

(2007) 02 MP CK 0091
In the Madhya Pradesh High Court
Case No : Writ Petition (S) No. 388 of 2007

Raghubir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) 2 MPLJ 479

Hon'ble Judges : R.K. Gupta, J; Dipak Misra, J

Bench : Division Bench

Advocate : Sheel Nagu, for the Appellant; Dharmendra Sharma, A.S.G. and K.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.K. Gupta, J.

Petitioner by way of filing this petition under Article 227 of the Constitution of India has challenged the order dated 28-11-2006 passed by the Central Administrative Tribunal in O.A. No. 590/2006. which is Annexure P-3 to the petition. The orders dated 24-5-2006 and 1-7-2006 have also been challenged.

The facts leading to the present case are that Petitioner was an employee of the Respondents. There had been a theft in the factory of the Respondents and Petitioner was suspected. It was alleged against the Petitioner that stolen property belonging to Respondents was found in the dicky of Petitioner's scooter. The said material was also seized. Petitioner was kept under suspension by order dated 28-10-1991. Petitioner was also prosecuted in a Criminal Court and ultimately, according to the Petitioner, he was acquitted by the Criminal Court by order dated 23-12-2005 passed by the Judicial Magistrate, First Class, Jabalpur in Criminal Case No. 1285/1994.

Before the acquittal of the Petitioner, Petitioner was also issued a charge-sheet on 22-1-1992 and the inquiry was continuing against the Petitioner. Petitioner

preferred an application before the Tribunal making a grievance that since the Petitioner is simultaneously being prosecuted in a departmental enquiry and as well as in a criminal case, therefore, the departmental enquiry is liable to be stayed. The said application was filed before the Tribunal and it was registered as O.A. No. 375/1992. The Tribunal by an order dated 1-9-1992 did not stay the departmental enquiry. The said original application was finally decided on 3rd March, 1994. The Tribunal disposed of the said case by holding that there is no reason to stay the departmental enquiry.

Against the said judgment dated 3rd March, 1994 passed by the Tribunal, the Petitioner preferred a SLP before the Supreme Court of India and the Supreme Court by an order dated 1-8-1994 directed that disciplinary proceedings pending against the Appellant shall remain stayed during the pendency of the criminal prosecution. Thereafter, the Petitioner was acquitted in the criminal case by judgment dated 23-12-2005.

Since the departmental enquiry was continued against the Petitioner in spite of his acquittal, therefore, the Petitioner preferred another application before the Tribunal. The said application was registered as O.A. No. 590/2006. The said application ultimately was dismissed by the Tribunal by an order dated 28-11-2006, which is placed on record as Annexure P-3. By this order the Tribunal again dismissed the application of the Petitioner by holding that even though Petitioner has been acquitted yet the departmental enquiry can be continued. Being aggrieved by the said order of the Tribunal, the present petition has been preferred.

Mr. Sheel Nagu. learned Counsel appearing on behalf of the Petitioner has put forth the following submissions:

- (i) Since the Petitioner has been acquitted of the same charges by the Criminal Court, no departmental enquiry against the Petitioner can be continued.
- (ii) Even assuming that enquiry can be continued against the Petitioner yet the disciplinary authority has to consider the effect of acquittal while passing the final order of punishment.

The question with regard to right of employer to continue the departmental enquiry after the acquittal of an incumbent has been considered by the Apex Court in various judgments. The said question came up for consideration before the Apex Court in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, and the Apex Court ultimately came to conclusion in paragraph 11 of its judgment that proceedings before the Criminal Court are entirely different than the disciplinary proceedings and 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 Apex Court also considered the question with regard to evidence or the nature of proof in the departmental enquiry and also in the criminal case and thereafter came to the conclusion that since the departmental enquiry and the criminal case are entirely

of different nature, merely because employee is being prosecuted in a Criminal Court, it will not be proper to stay the departmental proceeding till the decision of the criminal case.

Again the said question came for consideration before the Apex Court in *Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai*, and the Apex Court in paragraphs 21 and 22 of its judgment came to hold as under:

21. Similarly, the learned Single Judge was patently misconceived in reaching the conclusion that the acquittal of the Respondent by the Court of CJM clinched the issue in the departmental enquiry, while losing sight of the well-settled law that the scope of criminal proceedings in the Court of criminal law and the scope of disciplinary proceedings in a departmental enquiry are quite distinct and exclusive and independent. 22. The learned Single Judge has also failed to appreciate that the standards of proof required in the criminal proceedings and the departmental disciplinary actions are not the same.

