

(1993) 07 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 690 of 1989

Shaikh Alyas Ayyub

APPELLANT

Vs

Dy. Chairman, Bombay Port Trust

RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:

Bombay Port Trust Employees (Conduct) Regulations, 1975 — Rule 22, 22(2), 25, 3(1)

Citation : (1994) 1 LLJ 844

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Advocate : J.P. Cama and K.P. Anil Kumar, for the Appellant; P. Ramaswamy, instructed by . Mulla and Mulla and Craigie Blunt and Caroe, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Kapadia, J.—By this writ petition under Article 226 of the Constitution filed by the petitioner, watchman of B.P.T., the order of the disciplinary authority dated June 7, 1988 is challenged.

2. The facts giving rise to this writ petition briefly are as follows:

(a) The petitioner was appointed as the watchman in the security organisation of the Bombay Port Trust with effect from August 16, 1983.

(b) By a charge-sheet dated October 7, 1986 the petitioner was informed about the statement of imputation of misconduct. According to the imputation, on September 14, 1984 at 2.30 p.m. Shri Pawaskar and Shri Desai, Zonal Officers of the security organisation with their staff i.e., watchman Nos. 93 and 99, while patrolling in their jeep in the docks and along Warehouse No. C came across the petitioner watchman who was coming out from Warehouse "A" riding on a bicycle and going towards blue gate No. 10. On seeing the said jeep the petitioner tried to hide himself. The petitioner was in plain clothes. The officers in the jeep felt that the petitioner was hiding something on his person. On suspicion, the petitioner was detained by the above staff. He was questioned thereafter. The

petitioner who became nervous ultimately replied that he was employed in the day shift at "A" Warehouse and that he had taken two ball bearings and had hidden them in the waist belt under the shirt. Two panchas were summoned and in their presence personal search of the petitioner was taken when it was revealed that he was carrying two ball bearings hidden on his person and a Panchanama was accordingly drawn. In the meantime the petitioner was detained at the place and Shri Pawaskar also reported the matter to the Yellow Gate Police Station. The duty officer at the Yellow Gate Police Station arrived at the spot and there after the above personal search was carried out. The petitioner thereafter took the police, the panchas and the B.P.T. staff to the third floor of "A" Warehouse and pointed out the place wherefrom he removed the above property. The property was taken in charge of by the police and the petitioner was put under arrest. According to the said statement of imputation, on the basis of the above facts it was alleged that the petitioner-watchman had committed misconduct of committing theft in connection with B.P.T. property under Rule 22(2)(b) of Bombay Port Trust Rules and Regulations for Non-Scheduled Staff and the Regulation No. 3(1) of the Bombay Port Trust Employees (Conduct) Regulations, 1976. At this stage it may be clarified that according to the B.P.T. the said watchman was a temporary employee and it is for this reason that the B.P.T. invoked the provisions of the Rules and Regulations for Non-Scheduled Staff. According to the said charge-sheet, Rule 22 of the Rules and Regulations for Non Scheduled Staff the employee who abets, connives to the attempt or commits theft, fraud or dishonesty in connection with the Port Trust property is guilty of misconduct. Under Regulation 3(1) of the Bombay Port Trust Employees (Conduct) Regulations, it is laid down that every employee shall, at all material times, maintain absolute integrity and devotion to duty. In the meantime Criminal Case No. 413 of 1984 under which the petitioner was charged for offence u/s 380 of the Indian Penal Code was instituted pursuant to the complaint filed by the State on September 14, 1984. The offence complained of was u/s 380 read with Section 114, I.P.C.

(c) By order dated February 26, 1985 the Additional Chief Metropolitan Magistrate, Bombay came to the conclusion that the possession of the said ball bearings was not proved by the prosecution and assuming for the sake of argument it is held that the accused was found to be in possession of the two ball bearings, even then he cannot be convicted of the offence u/s 124 of the Bombay Police Act. No offence u/s 380 I.P.C. had been brought home as there was no direct evidence of theft and, therefore, the accused gets benefit of doubt. In the circumstances, the accused was acquitted of the offence punishable u/s 380 I.P.C. This order was passed on February 26, 1985.

(d) As stated hereinabove, it is almost after 20 months that on October 7, 1986 the petitioner was charge-sheeted for the above misconduct. In the meantime he was allowed to work as a watchman in the B.P.T.

