
(2016) 02 RAJ CK 0128

In the Rajasthan High Court

Case No : SB Civil Writ Petition No. 14829/2009

RSRTC

APPELLANT

Vs

Ramavatar Sharma and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b)

Citation : (2016) 1 CLR 1041 : (2016) 149 FLR 378 : (2016) LabLR 394 :
(2016) 2 LLJ 579

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Vinayak Joshi, for the Appellant; Dharmendra Jain, for the Respondent

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—1. With consent of the parties, writ petition has been heard finally.

2. By this writ petition, a challenge is made to the order dated 1.4.2009, passed on an application under section 33(2)(b) of the Industrial Disputes Act, 1947 (for short "the Act of 1947").

3. Learned counsel for petitioner Corporation submits that in pursuance to the charge sheet dated 11.9.1991, enquiry was held. The charges were found proved for carrying 20 passengers without tickets. The order of punishment was passed on 20.1.1993 dismissing the workman from services. Since the approval of the order was required, an application under section 33(2)(b) of the Act of 1947 was submitted before the Industrial Tribunal, Jaipur. The application aforesaid has been dismissed by the tribunal on two grounds. Firstly, in reference to a criminal case lodged for the incidence and final report submitted by the police therein. Secondly, the charges have not been found proved.

4. It is submitted that the allegations in the FIR were not same as were the

charges in the departmental enquiry thus even if the FIR has resulted in final report, it cannot have effect on the departmental enquiry.

5. It is further submitted that departmental enquiry and the criminal case can go simultaneously and even if one is acquitted in criminal case, it would not effect the departmental enquiry. It is looking to the fact that standard of proof in the criminal case needs to be beyond doubt, whereas, same standard does not apply to the departmental enquiry. It is in the light of the judgment of the Apex Court in the case of case of "GM Tank versus State of Gujarat & ors" reported as , (2006) 5 SCC 446 and "Captain M Paul Anthony versus Bharat Gold Mines Ltd." reported as , (1999) 3 SCC 679.

6. It is further stated that charges were not found proved only on the ground that the inspecting team had taken the ticket book and way bill yet did not put signatures thereon. The finding aforesaid has been recorded in ignorance of the charges made against the workman. It was the case of the Corporation that ticket book and the way bill was given by the workman but it could not be signed by the inspecting team as was snatched by involvement of unwarranted elements. Ignoring the aforesaid fact, finding has been recorded, that too, when the tribunal is having limited jurisdiction for interference in the finding on an application under section 33(2)(b) of the Act of 1947. The interference in the finding cannot be made merely for the reason that other view is possible. It can be made only when material available on record cannot show proof of misconduct and not otherwise. The tribunal has acted beyond its jurisdiction while recording finding in ignorance of the charge sheet.

7. Learned counsel for the respondent workman, on the other hand, submits that when for part of the allegation in the charge sheet, an FIR was registered followed by final report by the police then it cannot be said that with the involvement of unwarranted elements ticket book and way bill was snatched from the inspecting team hence they could not put their signatures on it. The learned tribunal has thus made proper scrutiny of the case for recording its conclusions, that too, within its jurisdiction. In view of above, interference in the impugned order may not be made.

8. I have considered rival submissions of the parties and perused the record.

9. The application under section 33(2)(b) of the Act of 1947 was moved for approval of the order of dismissal from service of the workman. On an application under section 33(2)(b) of the Act of 1947, the tribunal has limited jurisdiction. It has to first determine as to whether the enquiry conducted by the employer was fair or not. If the conclusions are favourable to the employer then to consider as to whether prima facie case exist. The meaning of the words "prima facie" has been given by the Apex Court in the case of "Martin Burn Ltd. versus RN Banerjee", , 1958 AIR 79 and , 1958 SCR 514. Para 28 of the said judgment is quoted hereunder for ready reference -

"28. The Labour Appellate Tribunal had to determine on these materials whether

a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See Buckingham and Carnatic Co., Ltd. Case 1952 L.A.C. 490."

10. The perusal of the judgment of the Apex Court reveals meaning of "prima facie". The case need not be proved to the hilt which is established, if the evidence on record is believed.

11. If the impugned order is considered then the reference of final report in the FIR is wholly irrelevant. It is for the reason that departmental enquiry was not on the same charges as exist in the FIR so as to have effect of the final report. In any case, even if criminal case contains some allegations as are existing in the charge sheet, departmental proceedings are permissible simultaneously in view of the judgment of the Apex Court in the case of Captain M Paul Anthony (supra).

12. It is also held that even if in the criminal case, charged employee is acquitted, departmental enquiry would not be guided by the order of acquittal. There exist difference in the standard of proof in the criminal case and departmental enquiry. In the case of "Suresh Pathrella versus Oriental Bank of Commerce" reported in , (2006)10 SCC 572, the Apex Court held that acquittal in the criminal case cannot be taken as a bar for initiation of disciplinary proceedings against the delinquent employee. It is after considering that standard of proof required in criminal trial and departmental enquiry is quite different. Relevant para 11 of the aforesaid judgment are quoted hereunder for ready reference -

"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."

