

(2016) 03 KAR CK 0303

In the Karnataka High Court

Case No : Writ Appeal No. 3420 of 2013 (L-TER)

Yemanura

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Citation : (2016) 151 FLR 336 : (2016) 4 KantLJ 406 : (2017) LabLR 273 : (2016) 4 LLN 421

Hon'ble Judges : N. Kumar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : Sri V.R. Sarathy for Sri B. Krishna, Advocate, for the Appellant; Sri Somashekara, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The above appeal is filed against the order dated 25-2-2013 made in W.P. No. 4566 of 2008 by the learned Single Judge setting aside the order dated 20-11-2007 made in C.R. No. 45 of 2003 by the Central Government Industrial Tribunal-cum-Labour Court confirming the dismissal order dated 20-11-1993 passed by the respondent-Bank.

2. It is the case of the appellant that he was appointed as daily rated temporary sweeper in the month of September 1979 and got promoted as Bill Collector-cum-Peon in the year 1986. While he was working as Bill Collector-cum-Peon at Mandipet Branch, Davanagere, it was alleged that the appellant has committed theft of Demand Draft Books, Authority Cheques, Introduction Letters and misused the same forging signatures of Authorised Officers and personally encashing the amount of Rs. 3,08,000/- at various Branches of respondent-Bank. On the basis of the allegations, a charge memo dated 28-6-1993 came to be issued alleging that he has committed certain grave acts of misconduct. The said charges are denied by the appellant. Therefore, the Enquiry Officer was appointed. The criminal case was registered in C.C. No 758 of 1996 for the offences punishable under Sections 381, 468, 420 and 201 of Indian Penal Code,

1860 and after trial the appellant was acquitted on 7-6-2001. However, before the judgment could be delivered in the said case, the appellant was dismissed from service by an order dated 20-11-1993.

3. Being aggrieved by the said order of dismissal, the appellant filed the appeal before the Appellate Authority who after considering the entire material on record by its order dated 18-7-2002 rejected the appeal, Therefore, the appellant has raised an industrial dispute under the provisions of Section 10(1)(a) and 10(1)(d) of the Industrial Disputes Act, 1947. The same was referred to the Central Government Industrial Tribunal-cum-Labour Court.

4. The Central Government Industrial Tribunal-cum-Labour Court after hearing both the parties by its order dated 20-11-2007 directed the respondent-management to reinstate the appellant into service with effect from 7-6-2001 with full back wages, continuity of service and other consequential benefits.

5. Aggrieved by the said order passed by the Central Government Industrial Tribunal-cum-Labour Court, the respondent-Bank/management filed W.P. No. 4566 of 2008 (L-TER) before the learned Single Judge. After hearing both the parties by its impugned order dated 25-2-2013, the learned Single Judge has allowed the writ petition filed by the management and set aside the order dated 20-11-2007 passed in C.R. No. 45 of 2003 by the Central Government Industrial Tribunal-cum-Labour Court and confirmed the dismissal order dated 20-11-1993. Hence the present writ appeal is filed by the workman-appellant.

6. We have heard the learned Counsel for the parties to the lis.

7. Sri V.R. Sarathy learned Counsel for the appellant contended that the impugned order passed by the learned Single Judge is contrary to the law laid down by the Hon'ble Supreme Court in G.M. Tank's, case and the award passed by the Labour Court on the ground that the acquittal of the appellant is on merits and it is a case of honourable acquittal. Therefore, the learned Single Judge erred in its jurisdiction reversing the order passed by the Labour Court and the appellant has not forged the signatures of the officers and handwriting expert opinion is very much relevant. He further contended that the learned Single Judge ought to have seen that the appellant is a Group "D" employee and he has no access to the securities of the Bank, that apart in this regard no evidence worth the name has been given to show that the appellant has committed theft of alleged securities of the Bank. He further contended that the learned Single Judge merely basing upon the finding recorded in the Departmental Enquiry and the Enquiry Officer holds good in the facts and circumstances of the case. The judgment relied upon by the learned Counsel for Bank has no application to the facts of the present case. Therefore, he sought for setting aside the order passed by the learned Single Judge. In support of his contentions the learned Counsel for appellant relied upon the dictum of the Hon'ble Supreme Court in the case of S. Bhaskar Reddy and Another v. Superintendent of Police and Another, (2015) 2 SCC 365, to the effect that criminal proceedings and departmental proceedings

are based on similar facts and evidence, honourable acquittal of the appellant by the Trial Court on facts held berth the Tribunal and High Court erred in not considering the undisputed facts, that the appellants were honourably acquitted by the Trial Court for the same charge, hence dismissal order was set aside, appellants to compulsorily retired.

