

(2007) 08 MAD CK 0006

In the Madras High Court

Case No : Writ Petition 30649 of 2004

The Superintendent of Central Prison and The Additional
Inspector General of Prisons

APPELLANT

Vs

K. Maruthamuthu and The Registrar, Tamil Nadu
Administrative Tribunal

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Citation : (2007) 08 MAD CK 0006

Hon'ble Judges : S. Tamilvanan, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : M. Dhandapani, Spl. G.P, for the Appellant; Hari Paranthaman, for P. Vijendran, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The Superintendent of Central Prison, Trichy and the Additional Inspector General of Prisons, Chennai are the

petitioners. The challenge is to the order of the State Administrative Tribunal dated 19.05.2004 passed in O.A.No. 4489 of 2002. The issue

relates to the dismissal of the first respondent who served as a Warder under the first petitioner. He was issued with a charge memo dated

23.08.1989 wherein, it was alleged that while working as Grade I Warder from 03.03.1999, when he reported to night shift duty on 09.08.1999

at 17.40 hours, he was checked by the gate keeper, viz., Thiru. R. Sekar (Grade I Warder) Entry Gate and it was found that he had concealed

Ganja powder weighing about 50gms in a polythene sachet in lungi kept in the bed roll belonging to him. As possession of Ganja was prohibited

under Sub Section 42 - 45 - 12 of Prison Act, he is alleged to have committed

serious misconduct violating Rules 134(2) and 298(c) of Tamil

Nadu Prison Manual. The first respondent was called upon to submit his explanation. By letter dated 28.09.1999, the first respondent denied the

misconduct alleged against him and stated that he would submit his detailed explanation after the oral enquiry. He also wanted copies of certain

documents. Thereafter, an enquiry was ordered to be held, in which the first respondent participated. In the enquiry, four witnesses were examined

in support of the charges. The first respondent examined himself in the enquiry apart from cross examining the witnesses examined in support of the

charges. The Enquiry Officer submitted his findings dated 15.07.2000 holding that the charges levelled against the first respondent were

conclusively proved. Based on the findings of the Enquiry Officer, explanation was called for from the first respondent by letter dated 28.07.2000.

The first respondent in his reply dated 09.08.2000 submitted that since as against the very same occurrence a criminal case was pending, he should

be permitted to submit his explanation after conclusion of the criminal case. However, the first petitioner in his communication dated 19.09.2000

granted one more week time to the first respondent for submitting his reply to the report of the Enquiry Officer. It was also specifically stated

therein that, if no reply is received, it would be taken that he had no explanation to offer and that final orders would be passed after conclusion of

the criminal case. Thereafter, by order dated 14.11.2000, the first respondent was dismissed from the services for the proven misconduct of

attempt to smuggle 50gms of Ganja into the jail premises. The first respondent preferred an appeal against the order of dismissal in his appeal

memo dated 24.01.2002 to the Deputy Inspector General of Prisons, Trichy and by order dated 07.03.2002, the said appeal came to be

dismissed, since the same was preferred after a delay of one year and two months. The first respondent preferred a further revision before the

Inspector General of Prisons on 18.03.2002 and that was also dismissed by the revisional authority by order dated 13.06.2002.

2. Be that as it may, in the criminal Court where the first respondent was proceeded against under the provisions of the NDPS Act, the case was

registered as C.C.No. 39 of 2000 on the file of the Special Court under the Essential Commodities Act, Pudukkottai. The Special Court by its

judgment dated 24.09.2001, acquitted the first respondent by granting the benefit of doubt in his favour. Thereafter, the first respondent preferred

the present Original Application before the State Administrative Tribunal in O.A.No. 4489 of 2002. The Tribunal, by the order impugned in this

writ petition has taken the view that since the criminal Court based on the evidence placed before it has found that the charge was not proved and

has chosen to acquit him in the light of the decision of the Hon''ble Supreme Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.

and Another, , set aside the order of dismissal passed against the first respondent.

3. Aggrieved against the same, Mr. M. Dhandapani, learned Special Government Pleader appearing for the petitioners contended that the acquittal

by the criminal Court cannot be the sole criteria for the purpose of interfering with the punishment imposed on the first respondent. Learned Special

Government Pleader by placing reliance upon the recent decision of the Hon''ble Supreme Court reported in Noida Entrepreneurs Assn. Vs.