(e) On March 1, 1988 after recording the evidence, the inquiry report was

submitted by the Inquiry Officer. After examining the evidence on record, the Inquiry Officer came to a conclusion that since the petitioner was acquitted on the basis of benefit of doubt in the above Criminal Case No. 413/P of 1984 the B.P.T., was certainly entitled to hold a domestic inquiry and pass an order; that the Inquiry Officer also came to the conclusion that in view of the fact that the security staff, whose evidence was recorded, were present at the spot when the incident occurred and since all of them had seen the petitioner carrying two ball bearings tucked beneath his waist belt and since the petitioner had no explanation as to how the said properties came to be tucked beneath his waist belt, the Inquiry Officer came to the conclusion on perusal of the F.I.R., the Panchanama, the admissions made by the workman before the police as also the fact that the said two ball bearings were found tucked in the waist. It was clear that the petitioner was caught red handed while he was trying to remove the ball bearing tucked below his waist belt. According to the said finding, therefore, the Inquiry Officer held that he has no hesitation in holding the petitioner guilty for having committed misconduct or committing theft in connection with the Port Trust property under Rule 22(2) (b) of the Rules and Regulations for Non-Scheduled Staff. By the said order, the Inquiry Officer further came to the conclusion that the petitioner has thereby violated Regulation 3(1) of the Bombay Port Trust Employees (Conduct) Regulations, 1976 and has rendered himself liable to be proceeded against for major penalty under Regulations 8, 12 and 13 of the B.P.T. (Classification, Control & Appeal) Regulations, 1976.

(f) Pursuant to the said findings on March 11, 1988 the Deputy Chairman of the B.P.T. issued a show cause notice calling upon the petitioner to show cause why penalty of dismissal from B.P.T. service should not be inflicted.

(g) By letter dated May 11, 1988, the petitioner denied the charges levelled against him. He also submitted in the alternative, that punishment of dismissal was grossly disproportionate to the misconduct alleged against him and in the circumstances he pleaded that the punishment for dismissal should be set aside.

(h) By an order dated June 7, 1988, the disciplinary authority came to a conclusion that the findings of the Inquiry Officer were absolutely in accordance with the law. By the said order, the disciplinary authority further came to the conclusion that the discovery of the said ball bearings, the Panchanama, the F.I.R. and the evidence of the staff members clearly shows that the petitioner was guilty of the charge. According to the said disciplinary authority, the charges constituted misconduct, in violation of Regulation 3(1) of the B.P.T. Employees (Conduct) Regulations, 1976 and, therefore, the order of dismissal ought to be passed. The disciplinary authority also came to the conclusion that looking to the gravity of the offence involved in question, the punishment of dismissal should be converted into removal from service for the reason that the petitioner was a young man and he had worked only for five years and since his option for future employment should not be closed, removal from service would be the proper punishment.

(i) Being aggrieved by the said order of removal, the petitioner preferred an appeal to the Chairman. By an order dated September 12, 1988 passed by the appellate authority, the Chairman of the B.P.T. agreed with the finding of the Inquiry Officer and accordingly dismissed the appeal.

(ii) Being aggrieved by the said removal, the present petition has been filed under Article 226 of the Constitution.

