

(2009) 04 OHC CK 0084
In the Orissa High Court
Case No : O.J.C. No. 10846 of 1997

Sayambhu Digal

APPELLANT

Vs

Hindusthan Aeronautics Limited and Others

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Constitution of India, 1950 — Article 12
Criminal Procedure Code, 1973 (CrPC) — Section 248(1)
Penal Code, 1860 (IPC) — Section 379, 380

Citation : (2009) 1 ILR (Ori) 665 : (2009) 2 OLR 845 Supp

Hon'ble Judges : Sanju Panda, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Saktidhar Das, A.K. Nayak, L. Samantaray, D.R. Bhoktya, B.N. Udgata, H.S. Satpathy, B. Patnaik, B.K. Sinha, Archana Mohanty and D. Dhar, for the Appellant; Y.S.N. Murty, Paramananda Mishra and S.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—By means of this writ petition, the Petitioner has challenged the impugned order of dismissal from service from the post of Mechanic under the opposite parties i.e. Hindusthan Aeronautics Limited.

2. There is no doubt that the Hindustan Aeronautics Limited is an instrumentalities of the State and is "State" within the meaning of Article 12 of the, Constitution

3. The brief facts of the case are that the Petitioner was working as Mechanic under opposite party No. 1. On 11.3.1993, 188 turbine blades were heaped on the floor of the Forge Shop for cooling. On the next day, the Deputy Manager found 24 out of the 188 blades missing. So, he reported the matter to the Security and Vigilance Department of Hindustan Aeronautics Limited for investigation. The Manager (Security and Vigilance) after being satisfied that there was theft of 24 numbers of turbine blades from the Forge Shop lodged

F.I.R. at the Sunabeda Police Station on 12.3.1993 alleging commission of theft of 124 numbers of 1st stage turbine blades. However, nobody was mentioned as the culprit in the F.I.R. The Police registered a case bearing Sunabeda P.S. Case No. 25 of 1993 for the offences punishable u/s 379 I.P.C. During the course of investigation, the police searched the quarters of the Petitioner and seized 7 number of aero engine blades along with several other articles. The Petitioner was arrested and released on bail. A Criminal Trial was conducted against him on the basis of the Police investigation which was registered as G.R. Case No. 183 of 1993 and T.R. No. 933 of 1993. The Petitioner was charged u/s 380 of the Indian Penal Code for committing theft of some old aero engine turbine blades. After conclusion of trial, vide judgment and order dated 23.4.1994 the Petitioner was not found guilty and was acquitted u/s 248(1) of the Code of Criminal Procedure. by the S.D.J.M., Koraput.

4. Simultaneously the Disciplinary Proceedings were also initiated against the Petitioner. The charge levelled against the Petitioner was to the effect that on 23.3.1993 at about 10.30 AM. the Departmental Security Staff along with the local police raided the quarters of the Petitioner i.e. Quarters No. R/72 and found the following materials belonging to the Company in his quarter.

- (i) One piece of Steel Bar of 6" length and 8" circumference.
- (ii) One piece of 16" and two pieces of 19" aluminum pipes.
- (iii) Two Nos. of old fibre rounds containing bearings.
- (iv) Two old aero engine bearings.
- (v) One small old fuel pipe line of 9" length (approx)
- (vi) Seven Nos. of unfinished aero engine nimonic steel blades.
- (vii) One No. of old ferrous metal part of Aero Engine.

Out of the above items, item Nos. (i) to (v) were seized from his quarters and item Nos. vi and vii were found behind his quarter which were concealed under the dry leaves of Banana plants.

5. Eight witnesses were also examined during the course of departmental enquiry. The Petitioner was allowed to cross-examine the witnesses to prove recovery etc. in support of the prosecution. The Petitioner did not produce any document in his support. The Petitioner was found guilty and it was held by the Disciplinary authority that the findings of the criminal court is not binding in the disciplinary proceeding and ultimately the impugned order of dismissal from service was passed on 11.07.1997 by the General Manager, Hindustan Aeronautics Ltd, Koraput Division.

6. It has been submitted by Learned Counsel for the Petitioner that the allegations in the criminal case as well as in the disciplinary proceeding are one and the same and after acquittal in criminal case, the departmental proceeding

initiated against the Petitioner as many as eight witnesses were examined but though the Petitioner wanted to examine some departmental heads, he was not permitted to examine them. The record shows that the Petitioner had cross examined the witnesses. The Inquiry Officer had also considered the explanation submitted by the Petitioner. He has specifically mentioned regarding recovery. The Petitioner submitted in his explanation which is placed as Ext.P/2 that the Security staff and the Police staff took him to the Police Station and took his signature on blank paper. But he said that the same was not correct and the answer given by P.W. 2 to Question No. 1 at Para-13 while obtaining clarifications from P.W. 2 by ED was "he has signed the seizure list in my presence". Therefore, the fact of signing the seizure list in the presence of P.W. No. 2 was proved.

