
(2018) 08 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Appeal No.148, 151 Of2018

State Of Madhya Pradesh

APPELLANT

Vs

Suresh Singh Senger

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7, 12, 13(1)(D), 13(2)
Indian Penal Code, 1860 — Section 34, 296, 324, 506??1988

Citation : (2018) 08 MP CK 0005

Hon'ble Judges : P.K. Jaiswal, J;S.K. Awasthi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Heard.

Both these intra-Court appeals has been filed against the order dated 10/08/2017 passed in W.P. No.5250/2016(S) (in W.P. No.148/2018) and W.P.

No.4353/2016(S)(in W.A. No.151/2018) by which the learned writ court was of the opinion that the finding arrived at are perverse findings and

punishment order which has been passed, deserves to be quashed and accordingly it is quashed.

2. Facts of the case are that the respondent was serving on the post of Head Constable under the Superintendent of Police, District Indore. He was

placed under suspension by an order dated 24/02/2010 on account of registration of a criminal case at Crime No.03/2010 for offence under Section 7,

12, 13(1) (D) and 13 (2) of the Prevention of Corruption Act, 1988. Thereafter, the charge sheet was filed and in trial the respondent has been

acquitted in the criminal case vide judgment of acquittal Annexure-P/6. Other co-accused person, who was facing the aforesaid criminal case has

been convicted by the learned Special Judge.

3. After suspension of the respondent, the Department has issued a charge-sheet against the respondent on 15/03/2010. The charge levelled against

the respondent was that he has not arrested the accused persons in respect of Crime No.119/2010 which was for offence under Sections 324, 296,

506 and 34 of IPC and, therefore, he has committed misconduct.

4. A detailed reply has been filed by the respondent/employee before the competent Disciplinary Authority and pointed out all the minute details of the

duty which he has performed in nine days i.e. the period in question have been furnished.

5. It is also not in dispute that the only charge-sheet against the respondent was that he was not able to arrest the accused persons within a period of

nine days from the date of registration of FIR against them. Only because the respondent was not able to arrest the accused persons within a period

of nine days from the date of registration of Crime No.119/2010, he has been inflicted with punishment.

6. The respondent gave a detailed reason along with all the documents as to why the accused persons have not been arrested within a period of nine

days, but that has not been discussed by the Inquiry Officer in its finding recorded against the respondent. It has also come in record that the

Disciplinary Authority vide order dated 11/04/2016 has observed that in the case of respondent, the Departmental Enquiry has to be dropped and

inspite of the aforesaid observation the inquiry was concluded and the respondent has been punished.

7. Learned writ court considering the law laid down by the apex Court in the case of R.K. Solanki Vs. Central Bank of India & Ors. reported in

2017(1) MPLJ 106 and Corporation of the City of Nagpur, Civil Lines, Nagpur Vs. Ramchandra reported in 1981(2) SCC 714 has held that in criminal

case registered against the respondent under the Prevention of Corruption Act, he has been acquitted and it was a case of clean acquittal and relying

on the principle of law laid down so also the fact that a detailed explanation has been given by the respondent regarding non-arrest of the accused

persons within a period of nine days, but this fact were not considered and, therefore, order impugned before the writ court were quashed and the writ

petitions have been allowed. Relevant part of the order dated 10/08/2017,

passed in W.P. No.4353/2016 and W.P. No.5250/2016 reads as under :-

The petitioner did submit a reply in the matter to the competent Disciplinary Authority and the Disciplinary Authority by an order dated 17/09/2014 has

directed for holding of a regular Departmental Enquiry. Thereafter, Departmental Enquiry was held and the Enquiry Officer has held the charge sheet

proved against the petitioner. It is pertinent to note that the Enquiry Officer while holding the petitioner guilty of the alleged misconduct has observed

that the petitioner has been acquitted in the criminal case for offence under Section 7, 12, 13(1)D and 13(2) of the Prevention of Corruption Act, 1988

and finally the Disciplinary Authority based upon the Enquiry Report has imposed a penalty of stoppage of one increment with cumulative effect vide

order dated 18/05/2015. The petitioner thereafter, preferred an appeal and the appellate authority by an order dated 22/08/2015 has dismissed the

appeal of the petitioner.

Learned Senior Counsel has vehemently argued before this Court that the petitioner was assigned various duties including maintenance of law and

order during the period in question and details of the duties assigned to the petitioner were brought to the notice of the authorities and ignoring the fact

that the petitioner was assigned various duties and therefore, was not able to arrest the accused persons, the petitioner only because the petitioner was

not able to arrest the accused persons within a period of nine days, has been inflicted with punishment.

This Court has carefully gone through the Enquiry Report as well as the judgment delivered by the Special Judge in the criminal case. In the criminal

case, the allegation was that the present petition as he has accepted the money from the accused persons have not arrested the accused persons. The

aforesaid charge was not proved in the criminal case against the petitioner. Not only this, the Enquiry Report reveals that the petitioner has brought

copies of documents on record to demonstrate that he was on duty for the period in question and in spite of the aforesaid fact, merely on the basis of

bold allegation that he has not sincerely taken steps to arrest the accused persons, the respondents have passed the order of punishment.