3. Mr. Cama, the learned Counsel appearing on behalf of the petitioner, made the following submissions :-

(a) Regulation 3(1) of the Bombay Port Trust Employees (Conduct) Regulations, 1976 cannot be the foundation of the charge-sheet and that the misconduct, therefore, cannot be based upon the said Regulations. He further submitted that in the present case, the misconduct alleged against the petitioner has not been listed and in the absence of proper enumeration of the misconduct Regulation 3(1) cannot be invoked. He further submitted that Regulation 3(1) of the said Regulations, 1976 did not constitute misconduct and, therefore, the finding which was based on the said Regulation 3(1) were clearly bad in law. He further submitted that Rule 22(2)(b) of the B.P.T. Rules and Regulations for Non-Scheduled Staff is an independent rule and the Rule 22(2)(b) has to be telescoped into Regulation 3(1) in the present case. He further submitted that Rule 22(2)(b) cannot be confused with Regulation 3(1) of the 1976 Regulations as is sought to be done in the present case. It was accordingly submitted that in the present case the charge-sheet as well as the findings recorded by the Inquiry Officer were in violation of the provisions of law as Regulation 3(1) amounts to misconduct. In other words, the contention raised by the petitioner's Counsel was that Regulation 3(1) did not constitute misconduct and, therefore, the findings based on the said Regulation were bad in law. In support of his contentions, Mr. Cama placed heavy reliance on the judgment of this Court in the case of *Abdulla A. Latifshah Vs. Bombay Port Trust and Others*, . Mr. Cama submitted that the facts of the present case were identical to the facts of the case of *Abdulla A. Latifshah*, (supra) and accordingly he submitted that the present findings were also liable to be set aside. He also submitted that the view of this Court in *Abdulla A. Latifshah's* case, (supra) was also upheld by the Division Bench of this Court in the case of *Nadir Shah v. K.K. Uppal*, decided on June 24, 1981 in L.P.A. No. 750 of 1987. It was submitted that in the case of *Nadir Shah*, (supra), the contention of the employee was accepted that the charge-sheet was misconceived as it was founded on Regulation 3 of the said Regulations, 1976. In view of the aforesaid decision of this Court Mr. Cama submitted that the order of removal in the present case was liable to be set aside. I do not find any merit in the said contentions raised by the learned counsel for the petitioners. Firstly, in the present case, as stated hereinabove, the charge-sheet weighed with the finding of the Inquiry Officer clearly shows that not only Regulation 3(1) of the B.P.T. Employees (Conduct) Regulations, 1976 has been invoked, it was the case in *Abdulla A. Latifshah's* matter, (supra)

but also Rule 22(2)(b) of the Rules and Regulations applicable to non-scheduled staff is also invoked. In the case of Abdulla A. Latifshah, (supra), the facts clearly indicated that it is only Regulation 3(1) of the B.P.T. Employees (Conduct) Regulations were invoked and it was in the light of the said charge-sheet that this Court took the view that the misconduct was not properly listed; that the misconduct was not properly spelt out and that Regulation 3(1) could not be the basis of misconduct as the said Regulation was general in nature. In the present case, therefore, the charge-sheet read with the findings of the Inquiry Officer clearly shows that Rule 22(2)(b) of the Rules as applicable to non-scheduled staff was clearly attracted. Rule 22(2)(b) reads as under:-

"22(2) An employee may be suspended, demoted and/or reduced in grade, removed or dismissed without notice or any compensation in lieu of notice, for any of the following acts or omissions:

(b) Abetting, conniving at or attempting or committing of theft, fraud or dishonesty in connection with Port Trust work or property".

Similarly, Regulation 3(1) of the BPT Employees (Conduct) Regulations, 1976 reads as under:-

"3(1) Every employee shall at all times maintain absolute integrity and devotion to duty".

Now, considering the scope of the Rules and Regulations for non-scheduled staff, it is clear that Rule 22 falls in Chapter XV which deals with disciplinary action for misconduct. Rule 22(2) lays down that an employee may be removed or dismissed without notice or any compensation in lieu of notice for any of the following acts or omissions. Rule 22(2)(b) therefore, assumes importance because it gives power to the B.P.T. to remove or dismiss an employee without notice where a person is found guilty of theft, fraud or dishonesty. In the present case the B.P.T. invoked Rule 22 of the said Rules and Regulations for Non-Scheduled Staff along with Regulation 3(1) of the said Regulations 1976 which lays down that every employee shall maintain absolute integrity and devotion to duty. The said Regulations, 1976 have been framed u/s 28 of the Major Port Trusts Act. Under Rule 25 of the Rules and Regulations for Non-Scheduled Staff, it is laid down that no order of dismissal, removal or reduction shall be made unless departmental instructions relating to enquiries as set out in Appendix E are complied with. Therefore, reading the provisions of Rule 22 and Rule 25 of the Rules and Regulations for Non-Scheduled Staff along with Regulation 3(1) of the said Regulations, 1976, it is clear that in the present case a specific charge of theft was listed in the charge-sheet and that the misconduct was based on provisions of Rule 22(2)(b) along with Regulation 3(1). In the case of Abdulla A. Latifshah, (supra), the charge-sheet of theft was based only on Regulation 3(1) 3 of the said Regulations, 1976 whereas in the present case the misconduct is based on Rule 22(2)(b) of the said Rules read with Regulations, 1976. Mr. Cama vehemently argued that if one reads the charge-sheet along with the findings of

