
(1999) 08 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 36187 of 1999

Jai Ram Prajapati

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 16
Penal Code, 1860 (IPC) — Section 304, 409, 419, 420
Telegraph Act, 1885 — Section 21, 25, 27

Citation : (1999) 4 AWC 3073 : (1999) AWC 3073 : (1999) 3 UPLBEC 2029

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : D.R.S. Chauhan, for the Appellant; S.C. and Anoop Kumar Srivastava, for the Respondent

Judgement

O.P. Garg, J.—The petitioner Jai Ram Prajapati is Junior Telecom Officer in the Telecom Department which is a class III post. It is proposed to hold an enquiry against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The statement of articles of charges framed against the petitioner is Annexure-1 to the Memorandum dated 16/19.7.1999, a copy of which is Annexure-5 to the writ petition. The petitioner has challenged the propriety, correctness and validity of the statement of articles of charges and the memorandum, aforesaid, and has prayed that they may be quashed and the respondents be commanded not to adopt any coercive action against the petitioner on the ground that the petitioner has been finally acquitted in the Criminal Trial Case No. 2212 of 1997, under Sections 419/420/409, I.P.C. and Sections 21, 25 and 27 of the Indian Telegraph Act, as per order dated 22.10.1998, passed by the Chief Judicial Magistrate, Azamgarh.

2. Learned counsel for the parties agreed that since the writ petition can be disposed of on legal matrix only, it may be heard and decided on merits at this stage. Learned standing counsel appearing on behalf of the respondents stated that he shall not file counter-affidavit.

3. Heard Sri D. R. S. Chauhan, learned counsel for the petitioner and Sri Anoop Kumar Srivastava, learned standing counsel, appearing for respondents.

4. The only legal point on which the present writ petition has been grounded is that after acquittal of the petitioner on the criminal charge in the aforesaid case, the departmental enquiry cannot be continued against him. This submission has been repelled by the learned standing counsel for the respondents.

5. Sri Chauhan urged that where the departmental proceedings and the criminal case are based on the same set of facts and evidence in both the proceedings is common, without there being a variance, it would be a futile exercise to continue with the departmental enquiry and with the acquittal of the petitioner in the criminal charge the departmental enquiry should abate. In support of his contention, learned counsel for the petitioner placed reliance on the decision of the Apex Court in *Satish Chand v. Commissioner of Police and others* 1995 (1) ESC 397. I have thoroughly studied the said decision and find that it does not apply on all fours to the facts of the present case. In the aforesaid decision, it was observed that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self-same allegations and take appropriate disciplinary action. This observation obviously does not support the case of the petitioner, as in that case, acquittal was not on merits. The material on the basis of which the promotion of the appellant of that case was denied was the sole ground of the prosecution u/s 5(2) and that ground when did not subsist, the same, it was held, could not furnish the basis for DPC to overlook his promotion. It was further observed that the departmental enquiry itself was dropped by the respondents the very foundation on which the DPC had proceeded was Illegal. The view taken was that the appellant of that case was entitled to the promotion with effect from the date immediate junior was promoted with all consequential benefits.

6. In contradistinction to the aforesaid decision, learned counsel for the respondents placed reliance on para 5 of the decision of the Apex Court in *Nelson Motis Vs. Union of India and another*, which may appropriately be quoted as below :

"So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case."

Sequel to the decision aforesaid, there is another celebrated decision of the Apex Court in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs.*

Mohd. Yousuf Miya, etc., in which the question was whether High Court was Justified in staying the departmental enquiry on account of criminal prosecution of the employee u/s 304, Part II, I.P.C. Allowing the appeal of the employer, the Apex Court, placing reliance on the earlier decisions in State of Rajasthan Vs. B.K. Meena and others, , and Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, , observed that the purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. 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 denned under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is 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. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence u/s 304A and 338. I.P.C. The above decisions clearly relieve the necessity to consider the case law once over. Nevertheless, there is a recent decision of the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, in which the position has been well culled out and summarized. It has been held that there is a consensus of judicial opinion amongst the High Courts and the various pronouncements of the Apex Court, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. The basis for this proposition is that proceedings in 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 those proceedings is also different than that required in a criminal case. While in the departmental proceedings, the standard of proof is one of the 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.

7. The Judicial opinion indicates that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal court, still it would be desirable to stay the domestic enquiry if the incident giving rise to a charge framed against the employee in a domestic inquiry is being tried in a criminal court. The conclusions as were deducible from various decisions of the Apex Court, are as follows ;

(1) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(2) If the departmental proceedings and the criminal case are based on Identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(3) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(4) The factors mentioned at (2) and (3) above cannot be considered in Isolation to stay the Departmental proceedings , but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

8. In the instant case, the petitioner has undoubtedly been acquitted of the criminal charge. The departmental enquiry, which was initiated against him on 1.9.1997 was kept in abeyance, lest the petitioner was not prejudiced in the defence which he may take before the Criminal Court. Now that the criminal case has ended in acquittal of the petitioner, there appears to be no impediment in bringing the departmental enquiry to a logical conclusion. There is no absolute bar or legal prohibition in continuing the departmental enquiry after the acquittal of the employee in the criminal case. As said above, purpose of the departmental enquiry, nature of allegations and the proof are entirely different. The petitioner will have ample opportunity to defend himself in the departmental enquiry also. Therefore, the Memorandum, accompanied by Articles of Charges, cannot be throttled at this stage.

9. In view of the legal position stated above, the present writ petition turns out to be without any merit and substance. it is accordingly dismissed.