

(2011) 01 AHC CK 0241

In the Allahabad High Court

Case No : Special Appeal Defective No. 900 of 2010

Chhotey Lal

APPELLANT

Vs

Indian Telephone Industries Limited and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Citation : (2011) 01 AHC CK 0241

Hon'ble Judges : Ritu Raj Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Though there is delay of nine months and one day in filing the special appeal, but since there is no objections from the other side in condoning the delay and we also find that the grounds shown in the affidavit accompanying the application for condonation of delay, are sufficient, we condone the delay.

2. Heard Sri Ajay Pratap Singh, learned Counsel for the Appellant and Sri Krishna Chandra, learned Counsel for the Respondents.

3. This special appeal has been filed against the judgment and order dated 19.02.2010 passed by the Learned Single Judge.

4. The Appellant while working in the Indian Telephone Industries faced an F.I.R. with the allegation of theft of certain articles. The departmental inquiry was also instituted against the Appellant by issuing a chargesheet. The Appellant was dismissed from service by order dated 09.02.1987. The F.I.R. was lodged on 09.01.1987. The criminal prosecution lasted for about five years and it was only on 28.08.1992 the Appellant was acquitted, he, thereafter, in the year 1993 preferred a writ petition challenging the order of dismissal from service. The grounds of challenge which find mention in the order passed by the learned Single Judge are as follows:

(a) No departmental enquiry could be conducted on the same set of facts in

which a criminal trial is also proceeding;

(b) Petitioner was acquitted by the trial court, hence he should be reinstated;

(c) Copy of the enquiry report was not given to the Petitioner thereby denying him the opportunity of defending him properly;

(d) No appeal was preferred by the opposite parties against the acquittal order.

5. The learned Counsel for the Appellant could not explain that if the Appellant was aggrieved by the order of dismissal from service passed on 09.02.1987 on the ground of procedural irregularity in holding the disciplinary proceeding or in passing the punishment order then why he did not approach the court within the reasonable time. In fact, the Appellant filed the writ petition only when he was acquitted in the criminal trial though by giving the benefit of doubt.

6. Needless to burden the judgment and case law on the point in issue, namely, the departmental proceedings, if have been taken alongwith criminal proceedings, it would not make the order of dismissal from service bad, merely because in the criminal trial the delinquent has been acquitted because of benefit of doubt.

7. It is only when there is an honorable acquittal in the criminal trial, on the basis of evidence which is absolutely identical both in the departmental proceedings and also in the criminal trial, i.e. where the same evidence is relied upon in both the forums, where such evidence fails to prove the committing of the offence, such a plea may be entertained in given facts of a particular case.

8. The plea aforesaid may be sustained in the aforesaid given circumstances but holding of criminal trial and also the department proceedings in respect of charges as in the present case, will not make the departmental proceedings bad in law.

9. The learned Single Judge relying upon the decision of the Apex Court, has rightly concluded that the two proceedings could have gone simultaneously and that the effect of acquittal in criminal trial would not result into automatic setting-aside of the dismissal order.

10. The learned Single Judge had also tested the validity of the departmental inquiry and has come to the conclusion that full and fair opportunity was afforded to the Appellant, and thus, no procedural irregularity could be pointed out either before the learned Single Judge or before this Court.

11. The learned Counsel for the Appellant has, however, argued that the Appellant was neither given show cause notice nor the inquiry report was furnished to him. The learned Single Judge has observed that in the present case the dismissal order was passed on 09.02.1987 while the judgment in the case of Union of India v. Ramjan Khan AIR SC 1990 was delivered after about three years, which specifically provided that the requirement of issuing show cause notice alongwith inquiry report would only be applicable prospectively but orders

passed before the date of judgment would not be affected.

12. Further the non giving of the inquiry report again automatically would not make the order bad unless some prejudice is shown by the Appellant as has been held by the Hon''ble Apex Court in the case of Managing Director ECIL Hyderabad v. B. Karunkar 1993 (5) SLR 532.

13. Last plea of the learned Counsel for the Appellant is that as per the Standing Orders applicable, the Appellant who was working in the Indian Telephone Industries Ltd., the inquiry report was to be furnished but it was not done so.

14. In the order of the learned Single Judge it has also been observed that the application for supplying of inquiry report was moved by the Appellant much after the passing of the dismissal order.

15. Mr. Krishna Chandra, learned Counsel for the State clarifies that pursuant to the standing order inquiry report has to be furnished to the delinquent if it is asked for by the delinquent but in the instant case no such prayer was made before passing of the punishment order and when the request for supply of the inquiry report was made, the same was given to him.

16. We do not find any illegality or infirmity in the impugned judgment and order passed by the learned Single Judge. Accordingly the special appeal is dismissed.

17. No orders as to costs.