

(1986) 01 KL CK 0010
In the High Court Of Kerala

K. Babu

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-01-1986

Acts Referred:

Evidence Act, 1872 — Section 43

Penal Code, 1860 (IPC) — Section 409, 467, 477A

Citation : (1986) 2 LLJ 473

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Judgement

M.P. Menon, J.—The petitioner, a clerk/cashier of the Kottayam Branch of the Union Bank of India, was prosecuted for offences punishable under Sections 409, 467 and 477A of the Indian Penal Code, for alleged forgery of a cheque and unauthorised withdrawal of amounts from the account of one of the bank's constituents. The criminal court acquitted him on the ground "that the prosecution had failed to bring home the guilt of the accused beyond reasonable doubt". Notwithstanding the acquittal the management of the Bank decided to proceed against the petitioner departmentally, by issuing Ext. P 1 charge-sheet and appointing an enquiry officer. The petitioner "objected to the holding of the enquiry" on various grounds, but the Bank management was not prepared to relent. This writ petition was thereupon filed in December, 1982 challenging the authority of the management to take disciplinary action against its employees in respect of acts of omission or commission of which they are already adjudged not guilty by the criminal court of the land. (The challenge to Ext. P3 was not pressed at the hearing).

2. It is common ground that in matters relating to "disciplinary action and procedure therefor", the first respondent-Bank and its employees are governed by the provisions of Chapter XIX of the settlement dated 19th November, 1966 entered into between the Indian Banks' Association and the Bombay Exchange Banks' Association on the one part, and their workmen represented by the All India Bank Employees' Association and the All India Bank Employee' Federation

on the other. Clause 19(3) of the said settlement reads: -

19(3)(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted, and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However in the event of the management decided after enquiry not to continue him in service, he shall be liable only for termination of service with three months pay and allowance in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct.

(d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set below in Clauses 19.11 and 19.12 infra relating to discharge, and the provision set out above as to pay, allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three month's pay and allowances in lieu of notice, as directed above.

In as much as Clauses 19(11) and 19(12) deal with the procedure to be followed in issuing charge-sheets, holding enquires etc. the implication of Clause 19(3)(c) is clear: even if an employee is acquitted of the offence with which he is charged in a criminal court, the management of the bank will have the authority to initiate disciplinary action against him in respect of the same matter, with the difference that if he is found guilty in those proceedings, he cannot be dismissed but only terminated with three months' pay and allowances etc. The Original Petition therefore contains a challenge to the validity of Clause 19(3)(c) of the settlement; and in fact that was the only point pressed at the hearing.

3. It seems to me that there are many difficulties in granting the declaration that Clause 19(3) is void "in so far as it permits disciplinary proceedings on the same

set of allegations which was subject-matter of criminal trial, in which the employee was acquitted." The first is that the parties to the settlement, namely, the two Associations of employers and the two trade unions, are not parties to the writ petitions, The second is that a writ court, in the exercise of its discretion, will not readily accede to a request for unsettling a consensual arrangement in the area of industrial relations, which has apparently been working satisfactorily for about two decades. And the third is that the attack against sub-clause is not founded on any provisions 5 of the Constitution or any statute or statutory rule, but only on some concept of issue estoppel, res judicata or similar doctrines on the applicability and relevance of which judicial opinion has not been uniform. And finally, so far as this Court is concerned, the question raised is also covered against the petitioner by a few decisions.

4. Still, as the matter has been argued at length and reference made to a large number of decisions subsequently rendered and reported, I shall make an attempt to briefly refer to at least a few of them: two or three of the latest, in fact, contain elaborate discussions on most of the earlier decisions on the subject. But before doing so, it is necessary to state that for about three decades and a half, industrial adjudication in this country has been more or less uniformly taking the view that a criminal trial and a disciplinary proceedings operate in different fields, with different objects or for different purposes, and with different standards of proof. Broadly stated, criminal offence is a conduct involving an act or omission which society considers as improper, as against its interests and has therefore been prescribed by law. An act or omission which an employer considers to be against the interests of the smooth functioning of his establishment, and which is therefore considered objectionable, is called "misconduct". While the first is an offence against society, the second is an offence against discipline: and one and the same act of an employed person may amount to a violation of both set of rules. In *Velhmikara Rubber* 1951 II L.L.J. 37 at p. 39 the Labour Appellant Tribunal had said:

It was urged before us as a question of law that the management ought to have waited until the conclusion of the criminal proceedings before it took steps to discharge, and that since these two persons have not been discharged or acquitted they ought to be reinstated. We are quite unable to agree. It is the duty of the management to impose discipline in the administration of its affairs, and even though the assault took place outside the factory premises, the employers were entitled to take action against these two persons as the assault was the result of an act of intimidation of other workmen. We do not agree that because the criminal court has acquitted or discharged these two men the management was not justified in taking action against them, or that the decision of the management was erroneous, for we can visualise a prosecution failing for a variety of reasons.