This Court while the matter was being argued has requested the learned counsel appearing for respondent/State to inform this Court whether there is

any regulation or whether there is any other statutory provision which provides

for a time frame mechanism to arrest the accused person and it has brought to the notice of this Court that there is no such statutory provision / regulation, however, a police personnel is required to arrest the accused person as soon as possible.

Learned Government Advocate has drawn the attention of this Court towards judgment delivered in the case of R. K. Solanki Vs. Central Bank of India & Others reported in 2017(1) MPLJ 106 and her contention is that the proof required in Departmental Enquiry is different than proof required in criminal case.

This Court has carefully gone through the aforesaid judgment. It is true that the degree of proof required in Disciplinary Enquiry which is based on preponderance of probability and same is to be taken in to account, whereas in the criminal case offence is to be proved beyond reasonable doubt.

However, in the same judgment, the learned Judge in paragraph No.16 has held as under:-

¶16. The judgment of Captain M. Paul Anthony and G.M.Tank (supra) were again considered by the Supreme Court in Divisional Controller,

Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao-(2012) 1 SCC 442. In para-24, the Apex Court considered the judgment of Captain

M. Paul Anthony(supra), and opined that this judgment is not of universal application. The judgment of G.M.Tank (supra) was considered in para-23

of the judgment. After considering this judgment and after taking note of the basic judgment of R.P.Kapoor (supra), the Apex Court held that the

departmental inquiry and criminal case can run simultaneously despite the fact that the same are founded upon the same factual matrix. It was held

that facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any

bearing on the findings recorded in the departmental inquiry. This view is followed by the Supreme Court in State of West Bengal and others Vs.

Sankar Ghosh-(2014)3 SCC 610. In this case also, the Apex Court explained the judgment of Captain M. Paul Anthony and G.M.Tank (supra). In

para, 16, 17 and 18 of this judgment, the Apex Court held that the proof required in the departmental inquiry is different than the proof required in a

criminal case. In Indian Overseas Bank, Annasalai and another Vs. P.Ganesan and others-(2008) 1 SCC 650, the Apex Court reiterated the same

principle. In *Ajit Kumar Nag Vs. Indian Oil Corporation Ltd.* - (2005) 7 SCC 764, it was held as under:-

“...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...” (Emphasis supplied) In the light of aforesaid, I am unable to hold that after

acquittal of the petitioner, the respondents were not justified in conducting the inquiry.

This Court has carefully gone through the charge against the petitioner framed in the criminal case as well as charge framed in the Departmental

Enquiry. They were arising out of the same incident and therefore, the criminal case in the peculiar facts and circumstances of the case is certainly

having bearing in respect of the Departmental Enquiry.

Heavy reliance has been placed upon another judgment delivered by the apex Court in the case of *Corporation of the City of Nagpur, Civil Lines,*

Nagpur Vs. Ramchandra reported in 1981(2) SCC 714. The Hon'ble Supreme Court in the aforesaid case has held that acquittal in criminal case will

not dis-entitle the department to continue with the Departmental Enquiry and the Departmental Enquiry has to continue, however, as this Court has

observed that the findings of Departmental Enquiry are perverse, findings are to be quashed by this Court. Not only this, in this particular case the

disciplinary authority by an order dated 11/04/2014 has categorically observed that in the case of the petitioner, the Departmental Enquiry has to be

dropped and in spite of the aforesaid the enquiry was concluded and the petitioner has been punished.

This Court after careful consideration of the Enquiry Report, is of the opinion that findings arrived at by the Enquiry Officer are perverse findings. Not

only this, the petitioner on the basis of similar set of evidence has been acquitted in the criminal case. The petitioner has given details at page No.100

which is a reply to the show cause notice and all minute details of the duty which he has performed in nine days i.e. the period in question, have been

furnished. The Enquiry Officer has safely ignored the same and has not given any findings on the same.

In the considered opinion of this Court as the findings arrived at are perverse findings and punishment order which has been passed, deserves to be

quashed and is accordingly quashed. Resultantly, the writ petition stands allowed and the impugned order dated 18/05/2015, 22/08/2015 and 07/04/2016

are hereby quashed. The petitioner shall be entitled for all consequential benefits except the back wages.

In the other connected petition i.e. Writ Petition No.5250/2016 filed by the petitioner the petitioner is claiming promotion on account of his promotion

dated 26/10/2012 which was kept in abeyance because of the Departmental Enquiry which was pending against the petitioner. The petitioner has been

acquitted in the criminal case i.e. Sessions Trial No.02/2010 and as this Court has quashed the punishment order passed in the matter, the petitioner

will certainly be entitled for all benefits flowing out of the promotion order dated 26/10/2012. However, he shall not be entitled for back wages.

With the aforesaid, Writ Petition No.5250/2016 stands partly allowed. The promotion order is dated 26/10/2012 and therefore, the petitioner shall be

entitled for all consequential benefits w.e.f. 26/10/2012 except the back wages.

Certified Copy as per rules.

8. On due consideration of the aforesaid, we are of the view that the reason assigned by the learned writ court quashing the order is just and proper.

No case is made out to interfere with the well reasoned finding recorded by the learned writ court on 10/08/2017, as prayed is made out.

9. Both the writ appeals W.A. No.148/2018 and W.A. No.151/2018 filed by the appellants/State has no merit and are, accordingly, dismissed. No

costs.