

T.V. Gowda Vs. State of Mysore and ors.

T.V. Gowda Vs. State of Mysore and ors.

SooperKanoon Citation : sooperkanoon.com/371575

Court : Karnataka

Decided On : Dec-13-1973

Reported in : (1975)IILLJ513Kant

Judge : D.M. Chandrashekhar, ;E.S. Venkataramiah and ;K. Bhimayya, JJ.

Acts : Evidence Act; Mysore (Karnataka) Civil Service (Classification, Control and Appeal) Rules; Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960; [Indian Penal Code \(IPC\), 1860](#) - Sections 409 and 477A; [Constitution of India](#) - Articles 20(2) and 226

Appeal No. : W.P. No. 693 of 1970

Appellant : T.V. Gowda

Respondent : State of Mysore and ors.

Judgement :

ORDER

1. A Division Bench Of this Court consisting of Govinda Bhat, J. (as he then was), and Malimath, J. has by its order dated 22-3-1973 referred to a Full Bench the following question :

Whether an order of a criminal Court acquitting the accused on the merit of a case would bar the disciplinary authority from holding him guilty and imposing punishment in disciplinary proceedings conducted under the Mysore (Karnataka)

Civil Service (Classification, Control & Appeal) Rules, on the basis of the same facts and accusations in respect of which he was tried and acquitted by the Criminal Court.'

2. On the above question there are earlier decisions of this Court in *P. Ekambaram v. The General Manager, M.G.R.T.C.*, (1961) Mys. L.J. 1066; *Mainuddin Alisab Kazi v. State of Mysore*, (1964) 1 Mys. L.J. 188 and *Rama v. Superintendent of Police, Kolar*, A.I.R. 1967 Mysore 220.

3. In *Ekambaram's* case a Division Bench of this Court consisting of Somnath Iyer, J. (as he then was), and Kalagate, J., held that of a civil servant acquitted by a Criminal Court, would bar a disciplinary proceedings in respect of the same charge, Somnath Iyer, J., observed thus at page 1068 :

'Normally if a person holding a civil post is found to have committed an offence punishment under the penal code, he would in the first instance be prosecuted in a Criminal Court for that offence. It may be that it is not always necessary to resort to that course since the disciplinary authority would also have the power to make a departmental enquiry into that charge although it is punishable by a Criminal Court. But if the department in which the petitioner was holding the civil post chooses to have that charge enquired into by the Criminal Court and the Criminal Court enquires into it and acquits the civil servant of the charge which had been framed against him it should, in my opinion, be extremely improper for any disciplinary authority to enquire against into that charge and hold him guilty on the very evidence which was produced before the Criminal Court and which it disbelieved. To permit that would be to countenance an improper circumvention of the order of acquittal made by a competent Criminal Court.'

4. The above decision was followed by Kalagate, J. in *Mainuddin Alisab Kazi's* case. That was also a case in which the Criminal Court acquitted the accused holding that the evidence was not sufficient to bring home the guilt of the accused. His Lordship reiterated the earlier view and observed as follows :

'The question, therefore, is, even though the department has got a right to hold a departmental enquiry, whether it would be right for it to come to a contrary

conclusion and circumvent the decision of the Court. In my opinion, if this is permitted, it will shake the confidence of the public in the judiciary and it is neither desirable nor proper for the disciplinary authorities to circumvent decision of the Court and find the accused guilty when on the very same evidence the Court has found that it is not sufficient to convict the culprit.'

His Lordship, however, said that it may be permissible for the disciplinary authority to take disciplinary action against the delinquent where the Criminal Court had given the benefit of doubt though it was morally convinced of the guilty of the accused. But where the Court has found the accused not guilty on the evidence before it, his Lordship said that the disciplinary authority should not disregard the decision of the Criminal Court, and start proceedings, and take action against the delinquent.

5. In *Rama v. Superintendent of Police, Kolar* A.I.R. 1967 Mysore 220, the petitioner was a police constable. A case against him had been registered for an offence, although no prosecution in respect of that offence had yet commenced. In the meanwhile disciplinary proceedings were also commenced against him in respect of the same matter. He assailed such disciplinary proceedings on the ground that there was an impending criminal prosecution against him in respect of the same matter. The evidence proposed to be produced against him in the disciplinary proceedings, was identical with the evidence proposed to be produced in the criminal case.