In *Titagarh Paper Mills Ltd.* (No. 1) 1957-II L.L.J. 550 at p. 553-554, the Tribunal again observed:

The decision of a criminal court cannot operate as *res judicata*. Nothing stands in the way of the industrial tribunal examining the evidence and facts and arriving at its own conclusion. There is no question of the industrial tribunal substituting its decision for the decision of the criminal court. Whatever the conclusion of the industrial tribunal may be, the order of discharge passed by the magistrate stands good. The fields of operation of the two tribunals are different. The criminal court's function is to punish people for acts which amount to offences against society, though a private individual might be the immediate victim. The function of the industrial tribunal is only to uphold or set aside the disciplinary action taken by the management of a private concern against its own workmen who are alleged to have misconducted themselves in their behaviour towards a superior officer. Such conduct of the workmen may not amount to an offence under the Indian Penal Code but may be misconduct sufficient to deserve disciplinary action. Hence, if the industrial tribunal upholds the disciplinary action taken by the manager, it is, in no sense, a substitution for the decision of the criminal court. The two can exist independently of each other.

It may probably be correct to suggest that Clause 19(c) of the settlement impugned herein represents how employers and employees in the banking industry have been understanding the law, on this part of industrial relations.

5. The above principles were however not being uniformly adopted by the High Courts in India in service matters i.e. where a government servant is acquitted of the charge against him by a criminal court, but is found guilty of the same charge in a domestic enquiry. Different Judges or different Courts have been putting the matter in different language; one approach has been to suggest that no domestic tribunal should be allowed to "sit in appeal" over the finding recorded by a competent court. To permit a tribunal to differ from the conclusion reached on a question of fact by a court was considered as "subversive of justice", by some others. Rules of *res judicata*, issue estoppel etc. were also pressed into service by still others. There were even differences of opinion within the same court, one bench taking one view, and a bench of co-ordinate jurisdiction trying to distinguish it and taking a different view. But as already stated, it is unnecessary to refer to all the twists and turns chronologically or historically: it is enough to notice a few of the recent decisions.

6. In *Jeevan Prakash Pandurang Mokashe Vs. State Bank of India and another*, a Division Bench of the Bombay High Court said at p. 152:

If the principle of issue estoppel and the principle of *res judicata* applies, then we think that subjecting a person to a proceeding over again for determination of the same questions and same facts is opposed to the normal rules and principles of justice and jurisprudence. A proceeding therefore would be liable to be quashed at any stage and including at the commencement stage where they are found to be or shown to be opposed to rules and principles of jurisprudence and law governing finality of matters decided between the parties.

The rule was more specifically adverted to in another passage of the judgment, reading as follows:

It seems to us that where an acquittal is based upon a finding of fact, either to be existing or not existing as alleged, either by the prosecution or by the accused, then to that extent such a finding of fact becomes a binding and conclusive fact in all proceedings against that party. It will acquire the status of an issue estoppel and would not be capable of being further investigated or enquired into for the purpose of coming to a conclusion differently or contradictorily. The same can never form as a basis and considered as a basis for purposes of determining the desirability of the employee to be retained in service or his continuation.

While stating the law as above, their Lordships had to distinguish an earlier Division Bench ruling of the Courts in *Bhaurao v. State* 1963 I LLJ 153, and also to observe that the principle could have no application to cases of acquittal on technical grounds. It is also significant to note that the Supreme Court decision in the *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, to which reference will be made separately, had not been brought to their Lordships' notice.

7. The question before a Division Bench of the Madras High Court in *M.M. Rubber Co. Ltd., Madras Vs. S. Natarajan, The Presiding Officer, Labour Court, Madras*, was whether "a domestic enquiry could be proceeded with against an employee who was acquitted in a criminal trial held in respect of the same act"; and after elaborately considering the case law on the subject, including the Supreme Court decision in the *Corporation of Nagpur case* 1981-I L.L.J. 6 and the two Bombay decisions noticed, the Court answered it in the affirmative, holding that: (at p. 369)

proceedings does not violate any rule of law or any other principle of law, when it chooses to ignore the findings of Criminal Court and decides to act on the evidence led before him, and ultimately comes to the conclusion that such (police) officer is not fit to be retained in service inspite of his acquittal by the criminal court. He also does not violate any principle of natural justice merely by ignoring such findings of the Criminal Court, where otherwise he has recorded his findings after giving full opportunity to the delinquent to have his say.