In *South Bengal State Transport Corpn. Vs. Swapan Kumar Mitra and Others*, , their Lordships had held as under:

9. We have heard the learned Counsel for the parties and also examined the relevant records of this case. Although the Division Bench had not categorically said that the departmental proceeding could not be continued and punishment could not be imposed on the delinquent employee when the criminal case ended in acquittal, even then the learned Counsel for the Respondents sought to argue this ground before us. In our view, this ground is no longer *res integra*. In *Nelson Motis v. Union of India* a three-Judge Bench of this Court observed at SCC p. 714, para 5. as follows:

So far the first point is concerned, namely, whether the disciplinary proceedings could have been continued in the face of the acquittal of the Appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject-matter of the criminal case.

(emphasis supplied)

Similarly in *Senior Supdt. of Post Offices v. A. Gopalan* the view expressed in *Nelson Motis v. Union of India* was fully endorsed by this Court and similarly it was held that the nature and scope of proof in a criminal case is very different from that of a departmental disciplinary proceeding and the order of acquittal in the former cannot conclude the departmental proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the

charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be continued. That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case, departmental proceedings could not be continued and the order of removal could not be passed.

The Apex Court in *N. Selvaraj v. Kumbakonam City Union Bank Ltd. and Anr.* 2006(9) SCC 172 considered the effect of acquittal in the departmental enquiry and expressed the opinion that merely because an employee has been acquitted in the criminal proceeding, it does not imply that continuation of departmental enquiry thereafter would not be justified. In this reference, the relevant paragraph would be para-6, which is reproduced as under:

It is contended by the learned Counsel for the Appellant that since the Criminal Court acquitted him, continuity of departmental enquiry is not justified and he should be directed to be paid all the backwages on the basis of the acquittal recorded by the Criminal Court. We are not at all convinced by this contention. By now, it is well-settled principle of law that the standard of proof between the criminal trial and the departmental proceedings is quite different. In criminal trial the standard of proof is proof beyond all reasonable doubt, whereas in the departmental proceedings it is preponderance of probability which is taken into consideration. It is also to be noted that in continuation of the earlier order passed by this Court as referred to above, the suspension of the Appellant is continuing subject to the final decision that may be made on the basis of a second enquiry. It is now well-settled principle of law that, pay and allowances including backwages will depend on the outcome of the second enquiry to be decided by the disciplinary authority in accordance with the relevant financial rules, (see *Managing Director, ECIL v. B. Karunakar*).

In *Jasbir Singh Vs. Punjab and Sind Bank and Others*, in para-13 of its judgment, the Apex Court held as under:

The High Court relied upon a decision of this Court in *Pratibha Rani v. Suraj Kumar* where a statement of law was made that criminal law and civil law can be allowed to operate side by side. There is no quarrel with the said proposition.

On the basis of the aforesaid pronouncements of law it is apparent that in spite of the acquittal of the Petitioner by the Criminal Court there is no bar that the disciplinary proceeding shall also come to an end. Hence, the first submission urged by the learned Counsel for the Petitioner stands rejected.

The next submission of the learned Counsel for the Petitioner is that in the present case the Respondents have not yet completed the enquiry and the effect

of the acquittal cannot be ignored by the departmental enquiry. Learned Counsel relied upon the decision in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, .

In P. C. Kakkar's case (supra) the Apex Court considered the question with regard to the consideration of the acquittal by the disciplinary authority at the time of passing the final order of punishment in case the employee is found guilty in the departmental enquiry. The Apex Court while considering the said question came to the conclusion that factum with regard to acquittal of the employee being an important circumstance the same has to be considered by the disciplinary authority at the time of inflicting the punishment and accordingly the Apex Court came to hold in para-15 of its judgment as under:

... At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application.

In view of the above, the second submission of the learned Counsel for the Petitioner deserves to be accepted and is accepted.

In view of the aforesaid, the present petition deserves to be allowed in part. The Respondents are directed that if the Petitioner is found guilty in the departmental enquiry then while imposing the punishment the disciplinary authority shall consider the factum with regard to acquittal of the Petitioner by the Criminal Court.

The petition accordingly stands partly allowed. No costs.