
(2011) 11 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 1470 of 2011

Prakasan, K.S.

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Citation : (2012) 2 ILR (Ker) 571 : (2012) 2 KLJ 753

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Sumathy Dandapani and Sri Millu Dandapani, for the Appellant; T.R. Ravi (Special Government Pleader), for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan, J.—Appellant is the petitioner in O.P. 32221 of 2001. He was working as a Forest Guard in Malayattoor Division. Alleging dereliction of duties, indiscipline, assault on superior officers after trespassing into the quarters and misuse of departmental vehicle, disciplinary proceedings were initiated against him. Ext. P-1 dated 8-3-1993 is the memo of charges. An enquiry was conducted Ext. P-2 dated 31-5-1994 is the report of enquiry wherein the enquiry officer had reported that the charges alleged against the appellant stand proved. Accepting Ext. P-2 report, the disciplinary authority issued Ext. P-3 notice calling upon the appellant to show cause for not imposing a penalty of barring two increments with cumulative effect. Ext. P-4 objection submitted by the appellant was overruled and by Ext. P-5 order dated 25-10-1994, the disciplinary authority imposed the penalty stated in Ext. P-3. Assailing Ext. P-5 order, Ext. P-6 appeal was preferred before the third respondent which was rejected by Ext. P-7 dated 22-11-1995. A second appeal was preferred before the second respondent. It was rejected by Ext. P-8 order dated 4-4-1998. Thereupon, a review was preferred before the first respondent. By Ext. P-10 order dated 16-1-2001 the review was also rejected. Assailing Ext. P-5 order as confirmed in Exts. P-7, P-8 and P-10, the original petition was preferred. The appellant had also taken a

contention that on allegation of trespass and assault against the superior officer, criminal case was registered and the appellant was prosecuted before the Judicial Magistrate of First Class I, Muvattupuzha, in S.T. 565/1993. By Ext. P-11 judgment he was acquitted. According to the appellant, in the light of acquittal by Ext. P-11, the appellant is entitled to be absolved from the charges levelled against him. Before the learned Single Judge reliance was also placed on the decisions of the Apex Court in G.M. Tank Vs. State of Gujarat and Another, and Basanti Prasad Vs. The Chairman, Bihar School Examination Board and Others, . Learned Single Judge did not find favour with the argument advanced. Consequently, the writ petition was dismissed by judgment dated 26-5-2010, assailing which this appeal is preferred. We have heard Smt. Sumathi Dandapani, learned Senior Advocate appearing for the appellant and perused the records.

2. The strong argument advanced before us is that in the light of Ext. P-11 judgment of acquittal, the appellant is entitled to be exonerated and that it is not just and appropriate to sustain the penalty imposed against the appellant. Learned senior counsel had also given reliance to the decisions cited before the learned Single Judge.

3. Going by Ext. P-1, we notice that there are specific allegations of dereliction of duties, disobedience, assault on Sri B.K. Maloor, Range Officer, after trespassing in to his quarters and misuse of motor cycle bearing Reg. No. KL 1B-3540, owned by the department. The misuse of vehicle is alleged with a plea that the appellant who had no driving licence, had ridden the motor cycle and that he did not make entry in the log book regarding the use of the vehicle. It is reported to be recurring and continuing. From Ext. P-11, we notice that the respondent was prosecuted before the learned Magistrate only for criminal trespass and assault on the Range Officer Sri B.K. Maloor who was examined as P.W. 1 before the trial Magistrate. The allegations of dereliction of duty, disobedience and misuse of vehicle were not at all subject-matter in the criminal prosecution. Therefore, for the sole reason of acquittal in criminal case, the appellant is not entitled to be fully exonerated from the charges. Adding to the above, on reading of Ext. P-11, we find that the Range Officer who was assaulted by the appellant had given evidence in support of the prosecution case. He was disbelieved only for the reason that two occurrence witnesses, who are officials, turned hostile to the prosecution and for the reason that there is delay of one day in lodging the complaint before the police. The acquittal, by Ext. P-11 is not at all an honourable acquittal. It is for want of sufficient corroborating evidence. The standard of proof in a criminal case is totally different from the standard of proof in departmental proceedings. In criminal case, benefit of reasonable doubt would always go in favour of the accused. On the other hand, in disciplinary proceedings, presumptions, assumptions and inferences may go in support of the charge. Even failure of the delinquent to properly explain may go against the delinquent. Even if an alternative conclusion is possible than the one arrived by the enquiry officer, it is not a reason to interfere with the findings of the enquiry officer. From Ext. P-11, it appears to be an acquittal giving benefit of doubt. It is

not an acquittal of the blame. In the above circumstances, we find that the appellant is not entitled to be exonerated in the light of Ext. P-11. As against the finding regarding dereliction of duties, disobedience and misuse of vehicle, there is no material to come to a conclusion that the charges are without any basis.

4. In the decision in G.M. Tank's case (supra), the disciplinary proceedings were initiated only on the basis of the conviction in the criminal case and the delinquent officer was terminated from service. On reversal of conviction in appeal, he was exonerated and ordered to be reinstated. Here in this case, there is separate set of charges and evidence was recorded. The finding of guilt in Ext. P-5 is based upon an independent set of evidence. So the ratio of Tank's case (supra) is not applicable to the case on hand. The ratio of the decision in Basanti Prasad's case (supra) also is of identical nature and hence has no application to the case on hand. Recently, in State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, the Apex Court has held that where there is separate set of evidence in proof of the charges alleged in the disciplinary proceedings and the disciplinary proceedings were concluded independent of the criminal prosecution, the finding of guilt and the penalty imposed thereon cannot be interfered for the mere fact that the appellant was acquitted in the criminal prosecution. At para 10 it is held:

The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry.....

Our earlier conclusion is in tune with the above ruling.

5. The learned senior counsel had also advanced an argument that the charges alleged against the appellant is not of severe nature so as to impose a major penalty of with-holding two increments with cumulative effect. We find little merit in the submission because from the allegation in Ext. P-1 memo of charges, it did not appeal to us that the allegation in the charge-sheet attracts only a minor penalty. Adding to that this Court in writ jurisdiction, cannot sit in appeal over the disciplinary proceedings, findings thereon or the penalty imposed. Unless it is established that the disciplinary proceedings were vitiated either by violating the principles of natural justice or for any other valid reason or that the enquiry officer had, in concluding against the delinquent officer, relied upon materials which are extraneous or that the conclusion arrived is basing upon no evidence, no judicial interference is permissible. So also, the penalty imposed cannot be interfered unless it is revealed that it is totally

disproportionate and shocking to the judicial conscience. The ruling of the Apex Court in State Bank's case (*supra*) also supports our view. At para 7, it is held as follows:

It is now well-settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

Having due regard to Ext. P-1, what we notice is that the allegations are not of trivial nature, but of serious nature. Trespassing into the quarters of the superior officer and assaulting him, misuse of office vehicle, that too, recurringly and falsification of official records are of serious nature canvassing major penalty. Even removal from service is justifiable. We are unable to accept the argument that the penalty imposed is disproportionate or shocking to the conscience. Even if the disciplinary authority had gone wrong, it is only towards leniency. In the above circumstances, we find that the learned Single Judge had correctly appreciated the facts and circumstances of the case. The learned Single Judge was right in not interfering with the findings in the disciplinary proceedings or the penalty imposed. The writ appeal is devoid of merits.

In the result, the writ appeal is dismissed. No order as to costs.