
(2009) 03 OHC CK 0040
In the Orissa High Court

Union of India (UOI) and Others

APPELLANT

Vs

Rabindra Behera and Another

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (2009) 107 CLT 556 : (2009) 1 OLR 964 Supp

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed against the Judgment and order of the Central Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter called the Tribunal") dated 15.12.1999 (Annex.-1) allowing the O.A. No. 182 of 1999 filed by the Opposite Party-employee for quashing the disciplinary proceedings.

2. The facts and circumstances giving rise to this case are that an F.I.R. dated 3.1.1987 was lodged against the Opposite Party -employee, while working as a Postal Assistant, u/s 409 I.P.C. for misappropriation of funds collected in the counter by him and also that on 2.1.1987 Opposite Party-employee received cash of Rs. 5,000 from the treasurer under receipt but he did not account the same. As the Opposite Party - employee was arrested and remained in judicial custody for more than 48 hours, in view of the provisions of Rule 10 of the Central Civil Services (Classification Control & Appeal) Rules, 1965, he was put under suspension vide Order Dated 22.1.1987. The said Opposite Party faced the criminal trial, however, stood acquitted of the charges of misappropriation by the Trial Court but was found guilty for non-accounting of the amount received from the treasury and was sentenced to undergo R.I. for one month and to pay fine of Rs. 500 vide Judgment and Order Dated 21.7.1990. Being aggrieved the Opposite Party - employee preferred Criminal Appeal No. 8 of 1990 which was allowed by the Appellate Court vide Judgment and Order Dated 16.11.1990 and

he stood acquitted of all the charges. The State Government filed Govt. Appeal No. 9 of 1991 and the Department also filed a Criminal Revision No. 15 of 1991 before this Court challenging the said Judgment passed by the Appellate Court. However, both the Appeal as well as Revision were dismissed vide Judgment and Order Dated 23.4.1997. The suspension order passed on 22.1.1987 was revoked by the Department vide Order Dated 7.7.1997 and said employee was reinstated. As the arrear and other benefits for the suspension period were not granted to the said employee because of the pendency of the criminal case, he filed O.A. No. 659 of 1999 before the Tribunal claiming the same. The Tribunal vide its interim Order Dated 29.1.1999 directed the present Petitioners to give certain benefits and make the payment of arrears. The same was not paid, thus contempt proceedings were initiated against the Petitioners and thereafter the said amount was paid. The department issued a charge-sheet dated 13.4.1999 after a period of more than 12 years and 4 months on the same charges on which he had been acquitted by the Criminal Court. Opposite Party-employee challenged the said proceedings by filing O.A. No. 182 of 1999 before the Tribunal and the Tribunal quashed the same vide impugned Judgment and Order Dated 15.12.1999 (Annex.1) mainly on the ground of delay. Hence this petition.

3. Learned Counsel for the Petitioners Ms. R. Bahal has submitted that delay cannot be a ground for quashing the Departmental Proceedings in case of such serious charges and there could not be any bar for initiation of the departmental proceedings after acquittal of the accused by the Criminal Court on the same charges. Therefore, the Judgment and order impugned is liable to be set aside.

4. On the contrary Shri Prasanna Kumar Mishra, Learned Counsel appearing for the Opposite Party-employee has submitted that the Opposite Party-employee was put under suspension on 22.1.1987. In spite of his acquittal by the first Appellate Court vide Judgment and Order Dated 16.11.1990 the suspension was not revoked and it continued till 7.7.1997. It was only when the Tribunal issued contempt notice for non-compliance of its order, the departmental proceedings were initiated on 13.4.1999 i.e. after 12 years 4 months and 12 days on the same charges on which he stood acquitted long back, which is not justified. At such a belated stage it was not possible for the employee to defend himself properly. Further, there had been no explanation for delay worth the name for initiating the proceedings at such a belated stage. Therefore, the Judgment and order impugned does not require any interference and the petition is liable to be dismissed.

5. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

6. This is settled legal proposition that even if a person stood acquitted by a Criminal Court, domestic enquiry for the same incidence can be held. The reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof is beyond reasonable doubt while in a domestic enquiry it is probability of

preponderances. In *Nelson Motis Vs. Union of India and another*, , the Supreme Court held as under:

The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.

7. In *State of Karnataka and Another Vs. T. Venkataramanappa*, ; and *Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. A. Gopalan*, , the Apex Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceeding, such a strict proof of misconduct is not required.

8. In *State of AP v. K. Allabakash* , while dismissing the appeal against acquittal by the High Court, the Apex Court observed as under:

That acquittal of the Respondent shall not be construed as a clear exoneration of the Respondent, for the allegations call for departmental proceedings, if not already initiated, against him.

