
(1994) 01 RAJ CK 0052
In the Rajasthan High Court
Case No : Civil Writ Petition No. 216 of 1990

Laxman Lal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 427, 452

Citation : (1994) 1 RLW 67 : (1994) 2 WLC 168 : (1994) 1 WLN 152

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—Petitioner Laxman Lal was working as Police Constable at Police Station, Sarada, district Udaipur. On 20.11.83, an F.I.R. was lodged by Badri Lal, Assistant Sub- Inspector Police, at Police Station, Sarada, against the petitioner. It has been alleged in the F.I.R. that on 18.11.83 the petitioner was deputed as a Watchman in the Police Station by the Station House Officer. The petitioner was of the view that this duty of watchman was assigned to him on the complaint made by complainant Badri Lal and, therefore, threatened him of dire consequences. On 19.11.83, when the complainant was sleeping in his quarter, the petitioner, armed with a knife, entered into the house of the complainant, tried to throttle him and give beatings to him. The complainant got himself rescued and went out of the house. The accused-petitioner followed him but ultimately with the help of Kishan Singh, S.H.O. and Bala Ram, Head Constable, he was rescued. The petitioner, also, gave a threat at that time that he would kill the complainant. On this information, a case under Sections 452, 323 and 427 IPC was registered and the police, after necessary investigation, presented the challan against the petitioner in the Court of the Munsif and Judicial Magistrate, First Class, Salumber. The petitioner was tried by the learned Judicial Magistrate, Salumber, for the offences under Sections 452, 323 and 427 IPC. A departmental enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and

Appeal) Rules, 1958, was, also, initiated against the petitioner, the charge-sheet was served and the Circle Officer, Vallabhanagar, was appointed as the Enquiry Officer. Both the disciplinary enquiry as well as the criminal trial proceeded simultaneously and no application was moved by the petitioner for the stay of either of these proceedings. The Enquiry Officer, after completion of the preliminary enquiry, submitted its report and after the receipt of the enquiry report, a notice was given to the petitioner by the Disciplinary Authority, and the Disciplinary Authority, after considering the representation of the petitioner and after perusal of the record of the case, came to the conclusion that the charges against the petitioner stand proved and he, therefore, imposed the punishment of removal/dismissal from service by his order dated 31.1.85. The petitioner preferred an appeal against the order of dismissal, passed by the District Superintendent of Police, Udaipur, before the Deputy Inspector General of Police, Udaipur Range, Udaipur. The appeal filed by the petitioner was, also, dismissed by the Deputy Inspector General of Police, Udaipur Range, Udaipur, vide order dated 16.10.1986. The petitioner rest contended with the order passed by the appellate authority and did not challenge the same. The trial in the criminal case wall, also, proceeded in the Court of the Judicial Magistrate, First Class, Salumber, and the learned Magistrate, after trial, by its judgment dated 5.10.1987, convicted and sentenced the petitioner for the offences under Sections 452, 323 and 427 IPC. Aggrieved with the judgment dated 5.10.1987, passed by the learned Judicial Magistrate, Salumber, convicting and sentencing him, the petitioner preferred an appeal, which was decided by the Additional Sessions Judge No. 2, Udaipur (Camp Salumber). The learned Additional Sessions Judge No. 2, Udaipur (Camp Salumber) vide its judgment dated 11.8.88, allowed the appeal filed by the petitioner and acquitted him of all the offences by observing that the statement of complainant Badri Lal does not find corroboration from the evidence of other witnesses. After his acquittal by the learned Additional Sessions Judge, the petitioner moved an application before the Deputy Inspector General of Police, Udaipur Range, Udaipur, for his reinstatement in service. This requires of the petitioner was turned-down by the Deputy Inspector General of Police vide its order dated 23.2.1989 (Annexure. 11). The petitioner has challenged this order Annexure. 11 by this writ petition and has prayed that the order of dismissal (Annexure 8), passed by the Disciplinary Authority, may be quashed and set-aside and the petitioner may be reinstated in service with all the consequential benefits.

