
(2014) 12 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : CWP No. 6686 of 2014

Rakesh Kapoor

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 392, 509
Prevention of Corruption Act, 1988 — Section 13(2), 7

Citation : (2014) 12 SHI CK 0013

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Dilip Sharma, Sr. Advocate and Umesh Kanwar, Advocate for the Appellant; M.A. Khan, Addl. Advocate General, P.M. Negi, Dy. AG and Ramesh Thakur, Asstt. AG, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—FIR No. 1 of 2013 dated 5.5.2003 was registered against the petitioner under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988 at Police Station, Anti Corruption Zone, Dharamshala. The petitioner was served with memorandums dated 24.12.2004 and 5.4.2005 vide Annexures P-1 and P-2, respectively. The petitioner filed OA(D) No. 126 of 2005 before the erstwhile H.P. Administrative Tribunal assailing the initiation of departmental proceedings against him pending criminal trial. The learned Tribunal granted interim stay on 19.5.2005. The petitioner was convicted and sentenced under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988 on 16.10.2008 by the learned Special Judge, Kangra at Dharamshala. He was sentenced to undergo two years rigorous imprisonment and to pay fine of Rs. 10,000/- and in default of payment of fine, he was ordered to undergo further simple imprisonment for six months. The petitioner was removed from service on 2.3.2010. A decision was taken vide Annexures P-5 and P-6, respectively that since master-servant relationship was severed after the removal of the petitioner, departmental proceedings were ordered to be closed. The fact of the matter is that the petitioner was acquitted by the Hon'ble Supreme Court vide judgment dated 22.11.2012. Thereafter, the

petitioner was re-instated on 16.5.2013 and the order dated 2.3.2010 whereby the petitioner was removed from service was set aside and the disciplinary authority was directed to proceed further with two departmental inquiries pending before the Commissioner Departmental Enquiries against the petitioner under the provisions of the Central Civil Services (CCA) Rules, 1965. The petitioner made appeals to withdraw the departmental inquiries initiated against him. The appeals were dismissed by the competent authority vide order (Annexure R-2) dated 14.10.2013 and order dated 12.7.2014, respectively.

2. Mr. Dilip Sharma, Sr. Advocate, appearing for the petitioner has vehemently argued that once the decision has been taken vide Annexures P-5 and P-6, the departmental proceedings could not be continued on the basis of Annexure P-7 dated 16.5.2013. On the other hand, Mr. M.A. Khan, learned Addl. Advocate General, appearing on behalf of the State has strenuously argued that the departmental proceedings were closed only on a technical ground that the master-servant relationship has come to an end, after the removal of the petitioner vide order dated 2.3.2010. According to him, the departmental proceedings could continue even though the petitioner has been acquitted as per the judgment dated 22.11.2012 and there is no specific bar not to continue with the departmental proceedings. He lastly contended that the petitioner has not been acquitted honourably, but given benefit of doubt, as per the operative portion of the judgment dated 22.11.2012.

3. The petitioner, as noticed hereinabove, was convicted and sentenced by the trial Court on 16.10.2008. He was removed on 2.3.2010. He has been reinstated vide order dated 16.5.2013 after his acquittal. Now, as far as Annexures P-5 and P-6 are concerned, it is evident from the language employed therein that a technical decision was taken not to continue with the departmental proceedings since the petitioner stood removed from the service. Though the petitioner has been reinstated but the employer has absolute right to continue with the departmental proceedings which were kept in abeyance or closed only technically.

4. We have also gone through the operative portion of the judgment dated 16.10.2008. The cogent reasons have been given in Annexure P-7 dated 16.5.2013 as well as Annexure R-2 dated 14.10.2013 and Annexure P-9 dated 12.7.2014 to continue with the departmental proceedings initiated against the petitioner on 24.12.2004 and 5.4.2005.