8. In *P.H. Tripathi Vs. Central Bank of India and Others*, the Allahabad High Court also; referred to the *Corporation of Nagpur case* and held that there could be no legal objection to taking departmental action against an employee, after his acquittal by a criminal court of the same charge. The court was not for laying down any inflexible rule, but it emphasised that *mens rea*, which was an important factor in criminal proceedings, could not have the same significance in disciplinary proceedings. The criminal court examines the intention and culpability of the person concerned, with reference to the impact of his act on the interest of the society as understood in the law governing such conduct. But the

domestic tribunal is concerned more with the consequences of the act on the needs of discipline in the establishment as laid down in the standing orders or other relevant rules. A full Bench of the Mysore High Court had also taken the same view, in *T.V. Gowda Vs. State of Mysore and Others*,

9. Turning to the decisions of this Court, the earliest and the most important that requires mention, with respect, is that of Mathew J. (as he then was) in *Spadigam (J.) Vs. State of Kerala*, The contention there was based on the doctrine of issue estoppel. It was argued that where -a government servant was acquitted by the criminal court of identical charges Government would be precluded from proving the facts in issue in the disciplinary proceedings as regards which evidence had already been tendered and findings entered by the court. It was also contended that there was no reason to confine the doctrine of issue estoppel to the trial of an issue in a subsequent criminal case. Mathew J. rejected the contention in the following words:

I do not think that the doctrine of issue estoppel has any application here. The doctrine is only concerned with the admissibility of evidence designed to upset a finding recorded by a competent Court in a previous trial in a subsequent criminal trial. It has never been applied in the case of an enquiry before a tribunal conducting a disciplinary proceeding, although the proceeding might be quasi-criminal in character.

Dealing more directly with the question as to whether there are any other principles of law barring disciplinary proceeding against an employee acquitted of the same charge by a criminal court, his Lordship said:

I do not think that judgment of a criminal Court acquitting an accused on the merits of a case would bar disciplinary proceedings against him on the basis of the same facts, or that the judgment would operate as conclusive evidence in the disciplinary proceedings. The reason for it is not far to seek. A criminal Court requires a high standard of proof for convicting an accused. The case must be proved beyond reasonable doubt. The acquittal of an accused by a criminal court only means that the case has not been proved against him beyond reasonable doubt. Such a standard of proof is not required for finding a person guilty in a disciplinary proceeding. It would be enough if there is a preponderance of probability of his guilt.

His Lordship then referred to the difference between the standards of proof required in a criminal case and in a civil case, and to the applicability or otherwise of the strict rules of evidence to domestic enquiries and added:

This object of criminal law and its enforcement through criminal proceeding is different from that of disciplinary proceeding. A criminal proceeding is mainly intended to punish, persons who have broken "the King's peace", and thus to show the indignation of the community to criminals whereas disciplinary proceeding is intended to maintain the purity and efficiency of public service. Then again, in a criminal trial, the only evidence admissible is that which is made

admissible under the provisions of the Evidence Act. A tribunal conducting an enquiry in disciplinary proceeding is not bound by strict rules of evidence. Any material which has a logically probative value to prove or disprove the facts in issue is relevant and admissible.

The discussion on the subject was concluded with the following observations:

Therefore, in a disciplinary proceeding, a person can be found guilty of a charge on materials which are inadmissible in evidence in a criminal trial. A judgment of acquittal by a criminal Court is inadmissible in a civil suit based on the same cause of action, except for the very limited purpose mentioned in Section 43 of the Evidence Act. Just as a civil court must independently of the decision of the criminal Court investigate facts and come to its own finding, so also, I think, a tribunal conducting a disciplinary proceeding must investigate the facts and come to its own finding and that without being hampered by the strict rules of evidence. Whether or not it is theoretically right to accord a different treatment to a judgment of conviction in a disciplinary proceeding involving the same issue in the light of the proviso (a) to Article 311(2), is a matter of which I do not wish to express an opinion now. Even as regards a judgment of acquittal as the strict rules of Evidence Act are not applicable to a disciplinary proceeding, the judgment might be a relevant piece of evidence, not because the judgment has got any peculiar value but because a tribunal conducting a disciplinary proceeding can take into account any material provided it is logically probative of the facts in issue.

