(2012) 06 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1660 of 2005

Ex. ASI/M Parvinder Singh APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Industrial Disputes Act, 1947 — Section 11A
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2012) 4 MPJR 51

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Parvinder Singh, Party in Person, for the Appellant; Vinay Zelawat, Advocate, for Union of India, for the Respondent

Judgement

S.C. Sharma, J.—The petitioner before this Court, present in person, has filed this present petition being aggrieved by an order dated 29.11.2003 (Annexure P-23) by which the punishment of compulsory retirement has been inflicted upon him. The petitioner is also aggrieved by an order dated 14.05.2004 passed by the appellate authority rejecting his appeal. He is also aggrieved with the order dated 09.03.2005 passed by the Director General, Central Reserve Police Force by which his revision petition has been dismissed. The contention of the petitioner is that he was appointed on the post of Assistant Sub-Inspector (M) after qualifying the competitive examination in the year 1995 and was enjoying an unblemished service record. He has also stated before this Court that he has not received any adverse ACR and by virtue of his service record, he was also selected for National Security Guards. The petitioner''s contention is that on 19.10.2000, one Mr. S.K. Upadhyaya, Deputy Commandant, who was also serving as an Accounts Officer, Central Reserve Police Force, Neemuch lodged a complaint with the police station, Neemuch wherein it was stated that the petitioner, in connivance with other members of Central Reserve Police Force has encashed a bank draft which was payable to one Mr. K. Vishambharan, Ex-Cook by making forged signature of Mr. K. Vishambharan and on the basis of the aforesaid complaint lodged by the accounts officer, a criminal case was registered u/s 420, 467, 468 and 471 of IPC. The petitioner has further stated that he was arrested on 04.12.2000 by the police authorities and was released on bail on 07.02.2001 by virtue of an order passed by this Court. The petitioner has further stated that while he was in custody a suspension order was passed on 25.01.2001 and thereafter, a chargesheet was issued on 04.5.2001. The petitioner has further stated that as per the memorandum of charges, 4 charges were levelled against the petitioner. Charge No. 1 was in respect of fraudulent encashment of bank draft by the petitioner, charge No. 2 was in respect of his unauthorized absence from 23.02.2001 to 24.02.2001, charge No. 3 was in respect of a loan obtained by him from Central Bank of India to purchase a Scooter without obtaining permission from the authorities and charge No. 4 is also arising out of the loan amount of Rs. 12,000/- obtained from Central Bank of India without informing the authorities. The petitioner has further stated that a criminal case was registered against him and a trial also took place. The petitioner has further stated that while the departmental enquiry was going on, he submitted an application before the authorities about non furnishing of the documents on 05.05.2001 (P-4) and also submitted an application before the authorities to stay the departmental enquiry proceedings as the charge No. 1 was the subject matter of the criminal trial. The petitioner''s grievance is that the departmental enquiry proceedings were not stayed and finally, the enquiry officer submitted his report (Annexure P-22) and held the charge No. 1 proved, charge No. 2 not proved and charge Nos. 3 and 4 partially proved. The petitioner has further stated that the competent disciplinary authority based upon the inquiry report has passed the order of compulsory retirement on 29.11.2003. The petitioner being aggrieved by the order of compulsory retirement has preferred an appeal before the appellate authority and the appellate authority has upheld the order passed by the disciplinary authority dated 07.06.2004. The petitioner''s contention is that the appellate authority while deciding the appeal of the petitioner has arrived at a conclusion that the petitioner is guilty only in respect of charge No. 1 i.e. fraudulent encashment of the bank draft and the charges Nos. 2, 3 and 4 were not proved against the petitioner. The petitioner being aggrieved by the order passed by the appellate authority preferred a revision petition before the Director General, Central Reserve Police Force and while revision petition was pending before the Director General, Central Reserve Police Force, the petitioner came before this Court by filing a writ petition i.e. W.P. No. 1193/04 and this Court while passing an order dated 04.02.2005 has directed the revisional authority to decide the petitioner''s revision petition within a period of 3 months. The petitioner''s contention is that the revisional authority has decided the revision petition of the petitioner on 09.03.2005 and the revision petition has been dismissed.

2. The petitioner has raised various grounds before this Court and prayed for quashing of the orders dated 29.11.2003, 07.06.2004 and 09.03.2005. The first

ground raised by the petitioner is that he was not granted all the documents as prayed by him before the enquiry officer and, therefore, the departmental inquiry suffers from violation of principles of natural justice and fair play. Another ground raised by the petitioner is that the appellate authority has held the petitioner guilty only in respect of charge No. 1 and in respect of charge No. 1, a criminal case was registered against the petitioner and the trial court has honorably acquitted the petitioner in criminal case vide order of acquittal dated 21.09.2005 passed in Criminal Case No. 1187/ 2000. The petitioner''s contention is that as the petitioner has been acquitted honorably in the criminal case, therefore, he cannot be punished in the manner and method as it has been done by the respondents.

