
(2008) 02 MP CK 0108
In the Madhya Pradesh High Court

R.K. Geete

APPELLANT

Vs

Deputy Managing Director and Corporate Development
Officer and Others

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)
Penal Code, 1860 (IPC) — Section 409

Citation : (2008) ILR (MP) 2771 : (2009) 2 MPHT 409 : (2008) 2 MPLJ 428 :
(2009) 3 SLJ 455

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In this writ appeal preferred u/s 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 justifiability and cogency of the order dated 18-4-2006 passed by the learned Single Judge in W.P. No. 281/99 is called in question.

The facts which are imperative and indispensable to be enumerated are that the appellant-petitioner (hereinafter referred to as "the appellant") was serving on the post of Assistant Manager in Jain Mandir Gas Relief Extension Counter, Bhopal of the State Bank of India and was the custodian of the said Extension Counter. On a surprise cheque made on 28-4-1992, it was found that there was shortage of Rs. 1,00,000/- and accordingly an FIR was lodged. The appellant was prosecuted u/s 409 of the Indian Penal Code (for short "the IPC") and was convicted by the Trial Court. On an appeal being preferred the learned Additional Sessions Judge reversed the judgment of conviction and recorded acquittal on the ground that the prosecution had failed to establish the fact that the appellant had misappropriated the amount in question. The said judgment in appeal was

rendered on 9-4-2004. After the said judgment came to be passed the appellant submitted a representation to consider the penalty in view of the decision of the Criminal Court by letter dated 11 -4-2005 but the same was not considered. As is discernible from the expose of facts a Departmental Enquiry was initiated against the appellant. A charge-sheet was issued on 25-7-1994. In the departmental proceeding the charges levelled against the appellant were found proven and on the basis of the same the Disciplinary Authority imposed the punishment of dismissal. The order passed by the Disciplinary Authority was assailed before the Appellate Authority who concurred with the order passed by the Disciplinary Authority on 18-8-1997. The order of dismissal passed by the Disciplinary Authority and affirmation thereof by the Appellate Authority was the subject-matter of attack before the learned Single Judge in invocation of extraordinary jurisdiction under Article 226 of the Constitution of India. It was contended that once an order of acquittal has been recorded in his favour he was entitled to be reinstated. It was further put forth that the allegation in the departmental charge-sheet and the prosecution that was launched against the appellant being based on selfsame facts the decision rendered in criminal case has to be given due prevalence and the order of punishment was to be axed. Quite apart from the above, it was urged before the learned Single Judge that the Department has given indecent burial to the principles of natural justice and ex parte proceeding was held against him which has entailed in his dismissal and, therefore, the said order deserves to be quashed.

The contentions put forth by the appellant before the learned Single Judge was strongly resisted by the Department contending inter alia, that criminal prosecution and the charges levelled against the appellant, delinquent employee were quite different and acquittal in the criminal case ipso facto would not inure to his benefit. It was also canvassed that the Departmental Enquiry was an ex parte one and in fact, ample opportunity of hearing was afforded to the appellant who chose not to avail the same and, therefore, in fact, the appellant had appeared before the Enquiry Officer on number of occasions but chose to avoid the proceedings and under these circumstances, there was no justification to contend that the principles of natural justice have not been followed. The learned Single Judge upon hearing the learned Counsel for the parties came to hold that charge-sheet in the criminal case was u/s 409 of the IPC and falsification of accounts u/s 477 of the IPC but the charges levelled against the appellant in the departmental proceeding was different; that the allegation that the appellant was proceeded ex parte was not acceptable inasmuch as the appellant had not participated in the proceedings and tried to submit medical certificates which cannot be given credence to; that the acquittal in respect of the offence would not consequently entail dislodging the order of dismissal inasmuch as in the departmental proceeding misconduct had been proved and parameters and standard of proof in a departmental proceeding are different than a criminal case.

We have heard Mr. Rahul Rawat, learned Counsel for the appellant and Mr. Sujoy Paul, learned Counsel for the respondents.

It is not disputed that the appellant was working as an Officer-in-Charge of Jain Mandir Gas Relief Extension Counter. It is not in dispute that he was prosecuted for the offence punishable under Sections 409 and 477-A of the IPC. There is no cavil over the fact that during the pendency of the criminal case a departmental proceeding was initiated and eventually he was dismissed from service and that was affirmed in appeal. It is admitted that the appellant was initially convicted and later on he was acquitted by the learned Appellate Judge. The questions that emanate for consideration whether by virtue of acquittal in the criminal case the appellant is entitled to be reinstated in service and further the departmental proceeding is vitiated due to non-compliance of principles of natural justice.

First we would advert to the facet whether there has been compliance of the principles of natural justice. The learned Single Judge in the order impugned had addressed himself to the certificate issued by Jaslok Hospital and Research Centre dated 11-10-1994 wherein it has been certified that the appellant would be fit to resume the work from 1-11-1994. After that date the appellant appeared in the Departmental Enquiry but thereafter remained absent. It is worth-nothing that the appellant had produced certain certificates issued by a Homoeopathic Doctor. Said certificates have not been given credence to by the learned Single Judge on the ground that they were availed from a private Homoeopathic Doctor and further ex parte proceeding was taken up against the appellant on 15-7-1995. The learned Single Judge has further opined that there is no certificate on record to show that the appellant was ill. When the appellant had himself chosen not to participate in the disciplinary proceeding it does not lie in his mouth that the principles of natural justice have been given indecent burial. On a scrutiny of the record and the reasonings given by the learned Single Judge on this score, we are of the considered opinion that the finding recorded on that count is absolutely impeccable.