8. Per contra, Sri Somashekara, learned Counsel for the respondent sought to justify the impugned order passed by the learned Single Judge and contended that the appellant was acquitted on benefit of doubt. While referring the evidence of handwriting expert-P.W. 17, the Criminal Court found that the handwriting expert had not received the specimen signature of the accused therefore, the Criminal Court has doubted the disputed signature of the appellant (Yemunara). The Criminal Court also observed that B. Shivaprakash, Accountant who was one of the officers authorised to sign the demand draft was not examined in the Criminal Court and therefore, the Criminal Court has expressed suspicion on the same, and the Criminal Court observed that the demand draft, authority cheque, introduction of letter of Guntur Branch and local delivery book have not been seized and produced. Therefore, the Criminal Court has given the benefit of doubt. The amount of demand draft involved in criminal case was Rs. 1,93,000/-, whereas in the domestic enquiry it was in respect of Rs. 3,08,000/-. Therefore, the criminal proceedings and departmental enquiry proceedings was not based on the same set of facts. Therefore the G.M. Tank and S. Bhaskar Reddy's cases relied upon by the appellant is not applicable to the facts and circumstances of the present case. Hence he sought for dismissal of the writ petition.

9. In view of the rival contentions urged by the learned Counsel for the parties, the points that arise for our consideration are as to:

1. Whether the appellant was acquitted by the Criminal Court on benefit of doubt?
2. Whether the CGIT is justified in setting aside the dismissal order passed by the management mainly on the basis of the acquittal order passed by the Criminal Court?
3. Whether the impugned order passed by the learned Single Judge calls for any interference?

10. We have given our anxious consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record.

11. It is not in dispute that the appellant was appointed as daily rated temporary sweeper during September 1979 and promoted as Bill Collector-cum-Peon in the year 1986. It is also not in dispute that in view of the theft of demand drafts, books, authority cheques, introduction letters and misusing of the same, forging signatures of the Authorised Officers and personally encashing demand drafts amount to Rs. 3,08,000/- at various branches of the respondent-Bank including Branches at Poona, Goa, Bombay and Surat. The respondent-Bank issued articles of charges to the appellant on 28-6-1993, the appellant denied the charge

memo, and after enquiry the Enquiry Officer submitted his report holding that the appellant is guilty of charges. Accordingly the 2nd show-cause notice was issued by the Bank and being not satisfied with the explanation offered by the appellant, he was dismissed from service on 20-11-1993. It is also not in dispute that in the interregnum a criminal case was registered in Crime No. 758 of 1996 for the offences punishable under Sections 381, 468, 420 and 201 of Indian Penal Code, 1860 and after trial the appellant was acquitted on 7-6-2001 on benefit of doubt. It is also not in dispute that the Criminal Court acquitted the appellant on the following grounds:

1. While referring the evidence of handwriting expert (P.W. 17) found that the handwriting expert had not received specimen signature of the accused. Therefore, the Criminal Court has disputed the signature of the appellant (Yemanura).

2. Criminal Court also observed that one Sri B. Shivaprakash, Accountant, who was one of the Authorised Officer to sign the Demand Draft was not examined, hence the Criminal Court expressed suspicion on the same.

3. The Criminal Court has expressed doubts on the evidence of P.W. 4-Sri R.A. Rathnakara, P.W. 5-Sri P.K. Kadapa, P.W. 8-N.R. Cutinho and P.W. 9-Sri Udaya Sakorkar, the witnesses from the Branches where the Demand Drafts were encashed by respondent, since handwriting expert P.W. 17 has not given definite opinion as to who signed the forged demand drafts.

4. The Criminal Court also observed that the demand draft, authority cheque, introduction letter of Guntur Branch and local delivery book have not been seized and produced. Therefore, gave the benefit of doubt.

