(2006) 08 CHH CK 0017

In the Chhattisgarh High Court

Case No : Writ Petition No. 3693 of 1997

C.P. Sharma APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 409
Telegraph Rules, 1951 — Rule 103

Citation : (2006) 3 CGLJ 592

Hon'ble Judges : S.R. Nayak, C.J;D.R. Deshmukh, J

Bench : Full Bench

Advocate : Prateek Sharma, for the Appellant; S.K. Beriwal, for the Respondent

Final Decision : Dismissed

Judgement

D.R. Deshmukh, J.—In this writ petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 26th June 1997 (Annexure P/4) passed by the Central Administrative Tribunal (for short the Tribunal) in Original Application No. 730/1994, the sole question of law that arises for determination is whether in view of the acquittal of the Petitioner in Criminal Case No. 208/1992 u/s 409 I.P.C. for committing criminal breach of trust relating to Rs. 50.000/- kept in the cash box of the Petitioner for disbursement to a depositor, the order of removal of the Petitioner from service on proof of charge of failure to maintain absolute integrity and devotion to duty, as required under Rule 3(1)(i) and 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964 (hereinafter referred to as the Rules of 1964) read with Rule 103 of Posts and Telegraphs F.H.B. Vol. I is contrary to law, and therefore, liable to be set aside.

2. The factual matrix not under dispute is that:

Petitioner was posted as Postal Assistant, Bhilai-1 from 17.10.1985. On 9.10.1990 he worked as Savings Bank Assistant and obtained an advance of Rs.

20,000/- from the treasurer to start the day''s business. After transacting, when the balance of Rs. 282.25 Ps. remained with him at 11.15 hours, he further obtained advance of Rs. 50,000/- (five bundles of Rs. 100/-) from the treasurer Smt. Pushpa Gregary for making payment of final withdrawal of Rs. 47,500/- in respect of MIS Account No. 10200. The Petitioner had asked the depositor to come on 9.10.1990 to receive the payment. However, the depositor did not visit the post-office till 3.00 P.M. on 9.10.1990. The Petitioner was provided with an iron cash box with lock and key for safe custody of cash during working hours. The counter of the Petitioner was such that no member of the public could have access to his cash box. The Petitioner put the bundles in the cash box. He made payment of Rs. 500/- from one bundle and put the remaining currency notes again in the cash box above the four bundles. Thereafter, while the Petitioner was to make payment of Rs. 1250/- and Rs. 750/- to some MIS account holder, he noticed at 11.45 hours that 4 bundles of currency notes of the denomination of Rs. 100/- amounting to Rs. 40,000/- were missing from the cash box. The Petitioner reported the matter immediately to the ASPM (SB) who stopped all counter transactions and search was made. The money could not be traced. The incident was reported to the police at 13.10 hours by the ASPM. After investigation, a criminal prosecution , u/s 409 I.P.C. was launched against the Petitioner which resulted in acquittal of the Petitioner vide judgment dated 18.6.1992 passed in Criminal Case No. 208/1992 on the sole ground that since the Petitioner had promptly lodged the F.I.R., there was no possibility of his committing criminal breach of trust. The Departmental Enquiry which, vide order dated 22.7.1991 of the Tribunal was stayed pending decision of the criminal prosecution, was commenced. The following charge was framed against the Petitioner in the Departmental Enquiry:

Article-I

That the said Shri C.P.Sharma while functioning as SB Counter Postal Asstt. Bhilai-1 S.O. on 9.10.90 obtained an advance of Rs. 50000/- (Rs. Fifty thousand) from the Asstt. Treasurer at about 1115 hrs on the plea to make payment of final withdrawal to Shri R.R. Kose, depositor of MIS account No. 10200 although the depositor had not attended the counter at the point of time. He reported missing of 4 bundles Currency notes of Rs. 100/- Denomination, bank bundles worth Rs. 40000/- from his Cash box at about 1145 hrs. The official did not suspect any official present in the office.

He failed to account for Rs. 40000/- (Rs. Forty thousand) violating Rule 103 of P&T F.H.P. Vol. I thereby he failed to maintain absolute integrity and devotion to duty as required vide Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules 1964.

The Enquiry Officer vide his report dated 31.1.1994 Annexure A-15 held the charge against the Petitioner proved. The Petitioner preferred an appeal to the Post-Master General which was also dismissed vide order dated 12.12.1994 (Annexure A-14). Aggrieved by the said order, the Petitioner preferred O.A. No. 730/1994 before the Tribunal.