3. The petitioner has drawn attention of this Court towards the order. passed by the revisional authority and his contention is that in paragraph No. 5 of the order passed by the Director General, Central Reserve Police Force, the sole basis for holding the petitioner guilty is the petitioner''s statement made before the investing officer (police) in the matter of cheating and forgery. His contention is that he cannot be punished on the basis of some statement made before the investigating officer (police) and as he has been later on, honorably acquitted in the criminal case, he has prayed for quashment of the order passed by the revisional authority on this ground also.

4. The petitioner has placed reliance upon a judgment delivered in matter of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and his contention is that the continuance of the departmental enquiry in light of the judgment delivered by the Apex Court specially in view of the fact that a criminal case was also pending, was bad in law. The petitioner has also placed reliance upon judgment delivered by the Apex Court in the case of Jasbir Singh Vs. Punjab and Sind Bank and others reported in 2007 (1) RSJ 287 and his contention is that in the light of the aforesaid judgment the petitioner is claiming reinstatement in service as he has been honorably acquitted in the criminal case.

5. Learned counsel for the respondents/Union of India has argued before this Court that they have followed the prescribed procedure in respect of departmental enquiry held against the petitioner keeping in view the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with Central Reserve Police Force Act, 1949. It has been argued before this Court that the petitioner has committed a grave misconduct by fraudulently encashing the bank draft, which was to be paid to some other person namley Mr. K. Vishambharan, Ex-Cook and he has also committed a misconduct by obtaining a loan from bank without obtaining the permission of the authorities. The respondents have stated that after granting an opportunity of hearing to the petitioner, the order of punishment has rightly been passed. It has also been argued before this Court that the petitioner is a member of Armed Force of the Union and has committed a grave misconduct. It has also been argued that the petitioner has been dealt with leniency by passing an order of compulsory retirement keeping in view the

services rendered by him. Learned counsel has also argued before this Court that the report of the inquiry officer is based upon the evidence adduced during the course of inquiry and subsequent acquittal of the petitioner vide order dated 21.09.2005 will not help to the petitioner at all. It has also been stated that the petitioner has given information in respect of fraudulent encashment of the bank draft to the police authorities and, therefore, based upon the evidence adduced during the investigation by the police, he has rightly been punished by the department.

Learned counsel appearing for Union of India has placed reliance upon a judgment delivered in the case of Om Prakash Dubey Vs. Union of India (UOI) and Others, and his contention is that the acquittal of the petitioner in the criminal case does not confer any right upon the petitioner for his reinstatement in service keeping in view the law laid down by this Court in the aforesaid case. He has also placed reliance upon a judgment delivered in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, and his contention is that correctness of the findings and information are based upon the material evidence adduced during the course of the departmental enquiry proceeding and correctness or otherwise of the finding reached in a departmental enquiry would rather depend on the enquiry record and would not depend upon the facts of the criminal case. Learned counsel has lastly placed reliance upon a judgment delivered by the Apex Court in the case of Bank of India and Another Vs. Degala Suryanarayana, and his contention is that the scope of judicial review of findings of disciplinary authority is quite limited and until and unless the findings are perverse, they cannot be subjected to judicial review and even this Court is having a limited role in the matter of interference in the departmental enquiry. Learned counsel has prayed for dismissal of the writ petition.

6. Heard the learned counsel for the petitioner in person and learned counsel appearing of Union of India at length and perused then record.

7. In the present case, it is an admitted fact that the petitioner was placed under suspension vide an order dated 25.01.2001 and the charge-sheet was issued to the petitioner on 05.05.2001. The charge-sheet issued to the petitioner includes four article of Charges and they are as under:-

(1) Charge No. 1 is that the petitioner while functioning as ASI (M) has committed an act of gross misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949 by fraudulently encashing a bank draft dated 24.07.2000 prepared in the name of Mr. K. Vishambharan, Ex-Cook.

(2) Charge No. 2 was in respect of his absence without leave from 23.02.2001 to 24.01.2001.

(3) Charge No. 3 and 4 are in respect of a loan obtained by the petitioner from Central Bank of India that too without permission of the authorities to purchase a Scooter.