9. Similar view has been reiterated by the Supreme Court in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, .

10. Disciplinary proceedings can also be held at the time when the delinquent employee is facing the criminal trial, as there is no bar to have both proceedings simultaneously as disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. (Vide *State of Rajasthan Vs. B.K. Meena and others*, ; *State Bank of India and Others Vs. R.B. Sharma*, ; *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, ; *Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas*, ; *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, ; *Commissioner of Police, New Delhi Vs. Narender Singh*, ; and *Punjab Water Supply Sewerage Board and Another Vs. Ram Sajivan and Another*, .

11. In *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, , the Supreme Court held that there can be no bar for continuing both the proceedings simultaneously. The Court placed reliance upon large number of its earlier Judgments, including *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, ; *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, ; *Jang Bahadur Singh Vs. Baij Nath Tiwari*, ; *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, ; *Nelson Motis (Supra)*; and *B.K. Meena (Supra)*, and held that proceedings in a criminal case and departmental proceedings can go on simultaneously except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common. In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of

discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Where the charge against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case. Where the nature of charge in a criminal case is grave and wherein complicated questions of fact and law are involved, will depend upon the nature of the defence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet. In case the criminal case does not proceed expeditiously, the departmental proceedings cannot be kept in abeyance for ever and may be resumed and proceeded with so as to conclude the same at the early date. The purpose is that if the employee is found not guilty his cause may be vindictive, and in case he is found guilty, administration may get rid of him at the earliest.

12. In Union of India (UOI) and Others Vs. Naman Singh Sekhawat, , the Court held that departmental proceeding can be initiated after acquittal by the Criminal Court. However, the departmental proceeding should be initiated provided the department intended to adduce any evidence which could prove the charges against the delinquent officer. Therefore, initiation of proceeding should be bona fide and must be reasonable and fair.

Thus, it is evident that there is no prohibition in law to hold Departmental Proceedings even after acquittal by the Criminal Court on the same charges.

13. The Supreme Court in Union of India v. Ashok Kacker, 1995 Supp (1) SCC 180 while dealing with a matter where the employee had challenged the charge sheet, clearly held that the Tribunal entertained the application at a premature stage. It was observed as follows:

...In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the Respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the Respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the Respondent or which may have been raised by him.

14. In Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, , the Supreme Court set-aside the order of the Tribunal by which the departmental enquiry and the charge-sheet were quashed on the ground of delay in initiation of the disciplinary proceedings and it was observed as follows:

Order Dated 12.11.1993 in Nos. 1702 of 1993 and 2206 of 1993 of the Tamil Nadu Administrative Tribunal, Madras is in question before us. The Respondent

while working as Assistant Section Officer, Home, Prohibition and Excise Department had been placed under suspension/Departmental inquiry is in process. We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charge, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by the Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the Counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an Appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on the Court to examine each case in detail. It is high time that it is remedied.

15. It was, therefore, emphasized by the Supreme Court that even by way of final order the departmental enquiry or the charge-sheet could not have been quashed. Thus, what could not have been done even at the final stage certainly could not have been done by way of any interim measure by the Tribunal.

16. It is settled legal proposition that even if the inquiry is initiated at a belated stage or there is a delay in the conclusion of the inquiry within a reasonable period the Court/Tribunal should not quash the charges without considering the gravity of the charges. Thus, the facts and circumstances of a particular case have to be examined and only after considering the gravity/magnitude of the charges the order should be passed. (Vide *The State of Madhya Pradesh Vs. Bani Singh and another*, ; *State of Punjab and Others Vs. Chaman Lal Goyal*, ; *Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others*, ; and *Additional Supdt. of Police v. T. Natarajan* 1999 SCC 646.

17. In *P.D. Agrawal v. State Bank of India and Ors.* (2006) 8 SCC 776, the Supreme Court considered the same issue and came to the conclusion as under:

The validity of the disciplinary proceeding and/ or justifiability thereof on the ground of delay or otherwise had never been raised by the Appellant before any forum. It was not his case either before the Appellate Authority or before the High Court that by reason of any delay in initiating the disciplinary proceeding he had been prejudiced in any manner whatsoever. It may be true that delay itself may be a ground for arriving at a finding that enquiry proceeding was vitiated in the event it is shown that by reason thereof the delinquent officer has been

prejudiced, but no such case was made out. In this case, as noticed herein before, the Appellant did not raise the question of delay before any forum whatsoever. He did not raise such a question even before the disciplinary authority. He not only took part therein without any demur whatsoever, but, as noticed herein before, cross-examined the witnesses and entered into the defence.

