
(1996) 04 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 319 of 1984

Rupeswar Dutta

APPELLANT

Vs

Oil India Ltd. and Others

RESPONDENT

Date of Decision : 04-04-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1997) 1 GLR 108

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : N.N. Saikia, R.K. Jaitly and G. Deka, for the Appellant; P.C. Deka and S.N. Sarma, for the Respondent

Final Decision : Allowed

Judgement

D.N. Baruah, J.—This writ application is directed against the Annexure-I show cause notice, Annexure-IV order of dismissal passed by the Additional Chief Engineer (Mechanical) Mechanical Engineering Department by which the Petitioner was dismissed from company's service with effect from 25th of August, 1983, Annexure-VII appellate order dated 22.11.83 passed by the Resident Chief Executive refusing to interfere with the order of dismissal and the order of the Central Tribunal, Calcutta.

2. For the purpose of disposal of "His Civil Rule, facts may be stated as follows:

Petitioner was initially appointed Boiler Attendant in the year 1961. He was promoted to the post of Boiler Attendant (Class-I) in 1966 and since then he had been serving in that capacity. He completed 23 years of service at the time of filing of the writ petition and the Petitioner was due to retire from service in the year 1991.

An incident took place on the night of 24/25th of April, 1983 near the house of the Petitioner at Duliajan in which one Jogen Chandra Deka was severely injured

by some miscreants. The injured was brought to the hospital of the company at Duliajan for treatment where he succumbed to his injuries on that day. A criminal case was initiated and the Petitioner was also one of the accused in the said criminal case. After trial Petitioner was acquitted of the charge u/s 302 IPC. However, he was convicted u/s 201 IPC for concealing the dead body. The judgment was delivered by the learned Sessions Judge on 31.1.87. Prior to that a departmental proceeding was also initiated on 7.6.83. The proceeding commenced for some time and it was concluded on 24th of August, 1983, Charges were stated to be proved against the Petitioner and he was found guilty. Accordingly, he was dismissed from service by Annexure-IV order dated 24.8.83 issued by the Additional Chief Engineer (Mechanical) Mechanical Engineering Department. He was dismissed from service from the next date of passing of the order.

Being aggrieved, the Petitioner preferred an appeal before the Resident Chief Executive-Appellate authority. The Appellate Authority by Annexure-VII order dated 22.11.83 dismissed the appeal. Meanwhile, before the date of his dismissal as there was some dispute pending in connection with the condition of service, the management of the Oil India Ltd. filed an application u/s 33(2)(b) for approval before the Central Tribunal, Calcutta. The prayer for approval was opposed by the Petitioner. The Petitioner submitted that it should be stayed as the criminal trial, was pending. However, the objection was not entertained by the Central Tribunal and the Central Tribunal decided to proceed with the case. Against that order the Petitioner has approached this Court. Thereafter, by judgment and order dated 31.1.87 the Criminal Court (Sessions Judge) acquitted the Petitioner of the charge u/s 302 I.P.C., but convicted him u/s 201 I.P.C. In the writ petition the Petitioner prayed for issuance of appropriate writ or direction restraining the Respondents from giving effect to the order of dismissal passed by the Additional Chief Engineer (Mechanical) Mechanical Engineering Department, Oil India Ltd. and confirmed by the Resident Chief Executive (appellate authority). The Civil Rule in due course came up for hearing and a Division Bench of this Court by judgment and order dated 15.11.89 held that the disciplinary action taken against the Petitioner could not sustain in law and accordingly quashed the order of dismissal and subsequent orders passed in the appeal. The management of the Oil India Ltd. filed SLP before the Supreme Court (Civil Appeal No. 3420 of 1990). The Apex Court after hearing granted the special leave and passed the following order:

It is not disputed that the appeal against the conviction and sentence u/s 201 is pending before the Gauhati High Court. It is, therefore, not proper for the High Court in the meantime to direct re-instatement of Respondent No. 1. Order of the High Court directing re-instatement is set aside with the request to the High Court to dispose of the Criminal Appeal as expeditiously as possible. The writ petition of Respondent No. 1 may be disposed of in the light of the judgment in the Criminal Appeal. The Appeal is disposed of accordingly.

In the meantime the appeal against conviction of the Petitioner u/s 201 I.P.C. was also disposed of by judgment and order dated 11.10.93 in Criminal Appeal No. 22/87 acquitting the Petitioner of the charge u/s 201 I.P.C. Thereafter, the Petitioner filed a miscellaneous; application as per the order passed by the Apex Court on 15.11.89. Therefore, the Civil Rule is taken up afresh.