8. It is noteworthy to mention here that the inquiry officer after appreciating the evidence on record has held the charge No. 1 proved, charge No. 2 not proved and charge No. 3 and 4 partially proved and the disciplinary authority based upon the inquiry report, has passed the order dated 29.11.2003 and the punishment of compulsorily retirement has been inflicted upon the petitioner. The appeal of the petitioner was partially allowed though the order of compulsory retirement was upheld and the appellate authority has upheld charge No. 1 only as proved against the petitioner. The petitioner preferred an appeal before the revisional authority and the revisional authority-Director General, Central Reserve Police Force by an order dated 09.03.2005 has upheld the order passed by the appellate authority and the order of compulsory retirement of the petitioner has attained the finality.

9. This Court has carefully gone through the inquiry report, order of punishment, order passed by the appellate authority as well as the order passed by the revisional authority and all the different authorities while holding the petitioner guilty in respect of charge No. 1 has placed reliance upon the statement of the petitioner, which was allegedly given by the petitioner during the course of the investigation made by the civil police. Paragraph Nos. 5, 6, and 7 of the order passed by the revisional authority read as under:-

5. And whereas the revision petition has been entertained in this Directorate in the interest of natural justice and after due analysis of case as well as points raised by the petitioner in his revision petition, it is revealed that departmental enquiry was conducted on various charges leveled against petitioner vide Article-I, II, III & IV as mentioned at para-1 above. As per report of departmental enquiry, Article-I and IV have been fully proved and Article-III has been partially proved. It has been established beyond any shadow of doubt that the Bank Draft amounting to Rs. 1,07,452/-was not received by the recipient namely Ex-Cook Vishmbharan and the same was fraudulently encashed from the bank from where it was prepared. During the course of investigation by the Civil Police on the basis of FIR lodged by CTC-I, CRPF, Neemuch, the petitioner has admitted the facts and on his statement made before Civil Police, Rs. 80,000/- were recovered/ captured from one Shri Dan Singh father of HC (Manila) Smt. Kaushalya Devi (one of the co-accused in this case). The statement of petitioner before Civil Police during the course of interrogation and subsequent recovery of Rs. 80,000/- from father of HC (Mahila) Kaushalya Devi on the basis of statement of the petitioner clearly establishes the involvement of petitioner in fraudulent encashment of Bank Draft amounting to Rs. 1,07,452/-. Since Article I and IV has been fully proved and Article-III has been partially proved, there are sufficient reasons to conclude that the petitioner committed an act of sever misconduct in that he was involved in fraudulent encashment of Bank Draft in question.

6. And whereas, I have carefully gone through the revision petition together with the connected records of the case. The revisionist has already been dealt with

leniently by the DIGP & Principal, CTC-I, CRPF, Neemuch vide order No. P. VIII-7/2000-General dtd 29/11/2003 and the IGP-Training vide order No. P. VIII-1/2004-Trg-4CPS) dtd 14/5/04. The revisionist in his revision petition has not brought out any fact worth consideration. The enquiry was conducted as per procedure and in accordance with the principles of natural justice.

7. Now therefore, the undersigned in exercise of the powers conferred by Rule 29 of CRPF Rules 1955, hereby rejects the revision petition being devoid of merits.

10. The aforesaid order of the revisional authority makes it very clear that the petitioner has been punished on the basis of the statement made before the police authorities in respect of the criminal case registered against the petitioner and which was subject matter of criminal trial No. 1187/2000 and there is no other independent material/witness, which has been considered either by the inquiry officer of by the appellate authority or by the revisional authority. It is noteworthy to mention here that the petitioner has been acquitted in criminal case by the judgment of acquittal dated 21.09.2005 and the statement of the police authorities in criminal investigation has been used against the petitioner as well as the statement of the petitioner given before the police authorities has been used by the disciplinary authority.

11. This Court is of the considered opinion that once a departmental enquiry was pending in respect of the same charges in all fairness, the respondents should have deferred the departmental enquiry, till the pendency of the pending criminal case. The Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And Another, in paragraph Nos. 13 and 21 has held as under:-

13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

21. In another case, namely, Depot Manager, Andhra Pradesh State Road

Transport Corporation Vs. Mohd. Yousuf Miya, etc., , again it was held that there is no bar to proceed simultaneously with the departmental inquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of fact and law.

The judgment of the Apex Court makes it very clear that in a case where departmental enquiry and criminal proceeding are based on the same set of facts and the evidence of both the proceedings is common, the departmental proceeding should be stayed, however, in the present case the departmental enquiry proceedings were not stayed and the petitioner has been found guilty in the departmental enquiry proceeding, though, he has been acquitted in the criminal case.

14. The Apex Court in the case of Jasbir Singh Vs. Punjab and Sind Bank and others in paragraph Nos. 7 to 16 has held as under:-

7. Respondent Bank, therefore, invited findings of a competent civil court on the issue as to whether the appellant has committed any embezzlement or not. It is not in dispute that embezzlement of fund was the principal charge against the appellant in all the proceedings. He is also said to have been forged the signature of the account holder and tempered with the records. Respondent Bank failed to prove any of these charges before any court of law.