3. Before the Tribunal it was contended by the Petitioner that since the criminal court had exonerated him of the charge of misappropriation, the Disciplinary/ Appellate Order could not be sustained. It was also urged that theft of cash was reported by the Petitioner himself immediately after the occurrence which proved his bona fides.

4. The Respondents herein contended before the Tribunal that the burden of proof to show as to how the amount of Rs. 40.000/- disappeared from his cash box was entirely on the Petitioner. The charge in the criminal case and the departmental proceedings was not identical since the charge sheet issued by the Disciplinary Authority was for not maintaining absolute integrity and devotion to duty, as required under Rule 3 (1)(i) and 3 (1)(ii) of the Rules of 1964 whereas the criminal prosecution was for committing criminal breach of trust.

5. The Tribunal rejected the Petitioner''s contention and agreed with the Respondents herein that the charges in the criminal case and the departmental proceedings were not identical. It was held that the emphasis in the Departmental Enquiry was on non-adherence of Rules relating to the loss of Government money for which the Petitioner was squarely accountable. On these grounds, O.A. No. 730/1994 was dismissed.

6. Shri Prateek Sharma, learned Counsel for the Petitioner placed reliance on Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and G.M. Tank Vs. State of Gujarat and Another, while contending that the finding recorded by the Tribunal was perverse and without application of mind since the Petitioner was, on the same facts, acquitted in the criminal prosecution which judgment had become final. The impugned order passed against the Petitioner by the Tribunal was, therefore, liable to be set aside. On the other hand, Shri S.R. Beriwal, learned Counsel for Respondents contended that the charge against the Petitioner in the criminal prosecution and the Departmental Enquiry was not identical.

The act of the Petitioner was of gross negligence despite the fact that he had been provided with a cash box with lock and key and the fact that the situation of his '' counter was such that no one from outside could lay his hands on the currency notes inside his cash box. It was crystal clear that the Petitioner had failed to maintain absolute integrity and devotion to duty, as required under Rule 3(1)(i) and 3(1)(ii) of the Rules 1964. It was also argued that the Petitioner offered no explanation as to why he obtained an advance of Rs. 50,000/- from the Assistant Treasurer at 11.15 hours although the depositor of MIS Account No. 10200 did not turn up at his counter till 3.00 RM. The charge in the criminal prosecution was of criminal breach of trust whereas the charge in the departmental proceedings was of failure to maintain absolute integrity and devotion to duty. On these premises, it was urged that this petition was liable to be dismissed.

7. Having considered rival submissions, we have perused the record of the

departmental proceedings. The Petitioner was working as Postal Assistant at the Savings Bank Counter at Bhilai. While starting the day''s work on 9.10.1990, he initially obtained an advance of Rs. 20,000/- from the Treasurer and made payments therefrom to the depositors. Thereafter although the depositor of MIS Account No. 10200 did not turn up at his counter at the relevant time, he obtained another advance of Rs. 50,000/- comprising of 5 bundles of Rs. 100/- currency notes at 11.15 hours. It is not disputed that the money was kept by him in the cash box. It is also not disputed that cash box was provided with lock and key. Since the Petitioner had obtained an advance of huge amount of Rs. 50,000/-, it was his duty to ensure that the amount was safely locked inside his cash box and to act with due care and diligence since the depositor had not turned up. At 11.45 A.M., all of sudden, the Petitioner reported that Rs. 40,000/- from his cash box were stolen. During departmental proceedings, it was found that neither any member of the public could lay his hand from outside the counter to the money kept in the cash box of the Petitioner nor did the Petitioner suspect any other employee for removing the money from his cash box. Thus, there is not even an iota of doubt that the Petitioner being a trustee of the huge cash amount in his cash box failed to take reasonable care and to act with diligence in respect of the same and thereby failed to maintain devotion to duty or maintain integrity. The charge in the criminal prosecution and the departmental proceedings was not identical since the Petitioner was charged for committing criminal breach of trust by misappropriating the money; whereas the charge in the departmental proceedings was of failure to maintain; absolute integrity and devotion to duty, as required vide Rule 3(1)(i) and (ii) of Central Civil Services (Conduct) Rule 1964 and Rule 103 of P&T F.H.P. Volume I.