Noida and Others, contended that even if the criminal Court had acquitted the delinquent, the conclusion of the departmental proceedings can be

independently supported and the Tribunal committed serious illegality in interfering with the order of punishment imposed on the first respondent.

Learned Special Government Pleader contended that the degree of proof required in departmental proceedings and criminal Court varies in great

length and that when proof of hilt is the requirement in the criminal case, preponderance of probability is the rule in all domestic enquiries and in

such circumstances, when the Enquiry Officer relied upon the evidence of the guard and other witnesses who had witnessed the recovery of Ganja

from the possession of the first respondent when he reported for the duty in the night shift on 09.08.1999, in the absence of any acceptable

evidence let in on behalf of the first respondent, there was no scope to interfere with the findings of the Enquiry Officer and the ultimate order of

dismissal passed against the first respondent. Learned Special Government Pleader also relied upon Nand Kishore Prasad Vs. State of Bihar and

Others, in support of his submission.

4. As against the above submissions, Mr. Hari Paranthaman, learned Counsel appearing for the first respondent by placing heavy reliance upon the

decision of the Hon''ble Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, contended that the facts involved in the decision of the Hon''ble Supreme Court and in the case on hand are identical and when the Hon''ble Supreme Court has stated the law to the effect that when once in the criminal Court the recovery was found to be not proved, the delinquent need not have to do any more exercise before the disciplinary authority and that based on the decision of the criminal Court, the first respondent ought to have been cleared of all the charges levelled against him. The learned Counsel contended that the first petitioner himself while calling for explanation from the first respondent after the report of the Enquiry Officer has stated in the communication dated 19.09.2000 that he was waiting for the outcome of the criminal Court proceedings and therefore, the passing of the final orders on 14.11.2000 without waiting for the decision of the criminal Court itself would vitiate the order of dismissal. The learned Counsel contended that since the disciplinary action and criminal proceedings were based on the same set of facts and the charge levelled against the first respondent in the criminal Court was serious, applying the decision of the Hon''ble Supreme Court in Paul Antony's case, the petitioners ought to have postponed the departmental action till the conclusion of the criminal Court verdict, which ultimately ended in an acquittal. By taking us through the criminal Court judgment, learned Counsel submitted that the evidence of very same witnesses who were examined in the enquiry has been analysed by the criminal Court in detail which has reached a conclusion that the alleged recovery of Ganja weighing 50 gms from the first respondent was not proved. The learned Counsel therefore contended that if the first petitioner had awaited the outcome of the criminal Court verdict that would have resulted in the dropping of the disciplinary proceedings and therefore, the whole action of the petitioners in having dismissed the first respondent from service based on the one sided enquiry held against him was rightly interfered with by the Tribunal.

5. Having heard the learned Counsel for the respective parties, as far as the contention raised on behalf of the first respondent, based on the acquittal in the criminal proceedings, he should have been exonerated of the charges levelled against him in the enquiry is concerned, we are unable

to agree with the learned Counsel for the first respondent. In this context, we wish to rely upon the recent decision of the Hon''ble Supreme Court

reported in 2007 (3) CTC 211 (cited supra). The Hon''ble Supreme Court after making a detailed reference to the principles set out in Paul

Antony's case has stated as under in paragraph No. 22:

22. The standard of proof required in Departmental proceedings is not the same as required to prove a criminal charge and even if there is an

acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding

not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue....

(emphasis added)

6. After the above categoric dictum of the Hon''ble Supreme Court in stating that even after the acquittal in the criminal proceedings, there is no bar

in proceeding with the departmental action, we will have to see only whether in the case on hand, there is any scope to still contend that by virtue

of the acquittal of the first respondent by the Special Court that should enure to his benefit in order to interfere with the order of dismissal passed

against him. In this context, it is necessary to analyse the conduct of the first respondent in the course of the proceedings of the enquiry held by the

Enquiry Officer. The first respondent never came forward with his defence right from the date when the charge sheet was issued to him by the

disciplinary authority. Though initially he took the stand that he would submit his explanation after the conclusion of the oral enquiry, he did not

submit any such detailed explanation setting forth his defence. In the enquiry, in support of the charges, atleast three witnesses were examined who

deposed about the recovery of 50gms of Ganja kept in a polythene sachet and concealed in a lungi rolled in a bed roll brought by the first

respondent.