5. Their lordships of the Hon"ble Supreme Court in the case of South Bengal State Transport Corpn. Vs. Swapan Kumar Mitra and Others, , have rejected the contention of the petitioner that after the acquittal, the departmental proceedings could not be continued and punishment could not be inflicted. Their lordships have 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 Vs. Union of India and another*, a three-Judge Bench of this Court observed at SCC p. 714, para 5, as follows:

"5. 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)

10. Similarly in *Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. 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 discontinued. 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."

6. Their lordships of the Hon^{ble} Supreme Court in the case of *Commissioner of Police, New Delhi Vs. Narender Singh*, , have held that acquittal in criminal trial is not by itself a ground not to initiate or drop departmental proceedings. Their lordships have held as under:

"13. It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed."

7. Their lordships of the Hon^{ble} Supreme Court in the case of *Suresh Pathrella*

Vs. Oriental Bank of Commerce, , have held that acquittal in criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. The yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. Their lordships have held as under:

"11. In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

8. Their lordships of the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Naman Singh Sekhawat, , have held that departmental proceedings could be initiated even if the acquittal is recorded by the criminal court. It could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. However, such a proceeding must be initiated bonafide and the action must be reasonable and fair. Their lordships have held as under:

"29. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair."

9. In the instant case, the petitioner has been given benefit of doubt.

10. Their lordships of the Hon"ble Supreme Court in the case of The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao, , have again reiterated that acquittal by itself would not debar the disciplinary authority in initiating a fresh departmental proceedings and/or where the departmental proceedings had already been initiated, to continue therewith. Their lordships have held as under:

"18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the Enquiry Officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment. There cannot, furthermore, be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated or to continue therewith.

20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , however, remains unshaken although the applicability thereof had been found to be dependant on the fact situation obtaining in each case."

11. Their lordships of the Hon"ble Supreme Court in the case of Samar Bahadur Singh Vs. State of U.P. and Others, , have held that acquittal in criminal case has no bearing or relevance to departmental proceedings as standard of proof in both cases is totally different. Their lordships have held as under:

"2. The appellant herein was employed as a Constable in the Provincial Armed Constabulary (hereinafter referred to as "P.A.C.") on 15.11.1978. He was posted in IV Bn. P.A.C., Allahabad. On 27.10.1991, he was unauthorisedly absent from the Battalion Headquarter and on that day in the evening he along with one of his friends grabbed one bottle of liquor from the wine shop forcibly and also threatened them. With regard to the aforesaid incident, a criminal case was also registered on the basis of a complaint filed by the salesman of the wine shop, Sh. Rajan Lal. The appellant was also medically examined during the course of which he was found to be under the influence of liquor. The Doctor has opined that he had consumed alcohol, but was not intoxicated.

6. We have considered all the aforesaid submissions in the light of the records that are available with us. The medical report which is placed on record indicates that the appellant had consumed alcohol, but he was not intoxicated. The appellant was missing from the headquarters on 27.10.1991 from the morning and he was caught in the case registered under Section 392 I.P.C. in the evening. The appellant wishes to make a defence that he was advised to take medicine but the prescription which is placed in the departmental proceedings does not indicate that any medicine was prescribed in that prescription. The appellant was arrested in the criminal case in connection with stealing of a bottle of foreign liquor and even during that time he had consumed alcohol prior to the incident. These facts have been brought out in the inquiry proceedings initiated against him in which the appellant did not participate. Therefore, whatever allegations have been brought against him, have been proved by placing cogent materials on record, which go un rebutted due to his absence in the proceedings. We also find that the appellant has been charged on the ground of negligence, dereliction of duty and consuming liquor. The aforesaid facts are found proved in the departmental proceedings.

7. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the

standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.

8. Now, the issue is whether punishment awarded to the appellant is disproportionate to the offence alleged. The appellant belongs to a disciplinary force and the members of such a force is required to maintain discipline and to act in a befitting manner in public. Instead of that, he was found under the influence of liquor and then indulged himself in an offence. Be that as it may, we are not inclined to interfere with the satisfaction arrived at by the disciplinary authority that in the present case punishment of dismissal from service is called for. The punishment awarded, in our considered opinion, cannot be said to be shocking to our conscience and, therefore, the aforesaid punishment awarded does not call for any interference."

