

20. That will imply that when the similar charge levelled against the concerned employee in the departmental and criminal actions pertains to the line of duty of such employee, an acquittal other than an honourable acquittal in the criminal proceedings should not result in the departmental action being dropped or an independent assessment on a different standard of proof being undertaken in course thereof.

21. In the present case, the criminal court held that the investigation was conducted in a perfunctory manner and no document had been brought on record in support of the charges. The criminal court observed that the "Investigating Officer submitted charge-sheet without seizing any document". Indeed, the criminal court lamented that,

"...Such poor and dismal performance of the prosecution would encourage an unscrupulous Government employee to inculcate (sic, indulge in) misappropriation of Government property/money and the authorities behind the prosecution case are liable for such failure of the prosecution case when it is noticed that no document/Ledger Book or other papers were seized by the police in order to substantiate the charge."

22. In the light of the observation of the criminal court, one can only be amazed at the gall of the petitioner to suggest that the order was one of honourable acquittal that prompted him to seek the very extraordinary order of the departmental action being arrested by an order in the nature of the declaration in proceedings under Article 226 of the Constitution. The present matter betrays the insulting assessment by the petitioner of the quality of adjudication in a high court, no less. It is also an abject failure of the system that this petitioner was confident that even if he did not get away with the chance that he took in filing the petition, he would not be visited by any untoward consequence. It is time that such petitioner and others of his ilk be sent a clear message: that frivolous litigants such as the present petitioner who clog the system that result in the deserving cases being delayed, will not get away lightly.

23. Since no case of the arrest of the departmental action midstream has been made out in the petition, WP No. 86(W) of 2016 is dismissed. The petitioner will pay costs assessed at Rs. 50,000/- to the West Bengal State Legal Services Authority within a fortnight from date, failing which the respondent bank will cause the payment to be made out of the salary or emoluments that may be due to the petitioner. In the event any of the charges levelled against the petitioner in the departmental action is established, irrespective of the order of punishment that may be made against him, he will be liable to pay the bank a further sum of

Rs. 1 lakh as punitive costs, which the bank will be entitled to withhold from any money that may be due to the petitioner.

24. Since the bank is not represented, the petitioner is directed to forward a copy of this order to the bank within a week from date.

25. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.