8. In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, the facts were that the Appellant was a Security Officer in a Government undertaking and was placed under suspension and disciplinary as well as criminal proceedings were initiated against him on the ground that in a police raid mining sponge gold ball weighing 4.5 grams and 1276 grams of gold-bearing sand were recovered from his house. The Appellant was acquitted in the criminal case with the categorical finding that the prosecution has failed to establish its case. The Appellant was dismissed from service on the basis of the findings recorded in the disciplinary proceedings. The request of the Appellant for his reinstatement in view of his acquittal in the criminal case was turned down and his departmental appeal against the dismissal also failed. The Apex Court observed as under:

There is a consensus of judicial opinion on a basic principal that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. Basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of the disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt.

It was further observed as under:

In the present case, criminal and departmental proceedings were based on identical set of facts, namely, raid conducted at the Appellant''s residence and recovery of incriminating articles therefrom. Findings recorded by the Enquiry Officer indicate that charges against the Appellant were sought to be proved by police officers and Panch witnesses who had raided the Appellant''s house and had affected the recovery. They were the only witnesses examined by the Enquiry Officer who by relying upon their statements, came to 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 entire evidence, came to a conclusion that no search was conducted nor was any recovery made from the Appellant''s residence. The Appellant was acquitted by throwing out the whole case of the prosecution. In this situation, therefore, where the Appellant is acquitted by a judicial pronouncement with the findings that the ''raid and recovery'' at his residence were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand.

The facts and evidence in departmental as w ell as in criminal proceedings were the same without their being any iota of difference. The distinction which is usually drawn between departmental and criminal proceedings on the basis of approach and burden of proof, would not be applicable to the instant case.

9. In G.M. Tank Vs. State of Gujarat and Another, , the Appellant was charged for offence of acquisition of movable and immovable properties disproportionate to his known sources of income and was dismissed from service after holding departmental enquiry. The writ petition filed by the Appellant was dismissed. It was held that the departmental proceedings and the criminal case were based on identical and similar set of facts and the charge in the departmental case against the Appellant and the charge before the criminal court were one and the same. Relying upon Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , the judgment of the learned single Judge as well as the Division Bench in L.P.A. were set aside while allowing the appeal.

10. Having considered the case law cited by the Petitioner with utmost circumspection, we find that the facts of the present case stand on a completely different footing. It is now well settled that the parameters of adjudication of a criminal prosecution and a departmental proceedings are quite different though they may be based on the same facts. In a criminal prosecution the burden of proving the charge beyond the shadow of doubt is wholly on the prosecution. On the other hand, a departmental proceeding is decided upon preponderance of

probabilities. In the present case, although the criminal prosecution case and the departmental proceedings were based on the same facts, yet the charge in both were not identical. The charge in the criminal case was one of criminal breach of trust whereas the charge in the departmental proceedings against the Petitioner was one of failure to maintain absolute integrity and devotion to duty. The acquittal of the Petitioner in criminal prosecution u/s 409 I.P.C. did not in any manner absolve him of the burden to explain that he took all necessary precautions and acted with diligence to prevent the loss of huge public money from his cash box. The circumstances in which the Petitioner obtained advance much before the arrival of the depositor, the location of the cash box and its inaccessibility to the general public from outside and the fact that the amount of Rs. 40,000/- disappeared without the Petitioner having moved from the seat the needle of suspicion squarely points towards the Petitioner and reveals a complete failure on the part of the Petitioner to maintain absolute integrity and devotion to duty. We have also perused the judgment rendered by the Criminal Court. Neither there is any detailed discussion of the facts nor any cogent reason has been expressed therein. It proceeded to acquit the Petitioner solely on the basis that he had promptly informed about the theft of Rs. 40,000/- from his cash box. We cannot resist from observing that the findings recorded by the learned Criminal Court did not reveal proper application of judicial mind. Be as it may, a civil servant who is in-charge of huge amount of public money can, under no circumstance, be allowed to reap the benefit of his acquittal in a departmental proceedings where the charge was of a completely different nature, though based on the same facts. If the contention of the Petitioner was to be accepted, it would amount to giving a license to such custodian of public money to let it disappear without being accountable for it. In the facts and circumstances of the case, we are of the considered opinion that the Petitioner failed to maintain absolute integrity and devotion to duty since he could not offer any explanation whatsoever for the disappearance of Rs. 40,000/- from his cash box although he did not move from his seat or from his counter, at any time, after obtaining the advance and before the money disappeared. Civil servants who have custody of public money are wholly accountable if huge amount of public money disappeared from their custody without there being even a reasonable explanation for due care and diligence having been exercised to prevent it.

11. In view of the aforesaid discussion, we are of the considered opinion that the dismissal of Original Application No. 730/1994 by the Tribunal is wholly justified. There is no merit in this writ petition which is accordingly dismissed. There shall be no order as to costs.

