

(2018) 11 CAT CK 0122
In the Central Administrative Tribunal
Case No : Original Application No. 3593 Of 2014

Manoj Shankar

APPELLANT

Vs

Union Of India Through Secretary And Ors

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Employees Provident Funds And Miscellaneous Provisions Act, 1952 — Section 7A
Employees Provident Fund Staff (Classification Control And Appeal) Rules, 1971 — Rule 10

Citation : (2018) 11 CAT CK 0122

Hon'ble Judges : K.N. Shrivastava, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Yashvardhan, Puneet Kumar, Keshav Mohan, Rishi Kr. Awasthi

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Heard Mr. Yashvardhan, counsel for applicant and Mr.Keshav Mohan, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:

"(i) The orders dated 03.01.2014 and 20.02.2014 initiating disciplinary proceedings against the applicant may be declared bad in law, illegal, arbitrary and be quashed and set aside;

(ii) Direct the respondents to terminate the disciplinary proceedings initiated against the applicant forthwith;

(iii) Other directions and orders, which this Hon'ble Tribunal deems proper in view of the facts and circumstances of the case may kindly be allowed to the applicant;

(iv) The cost of litigation may also be awarded in favour of the applicant."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant vide Memorandum dated 03.01.2014 intending to hold an inquiry under Rule 10 of the EPF Staff (Classification, Control & Appeal) Rules, 1971. The article of charge is that the applicant demanded and accepted illegal gratification to the tune of Rs.50,000/- from Sri E.C.Dastha, Proprietor of M/s PMH Koya Engineering Contractor through Sri Mohammed Idress Bidri, EO, Regional Office, Gulbarga as a motive/reward for concluding Section 7A inquiry under EPF & MP Act 1952 against the said establishment and issuance of clearance certificate in its favour.

4. Along with article of charge, statement of imputation of misconduct, list of documents and list of witnesses were served on the applicant. At this stage, the applicant has approached this Tribunal for quashing the departmental proceedings on the ground that on more or less the same charges, criminal proceedings were initiated against him before a CBI Court, namely, in the Court of III Addl. District & Sessions and Special Judge, Dharwad in Spl.(CBI) C.C.28/2013 titled State Vs. Manoj Shankar and in the said Criminal trial except two, all the witnesses which are listed in the departmental enquiry, were shown as prosecution witnesses and were examined and ultimately the trial Court acquitted the applicant.

5. The contention of the applicant is that once the trial Court has acquitted him after recording the deposition of the witnesses and considering the same, then on the same set of facts and with the same witnesses, a departmental enquiry cannot be held. In support of his contention, the counsel for the applicant has relied upon the following judgments:

"(1) Joginder Singh Vs. Union Territory of Chandigarh & Ors(2015) 2 SCC 377)

(2) Deputy Inspector General of Police Vs S. Samuthiram (2013) 1 SCC 598)

(3) State of Assam & Anr. Vs. Rasghava Rajgopalachari (1972 SLR 44)

(4) R.P. Kapoor Vs. Union of India (AIR 1964 SC 787)

(5) Marimuthu Vs. State (20130 SCCOnline Mad 172)

(6) Maharashtra State Financial Corporation Vs. Nimba Jagannath Tamboli & Ors (2011 (3) Mh.L.J. 188)

(7) Robert Stuart Wauchope Vs. Emperor (ILR (61) Cal.168.

(8) Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd & Anr. (1999) 3 SCC 679)

(9) G.M.Tank Vs. State of Gujarat & Ors (2006) 5 SCC 446)

(10) S.Rama Rao Vs. Food Corporation of India & Anr. (1989) 5 SLR 567)

(11) Ravuru Babu Rao Vs. General Manager, Oriental Insurance Co. Ltd. Madras (1997) 1 ALT 805 (DB).

(12) A.A.Laxma Reddy Vs/ Commissioner Custom & Central Excise & Ors. (2007 SCC Online CAT 629)."

6. The counsel for the respondents pointed out that the acquittal of the applicant in the criminal case is not on merit and that the criminal court has acquitted him giving benefit of doubt. In this regard, he drew our attention to para 119 of the judgment of criminal Court, which is extracted below:-

"Thus considering all the above.....in my opinion, the prosecution has miserably failed to prove the charges against both the accused beyond reasonable doubt and they are entitled for benefit of doubt....."

7. The counsel for the respondents further submitted that the standard of proof required in department enquiry is only preponderance of probability, which exists in this case and as such the OA requires to be dismissed. In support of his contention, he relied upon the following judgments

"(1) Dy.Commissioner of Police New Delhi and Another Vs.Mehar Singh (2013) 7SCC 685.

(2i) Management of Reserve Bank of India Vs. Bhopal Singh Panchal (1994) 1 SCC 541)

(3) Union of India Vs. Purushottam (2015) 3 SCC 779

(4) RP Kapoor Vs. Union of India (AIR 1965 SC 787.

(5) Nelaon Moti Vs. Union of India (AIR 1992 SC 1981)

(6) Dharam Singh Vs. Delhi Transportation Corporation (OA No. 1358/2012)

8. In the case of Purushottam (supra), the Hon'ble Supreme Court has held as follows:

"14.... The acquittal of an employee by a criminal court would not automatically and conclusively impact departmental proceedings: firstly, because of the disparate degrees of proof in the two, viz. beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries; secondly, criminal prosecution is not within the control of the concerned department and acquittal could be the consequence of shoddy investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the trial etc. and thirdly, an acquittal in a criminal prosecution may only preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the criminal Court must conclude that the accused is innocent and not merely conclude that he has not been proved to be guilty beyond reasonable doubt.

15 ...The recent case falls in the passive category, since the respondent has been let off, incorrectly on technicalities, and that too, on a very implausible and debatable if not specious opinion of the JAG. The respondents had not earned an

honourable acquittal. Consequently, whether on reliance of the double jeopardy principle or on the setting aside of his punishment, departmental or disciplinary proceedings ought not be viewed as precluded.."

From the law laid down by the Hon'ble Supreme Court in the above case, it is clear that even if there is acquittal on merit in the criminal case, that would not automatically and conclusively impact the departmental proceedings because the standard of proof required in the criminal case is that of proving the prosecution case beyond reasonable doubt whereas in the departmental proceedings it is preponderance of probability. Further to be noted is that the criminal prosecution is not within the control of the department concerned and it may faulted due lapses on the part of the Investigating Agency.

In the present case, as held by the trial Court, the acquittal occurred because the prosecution could not prove the guilt of the accused as per the standard required in a criminal case. As such, the department cannot be precluded from proceeding against the accused in a departmental enquiry.

9. In Joginder Singh (supra), relied upon by the applicant, the Hon'ble Supreme Court did not consider the above aspects but considered them in Purushottam (supra). The entire focus in the case of Joginder Singh (supra) was regarding the phrase "honourable acquittal". The Court concluded that the phrase "honourable acquittal" does not appear in the Code of Criminal Procedure and it is evolved by the judicial pronouncements and hence an acquittal cannot be distinguished as 'acquittal proper' and 'honourable acquittal'. In the circumstance, in our opinion in the facts and circumstances of this case, the law laid down by the Hon'ble Supreme Court in the case of Purushottam (supra) is required to be followed.

10. In view of facts and circumstances and the principles of law laid down by the Hon'ble Supreme Court referred to above, the action of the respondents in initiating the departmental enquiry against the applicant does not call for interference.

11. Accordingly, the OA is dismissed. No order as to costs.