7. In the case of State of Rajasthan Vs. B.K. Meena and others, , the Supreme Court held that the Respondent namely B.K. Meena was a member of Indian Administrative Service belonging to Rajasthan cadre. He was working as Addl. Collector, Development-cum-Project Director, District Rural development Agency (DRDA) Jaipur during the year 1989. He was transferred from the said post and his successor lodged an F.I.R. against the Respondent in the Police Station, Rani Park, Jaipur, inter alia, alleging misappropriation of public funds by the Respondent to the tune of Rs. 1.05 crores. The Anti-corruption Department of the State of Rajasthan investigated into the said offence and found that the Respondent was involved in the offence and accordingly lodged an F.I.R. Consequently, he was placed under suspension and also was arrested. Charge-sheet was filed against him in the Court of Chief Judicial Magistrate, Jaipur in the criminal case and cognizance thereof was taken. Against the same Respondent B.K. Meena approached Central Administrative Tribunal, Jaipur which ordered stay of the disciplinary proceeding. However, it is not necessary to mention those facts, as the same are not relevant to this case. The Hon'ble Supreme Court in that case, inter alia, held that the approach and the objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code if any) are established and if established what sentence should be imposed upon him. The standard or proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

In the case of Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., , the apex Court relied upon an earlier decision in B.K. Meena's case (supra) and held that the purpose of departmental enquiry and that of the criminal prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence of violation of duty, which the offender owes to the society or for breach of which law has provided that the

offender shall make satisfaction to the public. So, the crime is an act of commission in violation of law or of omission the service and efficiency of public service. It has further been held by the apex Court that the offence generally implies infringement of public, 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 proceedings relates to breach of duty of the delinquent officer and punishment for his misconduct defined under the relevant statutory Evidence Act to disciplinary proceeding stands excluded is a settled legal position. The enquiry in the departmental proceedings relates as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touch-stone of human conduct. The standard of proof in the departmental proceedings is not the same as in the criminal trial. The evidence also is different from the stand point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. This Court in *Union of India and Anr. v. Dhuleswar Pati and Anr.* 2006 (II) OLR 417 and *Union of India and Ors. v. Rabinarayan Das and Anr.* 2006 (II) OLR 752 considering the question whether departmental proceeding can be initiated against the delinquent in case he has been acquitted by the Criminal Court of the charges based on same set of fact held in the affirmative.

Thus in view of the above discussion, it is clear that there is no bar to initiate a departmental proceeding after conclusion of the criminal trial resulting in acquittal of a government servant on the basis of the same set of facts.

8. Relying on the decisions of the apex Court in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, , Learned Counsel for the Petitioner contended that the departmental proceeding cannot be initiated against the delinquent for the same set of facts on which he had been acquitted by the Court in the criminal trial held against him. In the aforesaid case, the apex Court held that if departmental proceedings and criminal case are based on identical set of facts, evidence in both the proceedings are common and employee is acquitted in the criminal case, an order of dismissal already passed may also be set aside. It may be mentioned here that the criminal case was initiated against the Petitioner for commission of theft of some aero engine turbine blades whereas the charge in the departmental proceeding related to theft, fraud, breach of trust or dishonesty in connection with the employer's property and breach of Standing Orders applicable to the establishment which amounted to misconduct. Different sets of witnesses were examined in both the proceedings. In view of the above mentioned facts and circumstances, this Court is of the opinion that the Disciplinary Authority has rightly held that the decision of the Criminal Court is not binding in the disciplinary proceedings. The purpose of Criminal Proceedings and the disciplinary proceedings are altogether different. The nature of evidence

in criminal trial is quite different from the departmental proceedings. In the Criminal trial the prosecution is to prove its case of commission of offence by the accused beyond reasonable doubt whereas in the disciplinary proceedings it is the misconduct of a delinquent which requires to be proved against the delinquent and proof in that behalf is not as high as in an offence in criminal charge. Adequate opportunity has been extended to the Petitioner in the departmental enquiry. We have perused the records of the departmental proceeding. Petitioner has cross-examined all the witnesses examined on behalf of the department but he did not produce any documentary evidence nor examined any witness on his behalf. No procedural error in the proceeding has been brought to our notice. We have also not found any illegality, impropriety or manifest error of law in the impugned order passed by the disciplinary authority. The decision taken by the disciplinary authority therefore cannot be interfered with.

9. In the result, there is no merit in the writ petition which is accordingly dismissed.

Sanju Panda, J.

10. I agree.