5. The Criminal Court has also observed that the police and the prosecution have not produced the attendance details of the appellant to show that the appellant was not on duty when he had encashed the demand draft at various places. Hence the Criminal Court has expressed suspicion about the absence of the appellant. Whereas in the domestic enquiry, the respondent-Bank has produced leave records that the appellant-Yemunara had applied leave on those days when he had encashed demand drafts at various places. The above observation made by the Criminal Court clearly indicates that the acquittal of the appellant in the criminal case was not an honourable acquittal, but acquittal by giving benefit of doubt.

12. In view of the above, we answer Point No. 1 in the affirmative holding that the appellant was acquitted by the Criminal Court on benefit of doubt.

13. It is also not in dispute that the CGII-cum-Labour Court has proceeded to set aside the dismissal order dated 20-11-1993 passed by the respondent-Bank/ Management mainly on the basis of the acquittal order made in a criminal case observing that in order to show whether the acquittal is honourable or is the result of benefit of doubt being given to the delinquent official on going through

the entire reasons of the judgment supported by evidence on record. In this case, as noted above" the learned Magistrate after discussion at length, threadbare, oral testimony of the prosecution witness and the documents, much less handwriting expert recorded a finding to the effect that the prosecution miserably failed to connect the accused with the guilt. Therefore, he was of the opinion, that judgment acquitting the first party honourably and is not based on the benefit of doubt and proceeded to pass the impugned order relying upon the judgment of the Hon"ble Supreme Court in the case of G.M. Tank v. State of Gujarat, AIR 2006 SC 2129. It is also relevant to state at this stage, while passing the acquittal order by the learned Magistrate on 7-6-2001 has observed as under:

"Hence it is not necessary to give sufficient documentary proof more on this ground. Hence the accused theft the documents and the witnesses are destroyed, and there is no straight proof in this regard that the prosecution has failed to prove the crime of offence against the accused committed and now it is doubtful case in the matter and there is a doubt in favour of the accused accordingly he was acquitted."

14. The CGIT while setting aside the dismissal order passed by the Disciplinary Authority has not taken note that the departmental proceedings and the criminal case are not based on identical facts, evidence of same witnesses and same documents. In the criminal case, the amount of demand draft involved was only Rs. 1,93,000/- whereas in the domestic enquiry it was in respect of Rs. 3,08,000/-. Further the attendance register and local delivery book were not produced in criminal case but produced in the domestic enquiry. Further Sri A.R. Ranganath, Branch Manager (M.W. 3), Sri B. Shivaprakash, Accountant (M.W. 4) and Sri V.N. Kulkarni, Vigilance Officer (M.W. 5) were not examined in the criminal case. Further admitted signature was not furnished to the handwriting expert (P.W. 17) for giving his findings. Therefore, the criminal proceedings and departmental enquiry proceedings were not based on the same set of facts. Therefore, the dictum rendered by the Supreme Court in the case of G.M. Tank was not applicable to the facts of the present case. The Hon"ble Supreme Court in the case of G.M. Tank, held the officer was honourably acquitted in a Criminal Court without giving any benefit of doubt and admittedly in the present case, the appellant was acquitted in the criminal case mainly on the basis of benefit of doubt.

15. In view of the reasons stated above we answer the 2nd point in the negative holding that CGIT is not justified in setting aside the dismissal order passed by the Management mainly on the basis of acquittal order passed by the Criminal Court on benefit of doubt.

16. The CGIT while considering the records and contentions has recorded a specific finding that:

"Therefore, as could be read from the findings and the reasonings given by the

Enquiry Officer, he appreciated the evidence threadbare and at length the oral and documentary evidence produced by the management and at the same time the defence taken by the first party in coming to the conclusion that the first party was guilty of the misconduct as levelled in the charge-sheet. As noted above, nothing worth was pointed on behalf of the first party as to why the findings of the Enquiry Officer suffered from perversity. There was no argument on his behalf to show that the Enquiry Officer did not appreciate the evidence brought on record or that his appreciation of evidence was not backed by cogent and valid reasonings. In the result, I must record a finding to the effect that finds of the Enquiry Officer suffered from no perversity."