Another facet of violation of principles of natural justice which has been canvassed before us, is that the appellant was not permitted to engage an Advocate. It is noteworthy to mention the Presenting Officer engaged by the Bank was a bank employee and not an Advocate. There can be no scintilla of doubt that the same did not involve any complex question of law and, therefore, engagement of any Advocate was not necessary. Thus, it cannot be said that there has been violation of principles of natural justice. The next submission of the learned Counsel for the appellant is that once he has been acquitted in the criminal appeal and the charges are similar, he is entitled to be reinstated. To appreciate the said submission it is seemly to reproduce the charges that were framed in the departmental proceedings:

Statement of allegations

While you were working as Officer-in-Charge at Jain Mandir Gas Relief Extension Counter (under Hamidia Road, Bhopal Branch), on 28-4-92, a shortage of Rs. 1.00 lac was found in the cash balance held in your sole custody, by the Branch Manager, Hamidia Road Branch, who carried out the surprise verification of the

cash of the extension counter on that date. You, being the sole custodian of the cash of the Extension Counter and personally responsible for the correctness of the cash held in your single custody, failed to protect the Bank's interests and the Bank has been saddled with a pecuniary loss of Rs. 1 lac.

Articles of Charges

You are charged with gross negligence in the performance of your duties unmindful of Bank's interests. By failing to protect the Bank's interests/cash, you have exhibited lack of devotion to duty. Your acts are unbecoming of a Bank Official and Contravenes Rule No. 50 (4) of the State Bank of India Officers Service Rules governing your services in the Bank.

The appellant was prosecuted for the offence punishable under Sections 409 and 477-A of the IPC. The charges, as we perceive, have a different character, tenor and contour. In *Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai*, a two-Judge Bench of the Apex Court look note of the fact that the respondent therein was an accused in criminal case instituted against him for offence punishable u/s 409 of the IPC (criminal breach of trust) and falsification of accounts punishable u/s 477-A of the IPC whereas the charges in the Departmental Enquiry were violation to maintain prescribed records for issue of stock and for swindling the Corporation in collusion with the other members of the staff through misappropriation of stock and cash of the Corporation thereby causing huge loss to the Corporation. The Bench expressed the opinion that the High Court had lost sight of the fact that scope of criminal proceedings in a Criminal Court and the scope of disciplinary proceedings in a Departmental Enquiry are quite distinct, exclusive and independent of each other; that criminal proceedings in Criminal Court and disciplinary proceedings were on totally different sets of facts and charges; and that the Disciplinary Authority has arrived at impeccable conclusions based on dispassionate appreciation of the evidence on record and supported by legally irrefutable reasons. After so stating Their Lordships referred to the decisions rendered in *Lalit Popli Vs. Canara Bank and Others*, and *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, came to hold as under:

32. The scope of disciplinary proceedings and the scope of criminal proceedings in a Court of criminal law are quite distinct, exclusive and independent of each other. The prosecution proceedings launched against the respondent herein were in respect of offences punishable under Sections 409 and 477-A, IPC, whereas the departmental proceedings as initiated against her were in respect of the charges of misappropriation and other fraudulent practices such as deliberate omission to bring into account the stock received showing bogus issues in the records, falsification of accounts, submission of defective accounts, tampering of records, manipulation of accounts and records, etc. Thus, the respondent herein was proceeded against for quite different charges and on different sets of facts before the Court of Chief Judicial Magistrate, on the one hand, and before the Departmental Enquiry on the other.

*** *** *** *** *** *** In the instant case, the charged employee holds a position of trust where honest and integrity are inbuilt requirements of functioning and, therefore, in our opinion, the matter should be dealt with firmly with firm hands and not leniently. In the instant case, the respondent deals with public money and is engaged in financial transactions or acts in a fiduciary capacity and, therefore, highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, the conclusion of the learned Single Judge as affirmed by the Division Bench of the High Court do not appear to be proper. We have no hesitation to set aside the same and restore the order passed by the Disciplinary Authorities upholding the order of dismissal.

In the case at hand the allegations in the charge-sheet are that the appellant was Officer-in-Charge of the Extension Counter and was responsible for the correctness of the cash, he has failed to protect the bank's interest as a result of which the Bank has been saddled with pecuniary loss of Rs. 1,00,000/-. There was also allegation that he was grossly negligent in performance of his duties unmindful of Bank's interests. It was also the allegation that he had exhibited lack of devotion to duty and failed to protect the Bank's interests. There is no scintilla of doubt that the charge-sheet is absolutely different. The Enquiry Officer has found in the enquiry that the appellant was guilty of the charges. The Disciplinary Authority has concurred with the same. We have already held that the learned Single Judge is absolutely justified in holding that the Enquiry Officer has correctly proceeded ex parte against him and nothing can be flawed in it.

In view of the aforesaid analysis we perceive no merit in this appeal, accordingly the same stands dismissed without any order as to costs.