18. Thus, while entertaining the submissions that inquiry should not be proceeded with such charge sheet which had been issued at a belated stage or the inquiry stood vitiated on account of the inaction of the employer, the Court has to consider the seriousness and magnitude of the charges and while doing so the Court must "weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper in the circumstances".

19. In *State of Andhra Pradesh Vs. N. Radhakishan*, , the Supreme Court as observed as under:

It is not possible to lay down any predetermined principles applicable to all cases and in all situations where is a delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay.

20. A similar view has been reiterated in *Food Corporation of India Ltd. v. V.P. Bhatia* (1998) 8 SCC 131.

21. In *Government of A.P. and Ors. v. V. Appala Swamy* (2007) 14 SCC 49, same view has been reiterated by the Hon''ble Supreme Court. While deciding the said case, reliance had been placed on the Judgments in *Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan*, ; *P.D. Agrawal* (supra); *Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey and Ors.* (1995) 3 SCC 134; and also referred to *M.V. Bijlani Vs. Union of India (UOI) and Others*, .

22. In *Prafulla Chandra Mohapatra Vs. State of Orissa and others*, , the Apex Court held that initiation of departmental proceedings after acquittal of the employee by the Criminal Court on merit as well as on technical ground should not generally be resorted to after a long period merely being influenced by any observation made by the Criminal Court and it is not required merely on the ground that acquittal had been on a technical ground. While initiating the proceedings, the findings of Criminal Court should be examined properly.

23. In *P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board*, , the Hon''ble Supreme Court considered a similar issue where the charges had been of misappropriation and corruption and held that departmental proceedings should

not be initiated at a much belated stage as it would be very prejudicial to the delinquent. More so, during the intervening period, as there had been an allegation of his disputed integrity and having facing the charge of corruption he had to suffer from unbearable mental agony and distress. "The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees." As a matter of fact, the mental agony and sufferings of the delinquent due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the employee should not be made to suffer.

24. In view of the above, the law can be summarised that normally in exercising power of judicial review the Court/Tribunal should not quash the disciplinary proceedings even on the ground of delay. There can be no strait-jacket formula for interfering with such proceedings. In exceptional circumstances, where the charges are very grave, the inquiry may be necessary even at a belated stage, but there must be satisfactory explanation for delay on the part of the department as the delinquent suffers from mental agony and distress during said proceedings. There must be sufficient evidence to prove the charges against him.

25. The instant case is required to be examined in the light of the aforesaid settled legal propositions.

26. Admittedly, the charges against the delinquent were grave in nature. In case the charges of misappropriation against the delinquent stands proved, no punishment other than that of dismissal can be awarded. (vide *Ruston & Hornsby (I) Ltd. v. T.B. Kadam* AIR 1975 SC 2025; *Municipal Committee, Bahadurgarh Vs. Krishan Behari and others*, ; *U.P. SRTC v. Basudeo Chaudhary*, (1997) 11 SCC 370; *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourakara Sangha Etc.*, ; *Karnataka State Road Transport Corporation Vs. B.S. Hullikatti*, ; *Regional Manager, RSRTC v. Ghanshyam v. Sharma*, (2002) 1 LLJ 234 SC; *Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh*, ; and *U.P. State Road Transport Corporation Vs. Vinod Kumar*,).

27. But in the instant case, the Court cannot lose sight of the fact that the delinquent stood acquitted by the first Appellate Court vide Judgment and Order Dated 16.11.1990 and suspension order passed on 22.1.1987 was revoked on 7.7.1997. There could be no justification on the part of the department to keep the delinquent under suspension-without initiating the inquiry and issuing the charge-sheet for such a long period.

28. The Learned Tribunal reached the conclusion that after acquittal by the Appellate Court vide Judgment and Order Dated 16.11.1990, the department remained in deep slumber for a period of about 9 years. Even before this Court

no explanation could be furnished for inaction on the part of the department in this regard. The proceedings have been initiated only when the order passed by the Tribunal in favour of the Opposite Party-employee to grant him financial and other consequential benefits for the period during which he remained under suspension were not complied with and for that reason contempt proceedings were initiated. In such a fact situation the proceedings cannot be held to be bona fide. More so, the incident occurred on 2.1.1987 and in the meanwhile a period of more than 22 years have elapsed. Since then the Opposite Party-employee has been suffering from mental agony and distress. Taking into consideration, the above referred facts, we do not see any cogent reason to interfere with the impugned Judgment and order. Petition lacks merit and is accordingly dismissed.

B.N. Mahapatra, J.

I agree.