

(1968) 09 MAD CK 0036
In the Madras High Court

Superintendent of Post Offices, Chingleput Division and
Director of Postal Services and Another

APPELLANT

Vs

Shaik Kasim

RESPONDENT

Date of Decision : 04-09-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 409, 467, 471

Citation : (1975) 1 LLJ 370

Hon'ble Judges : Veeraswami, J; Alagiriswami, J

Bench : Division Bench

Judgement

1. This is an appeal from an order allowing the petition filed by the respondent under Article 226 of the Constitution to quash his dismissal from service. In 1959, he was the sub-postmaster at Arni in Chingleput District. On a finding that seven out of ten charges against him were proved in the departmental enquiry, he was dismissed from service by an order of the Superintendent of Post Offices dated January 23, 1960. His appeal to the Director of Postal Services was unsuccessful, and so too his further memorial to the Director-General of posts and Telegraphs. In his memorial, he mentioned of his acquittal by the Sessions Judge of Chingleput of charges against him of criminal breach of trust by a public servant, forgery of valuable security and using as genuine a forged document, offences punishable respectively under Sections 409, 467, and 471 read with 467 I.P.C., and maintained that, in view of that, there was a conflict of findings, one set in the departmental enquiry and the other by the criminal Court, particularly in respect of charges 2 and 3 in the departmental enquiry. But this did not prevail with the authority. He eventually moved this Court under Article 226.

2. Anantanarayanan, J., the then learned Officiating Chief Justice, held that charges 2 and 3 in the departmental enquiry were the most serious and those charges as well as the charges in the sessions being based on identical material but conflicting findings were arrived at by the two forums, the dismissal order should be set aside and the matter released for fresh determination by the

disciplinary authority, in the light of the rest of the charges which alone remained established against the respondent. The learned Judge reviewed a number of cases and deduced certain propositions, in the light of which he considered that the conclusion he arrived at followed.

3. Where an order is rested on more grounds than one, but some of them are found to be bad or non-existent, whether the order should be set aside as vitiated for that reason will depend upon the satisfaction of the Court that the order could not have been made on the surviving grounds. The principles were first established in a series of what may be called as detention cases and, so far as this Court is concerned, it was applied to orders in disciplinary proceedings in *Jerome DiSilva v. Regional Transport Authority* (1952) I M.L.J. 35. That case related to a conflict between the findings in criminal Court as well as in departmental enquiry on identical charges. Rajamannar, Chief Justice and Venkatarama Aiyar, J. held:

It would indeed be a strange predicament when in respect of the same offence, he should be punished by one Tribunal on the footing that he was guilty of the offence and that he should be honourably acquitted by another Tribunal of the very same offence. As primarily the criminal Courts of the land are entrusted with the enquiry into offences, it is desirable that the findings and orders of the criminal Courts should be treated as conclusive in proceedings before quasi-judicial Tribunals.

It may be seen that this principle is based not so much upon the principles of natural justice but on the expedient that the findings of Courts lawfully established for the purpose should prevail over those of the departmental authorities. There are several cases which followed; but on a review of later cases, the Supreme Court in *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, stated the law as follows:

The principle underlying these decisions appears to be this. An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant, can be sustained if the Court is satisfied that the authority "would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision.

It is in the light of such principles, the learned Judge would appear to have approached the matter in this case. He further thought that in the application of the principles stated *supra*, it did not matter whether the findings in the criminal Court preceded or followed the departmental orders. On the view we take in this case, it seems to us that it is unnecessary to decide the correctness of this

proposition.

4. It is contended before us for the appellant that, as a matter of fact, if the records are carefully scrutinised, it would emerge that there was no conflict of findings of the domestic forum and the criminal Court on identical charges. It is not disputed and indeed it cannot be that the materials for the departmental charges and the criminal prosecution are identical. But it does not follow from it that the charges framed on such materials should necessarily overlap and so too the findings arrived at in regard to them. The learned Judge stated that charges 2 and 3 were very serious, taken together, and it was not disputed that upon the facts which formed the basis of those charges, the departmental authorities gave a complaint to the police to the effect that the writ petitioner was guilty of offences under Sections 409, 467 and 471 I. P. C. Proceeding on that basis, at the end of the order, he thought that in view of the acquittal of the respondent in the criminal proceedings, the departmental findings on charges 2 and 3 against him should be disregarded, and since the other charges were less serious and only related to procedural matters, it would not be possible to predicate whether the disciplinary authority would have inflicted the same punishment.

5. On an examination of the records, we are persuaded that the departmental charges 2 and 3 are not identical with the charges in the criminal prosecution. Departmental charges 2 and 3 are that during the "aforesaid period" and while functioning in the aforesaid office, the said Shri Shaik Kasim failed to observe the provisions of Rules 443(B), 443(a), 443, (B)(c)(1) and 443C of Volume VI, Part. I Third Edition, before passing the withdrawal of Rs. 650 from S. B. Account No. 67540 on 22-1-1959 (Charge 2), and that during the "aforesaid period" and while functioning in the aforesaid office, the said Shri Shaik Kasim changed into the accounts of Arni CPT/P, O. a withdrawal of Rs. 650 as if made in the S.B. Account No. 67540 on 22-1-1959 although this withdrawal was not actually made by the concerned depositor on that date (Charge 3). It may be at once seen that neither of the two charges attracted the misdemeanour of criminal misappropriation or forgery. So far as charge 2 is concerned, it was entirely procedural. A reference to the rules referred to in the charge makes this abundantly clear. Charge 3, in effect, stopped short of accusing the respondent with misappropriation. All that the charge was concerned with was that he had changed into the accounts of Arni Post Office a withdrawal of Rs. 650 although it was not made by the depositor on that date. The charge did not say that the respondent himself had taken the money for his purposes. If we turn to the criminal prosecution, the three charges that we have already indicated related to criminal breach of trust, forgery in the withdrawal receipt and using as genuine a forged document. The Sessions Judge himself was aware of the departmental charges and he remarked with reference to them.

It is very significant to note that misappropriation and forgery do not form the subject-matter of the charges framed by the Postal Authorities in the departmental enquiry.

We take the same view of the scope of the departmental charges 2 and 3 and of the charges in the criminal prosecution. The acquittal even on these charges was not based on clear findings that there was no misappropriation or criminal breach of trust. As a matter of fact, the Sessions Judge stated in one part of his judgment:

There is even a possibility that the accused had misappropriated the amount and had brought round P. W. 4 to support his version at the first instance, but a conviction could not be based on this surmise.

The acquittal, as far as we are able to see from the order of the Sessions Judge, was based on the doctrine of the benefit of doubt, more especially on an appreciation of the evidence of P. W. 4 and the unreliability of his testimony in view of his prevarication at different stages.

6. Under the circumstances, therefore, we are satisfied that although the materials in the departmental enquiry and the criminal prosecution are basically the same, the department charges, particularly charges 2 and 3, were in no way identical with the charges in the criminal prosecution. It follows that there could be no overlapping of findings in regard to the two sets of charges.

7. On that view of the matter, we allow the appeal. In the particular circumstances, we make no order as to costs.