7. As far as the said fact of seizure from the first respondent was concerned, though the first respondent cross examined those witnesses, he had

not even suggested to any of them that such Ganja was deliberately planted on him and was made to appear as though it was recovered from him.

There was no reason why those three witnesses who were also placed in equal status like that of the first respondent who have come forward to

give false evidence implicating the first respondent. There was not even a suggestion to any of those three witnesses that they had personal grudge against the first respondent. Though the learned Counsel for the first respondent was seriously contending that the first respondent had earlier preferred certain complaints against the first petitioner as regards the manner in which he was dealing with stores material and the food materials meant for the prisoners, to our dismay, there was no (Sic) of evidence in support of the said stand. In fact, there was not even a suggestion in that line to any of the witnesses examined before the Enquiry Officer. In fact, till the Original Application was filed before the Tribunal, there was no such stand taken by the first respondent as a defence in order to vindicate his stand. Even assuming he was not in a position to disclose the said stand before the Enquiry Officer, there is no reason why the first respondent has not disclosed such a stand atleast before the State Administrative Tribunal in the Original Application. Apart from the above, (Sic) failure in disclosing his stand throughout the disciplinary proceedings as well as before the Tribunal, it will have to be stated that till date, no material was placed in support of the said stand even before this Court. In the above stated circumstances, we are not in a position to countenance the stand of the first respondent that because of the ill feeling developed by the first petitioner as against the first respondent, he was victimised by foisting false case against him. If once such a stand of the first respondent cannot be accepted, the only other contention on behalf of the first respondent was that once the criminal Court after analysing the evidence of very same witnesses who were examined in the departmental enquiry had come to a conclusion that the seizure from the first respondent was not true, whether on that score, the whole exercise carried out by the disciplinary authority should be thrown out.

8. As far as the said contention is concerned, it will have to be stated that the present proceedings before the criminal Court is not under the general criminal law. On the other hand, since the possession of a narcotic substance like Ganja with a person has to be proceeded against under the provisions of the special enactment called NDPS Act, very stringent procedures have been prescribed in order to launch prosecution against such an accused. In the light of the said special procedure prescribed under the provisions of the NDPS Act, in the absence of satisfactory

compliance of the prescribed procedure, the NDPS Court reached a conclusion that the seizure of Ganja from the first respondent as stated by the witnesses could not be believed. Since the degree of proof even as between criminal proceedings launched under the provisions of the Indian Penal Code and the provisions of the NDPS Act varies in vast difference, it will have to be held that as between such proceedings under the provisions of the NDPS Act and the one adopted by the disciplinary authority can never be equated in order to hold that the acquittal in the said proceedings should automatically result in clean chit being granted to the first respondent as regards the misconduct alleged against him. In this context, we wish to rely upon a decision of the Hon^{ble} Supreme Court reported in 1982 (1) LLJ 46 [State of Haryana and Anr. v. Rattan Singh], wherein, the Hon^{ble} Supreme Court has stated as to in what manner the assessment of evidence in a departmental enquiry to be made. Para 4 of the said judgment is relevant for our purpose, which reads as under:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and creditability. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations or observance of rules of natural justice. Of course, fairplay is basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic Tribunal, cannot be held good.... The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly

available for the Court to look into because it amounts to an error of law apparent on the record....

