
(2015) 04 PAT CK 0048

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3133 of 2010

The Union of India and Others

APPELLANT

Vs

Gopal Kumar Pandey

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Evidence Act, 1872 — Section 28

Citation : (2015) LabIC 2827

Hon'ble Judges : N.P. Singh, J;Jitendra Mohan Sharma, J

Bench : Division Bench

Advocate : Sanjay Kumar, A.S.G., for the Appellant; Rajani Kant Mishra, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J—We have heard learned counsel for the writ petitioner which is the Union of India in the Department of Post and Telegraph and learned counsel for the private respondent who was the petitioner before the Central Administrative Tribunal and perused the records. The contesting respondent Sri Gopal Kumar Pandey has been dismissed from service which order was not interfered in appeal. He then challenged the said order before the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna, which not only entertained his application but quashed the departmental proceedings and directed his reinstatement with all consequential benefits including arrears of pay with interest.

2. The basis of the order of the Tribunal was that the said Gopal Kumar Pandey was also tried in criminal case and on the basis of the same set of facts, he was acquitted. The Department of Post and Telegraph being aggrieved filed this writ application against the order of the Tribunal.

3. It appears that Gopal Kumar Pandey, while working as Postal Assistant at Khusrupur Post Office, in the District of Patna, on 10.04.1999, received keys of

both the Iron chests in which there was substantial amount of cash along with other keys of the office of Senior Post Master. This day was Saturday, the next day being Sunday. When, on Monday morning, Sri Sudarshan Ram, Senior Post Master, came to the Post Office he found that the door of the Post Office was broken, the iron chest was cut and opened and the cash amounting to about Rs. 2 Lacs was missing, he informed the superior authorities and then lodged the First Information Report. When authorities were making inquiries and they questioned Gopal Kumar Pandey. He is said to have confessed and given in writing that having the keys, he had defalcated the amount and given money to another person to break the door, cut iron chest to give it a look of burglary. He was arrested in the criminal case, charge-sheeted and tried. The trial court acquitted him in spite of the fact that several witnesses clearly stated that Gopal Kumar Pandey had voluntarily confessed in their presence and had noted the confession in his own handwriting. The criminal court rejected the confession as inadmissible in evidence in view of Section 28 of the Indian Evidence Act (hereinafter referred to as "Act") having been obtained by a superior officer under threat and possible coercion. There being no other reliable material, Sri Pandey was acquitted.

4. It may be noted that State appealed on a very limited issue against the acquittal which was also dismissed. After the acquittal in the criminal case, the departmental proceedings were taken up, charges were framed. The charges in the departmental proceedings were not simply about defalcation but irresponsible behaviour and other charges. In the departmental proceedings, once again the handwritten confession was brought on record and exhibited. Statement of various other witnesses, who were present, also recorded and exhibited and formed part of the records.

5. Based upon these facts, the departmental inquiry officer in the departmental proceedings held Sri Pandey guilty as charged and the disciplinary authority ordered for his dismissal from service. This order was not interfered with by the appellate authority. It is this order that the Tribunal has set aside in a bare two page order without discussing the evidences or their probative values.

6. Learned counsel for the Union of India submits that there is a marked distinction between a criminal case and a disciplinary proceeding. In a disciplinary proceeding, the disciplinary authority has to come to a finding based on preponderance of evidence. The findings can be on the basis of probability, the technical rules of Evidence Act are wholly inapplicable, whereas in a criminal proceeding not only the provisions of Evidence Act are applicable but the prosecution has to prove the guilt beyond reasonable doubt. Therefore, there may be cases where on the same set of facts, the criminal court may rightly acquit a person, yet the departmental proceedings, on the same materials, may find him guilty and yet be not wrong. He further submitted that this is one of those cases where the evidence i.e. the confession which was available on record in both the proceedings and even taken note of, the Criminal Court rejected it

under Section 28 of the Evidence Act as inadmissible in evidence. Nothing precluded the departmental authorities from taking into account the same in the departmental proceedings. The Criminal Court did not come to a finding that confession was not made or it was a piece of forgery or it was not written by the accused. On the technical plea of undue influence, the same was rejected by the Criminal Court. But, the fact is that it was written by the accused and it was corroborated by other witnesses. In course of the departmental proceedings, it would show that two courses were available and, as such, the Tribunal ought not to have interfered.

7. On the other hand, learned counsel for the contesting private respondent who was the petitioner before the Tribunal submits that when on the same set of facts, the Criminal Court had acquitted, the departmental authorities could not punish. Reliance was placed on the judgment of the Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 : (1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376 , and in particular, what their Lordships have noted in paragraph 34 thereof. Having considered the matter, in our view, the cryptic manner in which the Tribunal has proceeded to decide such an important issue has to be deprecated. All they have said is that once the Criminal Court has acquitted, the order of the departmental authorities in departmental proceedings cannot be sustained. They have not even referred the materials on record and how the two authorities appreciated them differently?

8. We may again reiterate what has often been said that the manner of appreciation of evidence in the criminal proceedings and disciplinary proceedings are entirely different. In the former, the proof has to be beyond reasonable doubt and the evidence has to be judged in view of the strict provisions of the Indian Evidence Act. Whereas, when we come to the departmental proceedings, it is based on preponderance of probability. The strict rule of evidence, as per Evidence Act, does not come into play. Therefore, merely because a person is acquitted in a criminal case, does not follow that the disciplinary proceedings must fail. Though, the converse is true where the Apex Court in the case of P.S. Rajya Vs. State of Bihar, (1996) 4 AD 627 : (1996) 6 JT 480 : (1996) 4 SCALE 344 : (1996) 9 SCC 1 : (1996) 2 SCR 631 Supp , has clearly held that if the disciplinary authorities or the departmental authorities failed to find a person guilty, then a criminal case on the same set of facts would be an abuse, because, if, in a departmental proceedings the charge could not be established, there is no chance of such a charge being established in a criminal case where strict rules of evidence are applicable.

9. As has noticed above, the converse of this is not correct. Ultimately, each case has to be decided on the facts brought before or proved before the authorities. In the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 :

(1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376 , the Apex Court clearly noticed that the Criminal Court had come to a finding that the prosecution had failed to prove the "raid and recovery" and gave a finding that there was no search conducted nor was there any recovery pursuant to any such search. The Apex Court held that the departmental proceedings could not have contradicted those findings. This is the distinction. Here the confession has been held to be inadmissible, it is not, there is any finding in the criminal court that there was no confession made. It is the probative value of the confession that is important.

10. Thus, we are unable to uphold the order of the Tribunal. Instead of merely setting aside the order of the Tribunal, we deem it fit to remand the matter to the Tribunal for fresh consideration in accordance with law after notice to the parties. The writ petition is, thus, allowed with the aforesaid direction. As the matter is over a decade and half old, it would be expected that the Tribunal would expedite the hearing and conclude the same, if possible, within a period of six months from today and during that period, the petitioner who is in service, shall not be disturbed.