8. In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,], this Court held that if departmental proceedings and criminal case are based on identical set of facts, evidence in both the proceedings are common and employee is acquitted in the criminal case, an order of dismissal already passed may also be set aside.

9. The learned counsel for the respondent contended that the decision of this Court has no application. He may be right. But, it is not necessary for us to delve deep into the matter as we are of the opinion that the judgment in civil matter having attained finality, the same was binding on Respondent Bank.

10. In Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, , it was opined:

It is, however, beyond any controversy that when a crucial finding like forgery is arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter.

11. It was further observed:

It is also of some interest to note that the first respondent itself, in the civil suit filed by the firm relied upon a copy of the report of the enquiry officer. The first respondent, therefore, itself invited comments as regards the existence of sufficiency of evidence/ acceptability thereof and, thus, it may not now be open to them to contend that the report of the enquiry officer was sacrosanct. We have referred to the fact of the matter in some detail as also the scope of judicial review only for the purpose of pointing out that neither the learned Single Judge nor the Division Bench of the High Court considered the question on merit at all. They referred to certain principles of law but failed to explain as to how they apply in the instant case in the light of the contentions raised before them. Other contentions raised in the writ petition also were not considered by the High Court.

12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed so to do.

13. The High Court relied upon a decision of this Court in Pratibha Rani Vs. Suraj Kumar and Another, where a statement of law was made that criminal law and civil law can be allowed to operate side by side. There is no quarrel with the said proposition.

14. The High Court, however, failed to take note of the decision of the civil court. It could not have refused to look into the materials on record solely relying on or on the basis of clause 19.3 (c) of Bipartite Settlement to hold that the departmental proceedings could have been initiated even after the judgment of acquittal is passed in criminal case. We, therefore, are of the opinion that impugned judgments cannot be sustained.

15. It was, however, urged that no back wages should be directed to be paid. Reliance in this behalf has been placed on U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, . In that case, this Court was dealing with a power of the Industrial Courts u/s 11-A of the Industrial Disputes Act. Therein, as the establishment was closed, the question of reinstatement of the workman did not arise. Still then, 25% back wages were directed to be paid as also the compensation payable in terms of Section 6-N of the U.P. Industrial Disputes Act.

16. The judgments of both the Civil Court and the Criminal Court established that the appellant was treated very unfairly and unreasonably. For all intent and purport, a criminal case was foisted upon him. A confession, according to learned Chief Judicial Magistrate, was extracted from him by the bank officers in a very cruel manner. It is, therefore, not a case where back wages should be denied. Respondent Bank has tried to proceed against the appellant both in a civil proceedings as well as in a criminal proceedings and at both the independent forums, it failed.

17. We, therefore, are of the view that the impugned orders and judgments cannot be sustained. They are set aside accordingly. The appeal is allowed. The appellant is directed to be reinstated with back wages, continuity of service and other consequential benefits. The respondent shall also pay and bear the costs of the appellant which is quantified Rs. 10,000/-.

The Apex Court in the aforesaid case while dealing with the forgery allegedly committed by an employee has considered the judgment delivered by the Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And

Another as well as the judgment delivered in all other cases wherein a criminal case as well as a departmental enquiry was pending,

15. Keeping in view the totality and circumstances of the case specially paragraph No. 5 of the order passed by the Director General, Central Reserve Police Force and the charge No. 1, which was established only on the basis of some statement of the petitioner allegedly given by the petitioner before the civil police and also keeping in view the fact that the petitioner has been exonerated in the criminal case, this Court is of the considered opinion that on the basis of statement of the petitioner before the police authority in a criminal case, in which he has been honorably acquitted, he cannot be held guilty in the departmental enquiry.

16. Resultantly, the impugned order passed by the disciplinary authority dated 29.11.2003, order passed by the appellate authority dated 07.06.2004 and the order passed by the revisional authority dated 09.03.2005 are hereby quashed and the matter is remanded back to the disciplinary authority to pass a fresh order on the basis of inquiry report that too keeping in view the judgment of acquittal delivered in the criminal case No. 1187/2010 decided on 21.09.2005. The aforesaid exercise of passing an appropriate order by the disciplinary authority shall be concluded within a period of 60 days from the date of receipt of certified copy of this order. It is needless to mention here that the petitioner shall be out of service till the final order is passed by the disciplinary authority. The disciplinary authority shall also be free to pass consequential order in the matter after passing an appropriate order on the basis of inquiry report in the matter. With the aforesaid, the writ petition is disposed of. No order as to costs.