the Inquiry Officer as well as the order of the Disciplinary Authority, the misconduct is based only on the violation of Regulation 3(1) and it is not based on the breach of Rule 22(2)(b) of the said Rules and Regulations for Non-Scheduled Staff. I do not find any merit in the said contention. The order of the Inquiry Officer as well as the disciplinary authority must be read as a whole. The said orders cannot be read as a statute. If read as a whole, it is clear that the provision of Regulation 3(1) of the said Regulation 1976, are to be read with Rule 22 of the Rules for Non- Scheduled Staff and, therefore, there is no merit in the contentions raised by the learned Counsel for the petitioner that the misconduct in the present case is only based on Regulation 3(1) of the said Regulations, 1976 and not on Rule 22(2)(b) of the Rules applicable to non-scheduled staff. Therefore, the judgment of this Court in Abdulla A. Latifshah's case, (supra) will not apply for the reason that in that case the misconduct was based on Regulation 3(1). In paragraph 3 of the judgment that position is clearly laid down. In fact it was not disputed that the charge-sheet was based only on Regulation 3(1) of the 1976 Regulations whereas in the present case the charges are based on the said Regulation 3(1) along with Rule 22 of the Rules applicable to non-scheduled staff. In the circumstances, there is no merit in the said contention raised by the learned Counsel for the petitioner. Secondly, as stated hereinabove and as laid down by various judgments of the Supreme Court, the charge-sheet which was issued to the workman has clearly spelt out the incident as well as the misconduct for which the workman was charged. The workman has filed reply to the said charge-sheet. The workman has led evidence to the said charges which clearly indicates that the workman understood what were the charges levelled against him. In the present case, there is no breach of the rules of natural justice. The workman was given full opportunity to put forth his case. The workman was caught red handed. The workman in fact indicated the place wherefrom the goods were stolen. The property was tucked under his waist. The witnesses have deposed to that effect and in the circumstances one fails to appreciate how it could be said that the misconduct has not been properly listed. In the circumstances, there is no merit in the said contention.

(b) Mr. Cama thereafter submitted that in the present case there was no second show cause notice on the merits and, therefore, the order of removal passed by the Disciplinary Authority was bad in law. Mr. Cama, however, very fairly stated that in the case of R. Gokaran v. D.K. Varghes, this Court has taken the view that second show cause notice on merits is not a condition precedent to the final order of the disciplinary authority. Mr. Cama fairly conceded that in view of the said judgment of this Court in R. Gokaran's case, (supra), it is not necessary to go further in the matter as the said question has been decided against his contention.

(c) Mr. Cama thereafter submitted that in the present case, in view of the admission of the charges levelled against the petitioner in the Criminal Court, the B.P.T. had no authority to hold a domestic inquiry in the present case. In this connection, Mr. Cama placed reliance once again on the judgment in the case of

Abdulla A. Latifshah, (supra) and submitted that the normal rule in the case of acquittal was that for the same charges the delinquent should not be asked to face the domestic inquiry once again. He submitted that according to the said judgment in the case of Abdulla A. Latifshah, (supra), once an employee is acquitted by the Criminal Court then the domestic inquiry cannot be held. It is further submitted that in the case of H.I. Kazi Vs. J.C. Agarwal and others, the meaning of "honourable acquittal by the Criminal Court" has been given and it has been laid down that there is no rule which specifically gives any power to the employer to hold a disciplinary inquiry when the employee has been honourably acquitted by the Criminal Court. It was further submitted that merely because the Criminal Court has used the expression "benefit of doubt" in its order dated September 26, 1985, the B.P.T. had no authority to hold a domestic inquiry. In this connection, Mr. Ramaswamy, the learned Counsel appearing for the B.P.T. submitted that the scope of the domestic inquiry is quite different from the inquiry before the Criminal Court. It will depend on the charges and the findings given by the Criminal Court. Mr. Ramaswamy placed heavy reliance on the judgment reported in the case of Nelson Motis Vs. Union of India and another, . The ratio of the said judgment in the case of Nelson Motis, (supra) lays down that the nature and the scope of a criminal case was different from the scope of a disciplinary proceedings and the order of acquittal, therefore, cannot conclude the departmental proceedings. The position in law is not in dispute. As stated hereinabove, one has to read the findings of the Criminal Court. On going through the said findings of the Criminal Court dated September 26, 1985, it is clear that the workman was given benefit of doubt and it is not possible to accept the contention of the petitioner that it was an honourable acquittal. The judgment" of this Court in the case of Abdulla A. Latifshah, this Court came to the conclusion that Latifshah was acquitted honourably by the Criminal Court. Secondly even in that case, this Court has categorically ruled that if it was a case of benefit of doubt and not a case of honourable acquittal then the employer is entitled to hold the departmental proceedings; that there was lot of difference between an accused person being honourably acquitted and completely exonerated and cases where he is acquitted on benefit of doubt. In the latter case, it has been held that the departmental inquiry should be held. In the circumstances, the ratio of this Court in Abdulla A. Latifshah's case, (supra) supports the respondents because in the present case the petitioner was not honourably acquitted but he was acquitted by way of benefit of doubt. The judgment of this Court in the case of H.I. Kazi, (supra), will also not help the petitioner for the reason that in that case the Pension Rules prescribed, inter alia, payment of suspension allowance where an employee was honourably acquitted, and it is in that line that this Court took the view that honourable acquittal, inter alia, means a clean and complete exoneration. Even applying the said ratio of the judgment in the case of H.I. Kazi, (supra), it is clear that in the present case the acquittal of the petitioner was only on the basis of the benefit of doubt and it was not a clean and complete acquittal/exoneration. In the circumstances, there is no merit in the said contention raised by the learned Counsel for the petitioners.

