

(2013) 10 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24691 of 2010

The Chief General Manager, Telecom District (BSNL), The
Principal General Manager, Telecom District (BSNL) and The
Deputy General Manager (VIG), Bharat Sanchar Nigam
Limited

APPELLANT

Vs

R.B. Ravi Shankar, The Director (Staff), Government of India,
Ministry of Communications and IT Department of
Telecommunications and Central Administrative Tribunal

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 1 ALD 751 : (2014) 2 ALT 442

Hon'ble Judges : L. Narasimha Reddy, J;A. Rajasheker Reddy, J

Bench : Division Bench

Advocate : B. Narasimha Sarma, SC for B.S.N.L, for the Appellant; R. Dilip Kumar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The 1st respondent (for short "the respondent") was working as Telecom Technical Assistant at Mehdipatnam in the year, 1998. On 10.07.1998 the Central Bureau of Investigation laid a trap and the respondent was found to have accepted bribe of Rs. 500/- for shifting a telephone. Based upon the developments in the trap, the Central Bureau of Investigation filed C.C. No. 5 of 1999 before the Special Judge for C.B.I. Cases, Hyderabad. The respondent was convicted by the criminal Court through its judgment dated 10.10.2001. Taking that into consideration, the Disciplinary Authority passed order dated 15.02.2002, dismissing the respondent from service. The respondent filed Criminal Appeal No. 1586 of 2001 before this Court. The appeal was allowed by this Court on 03.04.2008. Taking the same into account, the Disciplinary Authority passed order dated 18.12.2008, withdrawing the order of removal dated 10.10.2001 and directed reinstatement of the respondent. The benefit of back wages and continuity of services was also extended in the same order.

However, an observation was made to the effect that separate disciplinary proceedings would be initiated against him. Complaining that in spite of the order dated 18.12.2008, he has not been reinstated into service, the respondent filed O.A. No. 615 of 2009 before the Hyderabad Bench of the Central Administrative Tribunal. During the pendency of the O.A., the respondent was reinstated into service on 24.08.2009. Therefore, the O.A. was dismissed as infructuous.

2. The petitioners issued charge-sheet dated 18.03.2009 to the respondent, framing two charges. Challenging the same, the respondent filed O.A. No. 45 of 2010 before the Tribunal. He pleaded that once he has been acquitted by this Court, there is no justification for the petitioners to initiate disciplinary proceedings on the basis of same allegations and same charges.

3. The petitioners opposed the O.A. by filing a reply. They stated that the content of the charges framed in the charge memo dated 18.03.2009 is different from that of the charge in the criminal case. It was also pleaded that the parameters for enquiry in the disciplinary proceedings are substantially different from those, in the criminal cases.

4. The Tribunal allowed the OA. through its order dated 31.08.2010. Hence this writ petition.

5. Sri B. Narasimha Sarma, learned Standing Counsel for B.S.N.L. submits that the petitioners felt the impediment in framing charges, on account of the fact that the criminal case was pending against the respondent and though this Court acquitted the respondent, the right of the department to initiate the disciplinary proceedings is not at all affected or hampered. He submits that misconduct on the part of the respondent can certainly be decided with reference to the relevant provisions of the Service Rules and that the Tribunal was not justified in setting aside the charge memo.

6. Sri R. Dilip Kumar, learned counsel for the respondent, on the other hand, submits that, obviously, because the petitioners felt that barring an allegation, giving rise to the initiation of criminal proceedings, there is nothing to be initiated on the departmental side, no charges were framed and once the respondent was acquitted, the situation does not improve in favour of the petitioners. He submits that charge No. 2 was nothing but a replica of the charge in the criminal case and the petitioners cannot proceed with the same, after this Court acquitted the respondent. As regards Charge No. 1, he submits that though it is independent of the allegation giving rise to framing of a charge by the criminal Court, the petitioners cannot frame the same at this length of time. He contends that if the first charge has nothing to do with the second one, by that very reason, the petitioners could have proceeded with the enquiry at the initial stage itself, and the fact that no charge was framed for the past ten years, would certainly disentitle the petitioners, to frame the charge at this stage.

7. Quashing or setting aside a charge memo issued to a delinquent employee is almost uncommon, and is a rarity. The normal rule is that once the disciplinary

proceedings are initiated, they must reach finality in the form of an order, passed by the disciplinary authority, either exonerating the employee of the charges, or imposing punishment. Interference with the charge would normally arise, when it is issued by an authority, not vested with the power. It is in rare cases, that a charge memo is set aside, on other grounds.

8. The respondent herein was tried in a criminal case, on the basis of a complaint submitted by the C.B.I., Left to themselves, the petitioners did not frame any charges. They were keeping a perfect track of the proceedings in the criminal Court. When the respondent was arrested, the petitioners placed him under suspension. When he was convicted by the Court, they straightaway passed the order of dismissal. When he was acquitted by this Court, they passed an order of reinstatement. It is while reinstating him into service, that they have chosen to initiate disciplinary proceedings. Two aspects arise for consideration in this behalf: The first is about delay in issuing the charge-sheet, and the second is about the similarity of the charges.

9. It was way back in the year 1998, that the respondent was placed under suspension and prosecution was launched against him. Whenever an employee faces prosecution on any charges, the department too is expected to initiate disciplinary proceedings, in case the acts and omissions on the part of the employee constitute misconduct, as defined under the relevant service Rules. There are certain cases, in which the acts and omissions on the part of an employee, that gave rise to prosecution, do not have any bearing upon his official duties at all. In such cases, except that the appointing authority takes note of the developments, that occur in the criminal proceedings and takes suitable action according to the relevant provisions of law, nothing originates from his side. If the employee has been arrested in the criminal case, the appointing authority has to place him under suspension. If he is convicted, that must entail in the order of dismissal in the department. In fact, that exactly happened in this case.

10. If the acts and omissions of the employee, which gave rise to prosecution, would also constitute acts of misconduct, the charges must be framed by the disciplinary authority almost simultaneously with the prosecution. It is a different matter that in case the subject-matter of the criminal case and departmental proceedings is similar or identical, further steps in the departmental proceedings cannot be taken till the conclusion of the criminal case, lest the employee is compelled to disclose his probable defence in the criminal case. However, the disciplinary authority must discharge his obligation of framing the charges in the right earnest. He cannot treat the disciplinary proceedings as a standby, if the prosecution fails. Failure to frame charge for years together, even after noticing any acts of indiscipline would certainly constitute a ground for setting aside the charges, if framed after long lapse of time. In the instant case, the prosecution was launched in the year 1998, and departmental proceedings were initiated in the year 2009. The same cannot be sustained in law.

11. Assuming that the framing of charges is not otherwise illegal, the question as to whether the charges in the departmental proceedings are identical, with those in the criminal case; becomes relevant. If both are identical, the result that ensued in the criminal case must entail in the disciplinary proceedings also. If the same set of facts have given rise to any other act of misconduct, things may be different. The second charge framed by the petitioners against the respondent is similar, in all respects, to the one, framed in the criminal case. There cannot be any legal basis for conducting departmental enquiry into such charges.

12. It is a rare case, in which the charge-sheet itself deserves to be set aside; and the view taken by the Tribunal cannot be found fault with. Hence, the writ petition is dismissed.

13. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.