

(2014) 11 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 31163 of 2013 (S-CAT)

O. Gangadhara

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 323A, 323B
Criminal Procedure Code, 1973 (CrPC) — Section 25, 26, 35, 409, 468

Citation : (2014) 11 KAR CK 0060

Hon'ble Judges : Rathnakala, J;N.K. Patil, J

Bench : Division Bench

**Advocate : Vanitha K.R., Advocate for the Appellant; B. Pramod, C.G.C,
Advocate for the Respondent**

Judgement

Rathnakala, J.—The petitioner has filed this petition being aggrieved by the order dated 17.07.2012, passed by the Central Administrative Tribunal in Original Application No. 160/2011.

2. The facts that unfold, the petitioner was working as a postman in the respondents' department. On certain charges of misconduct, a departmental enquiry was held and he was punished with compulsory retirement from service and it was ordered for recovery of Rs. 41,155/- from his DCRG. He challenged the punishment order by way of an appeal before the Appellate Authority in O.A. No. 1013/1999 and the same was rejected on the ground of delay. Said order was taken before the tribunal in O.A. No. 1013/1999. His appeal was allowed and the matter was remanded. The Appellate Authority/second respondent disposed of his appeal on 25.08.2000. On the same allegation, criminal proceedings were initiated in respect of the offences punishable under Sections 409 and 468 of Cr.P.C. After a full pledged trial, he was convicted by the criminal Court and the appeal preferred before the Fast Track Court was allowed. The judgment of conviction passed by the trial Court was set aside and he was acquitted of the charges. Soon after the receipt of the order of acquittal dated 31.07.2010, he

addressed a letter to the third respondent for permission to draw salary from the date of his dismissal till the date of his superannuation. His letter and the reminder letter were not reciprocated. Therefore, he preferred O.A. No. 160/2011 before the Tribunal seeking all the foregone benefits from 17.12.1998 to 31.05.2010. The Tribunal did not find merit in his case and dismissed the same. This writ petition is filed on the ground that though he was acquitted of the similar charges in the departmental enquiry, the department has not taken any action to restore the benefits withheld. The amount involved in the criminal proceedings of Rs. 11,150/- is a part of the Rs. 41,155/- that was ordered to be recovered from his gratuity. Having no other source of income, in the evening of his life, pension is the only income for him. Hence, seeks a direction for the back wages by treating the period of his compulsory retirement to superannuation as on duty.

3. The Tribunal while assigning reasons for its conclusions, distinguished between the standard of evidence required to be led in a criminal trial from that of a departmental enquiry. Rightly, it has observed the absolutism of a criminal trial is not required in a disciplinary enquiry which rests only on probability. In the earlier proceedings i.e., in O.A. No. 1013/1999 which was filed by the appellant after his compulsory retirement, his appeal was considered on merits and some benefits were allowed to him by quashing the order of recovery from his gratuity. Another appeal filed by him in O.A. No. 1876/2000 was disposed of with liberty to file fresh application at appropriate stage and he had withdrawn O.A. No. 1876/2000. The Tribunal on overall consideration of the evidence was convinced that he is guilty of the misconduct as held in the departmental enquiry and acquittal from criminal charges has no binding force, thereby dismissed the appeal.

4. Following point arise in the given facts and circumstances is:

"Whether acquittal of the appellant from the criminal charges entitles him for back wages from the date of compulsory retirement till he attained the age of superannuation?"

5. The Apex Court in the case of Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, , has observed as under:-

In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental

proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability.

In the case of *State Bank of India and Others Vs. R.B. Sharma*, , same view has been reiterated by the Apex Court observing that both proceedings can be held simultaneously, except where departmental proceedings in criminal case are based on same set of facts and evidence in both the proceedings is common. It also observed that the purpose of departmental inquiry and of prosecution are to put a distinct aspect. Criminal prosecution is launched for an offence for violation of 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 a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service.

The Apex Court in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, , has held that both proceedings can be held simultaneously unless the gravity of the charges demand staying the disciplinary proceedings till the trial is concluded as the complicated questions of fact and law are involved in that case. Similar view has been reiterated by the Apex Court in *Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas*, . A Three-Judge Bench of the Hon"ble Supreme Court in *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, reconsidered all earlier judgments and reiterated the same view, as the approach and the objective of the criminal proceedings, and the disciplinary proceedings are distinct and different, there can be no bar in carrying on the criminal trial and criminal proceedings simultaneously.

6. From a catena of judicial pronouncements, it is a settled legal proposition that acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. As of now the petitioner is out of service in lieu of punishment of permanent retirement. He has crossed superannuation on 31.05.2010. His prayer for a salary for the period from the date of compulsory retirement to the date of attaining superannuation is without basis and not tenable. However, while parting we deem it appropriate to express our unhappiness about the observations of the Tribunal in it's judgment on the judicial pronouncement. The Tribunal while expressing its appreciation on the judgment of conviction returned by the J.M.F.C. Court comments that judgment of trial Court is better than judgment of Fast Track Court (Acquittal Judgment), that has drawn our attention to the scope of extent of jurisdiction of Administrative Tribunal.

7. The Tribunals are formed under Article 323A (Administrative Tribunals) of the Constitution of India. The Administrative Tribunals Act (13 of 1985) is constituted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation or Society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto. Section 14 of the Administrative Tribunals Act, 1985 deals with "Jurisdiction, powers and authority of the Central Administrative Tribunal which reads thus:

"Section 14:- Jurisdiction, powers and authority of the Central Administrative Tribunal:--

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to--

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning--

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation.--For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a

Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this subsection apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to--

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.

8. All offences under Indian Penal Code, 1860 are investigated, inquired into trial and dealt with according to the provisions of the Code of Criminal Procedure, 1973 and Criminal Rules of practice laid there under the Constitution of Criminal Courts, the classes of Criminal Courts etc., are structured as per Chapter II Sections 6 to 25 of the Code. The power of Courts are dealt by Chapter III Sections 26 to 35 of the Code. That being different spheres in which Criminal Courts and Administrative Tribunal function, it is beyond the propriety of the Administrative Tribunal to comment on the judgment of the Fast Track Court. It is not in the competence of a Tribunal to travel beyond the jurisdiction it is vested with under the statute. The Apex Court in its judgment reported in AIR 1977 SC 1125 in the case of L. Chandra Kumar Vs. Union of India and Others, has given a landmark decision as to jurisdictional powers of the Tribunals constituted under Articles 323A and 323B of the Constitution of India. The relevance of that judgment in this case is, "that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted". In another judgment, the Apex Court in the case of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and

Others, , deprecated the action of the Bench of the Tribunal, in over ruling the earlier judgment of the Co-ordinate Bench of the same Tribunal by holding that it was opposed to all principles of judicial discipline. From the above, it is clear that the Tribunal cannot violate the principles of judicial discipline. In the backdrop of the above, we hold that the comments made by the Tribunal in the impugned judgment on merits of judgment of Fast Tract Court that "We have examined the trial Court's Judgment with care and found that its Judgment is more correct than the appellate Court's Judgment" deserves to be expunged. Accordingly, expunged.

For the discussions made supra, petition is dismissed.