3. It is contended by the learned Counsel for the petitioner that the charges (Annexure 2), served upon the petitioner for the purpose of departmental enquiry being the same, which were the subject matter of the criminal case, also, and, therefore, both the proceedings cannot be permitted to go together. The continuation and termination of both these proceedings simultaneously has, therefore, resulted in failure of justice. His further submission is that in the facts and circumstances of the case, as the charges are the same, the disciplinary proceedings should have been staved. If the departmental proceedings would

have been stayed till the disposal of the Criminal case then the services of the petitioner would not have been terminated. In support of its contention, learned Counsel for the petitioner has placed reliance over: Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, and Laxman Singh v. The State of Rajasthan and Ors. D.B.C.W. No. 2724 of 1987 decided on 21.9.1988. It has, also, been contended by the learned Counsel for the petitioner that the petitioner was acquitted by the criminal court in appeal and in view of the clear-cut acquittal by the criminal court, the case of the petitioner should have been re-considered by the Disciplinary Authority taking into consideration the judgment of acquittal passed by the criminal court and the petitioner should have been reinstated in service with all consequential benefits and reliefs. As the respondent has not applied its mind in passing the order Annexure. 1 dated 23.9.88, the order, therefore, deserves to be quashed and set- aside. In support of its contention, learned Counsel for the petitioner has placed reliance over: Mohammed Umar v. Rajasthan State Electricity Board and Anr. 1993 (1) WLC 253. Lastly it is contended by the learned Counsel for the petitioner that charges No. 1 to 5, mentioned in the Charge-sheet, stood disproved in view of the judgment of acquittal passed by the Criminal Court because the evidence produced in the enquiry and in the criminal trial were the same and so far as Charge No. 6 is concerned, it is contended by the learned Counsel for the petitioner that in the given circumstances: whether the authority could have passed the punishment of removal from service on this charge alone, is a matter of conjecture and the order, therefore, deserves to be quashed and set-aside. In support of its contention, learned Counsel for the petitioner has placed reliance over: Kundan Singh Jhala v. The State of Rajasthan and Ors. 1984 RLW 631. Learned Deputy Government Advocate, on the other hand, has supported the order Annexure. 11 passed by the Deputy Inspector General of Police as well as the order Annexure. 8, passed by the Disciplinary Authority, and further submitted that there is no absolute bar for simultaneously conducting two parallel enquiries, i.e., the disciplinary enquiry by the Disciplinary Authority and the criminal trial by the Criminal Court on the same charges. It has, also, been contended by the learned Deputy Government Advocate that when the disciplinary enquiry already stood concluded and a punishment has been imposed on the basis of the disciplinary enquiry itself then after the conclusion of the enquiry if the petitioner has been acquitted by the Criminal Court then the conclusion arrived at in the enquiry is not affected. Even the order of Disciplinary Authority was affirmed by the Appellate Authority before the judgment of acquittal was passed by the Criminal Court and, therefore, so far as the enquiry proceedings are concerned, they became final and it was not necessary for the respondents to re-consider the case of the petitioner after two years of the conclusion of the enquiry, on the basis of the judgment passed by the Criminal Court in appeal. It has, also, been contended by the learned Deputy Government Advocate that as the dismissal was not made on the basis of the conviction of the petitioner by the Criminal Court but the order was passed on the basis of an independent enquiry hence the subsequent acquittal of the petitioner by the Criminal Court has no effect on

the conclusion arrived at in the departmental enquiry proceedings.

4. I have considered the submissions made by the learned Counsel for the parties.

5. It is, true that the first five charges, i.e., Charges No. 1 to 5, for which the disciplinary enquiry was conducted against the petitioner and the charges for which the petitioner was tried by the learned Judicial Magistrate, Salumber, are almost identical. So far as the Charge No. 6 is concerned, it relates to the absence of the petitioner from the duties with effect from 20.11.83 to 6.12.83. The disciplinary proceedings as well as the criminal trial, both, proceedings together. No request was made by the petitioner in either of the proceedings for staying the proceedings in either of case. In these circumstances there is nothing wrong in two simultaneous proceedings being taken, i.e., one in the Criminal Court and the other by way of Departmental Enquiry. In the case of the Supreme Court reported in: *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, as well as in the cases of *Laxman Singh and Mohammed Umar (supra)*, on which reliance has been placed by the learned Counsel for the petitioner, it has been held that there is no legal bar for simultaneous proceedings being taken against the delinquent employee against whom a disciplinary proceedings and criminal trial are initiated and there may be cases where it would be appropriate to defer disciplinary proceedings awaiting the disposal of the criminal case. In the later class of cases it would be open to the delinquent officer to seek the stay of the proceedings in such cases. Whether in the facts and circumstances of the case there should or should not have been simultaneous proceedings, it requires judicial consideration and the Court shall decide it in the circumstances of a particular case as to whether the disciplinary proceedings should be interrupted during the pendency of the criminal trial or not. No request was made by the petitioner in either of the proceedings and, therefore, continuation of the departmental enquiry and the criminal trial cannot vitiate the disciplinary proceedings and the decision taken in these proceedings shall remain unaffected as in the absence of stay order the Disciplinary Authority was free to exercise its lawful powers.