3. Heard Mr. N.N. Saikia, learned senior Counsel assisted by Ms. G. Deka, learned Counsel appearing on behalf of the Petitioner, Mr. P.C. Deka, learned senior counsel assisted by Mr. S.N. Sarma, learned Counsel appearing on behalf of Respondent Nos. 1 and 2.

4. Mr. Saikia submits before this Court that the charge levelled against the Petitioner in the disciplinary enquiry and the charges in the criminal trial are same and identical. This fact is not denied by Mr. Deka. Mr. Saikia submits that as the Petitioner has been acquitted of the charge u/s 302 I.P.C. by the learned Sessions Judge and of the charge u/s 201 I.P.C. by this Court, on the same charges departmental proceeding cannot proceed and no action can be taken on the basis thereof. Mr. Deka, on the other hand, strenuously argues that the departmental proceeding was initiated before the judgments were pronounced and, therefore, it is not a case that after acquittal the departmental proceeding has been initiated and, therefore, there can be no bar in proceeding with the departmental proceeding.

5. In support of his argument Mr. Saikia has drawn my attention to a decision of the Apex Court is Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others, In the said decision their Lordships of the Apex Court held thus:

...We have perused the proceedings of DPC which would clearly show that the reasons which prevailed with the DPC were the prosecution u/s 5(2) of Prevention of Corruption Act and the departmental enquiry, against the Appellant. It is not in dispute that the proposed departmental enquiry also is related to the selfsame offence u/s 5(2) of the Prevention of Corruption Act. The judgment acquitting the Appellant of the charge u/s 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits.

From this decision it is clear that in case of an acquittal on technical grounds, the departmental proceeding may continue, but if a matter is decided on merit, on the same charge there cannot be a departmental proceeding. The reason behind this, in my opinion, is that when a person faces trial for a particular offence and gets acquittal on merit, there should not be a second round of enquiry in respect of the same charge. It is true that determination of a case in a criminal Court is

altogether different from that of departmental enquiry. But that does not mean that if a particular charge is tried in a criminal Court on merit it should be again taken up in a departmental proceeding.

6. In support of his argument Mr. Deka places reliance on a decision of the Supreme Court in *Nelson Motis Vs. Union of India* and another, The Apex Court in the said case held that the nature and scope of criminal case were very different from those of a departmental disciplinary proceedings and an order of acquittal could not conclude the departmental proceedings. Paragraph 5 of the said judgment has made the position very clear.

In the said paragraph the Supreme Court observed thus:

5. So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the fact 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 criminal case.

This paragraph also indicates that if the charges are identical in that case the departmental proceeding should not proceed.

Mr. Deka also relies on a decision of the Apex Court in *Union of India (UOI) and Others Vs. Upendra Singh*, In the said case the Apex Court held that in the case of charges framed in a disciplinary inquiry the tribunal or court could interfere only if on the charges framed no misconduct or other irregularity alleged could be said to have been made out or the charges framed were contrary to any law.

This also will show that a Tribunal or Court has jurisdiction to interfere with a charge if it is not in accordance with law.

7. In the present case as per the decision of the Apex Court there cannot be a departmental proceeding on the same charges of which the criminal Courts have acquitted the Petitioner. In the SLP the Supreme Court set aside the order of reinstatement on the ground that the criminal case was still pending. That suggests that the result of the criminal case was relevant for the purpose of disposal of the departmental proceeding. Besides, the Supreme Court has also directed this Court to dispose of this writ petition in the light of judgment in the criminal case. This only means that if the judgment is in favour the departmental proceeding should not continue.

8. Considering all the facts and circumstances of the case I am of opinion that as the Petitioner has already been acquitted of both the charges u/s 302 IPC and 201 IPC, on the same charges no action should be taken by the department. In view of the above, the dismissal of the Petitioner is illegal and he is entitled to

get all the benefits of reinstatement.

Learned Counsel for the parties inform that the Petitioner has since retired from service, Therefore, only thing left with is what relief the Petitioner would be entitled to. It is true that when an order of dismissal is found to be not just and proper the Petitioner should be entitled to get the entire benefit as held by the Supreme Court in Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others, In the present case ends of justice will be met if the Petitioner is given back wages of 5 years. Accordingly, I direct the Respondents to pay back wages with all increments for five years till the date of his dismissal. He shall also be entitled to get pensionary and other benefits as he is entitled to under the law treating him as if he was not dismissed. The amount of backwages and other benefits shall be given to the Petitioner within, 6 (six) weeks from the date of receipt of this order.

The petition is allowed to the extent indicated above.