
(1989) 11 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 319 of 1984

Sri Rupeswar Dutta

APPELLANT

Vs

Oil India Ltd. and Others

RESPONDENT

Date of Decision : 15-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (1990) 1 GLR 411

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S. Medhi and S. Pathak, for the Appellant; K. Sarma, for the Respondent

Final Decision : Allowed

Judgement

1. The Petitioner by this petition under Article 226 of the Constitution of India, assails the order dated 24.8.83 of dismissal from service with effect from 25.8.83 passed by the Respondent.

2. The Petitioner an employee of the Respondent company was working as Boilder Attendant (Class-I) when by notice dated 7.6.83 disciplinary proceeding against him was drawn, on the complaint that on 24/25-4-83 midnight at Duliajan he had murdered J.C. Deka, an employee of the Drilling Department (Rigs), which was misconduct u/s XIV(2)(X) of the Company's Modified Standing Orders. The Petitioner was also placed under suspension. The Petitioner submitted reply dated 9-6-83 wherein he stated that since the case against him was subjudice, its verdict be awaited. The disciplinary enquiry was conducted and the Petitioner was dismissed from service by the impugned order dated 24.8.83. The Petitioner's appeal and subsequent representation to the authorities of the Respondent company did not succeed. The Respondent took the matter to the Central Industrial Tribunal, Calcutta for approval of action taken. Before the Central Industrial Tribunal, the Petitioner prayed that the trial in the criminal

court was pending and the matter should not be proceeded further. The prayer having not succeeded, the Petitioner has come to this Court and by order dated 28.5.84 in Misc. Case No. 301 of 1984, this Court had ordered stay of the proceeding in Misc. Application No. 7 of 1983, before the Central Industrial Tribunal at Calcutta.

3. The Respondents have opposed the petition and have filed a copy of the judgment of the Additional Sessions Judge in Sessions Case No. 81 (D) of 1984, which shows that the Petitioner was acquitted of charge u/s 302 IPC, even though he was convicted on charge u/s 201 IPC and sentenced to two years R.I. The Petitioner's appeal against conviction and sentence u/s 201 IPC is pending in this Court.

4. We have heard Sri S. Medhi, learned Counsel for the Petitioner and Sri K. Sarma, learned Counsel for the Respondents.

5. The judgment of the Additional Sessions Judge, Dibrugarh dated 31-1-87 at Annexure A with affidavit in opposition clearly shows that the Petitioner was acquitted of the charge u/s 302 IPC. The misconduct for which disciplinary action against the Petitioner was taken was that he had murdered J.C. Deka, The act, which constituted the misconduct, with which the Petitioner was charged was identical with the charge on which he has been acquitted by competent criminal court, and hence in our opinion, action taken against the Petitioner cannot be sustained.

6. Sri K. Sarma, learned Counsel for the Respondent, has submitted that there is no bar in law against taking action against an employee in a disciplinary proceeding even when a trial on criminal charge about the same misconduct is pending. It is true that disciplinary proceeding for an "act" as misconduct, which also is the subject matter of charge in a criminal trial, can be taken, but where the trial has ended in acquittal, it is not reasonable to accept that in the disciplinary proceedings he can be found to have committed the said act. It is a different matter that the act complained of as misconduct may be related or may even be similar to the act which constitutes the charge in a criminal trial, but where the act is the "same" or "identical as the act which constituted the charge in criminal trial and criminal trial results in acquittal, the disciplinary proceeding in respect of the same act as misconduct cannot proceed and any action taken on its basis cannot be sustained, for the reason that a competent court of law having found the person not guilty of having committed the "act" which constitutes the offence, it shall not be proper and just or in accordance with public policy to accept the same act as having been proved in a disciplinary proceeding for taking action against the concerned person. Sri K. Sarma, learned Counsel for the Respondent, has referred to Delhi Cloth and The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, where it was held that where a criminal trial on same facts was pending before court an enquiry for misconduct of the servant could proceed and that the refusal of the employer to stay the enquiry till decision of court, was not improper and no principle of natural justice were

violated. This authority has hardly any application on the facts of the the present case where the question is that after acquittal on charge u/s 302 IPC by a competent criminal court, whether the action taken in disciplinary proceeding against the Petitioner for the same, identical act of alleged murder even though as misconduct according to the company's standing orders, can be sustained.

7. Sri Sarma learned Counsel for the Respondent has submitted that the Petitioner has been convicted u/s 201 IPC which shows that he had committed some misconduct. While it may be so, the fact remains that the Petitioner was not charged with any act other than that of having committed "murder", which according to the employer company was misconduct. We have not found anything in the notice by which the disciplinary action was initiated, or in the impugned order, which may indicate that the action taken against the Petitioner was on the basis of some act as misconduct other than of having committed murder.

8. For the aforesaid reasons, we are unable to sustain the disciplinary action taken against the Petitioner which therefore requires to be quashed. The petition is allowed. The impugned order of dismissal from service and subsequent orders of dismissal of appeal and rejection of representation are quashed.

9. Petition allowed. No costs.