(d) The last submission advanced by the learned Counsel for the petitioner was that after 20 months the domestic inquiry came to be held and in the circumstances, on account of delay, the domestic inquiry stood vitiated. Mr. Cama submitted that the incident took place on September 14, 1984 and the charge sheet was given only on October 7, 1986. It was further submitted that the workman was acquitted by the Criminal Court on October 7, 1986 and in the circumstances, on account of the delay the inquiry stood vitiated. In this connection, Mr. Cama placed reliance once again on the judgment of this Court in *Abdulla. A. Latifshah's* case (supra). As stated hereinabove, as regards the last contention, it may be stated that *Latijshah's* case stood even on facts on an entirely different basis. In the present case as the facts clearly indicate, the stolen property was found on the person of the petitioner. The ball bearings were tucked beneath the waist. The workman in fact took the police as well as the staff to the warehouse from where he had stolen the said property. The workman was a watchman and in the circumstances, B.P.T. took the action of removal from service. These facts were not there in *Latifshah's* case. Secondly, in *Latifshah's* case the workman was clearly acquitted. In the present case, it is not the case of clean acquittal. In *Latifshah's* case this Court came to the conclusion that because the acquittal was based on complete exoneration, the employer was not entitled to hold a domestic inquiry and in the circumstances it was held that no explanation was forthcoming for holding a delayed departmental inquiry. In the present case that is not the case as stated herein. Moreover, as pointed out by the learned counsel for the respondents in the case of *Corporation of Nagpitr v. Ramchandran G. Modak*, reported in 1984 LIC 179 , it has been held by the Supreme Court that even in cases where departmental inquiry commenced pending criminal case, domestic inquiry could be continued after his acquittal in criminal cases if the department comes to the conclusion looking to the nature of the findings given by the Criminal Court. Normally where the accused is acquitted honourably and completely exonerated of the charges it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. In the present case it is true that the domestic inquiry was held after a period of approximately 20 months but in the circumstances of the case it cannot be said that on account of the said delay the entire inquiry should stand vitiated. Judicial notice can be taken of the fact that after the findings of the Criminal Court are made available, the Port Trust Authorities which is now faced with the large number of cases of theft is required to process the matters and in the circumstances of the present case, particularly when the employee himself was a watchman and where it is found that the property stolen was on the person of the workman and where he himself indicated the place from which the property was stolen, looking to the facts of the case, there is no merit in the contention that because of the delay the entire inquiry and the findings stood vitiated. Apart from the above contentions raised by the learned Counsel, there is nothing to indicate that the rules of natural justice have been violated. In the circumstances, no interference is called for under Article 226 of the Constitution. As laid down by the judgment of the Supreme Court in the case of *The Food*

Corporation of India Vs. George Varghese and another, , it has been held by the Supreme Court that where the employer has acted fairly and where the inquiry has been conducted in a fair manner, delay will not benefit or vitiate the inquiry. In view of the said decision of the Supreme Court in the case of Food Corporation of India, (supra), there is no merit in the last contention raised by the learned Counsel for the petitioners.

4. In the circumstances, there is no merit in any of the contentions raised by the petitioners. Accordingly the writ petition fails and is dismissed with no order as to costs.