

Nirdosh Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-01-2013

Judge : Tarun Agarwala

Appeal No. : Civil Misc. Writ Petition No. 4219 of 2011

Appellant : Nirdosh Kumar

Respondent : State of U.P. and Others

Judgement :

Tarun Agarwala, J..

An incident took place in the night of 29/30 August, 2004 wherein the petitioner in the course of his duty met with an accident with a Maruti Car while driving his motorcycle as a result of which, the petitioner fired from his official rifle injuring one occupant in the car, who eventually succumbed to his injuries in the hospital. On the basis of this incident, an F.I.R. was lodged against an unknown police officer and subsequently, upon investigation the petitioner's name surfaced and he was charge sheeted. On the otherhand, disciplinary proceedings were initiated against the petitioner on the charge that he had misused his post and had unlawfully used his rifle, which has tarnished the image of the police force. On the basis of this charge, a domestic inquiry proceeding was initiated and, after collecting the evidence, the inquiry officer submitted a report holding that the charge against the petitioner stood proved. The disciplinary authority issued a show cause notice and,

after considering the reply, passed an order of dismissal. The petitioner, being aggrieved, filed an appeal, which was dismissed. The petitioner thereafter filed a revision, which met the same fate. The petitioner has now filed the present writ petition.

During the pendency of the writ petition, the petitioner was acquitted by the Criminal Court, by a judgment dated 3.5.2001, which has been brought on record.

In view of the acquittal, the contention of the petitioner is, that since the departmental proceedings and criminal proceedings were based on identical or same set of facts and the petitioner has been acquitted by a Criminal Court, consequently, the impugned order of dismissal and further the appellate and the revisional orders are liable to be set aside and the petitioner is liable to be reinstated.

In support of his submission the learned counsel for the petitioner has placed reliance upon a decision of the Supreme Court in Captain M. Paul Anthony vs. Bharat Gold Mines Ltd. and others, (1999) 3 SCC 679.

Having heard the learned counsel for the petitioner at some length, the Court finds that the position of law is well settled, namely, that the departmental proceedings and the criminal proceedings can go on simultaneously, except where a departmental proceeding and a criminal proceeding are based on the same set of facts and evidence and where the witnesses are common in the said cases, the Court has to decide taking into account the said features of the case as to whether simultaneously continuance of both the proceedings would be appropriate and proper or not. In Captain M. Paul Anthony's case (Supra) one of the grounds where departmental proceedings could be kept in abeyance is "based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case."

In G.M Tank Vs. State of Gujarat and Others, 2006 (5) SCC 446 the Supreme Court held that where departmental proceedings and criminal case are based on

identical and similar set of facts and the charges in a departmental case against the applicant and the charges before the Criminal Court are one and the same, in which case, the departmental proceedings would be stayed till the disposal of the criminal case

The Supreme Court in the aforesaid case has clearly stated that where the case is of a grave nature and involves questions of fact and law, in that event, it would be advisable for the Authority to await the decision of the criminal Court

In the light of the aforesaid, there leaves no scope for doubt that there is no bar for simultaneous proceedings being taken against the delinquent employee in the form of a criminal action and also in the form of a disciplinary proceedings unless the charges are extremely serious and grave requiring judicial administration in preference to the verdict in domestic enquiry proceedings

In the instant case there is nothing on record to suggest that the criminal proceedings and the domestic proceedings are based on same set of facts or similar set of facts. There is no evidence to indicate that the evidence and the witnesses were the same. In the instant case a criminal action and disciplinary proceedings are not grounded upon the same set of facts. In the opinion of the Court, the purpose of the two proceedings are quite different. The object of the departmental proceedings is to ascertain whether the petitioner is required to be retained in service or not. On the other hand, the object of the criminal prosecution is to find out whether the offence in the penal statute has been made out or not. Therefore, in the opinion of the Court the area covered by the two proceedings are distinct and different and are not identical. The object of both the proceedings are different. Whereas the departmental proceedings are taken to maintain discipline in the service, the criminal proceedings is initiated to punish a person for committing an offence violating any public duty. In the instant case the Court finds that the charges mentioned in the domestic disciplinary proceedings are totally different and distinct. The Court finds that the charge of murder was slapped against the petitioner in the criminal proceedings where he was acquitted by giving him a benefit of doubt and it was not a clean acquittal. In the domestic inquiry, the charge against the petitioner was of misuse of his post and official rifle while on

duty, which was proved

In *Abhay Raj Singh Vs. Bank of Baroda and another* 2005 (2) UPLBEC 1802, the Court held that:-

"it is well settled principle of law that the degree of proof required in a departmental enquiry is vastly different than the degree of proof required to prove a criminal charge. In the departmental enquiry the findings can be recorded in preponderance of probabilities and it is not necessary that the charge must be proved to the hilt. The departmental proceedings and the criminal proceedings are entirely different in nature. They operate in different fields and they have different objectives. The material or the evidence in the two proceedings may or may not be the same and, in some cases, at least, material or evidence which would be relevant or open for consideration in the departmental proceeding, may be irrelevant in the criminal proceeding. The Rules relating to the appreciation of the evidence in the two enquiries may also be different. The standard of proof, the mode of enquiry and the rules governing the enquiry and the trial in both the cases are entirely distinct and different

The law is well settled that the Inquiry Officer can come to a different conclusion than arrived at by a Criminal Court and that it is immaterial whether the charges were identical or the witnesses were the same, as long as the power exercised by the Criminal Court and the inquiry under the relevant law and the service law and the distinct and separate. There is no bar for holding a disciplinary proceeding during the pendency of the trial though the basis may be one and the same. It is for the disciplinary authority to decide as to whether in a given case it should keep the domestic enquiry pending till the outcome of the criminal trial or not.

"For the reasons stated aforesaid, the Court does not find any merit in the writ petition

The writ petition is dismissed.

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