

(2009) 10 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Writ Petition No. 648 of 1997

Narayan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 379, 420

Citation : (2009) 10 RAJ CK 0043

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Govind Mathur, J.—Being aggrieved by the order of removal from service dated 30.9.1995 and its affirmance by the appellate authority vide order dated 27.08.1996, this petition for writ is preferred.

2. The petitioner, a Constable with Rajasthan Police, was served with a charge sheet under a memorandum dated 23.6.1994 with the allegations of misconduct as under:

vki o?kZ 1992 esa fuyfEcr gks vkidk eq[;ky; iqfyl ykbZu] Mwaxjiqj esa Fkk tgka ls vki gSMDokVj ijeh?ku ds nkSjku fuEu vkijkf/kd d`R; fd;k gSA

1- vkidk pkyku Fkkuk lwjtiksy ds izdj.k la-17@91 esa gksus ls vkidks fn-19-3-91 dks fuyfEcr fd;k tkdj vkidk eq[;ky; iqfyl ykbZu] Mwaxjiqj esa fd;k x;k Fkk tgka ls vki ,d ekg dh gSMDokVj ijeh?ku ij gh fn- 25-2-92 dks vius vki dks dLve vf/kdkjh crk dj esokM eksVIZ dh xyh mn;iqj ds ikl Jh nhid dkekj egktu fuoklh Mwaxjiqj dks jksd dj mldk lwVds?k pSd fd;k o mlesa ls vkus 40]000@& :- fudky fy;sA

2- vkids bl d`R; ij ifjoknh Jh nhid dkekj dh bryk ij Fkkuk lwjtiksy ij iz-la- 85@92 / kkjk 420] 379 rk-fg- esa iaftc) gks vuqla/kku fd;k rks vkids fo:)]tqeZ izekf.kr gksus ls pktZf?kV la-73@92 fn-30-3-92 drk dj pkyku U;k;ky; esa is?k fd;k x;kA

3- vki iqfyl tSls egRoiw.kZ foHkkx esa inLFkkfir gks vki }kjk tufgr dh lqj{kk ,oa vijk/k dks jksdus ds ctk; vki Lo;a us ywV [klksV dk vkijkf/kd d?R; fd;k ftlls iqfyl dh Nch /kwfey gqbZ vkSj iqfyl ds dk;Z dyki ij vke turk dk fo?okl de gqvKA vkidk mDr d`R; foHkkxh; fu;eksa ds foijhr gks iqfyl dh Nch dks /kwfey djus okyk ,oa vkijkf/kd izo`fr dk gksdj dkfcy n.Muh; gSA

3. The inquiry officer after conducting regular inquiry submitted his report to the disciplinary authority and as per that the petitioner was not found guilty for the allegations under consideration. The disciplinary authority was not in agreement with the findings given by the inquiry officer, therefore, while giving reasons for such disagreement he called for the petitioner by a notice dated 09.09.1995 to tender his explanation. A penalty of removal was inflicted upon the petitioner by the disciplinary authority under an order dated 30.09.1995 that was passed after considering the explanation submitted by the delinquent. A challenge given to the order dated 30.09.1995 also failed on rejection of appeal by the appellate authority vide order dated 27.08.1996.

4. Before the appellate authority it was contended by the petitioner that he was subjected to a criminal trial for the same allegations those were subject matter of disciplinary action and the Additional Chief Judicial Magistrate No. 1, Udaipur by his judgment dated 22.08.1995 acquitted him, as such the punishment imposed deserves to be quashed. While negating the contention aforesaid the appellate authority held that consideration in a domestic inquiry and a criminal trial are absolutely different.

5. While challenging the order of appellate authority as well as of disciplinary authority the argument advanced by counsel for the petitioner is that the order of removal deserves to be quashed in view of the fact that the delinquent employee was acquitted from the allegations of theft by a competent Court of criminal jurisdiction, thus, there was no occasion for the disciplinary authority to hold him guilty for the same allegation. The contention aforesaid is substantiated by a Single Bench judgment of this Court in Bahadur Ram v. State of Rajasthan and Ors., reported in 2008 (2) WLC 327, wherein in given set of facts the Court held as under:

In my opinion, upon perusal of the charge-sheet of this case, it is clear that charges are related to the investigation conducted by the Police Station Doodhwakhara in connection with FIR No. 32/91 and it was observed in the charge-sheet that because after investigation in the case challan for the offence of fraud u/s 420, I.P.C. has been filed and the petitioner was arrested and remanded to the police custody for the purpose of investigation, then, obviously whether any criminal offence is committed by the petitioner accused or not, it is subject-matter of trial. Of course, for the purpose of finding with regard to misconduct, there is jurisdiction and power vested in the Disciplinary Authority to proceed with the enquiry proceedings even trial of the criminal case is pending in view of the judgment of the Apex Court in the case of State of Rajasthan v. B.K. Meena (supra); but, in this case, from perusal of the language of the charge

framed against the petitioner it is clear that for the same set of evidence charge-sheet was filed in the criminal Court and, admittedly, after due trial the petitioner was acquitted from the said charge. Therefore, during the pendency of the criminal trial, the disciplinary proceedings against the petitioner was to be stayed till the disposal of the trial before the criminal Court. But, this was not done in this case and, ultimately, prior to acquittal of the petitioner in the criminal case, finding was arrived at in the departmental proceedings upon which the petitioner was dismissed from service. In these circumstances, the dismissal of the petitioner from service can be denied as an act of the Department in haste and oppressive. After judgment of the criminal Court for the same charge, dated 29.05.1995, the order of dismissal of the petitioner and so also the consequential orders passed by the higher authorities in the appeal and review petition deserve to be quashed and set aside.

6. Reliance is also placed by learned Counsel for the petitioner upon a judgment of Hon'ble the Supreme Court in G.M. Tank Vs. State of Gujarat and Another, holding therein that where a honourable acquittal of the employee is made by competent Court, then this fact is required to be taken into consideration in the proceedings giving challenge to the dismissal made as a consequent to domestic enquiry for the same charge.

7. Per contra, stand of the respondents is that the standard of proof in criminal trial and domestic enquiry are absolutely different and as such mere acquittal by extension of benefit of doubt, cannot be a reason for disciplinary authority to exonerate a delinquent employee, who is found guilty of misconduct on preponderance of probability. It is urged that in the present case, the petitioner, who was already facing a criminal trial for the offences punishable under Sections 379 and 420 IPC was identified by the complainant for the incident dated 25.02.1992 and further he made specific statements before the Court as well as before the Enquiry Officer regarding involvement of the petitioner in the alleged incident. The officials of the Police Department in their statements in quite unambiguous terms said that the petitioner was identified by complainant Deepak Kumar, as such, the probability of his involvement in a misconduct stood established.

8. Heard learned Counsel for the parties.

9. In State of Haryana and Another Vs. Rattan Singh, the Supreme Court has observed that in a domestic enquiry, the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials, which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence, but it has reasonable nexus and credibility.

10. In Kamaladevi Agarwal Vs. State of West Bengal and Others, it was held by Hon'ble the Supreme Court that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. In a criminal case, it is essential to prove a charge beyond

all reasonable doubt, whereas in a departmental proceeding preponderance of probability would serve the purpose.

11. In *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, it was held by the Apex Court that it is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer.

12. By relying upon the judgments aforesaid, the Supreme Court in *Commissioner of Police, New Delhi Vs. Narender Singh*, held that if an employee has been acquitted for a criminal charge, the same by itself would not be a ground for not initiating departmental proceeding against him or to drop the same in the event the order of acquittal is passed. In departmental proceedings, the standard of proof is not same as in a criminal case. The disciplinary authority may believe a version more probable of the incident and for that the strict principles of the Evidence Act are not applicable.

13. The legal position, that emerges out from the authoritative pronouncements of Hon"ble Supreme Court, is that the standard of proof required in recording a finding of conviction must be of strong nature to the extent that a charge must be proved beyond all reasonable doubts whereas in a departmental proceeding preponderance of probability would serve the purpose. If in a criminal trial the Court concludes that the charge itself is not made out, the incident alleged is absolutely false or concocted then the departmental adjudicating authority must not pass any order contrary, but in the case where a benefit of doubt is extended to the accused, then while considering the allegation of misconduct the departmental adjudicating authority can certainly examine preponderance of probability and also reach at a conclusion different to that of given by the criminal Court.

14. In the present case, the complainant Deepak Kumar and other police officials, who made investigation in the case, supported the allegations. Sole defence of the delinquent employee was that the police officials made wrong statements because of bias, but he failed to satisfy the reason for such bias. Nothing is said by him regarding any nexus between the complainant and the police officials. The disciplinary authority by preponderance of probability, gave a definite finding and that does not stood vitiated by acquittal of the delinquent employee on extension of benefit of doubt, thus, no interference of this Court while exercising powers under Articles 226 and 227 of the Constitution of India is warranted.

15. Accordingly, the petition for writ is dismissed.