10. In *P.K. Rajappan Pillai Vs. State of Kerala and Others*, Khalid J. noticed the difference in character between criminal and disciplinary proceedings and expressed the view that though an employer might respect the decision of a criminal court, an acquittal by such a court would not always fetter his hands from taking appropriate action upon the finding of a domestic enquiry. And in *D.I.G. v. Sankaran* 1982 II LLJ 309 a Division Bench had also said that "there would have been no bar to holding disciplinary proceedings on the same set of facts merely because the criminal courts had in a prosecution found in favour of the officer charged with the offence".

11. The Supreme Court had occasion to consider situations arising from parallel proceedings before a criminal court and in disciplinary matters. In *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, the Court held that an employer was not always bound to wait for the outcome of the criminal proceeding against his employee before initiating disciplinary proceedings against him, though it was desirable that in cases of a grave nature involving complicated questions of fact and law he waited for the decision of the court in order to ensure that the employee's defence was not prejudiced. In *Jang Bahadur Singh Vs. Baij Nath Tiwari*, the court pointed out that even if the issue in the two enquiries was not different, the pendency of criminal proceedings would not ordinarily affect the employer's power to take disciplinary action against his employee, because that power was essentially his, and not of the criminal court. And in the *Corporation of*

the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, at page 8 the Court said:

The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental enquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal Court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental enquiry on the very same charges or grounds of evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its discretion in any way fettered. However, as quite some time has elapsed since the departmental enquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental enquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the enquiry, it can certainly do so.

Mark the distinction their Lordships draw between propriety or expediency on the one hand and legality or competency on the other. Where an employee is fully and honourably acquitted by a criminal court, it would not be expedient or proper to continue departmental proceedings against him on the same charges and on the same evidence because usually the decision of a court, trained in examining and answering questions of law and facts should receive the utmost respect and should be placed on a higher pedestal than the conclusion reached by an enquiry officer who may also be honest and impartial, but is still not so trained and not bound by rules of evidence or set legal principles. But obviously this cannot be laid down as a general rule if it is borne in mind that the scope, purpose and object of the two enquiries are different and the standards of proof are also different. Where an enquiry officer disagrees with the findings of a criminal court, in a domestic enquiry against an employee, despite the circumstances that the evidence was practically the same before both, it may be possible for the Tribunal or the court before which the question is taken up to hold that the employers finding is perverse or that he has acted without bona fides; but that is not the same thing as saying that the disciplinary proceeding is ultra vires or beyond the powers of the employer.

12. It may perhaps be too startling a proposition to suggest in very general terms that irrespective of what a criminal or civil court has held in respect of the conduct of an employee, his employer should still be free to institute another enquiry against him and reach his own conclusion, on the same set of facts and the same evidence. Where a court acquits a person on grounds like want of sanction, nonavailability of prosecution witnesses, benefit of doubt, defective charge and such other technical reasons, there could be no difficulty in holding that his employer can be permitted to examine the matter further; but if it is

entirely a question of appreciating the same evidence, and reaching different conclusions thereon, the courts have been understandably reluctant to permit employers to overlook or ignore the decisions of criminal courts. Judicial reluctance to recognise primacy in favour of others, albeit in the limited field of discipline, in assessing evidence and reaching just or correct conclusion thereon, has perhaps been responsible for the extension or expansion of theories relating to issue estoppel, resjudicata and all that. But take a case where the driver of a motor car is hauled up before a court for rash and negligent driving, causing personal injury and disablement to some one. He may be acquitted by the criminal court, but he may still be found negligent by the civil court. and the employer vicariously held liable for compensation. Which is the binding decision for the employer? Should he follow the criminal court's verdict and exonerate the driver, ignoring the civil court's finding that he should have been more careful? Instead of laying down absolute rules in cases like these, what seems to be reasonable is to leave each matter to the appropriate authority, relating that the purpose and scope of each proceeding is different and that no authority would ordinarily act whimsically or erroneously and that even if one does so, the superior courts are there to correct the aberrations.

13. As for the case on hand, the petitioner was acquitted by the criminal court because his guilt was not established before it, beyond reasonable doubt. No court has so far gone to the extent of holding that acquittal on such a ground would preclude disciplinary proceedings. Whether the employer is going to "try" the employee on the basis of the same evidence which was placed before the criminal court, is a matter yet to be tested and verified. And what the employer is proposing to do is to proceed according to the agreed terms of a settlement. There are therefore no reasons at all to interfere, or hold that Clause 19(c) of the settlement is illegal or unconstitutional.