
(2011) 11 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 393 of 2001

Shri Narayan Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Citation : (2012) 1 GLD 231

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : B. Das, for the Appellant; D.C. Nath, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—Heard Mr. B. Das, learned Sr. counsel for the petitioner and Mr. DC Nath, learned Govt. counsel appearing for the State respondents. The writ petitioner is challenging the order dated 27.6.2000 whereby the Superintendent of Police, South Tripura District has imposed penalty of stoppage of one annual increment without cumulative effect and also to treat the period of suspension, 16.4.1996 to 25.2.1997 as not on duty in a departmental proceeding.

2. The impugned order has been assailed primarily on the ground that for the same incident a criminal proceeding was also initiated and in the criminal proceeding, the writ petitioner has been acquitted and as such the punishment in the disciplinary proceeding should also be quashed.

3. In support of his submission, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court rendered in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, .

4. On the other hand the learned Govt. counsel submitted that the issue before the criminal Court was different than those in the disciplinary proceeding. According to the learned counsel, witnesses in both the proceedings were also not one and the same and, as such, the acquittal of the writ petitioner on benefit

of doubt cannot be considered in the departmental proceeding. In support of this submission, the learned counsel has relied upon the judgment of this Court reported in (2007) 1 GLR 116 (DB), Shafiqul Haque Mazumdar v. Union of India and Ors., and the judgment of the Hon'ble Supreme Court rendered in the case of Sr. Suptd of Post Offices and others v. A. Gopalan, reported in AIR 1999 SC 1514 and the judgment rendered in the case of Ajit Kumar v. General Manager, Indian Oil Corporation Ltd. and others, reported in AIR (2005) SCW 4986.

5. In the case of A. Gopal (supra), the Apex Court has held that nature and scope of criminal case are different from those of departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. Their Lordships have further observed that in a criminal case charge has to be proved by the standard of proof beyond reasonable doubt while in the departmental proceedings the standard of proof for proving the charge is preponderance of probabilities.

6. In the case of A.K. Nag (supra), the Hon'ble Supreme Court took the identical views in the following words:

11. As far as acquittal of the appellant by a criminal Court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal Court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal Court, the impugned order dismissing him from service deserves to be quashed and set aside.

7. The Division Bench of this Court has also observed that a criminal case and a disciplinary proceeding cannot be put in a knot when the charges framed against

the petitioner in two different proceedings are totally different in nature and two different areas one is for the purpose of imposing punishment for committing penal offences under the Penal Code and the other is for dereliction of duty etc, as entrusted to an employee. On these premises their Lordships have held that acquittal in a criminal case cannot be a ground to set at free the petitioner from the charges leveled against him in the disciplinary proceedings.

8. The above apart, the departmental proceeding was conducted under the Police Regulation of Bengal, 1943. The Regulation 863 prescribes that discharge or acquittal of the delinquent cannot stand as a bar to award departmental punishment to an officer in respect of the same cause or matter. The legality of the aforesaid Regulation has not been challenged in the present writ petition.

9. The authority cited on behalf of the writ petitioner is distinguishable on facts. In my view, the ratio of judgment in the case of M. Paul Anthony (supra) is not applicable in the present case. In the aforesaid case, small quantity of gold bars were seized from the delinquent and both the departmental proceeding as well as the criminal proceeding were held on the same allegation, whereas in the case before me, the charges include gross misconduct of the delinquent by way of assaulting a sweeper of BSF by the writ petitioner in police out post, where the petitioner was posted as a constable. It may also be mentioned here that the sweeper ultimately succumbed to the injuries, for which a case of murder was registered against the petitioner, whereon he was acquitted on benefit of doubt. Be that as it may, even in the aforesaid case, the Hon'ble Supreme Court has observed that extending benefit of discharge in domestic enquiry, as a result of acquittal in criminal trial, would depend upon other facts. The relevant observations are as follows:--

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 the other factors as well....

10. In the case before me, the writ petitioner was subjected to departmental proceeding for assaulting a sweeper in his barrack and as a result of assault the sweeper succumbed to the injuries. Hence, the writ petitioner was put to a disciplinary proceeding on various counts, viz, misconduct, misbehaviour and dereliction of duty. On the other hand, in the Sessions trial, the point for decision before the criminal Court was whether the petitioner/accused had committed an offence of murder. Besides this, the writ petitioner/accused was acquitted on benefit of doubt. Be that as it may, in my considered opinion, the findings of the criminal Court cannot be made applicable in the departmental proceedings. In the result, the writ petition stands dismissed, being devoid of merit.