13. Same view was taken by the Hon"ble Apex Court in the case of "Punjab Water Supply Sewerage Board & anr. v. Ram Sajivan & anr." reported in , (2007) 9 SCC 86. In the aforesaid case, the delinquent was given benefit of probation in the criminal case. It was held that initiation of disciplinary proceedings is not a

bar.

14. In the case of Uttaranchal Road Transport Corporation & ors versus Mansaram Nainwal" reported in , (2006) 6 SCC 366, the Apex Court held that acquittal in the criminal case cannot automatically affect departmental enquiry. Therein, applying the judgment in the case of Captain M Paul Anthony, order of termination was set aside by the High Court. It was without discussing as to how the judgment in the case of Captain M Paul Anthony applies. Accordingly matter was remitted back to the High Court for afresh decision.

15. In case of "West Bokaro Colliery (TISCO Ltd.) Versus Ram Pravesh Singh" reported in, (2008) 3 SCC 729, it has been held that acquittal in a criminal case cannot be taken as a bar for departmental enquiry. Para 20 of the aforesaid judgment is also quoted hereunder for ready reference -

"20. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities."

16. Same view has been taken by the Hon"ble Apex Court in the case of "Union of India & ors versus Naman Singh Shekhawat" reported in , (2008)4 SCC 1, wherein, it has been held that after acquittal, initiation of departmental enquiry is permissible but exercise should be bona fide.

17. In the case of "Divisional Controller, Karnataka State Road Transport Corporation versus MG Vittal Rao" reported as , (2012)1 SCC 442, it has been held in para 23 thus -

"23. In Pandiyan Roadways Corpn. Ltd. v. N. Balakrishnan , (2007) 9 SCC 755, this Court reconsidered the issue taking into account all earlier judgments and observed as under: (SCC pp. 766-67, paras 21-22)

"21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and G.M. Tank v. State of Gujarat. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (See: Commr. of Police v Narender Singh, or; where the delinquent officer was charged with something more than the

subject-matter of the criminal case and/or covered by a decision of the civil court (See: G.M. Tank, Jasbir Singh v Punjab & Sind Bank and Noida Entrepreneurs v NOIDA, SCC at p. 394, para 16

22..... "41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. (See: e.g. Krishnakali Tea Estate and RBI v. S Mani) Each case is, therefore, required to be considered on its own facts."

18. In the case of "NOIDA Entrepreneurs Association Versus NOIDA & ors", (2007) 10 SCC 385, it has been held that standard proof of enquiry is not the same as required in a criminal case. Even an acquittal in the criminal proceeding does not bar departmental enquiry thus a decision to drop the enquiry was held to be improper. Paras 11, 13, 14, 16 of the said judgment are quoted thus -

"11.A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. (See: Tata Cellular v. Union of India , 1994(6) SCC 651), and Teri Oat Estates (P.) Ltd. v. U.T. Chandigarh and Ors. (, 2004 (2) SCC 130). The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan and Others v. T. Srinivas (, 2004(7) SCC 442), Hindustan Petroleum Corporation Ltd. and Others v. Sarvesh Berry (, 2005 (10) SCC 471) and Uttaranchal Road Transport Corpn. v. Mansaram Nainwal (, 2006(6) SCC 366).

"8..... The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a 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 public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the

evidence defined under the provisions of the Indian Evidence Act 1872 (in short the "Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

A three-judge Bench of this Court in *Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Ors.* (, 1997 (2) SCC 699) analysed the legal position in great detail on the above lines.

13. There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

14. In *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* , 1999 (3) SCC 679, this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In paragraph 22 conclusions which are deducible from various decisions were summarised. They are as follows:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the large in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed,

the departmental proceedings, even if they were stayed on account of the pendency of criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

19. Looking to the fact aforesaid, judgment of this court in the case of "SS Tanwar versus Marwar Gramin Bank, Pali & ors", 2000(1) WLC (Raj.) 369 cannot provide assistance to the non-petitioners.

20. The perusal of the impugned order reveals conclusions in para 7. The order is quite sketchy. It does not show as to how prima facie proof does not exist against the workman. The conclusions have been drawn only on the ground that when the ticket book and the way bill were available for putting signatures, it was not used by the inspecting team thus presumption has to be drawn against the management.

21. The tribunal has drawn conclusions in ignorance of the allegations in the charge sheet. The allegation against the workman was not that he had not given the ticket book and the way bill, rather, it was given to the inspecting team but it was snatched by involving unwarranted elements. How the allegation of snatching the ticket book and the way bill is not found proved, no finding exist and it cannot be guided by the final report given on the FIR.

22. In the light of the aforesaid, I find that the tribunal has not properly examined the issue thus impugned order is set aside and the case is remanded back to the tribunal to consider the issue again within four corners of the jurisdiction under section 33(2)(b) of the Act of 1947. The writ petition is allowed. The parties are directed to appear before the tribunal on 8.3.2016.