

(2009) 04 MAD CK 0250
In the Madras High Court
Case No : Writ Petition No. 28745 of 2006

C. Ganesan

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 17
Constitution of India, 1950 — Article 320(3)
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2009) 04 MAD CK 0250

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Mohanraj, for the Appellant; P. Gurunathan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner filed O.A. No. 9212 of 1997 before the Tamil Nadu Administrative Tribunal seeking to challenge the order of the first respondent in G.O. Ms. No. 74 Transport (H1) Department dated 02.04.1996. By the said order, the petitioner's appeal against the penalty imposed by the second respondent Director of Motor Vehicles Maintenance Department dated 15.02.1992 was rejected. The petitioner did not have the benefit of any interim order before the Tribunal.

2. The petitioner was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The charge against the petitioner was that he had beaten a Class 4 employee as he brought the water which was not potable, resulted in an injury and the victim being admitted to the Government General Hospital. There were also other charges including launching of a criminal case against the petitioner. After conducting an enquiry, the petitioner was imposed with a penalty of postponement of increment for three years with cumulative effect.

3. On notice from the Tribunal, the respondents have filed a reply affidavit dated 26.08.1999. In para 12 of the reply affidavit, it has been averred as follows:

It is submitted that the applicant had every opportunity to peruse any relevant record during the course of General Enquiry. The applicant obviously had not tried to do so. Further in his written statement to the enquiry officer, the applicant has not mentioned anything about the non-production of any records requested by him. Hence it is evident that only as an after thought and to introduce a legal angle, the applicant is now coming up with a submission that certain records were not produced to him. The contention of the applicant cannot be accepted as he had failed to avail the opportunities present before him.

4. In view of the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. No. 28745 of 2006.

5. Mr. Mohan Raj, learned Counsel for the petitioner contended that the petitioner was acquitted in the criminal case in S.C. No. 81 of 1990 by order dated 07.02.1992 by the Assistant Sessions Judge, Dharmapuri. Therefore, they ought not to have conducted an enquiry. Secondly, he submitted that the petitioner was a Union activist and he had been unjustly penalised.

6. In respect of the first contention, the petitioner relied upon the judgment of the Supreme Court in *G.M. Tank Vs. State of Gujarat and Another*, . The said judgment does not help the case of the petitioner since the Supreme Court went on the fact situation of that case. This could be seen from the following passage:

... In our opinion, such facts and evidence in the department 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 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's case* (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

7. Therefore, there is no disagreement with the earlier law laid down by the Supreme Court in the following cases:

(i) *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*,

(ii) *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*,

8. In *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, , it has been held as follows:

...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 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.

9. In Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., , it has been held as follows:

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 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 in a settled legal position. 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.

10. In State of Andhra Pradesh Vs. Sree Rama Rao, , the Supreme Court has held thus:

The judgments relied on by the learned Counsel appearing for the respondents are not 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.

11. In the present case, a perusal of the Criminal Court judgment shows that the acquittal of the petitioner was not honourable but on the ground of benefit of doubt. In fact, the learned Sessions Judge curiously held that the evidence of

P.Ws. 5 and 6 cannot be believed since they are officers and they are bound to support the prosecution. In essence, they are officially biased. It is also stated that there was no eye witness when the petitioner beaten up the Class 4 employee. But in the domestic enquiry, as laid down by the Supreme Court, it is not that charges should be proved beyond reasonable doubt but on the preponderance of probabilities, such evidence can be believed. G.M. Tank's case (cited supra) does not advance the case of the petitioner in the fact situation in this case.

12. Learned Counsel for the petitioner also relied upon the judgment of the Supreme Court in Union of India (UOI) and Others Vs. Naman Singh Sekhawat, . In para 29, the Supreme Court has held as follows:

29. It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods. His visit to the border for discharging his duties did not tantamount to misuse of the post or the authority. No evidence has been presented that he did not have the authority to go to the border side on official duties and even the department had not forbidden him from going to that place.

13. In the present case, as already held that the petitioner was acquitted only on the ground of benefit of doubt. Learned Counsel also submitted that though the first respondent consulted the Tamil Nadu Public Service Commission, he did not give the copy of the commission's recommendation. In this context, he placed reliance upon the decision of this Court in Union of India rep. by the Secretary to Government of India, Ministry of Defence, Department of Revenue (Central Board of Excise and Customs), New Delhi and Another v. The Registrar Central Administrative Tribunal, Chennai and Anr. (2005) 2 MLJ 154. In para 6 it has been held as follows:

In the light of the principle laid down in the above case, irrespective of Rule 17 of the CCS (Conduct) Rules, inasmuch as the disciplinary authority relied on the advice of the UPSC before imposition of punishment, it is but proper to supply copy of the said report to the delinquent before passing an order of punishment. Accordingly, we hold that the applicant was entitled to a copy of UPSC advice before imposition of punishment. This has been rightly found by the Tribunal.

14. But, however, as laid down by the Supreme Court in Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, , the consultation of Public Service Commission is not mandatory. The relevant passage found in para 7 can be usefully extracted below:

7. It was argued that the impugned order was invalid as it was passed without consulting the State Public Service Commission under Article 320(3)(c) of the Constitution. There is no merit in this contention. The case of State of U.P. v. M.L. Srivastava decided that the provisions of Article 320(3)(c) were not mandatory and did not confer any rights on the public servant and that the absence of

consultation with the State Public Service Commission did not afford him a cause of action.

15. The very same law has been laid down in several pronouncements of the Supreme Court while examining Article 320(3) of the Constitution of India. The Division Bench judgment relied on by the petitioner does not take into account the binding precedents of the Supreme Court.

16. The petitioner cannot use his office bearer ship in the Association as a shield for assaulting a class 4 employee. The misconduct committed by the petitioner can never be condoned.

17. In the light of the above legal pronouncements and also the fact situation of the present case, there is no case made out by the petitioner. Accordingly, the writ petition shall stand dismissed. No costs.