Admittedly the present appellant has not challenged the said adverse findings recorded by CGIT against the appellant and the same is final and conclusive. In the absence of the challenge against the adverse finding recorded by the CGIT against the appellant-workman, CGIT was not justified in setting aside the dismissal order passed by the management only on the basis of acquittal order passed by the Criminal Court on benefit of doubt.

17. Though the learned Counsel sought to place reliance on the dictum of the Hon''ble Supreme Court in the case of S. Bhaskar Reddy, wherein the Hon''ble Supreme Court held that the criminal proceedings and departmental proceedings based on the similar facts and evidence and honourable acquittal of the accused in the Criminal Court for the same charge was set aside instead of directing reinstatement, the appellants therein was to be compulsorily retired. Admittedly in the present case, the criminal proceedings and departmental enquiry proceeded against the appellant was not based on the same set of facts. The charges and the evidence are entirely different. The judgment relied upon by the learned Counsel for the appellant has no application to the facts and circumstances of the present case.

18. The Hon''ble Supreme Court while considering the acquittal in criminal proceedings and departmental enquiry in the case of Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao, (2012) 1 SCC 442, at paragraph 24 held as under:

"24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Limited, AIR 1999 SC 1416 does not lay down the law of universal application. Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry."

19. Therefore, the judgment relied upon by the appellant before the CGIT as well

as before the learned Single Judge has been considered by the Hon"ble Supreme Court in the subsequent judgment in the case of M.G. Vittal Rao and held that the judgment relied upon in Capt. M. Paul Anthony's, case laid down the law of Universal application and therefore, individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.

20. Admittedly in the present case, the departmental enquiry and criminal proceedings were initiated against the appellant on different charges and evidence and not on the same set of facts. Admittedly the Criminal Court acquitted the appellant on the benefit of doubt and not honourable acquittal as already stated above. It is well-settled law that departmental proceedings and proceedings in a criminal case can proceed simultaneously. There is no bar in there being conducted simultaneously, though separately.

21. The Hon"ble Supreme Court while considering the departmental proceedings and criminal proceedings in the case of Indian Overseas Bank, Annasalai and Another v. P. Ganesan and Others, (2008) 1 SCC (L and S) 275, at paragraph 24 held as under:

"24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the Delinquent Officers including the charges of damaging the property belonging to the bank which was not the subject-matter of allegations in a criminal case, the departmental proceedings should not have been stayed."

22. Admittedly in the present case, departmental proceedings and criminal proceedings are not based on identical facts, evidence of the same witness and same documents. In the criminal case, the amount of demand draft involved is Rs. 1,93,000/- whereas in the domestic enquiry the amount involved is Rs. 3,08,000/- and further attendance register and focal delivery book were not produced in the criminal Case, but produced in the domestic enquiry. The witnesses examined M.Ws. 3, 4 and 5 in the departmental enquiry were not examined in the criminal case and admitted signature was not furnished to the handwriting expert (P.W. 17) for giving his findings in the Criminal Court. Therefore, the criminal proceedings and departmental proceedings initiated against the appellant were not based on same set of facts.

23. After considering the entire material on record, the learned Single Judge of this Court has recorded a specific finding that the learned Counsel for the petitioner vehemently contends that the said order cannot be considered as honourable acquittal in view of the fact that the benefit of doubt was extended to six issues. Therefore, even on that issue the workman has failed to prove anything worthwhile before the Court. In view of my finding recorded it would not be necessary to go into the question whether it is honourable acquittal or not. Even assuming that the acquittal is honourable, in view of the judgment of the honourable Supreme Court in M.G. Vittal Rao's case, the same would

necessarily have to be considered in that background. The acquittal by itself cannot constitute a ground to set aside the findings of the Enquiry Officer in the departmental enquiry. Under these circumstances, since there is a consistent findings even by the tribunal with regard to the merits of the petition necessarily the order of the Tribunal cannot be sustained. Accordingly the learned Single Judge allowed the writ petition and set aside the order passed by the CGIT and confirmed the dismissal order passed by the management dated 20-11-1993. The same is based on cogent legal evidence and material on record.

24. In view of the aforesaid reasons, the impugned order passed by the learned Single Judge does not call for our interference while exercising powers under the provisions of Section 4 of the Karnataka High Court Act, 1961.

25. Accordingly, the writ appeal is dismissed.