12. Their lordships of the Hon"ble Supreme Court in the case of K. Venkateshwarlu Vs. The State of Andhra Pradesh, , have held that even in case of acquittal, when acquittal is other than honourable, departmental proceedings may follow. Their lordships have also issued directions as under:

"13. In R.P. Kapur v. Union of India the Constitution Bench of this Court has held that if the trial of a criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, but even in case of acquittal departmental proceedings may follow, when the acquittal is other than honourable. We are not aware whether any disciplinary proceedings are pending against the appellant. But, if they are, the concerned authority shall proceed with them independently, uninfluenced by this judgment and in accordance with law."

13. Their lordships of the Hon"ble Supreme Court in the case of Avinash Sadashiv Bhosale (D) Thr. L.Rs.. Vs. Union of India (UOI) and Others, , while discussing the scope of acquittal and its effect on departmental proceedings have held that conduct of criminal trial was in hands of prosecuting agency and once FIR was registered, Bank had little or no role to play. Failure of prosecution in producing necessary evidence before trial Court can have no adverse impact on evidentiary value of material produced by Bank before enquiry officer in departmental proceedings. Their lordships have held as under:

"57. Mr. Dwivedi, in our opinion, has rightly pointed out that the conduct of the criminal trial was in the hands of the prosecuting agency. Having registered the First Information Report, the Bank had little or no role to play, apart from rendering assistance to the prosecuting agencies. In our opinion, the failure of the prosecution in producing the necessary evidence before the trial court can not have any adverse impact on the evidentiary value of the material produced by the Bank before the Inquiry Officer in the departmental proceedings. Before the Inquiry Officer, the Bank had placed on the record all the relevant documents which clearly establish that the appellant had exceeded his discretionary powers in purchasing the cheques and issuing demand drafts to show undue favour to the three construction companies named in the charge sheet. In view of the

above, the findings recorded by the Inquiry Officer can not be said to be based on no evidence.

58. It is a settled proposition of law that the findings of Inquiry Officer cannot be nullified so long as there is some relevant evidence in support of the conclusions recorded by the Inquiry Officer. In the present case, all the relevant documents were produced in the Inquiry to establish the charges levelled against the appellant. It is a matter of record that the appellant did not doubt the authenticity of the documents produced by the Bank. He merely stated that the signature on the documents were not his. The aforesaid statement of the appellant was nullified by Mr. S.M. Mahadik, who appeared as a witness for the Bank. He clearly stated that he recognized the signature of the appellant as he had been working as his subordinate.

59. The findings recorded by the Enquiry Officer cannot be said to be based on no evidence. In such circumstances, the appellant cannot take any advantage of the findings of innocence recorded by the criminal court. The "clean chit" given by the learned Magistrate was influenced by the failure of the prosecution to lead the necessary evidence. No advantage of the same can be taken by the appellant in the departmental proceedings."

14. Their lordships of the Hon"ble Supreme Court in the case of Commissioner of Police, New Delhi and Another Vs. Mehar Singh, , have held that even if the person was acquitted or discharged in a criminal case that acquittal or discharge will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to life of crime poses a threat to the society. Their lordships have explained the terms "honourable acquittal", "acquitted of blame" and "fully exonerated" and the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of government service, if found necessary, because they pollute the department. Their lordships have held as under:

"24. We find no substance in the contention that by cancelling the respondents" candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co- relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. In R.P. Kapur Vs. Union of India (UOI) and Another, this Court has taken a view that departmental proceedings can

proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram*. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *The Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal*, , where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted.

26. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

15. Accordingly, in view of the facts enumerated hereinabove and the definitive law laid down by the Hon''ble Supreme Court, there is no merit in this petition and the same is dismissed.

16. Pending application(s), if any, shall also stand disposed of.