
(2011) 08 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24071 of 2011

Shaik Khadervali.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (2011) 08 AP CK 0073

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : J.M. Naidu, for the Appellant; Pushpinder Kaur, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The Petitioner is working as a Assistant Sub-Inspector in the Railway Protection Force and he is posted at Gooty. He was issued a memorandum of charges on 13.07.2010, alleging that he has resorted to acts of misconduct and dereliction of duty on 30.10.2009. Six charges were framed, which are mostly in relation to slackness on the part of the Petitioner in observing the delivery of scrap after weighing; to the purchasers. Departmental enquiry is proposed. The Petitioner challenges the proposed departmental enquiry in pursuance of the charge sheet, dated 13.07.2010, on the ground that in relation to the same allegations, a criminal case in Crime No. 10 of 2009 was registered and the matter is pending in the Court of Judicial First Class Magistrate for Railways, Guntakal. The Petitioner contends that he cannot be compelled to disclose his defence in the disciplinary proceedings, even while the criminal case is pending and if he discloses his defence at this stage, that would be detrimental to his interest in the criminal case. Reliance is placed upon certain provisions of the Railway Property (Unlawful Possession) Act, 1996 (for short "the Act") and the judgments rendered by various Courts.

2. Sri J.M. Naidu, Learned Counsel for the Petitioner submits that one of the cardinal principles of service law is that when an employee is subjected to

prosecution under the relevant penal law on the one hand and disciplinary proceedings under the service Regulations on the other hand, the latter must be stayed or stalled till the conclusion of the former, lest the employee is forced to disclose his defence in the departmental proceedings, even while the criminal proceedings are pending. He further submits that the Petitioner is shown as accused No. 13 in the criminal case and that the charges in both the proceedings are based on the same set of facts. He also submits that filing of any explanation or disclosure of defence in the departmental proceedings would turn to be detrimental to his interest in the criminal case.

3. Learned Counsel for the Respondents, on the other hand, submits that the crime alleged in the criminal case is referable to Section 3(a) of the Act, which pertains to unlawful possession or theft of railway property, whereas the allegation against the Petitioner in the departmental proceedings is the one of lack of proper supervision or dereliction of duties. She contends that there is no similarity of the charges in both the proceedings.

4. The Petitioner was entrusted with the duty to supervise and observe the delivery of scrap from the diesel shed on 30.10.2009. At a subsequent stage, it emerged that the scrap was delivered in a higher quantity than what the contractor was otherwise entitled to. That in turn gave rise to registration of a criminal case against the persons, who were found to be in possession of the material. Since the Petitioner and two other employees were entrusted with the supervision of proper delivery of the material, they too were shown as accused in the case.

5. It is not uncommon that the same set of facts or the same allegations would constitute basis for initiation of criminal proceedings on the one hand and disciplinary proceedings on the other hand. Notwithstanding the fact that the parameters for adjudication thereof are independent and different, if it emerges that the charges framed by the prosecution in the criminal case and the charges framed by the Department in the disciplinary proceedings are identical, departmental proceedings have to be kept aside, till the criminal case is concluded. The reason is that an accused in the criminal case cannot be compelled to disclose his defence and if such defence is required to be divulged in the departmental proceedings, even while the criminal case is pending, it may prove to be detrimental to the interest of the employee.

6. The Supreme Court has taken care to balance the conflicting interests and it ultimately directed that unless the charges in the two sets of proceedings are identical, the departmental proceedings cannot be stalled. Ultimately, it boils down to the question of comparison of the charges in the respective proceedings. In the instant case, the charge in the criminal case, as observed earlier, is based upon Section 3 of the Act. The said provision reads as under:

3. Penalty for unlawful possession of railway property:Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected

of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable-

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

7. The Petitioner is not alleged to have been found in possession of any railway property. Such allegation is against the persons, who took delivery of the material in excess of their entitlement. The Petitioner is shown as an accused in the criminal case in his capacity as an Officer, who supervised the delivery.

8. The allegation against the Petitioner in the departmental proceedings is that on account of his misconduct and dereliction of duty, fairly large quantity of scrap was delivered to certain scrap merchants in excess of what was auctioned. Further, an allegation of receiving illegal gratification from the contractor was also made in charge No. 3. Though this allegation also finds place in the criminal proceedings, it is not referable to any particular provision. The Respondents have to prove in the departmental proceedings, the charge that there was such dereliction of duty or act of misconduct on the part of the Petitioner. The prosecution in the criminal case on the other hand, has to concentrate on whether a crime is made out u/s 3 of the Act and if so, what is the involvement of the Petitioner in that. In this scenario, it cannot be said that the charges in two sets of proceedings are identical.

9. Therefore, the writ petition is dismissed. There shall be no order as to costs.