9. We had recently dealt with similar question in a judgment dated 04.07.2007 passed in W.P.No. 19843 of 2001. In the said decisions, we had

referred to the decisions of the Hon"ble Supreme Court where the expression "honourable acquittal" in a criminal case has been elaborately set

out. We have referred to one of the decisions of the Hon"ble Supreme Court reported in 2007 (3) CTC 211 (SC) in paragraph 20, which reads

as under:

16. The purpose of Departmental Enquiry and of prosecution is two different and distinct aspects. The Criminal prosecution is launched for an

offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to

the public. So crime is an act of commission in violation of law or of omission of public duty. The Departmental enquiry is to maintain discipline in

the service and efficiency of public service. It would, therefore, be expedient that the Disciplinary proceedings are conducted and completed as

expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the Departmental proceedings may or

may not be stayed pending trial in Criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts

and circumstances. There would be no bar to proceed simultaneously with Departmental enquiry and trial of a Criminal case unless the charge in

the Criminal Trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as

distinguished from mere private rights punishable under Criminal law. When trial for criminal offence is conducted it should be in accordance with

proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short the "Evidence Act"). Converse is

the case of Departmental enquiry. The enquiry in a Departmental proceedings relates to conduct or breach of duty of the delinquent officer to

punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act

stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the Department enquiry would

seriously prejudice the delinquent in his defence at the trial in a Criminal case. It is always a question of fact to be considered in each case

depending on its own facts and circumstances.

10. We have also referred to one other similar case dealt with by the Hon''ble Supreme Court in Civil Appeal Nos. 2674 to 2676 of 2004 dated

26.09.2006, where the question about the possibility of proceeding against the delinquent after his acquittal in the criminal case was considered

while referring to the said order of the Hon''ble Supreme Court, we have held as under in paragraph No. 40:

40. The next contention raised in those Civil Appeals was that the appellant therein was acquitted in the criminal case honourably and therefore, it

was impermissible to prove the charge issued against him. Reliance was placed upon the decision reported in G.M. Tank Vs. State of Gujarat and

Another, . The very same contention has now been raised by the first respondent herein in this Writ Petition. While dealing with the said contention,

the Supreme Court, after referring to the two questions framed by the Supreme Court in the decision reported in G.M. Tank Vs. State of Gujarat

and Another, , held that those questions are not relevant in the facts of the case at hand, that it was not a case where the appellant was dismissed

from service even when there was no evidence against him in a criminal Court and that as already noted therein, the appellant therein was acquitted

by the High Court by giving him the benefit of doubt and not acquittal on merits. The Supreme Court in its order dated 26.9.2006 in Civil Appeal

Nos. 2674-2676 of 2004, therefore ultimately held that the decision reported in G.M. Tank Vs. State of Gujarat and Another, , was

distinguishable on facts and therefore, the same is not applicable to the appellant therein. As the first respondent herein is in all respects, identically

placed like that of the appellant before the Supreme Court in Civil Appeal Nos. 2674-2676 of 2004, the said decision applies on all fours to the

facts of this case.

11. Therefore, when we apply the above principles set out by the Hon''ble Supreme Court to the case on hand, we are convinced that the acquittal

of the first respondent by the criminal Court did not in any way affect the order of punishment passed against the first respondent based on the

departmental enquiry and the finding of guilt rendered in the said proceedings.

Merely because in one of the communications of the first petitioner it was stated that even if the first respondent fail to submit his explanation, they would await the outcome of the criminal proceedings, it cannot be held that on that score, the final order of dismissal gets vitiated which was otherwise based on relevant evidence placed before the domestic Enquiry Officer which evidence as rightly held by the Enquiry Officer was sufficient enough to hold the first respondent guilty of the charges levelled against him in the enquiry. We are not therefore in a position to find any merit in the submissions of the learned Counsel for the first respondent. Having regard to our above conclusions, we are not in a position to hold that applying the decision in Paul Antonys's case, the first respondent should also be given the very same benefit and that based on the acquittal in a criminal Court, he ought to have been exonerated of the charges levelled against him in the disciplinary action. In our considered opinion, the facts and circumstances of law involved in Paul Antony's case is clearly distinguishable to the case of the first respondent and therefore, the petitioners were well justified in having relied upon the report of the Enquiry Officer in order to pass the final order of dismissal against the first respondent.

12. In such circumstances, the conclusion of the State Administrative Tribunal in having solely relied upon the criminal Court verdict and interfered with the order of punishment imposed on the first respondent is not valid in law and therefore, the writ petition deserves to be allowed and the impugned order set aside. Accordingly, we set aside the order of the Tribunal and affirm the order of punishment and the consequential orders passed by the appellate authority and the revisional authority in confirming the said order of punishment. The writ petition stands allowed. No costs.