6. The trial of a criminal case and enquiry in the disciplinary proceedings cannot be equated because the enquiries in both these proceedings are entirely distinct in character and object and the fields of operation of both these proceedings are, also, different. The conduct of the employee may not amount to an offence under the Indian Penal Code or under any other criminal law but it may deserve ? disciplinary action. The departmental proceedings are taken to ensure the standard of professional conduct and is designed to maintain discipline in service and to ensure that unfit/unsuitable persons may not be allowed to continue in service but the disciplinary proceedings do not import the question of investigation of the offence while in a criminal trial, the object of conducting it is to see that an offender may be punished for the offence which has been committed by him. The criminal court has no power to take disciplinary action

against the delinquent officer as that power vests in the Disciplinary Authority. There is a difference in the degree of proof required under these two proceedings as also in the manner in which the evidence in both these proceedings are to be appreciated. While in the criminal trial the standard of proof required for holding a person guilty is the proof beyond reasonable manner of doubt whereas in the departmental enquiry a charge can be established even on the preponderance of the probabilities. The scope of misconduct under the departmental enquiry is wider than that in a criminal offence. There is no constitutional bar for conducting two parallel proceedings for the same charges and in the absence of any such provision, both the proceedings can go simultaneously. The employer has a right to deal-with the misconduct of Us employee even when a criminal case is pending against him on the identical facts and the pendency of the criminal trial cannot debar the domestic enquiry because the power and right of taking disciplinary action against its employee vests in the disciplinary authority. Thus, the continuation of the departmental enquiry during the pendency of the criminal trial, which ultimately resulted in the dismissal of the petitioner, cannot be said to be, in any way, illegal, unjust or contrary to the Rules as there is no such constitutional or other statutory bar under the Act or the Rules.

7. The next question, which requires consideration in the present case, is as to what will be the effect of the departmental action taken by the Disciplinary Authority after the acquittal of the delinquent officer by the competent Criminal Court. The disciplinary enquiry was conducted by the Disciplinary Authority which ended in the dismissal of the petitioner on the basis of the evidence collected during the course of the enquiry and this order dated 31.1.85 of the District Superintendent of Police, Udaipur, was confirmed in appeal by the Deputy Inspector General of Police, Udaipur Range, Udaipur, vide its order dated 30.9.1986. The petitioner was, also, found guilty by the trial court in criminal case vide its judgment dated 5.10.1987, but he was ultimately acquitted by the learned Additional Sessions Judge, No. 2, Udaipur, vide judgment dated 11.8.89, after about two years of the order passed by the Appellate Authority in the disciplinary proceedings. Subsequent acquittal of the accused- petitioner in the criminal trial is not relevant in considering the merit of the disciplinary enquiry which had already concluded before the order of acquittal was passed. The petitioner was dismissed on the basis of an independent departmental enquiry and the order of dismissal passed by the Disciplinary Authority, as affirmed by the Appellate Authority, does not suffer from any. defect. The dismissal order cannot be said to be illegal or wrongful as it has been passed in an independent enquiry on the basis of the material available on record supporting the order of dismissal against the petitioner. The order was passed after giving full opportunity to the petitioner to defend his case. This subsequent acquittal of the accused-petitioner in the criminal trial will not affect the departmental enquiry which already stood concluded and the judgment of acquittal of the petitioner in criminal trail will have no effect on the order of dismissal passed no the basis of the material collected during the independent departmental enquiry. The

dismissal order, in the present case, has not been passed on the basis of the conviction of the petitioner in criminal trial but the dismissal was ordered on the basis of the independent departmental enquiry.

8. The next question, which requires consideration in the present case is: whether after the acquittal of the petitioner by the competent criminal appellate Court whether the Disciplinary Authority was required to re-consider the case of the petitioner for setting-aside the order of dismissal and for his reinstatement in service? The dismissal of the petitioner was made on the basis of the independent departmental enquiry held by the Department and the Disciplinary Authority gave its finding independently on the basis of the evidence collected during the course of enquiry and, therefore, the subsequent acquittal by the criminal appellate Court will not affect the order of dismissal as the enquiry had already resulted in the dismissal and it stood concluded more than two years prior to the judgment of acquittal. In the case of Mohammed Umar (*supra*) the enquiry was initiated and concluded after the order of acquittal was passed by the competent Criminal Court and in these circumstances the judgment of the Criminal Court was required to be considered in giving a finding regarding the guilt of the accused in the departmental enquiry, but the case of Mohammed Umar is not applicable in the present case as in the present case the enquiry stood concluded before two years of the judgment of acquittal. The finding of the criminal court is not conclusive or binding so far as the departmental proceedings are concerned. The acquittal of the petitioner in the present case was made on account of the fact that the statement of the complainant did not find corroboration from the other evidence, i.e., on the ground of insufficiency of evidence and not on the ground of non-happening of the incident and, therefore, the respondents were not required to re-consider the case of the petitioner again, as there was sufficient material against the petitioner to indicate that he is not a person fit to be allowed to continue in government service. The order of acquittal, passed by the criminal court will not fetter the hands of the employer to take appropriate action against the petitioner and to consider whether the petitioner may be allowed to continue in service or not, looking to his misconduct and antecedents. The acquittal does not mean reinstatement so long there is evidence to support the finding of the Disciplinary Authority in the departmental enquiry. The respondents are, therefore, not obliged to re-consider the case of the petitioner for his reinstatement in service as well as for reducing the quantum of punishment or for setting-aside the order of dismissal after the acquittal of the employee in criminal trial. The case of Kundan Singh Jhala (*supra*) is, therefore, of no avail to the petitioner as it is not applicable to the facts of the petitioner's case.

9. No other point was raised by the learned Counsel for the petitioner while initially arguing the case, but in the rejoinder, it has been argued by the learned Counsel for the petitioner that the orders Annexure 8 and Annexure 11, passed by the Appellate Authority are not speaking orders and, therefore they deserve to be quashed and set-aside. In support of this case, learned Counsel for the

petitioner has placed reliance over: Ram Chander v. The Union of India and Ors. AIR 1986 SC 81173. This ground was neither taken by the petitioner in the writ petition nor was it agitated at the time of initially arguing the case but since the point has been raised, I, therefore, think it proper to consider and decide this controversy, also. It is, no doubt, true that the Disciplinary Authority as well as the Appellate Authority are required to pass a reasoned order dealing with the contentions raised by the delinquent employee and a reasoned order is a desirable condition of a judicial disposal of a case but where the ultimate decision is based on the proper assessment of the broader factors then it would not be safe and appropriate to set-aside the order merely on the ground that all the relevant reasons have not been set-out in the order. The order passed by the learned Appellate Authority in the appeal and dismissing the appeal by him, cannot be said to be, in any way, laconic. The Appellate Authority agreed with the findings arrived-at by the Disciplinary Authority and to some extent, considered the evidence, too. Even otherwise, that order was passed in the year 1986, and no grievance was raised by the petitioner for such a long time and that order was not challenged by the petitioner till the judgment of acquittal was passed by the criminal Court. Why the order was not challenged for such a long time, has not been satisfactorily explained by the petitioner. The contention, raised by the petitioner is, therefore, devoid of any force and deserves to be rejected. So far as the order Annexure. 11 is concerned, the respondents were not required to re-consider the case of the petitioner on the ground of acquittal of the petitioner in the criminal case. The order of acquittal was passed after conclusion of the departmental enquiry, as such it has no effect on the enquiry with already stood concluded. The order of dismissal was passed on the basis of the evidence collected in an independent departmental enquiry and not on the basis of the conviction of the petitioner in criminal trial and, therefore, the question of reconsideration of the petitioner's case on the basis of the judgment of acquittal does not arise and as such no reasons were required to be given by the Departmental Authorities.

10. In this view of the matter, I do not find any merit in this writ petition and the same is hereby dismissed with costs.