6. Though his contention that there could not be a parallel disciplinary proceeding, was rejected, Somnath Iyer, J. (as he then was) who spoke for the Bench, said thus :

'What constitutes an impediment to a disciplinary proceeding is an acquittal in a criminal prosecution in respect of the same charge. If there be no such acquittal and even if a criminal prosecution has commenced and is continuing, a disciplinary proceeding which forms the subject-matter of the charge in the Criminal Court is not forbidden and can be commenced and concluded so long as the prosecution has not ended in an acquittal. That is the principle clearly emerging from the decision of the Supreme Court in *Delhi Cloth & General Mills v.*

Kushal Bhan, [1960-I L.L.J. 520].

7. The observation of his Lordship that an acquittal in a criminal prosecution was an impediment to a disciplinary proceeding in respect of the same charge, was obiter and was not necessary for deciding the question that arose in that case.

8. Thus the view taken in the aforesaid decisions of this Court is that when a civil servant is acquitted in a criminal case, it would be an improper circumvention of the order of acquittal made by competent Criminal Court if the disciplinary authority enquires again into the same charge, holds him guilty on the very same evidence which was produced before the Criminal Court and which it disbelieved. It is further held in Mainuddin Alisab Kazi's case that any circumvention of the decision of the Criminal Court, if permitted, would shake the confidence of the public in the judiciary and such a course would be neither desirable nor proper for the disciplinary authority to do so.

9. The Division Bench which has referred the above question to the Full Bench felt that the views expressed in the aforesaid decisions of this Court were in conflict with the decisions of the Supreme Court in Delhi Cloth & General Mills Ltd., v. Kushal Bhan, [1960-I L.L.J. 520]; J. K. Cotton Spinning and Weaving Company Ltd v. Its Workmen. [1965-II L.L.J. 153], And State of Andhra Pradesh v. Sree Rama Rao, [1964-II L.L.J. 150]. That is how the aforesaid question came to be referred to a Full Bench.

10. Mr. K. S. Desai learned advocate for the petitioner, submitted that the view taken in the aforesaid decisions of this Court finds support from the following decisions of other High courts viz., (i) Shaik Kasim v. Superintendent of Post Offices. Chingleput Dn., and another [1965-I L.L.J. 197]; (ii) Banta Singh v. National Coal Development Corporation and another, [1969-I L.L.J. 664] and (iii) Bhagwat Charan v. State of Uttar Pradesh. (1973 Labour and Industrial Cases, 1421).

11. In Shaik Kasim v. Superintendent of Post Offices, (supra) Anantanarayanan O.C.J. while dealing with the effect of acquittal of civil servant by the Criminal Court on disciplinary proceedings against him in respect of some charges,

observed thus :

'An administrative authority, in initiating disciplinary proceedings against a Government servant, is not bound to wait for the verdict of a Criminal Court. But, where the Criminal Court has tried the concerned person and acquitted him, it would be improper, and such a proceeding is liable to be quashed as not in consonance with the principles of natural justice, if the Administrative authority later initiates disciplinary proceedings on the identical facts and identical charge and records a contrary conclusion. But, of course, the acquittal should have been substantially on the merits, technical acquittals on grounds like sanction may not inhibit departmental disciplinary proceedings, or a contrary verdict therein.'

His Lordship further observed :

'Where the acquittal is substantially on merits, on identical facts and charges, it will not be proper for a disciplinary Tribunal to record a finding of guilt, and to punish thereon. This is a basic principle of jurisprudence, and I cannot see that it makes any difference that the departmental authority acts before the criminal proceeding, or after it. This Court, in exercise of the jurisdiction under Art. 226 of the Constitution, would be justified in striking down the action based on such findings as not in consonance with principles of natural justice. Otherwise, grave anomalies might follow, as stressed by Rajamannar, C.J. and Venkatarama Iyer, J. in : AIR1952 Mad853 .'

Thus the Madras High Court took the view that holding disciplinary proceedings against a civil servant acquitted by the Criminal Court, in respect of the same charge, would not be, in consonance with principles of natural justice.

12. In Banta Singh v. National Coal Development Corporation, [1969-I L.L.J. 664], Mahapatra, J., referred to the decisions in Shaik Kasim's case (supra) and observed as follows :

'It is true that the findings of the Criminal Court will not be binding in a civil trial, but here the question is different; whether that finding will be binding on the department for the purpose of instituting a departmental enquiry after the criminal

case is the point for consideration. Sometimes both the criminal trial and departmental enquiry go on. There is no bar against that. But if a departmental enquiry is withheld till the decision of the criminal trial, then that decision should be taken into account and cannot be overridden by continuing the departmental enquiry thereafter on the identical charges. Furthermore, if a departmental enquiry is not at all launched but a criminal case is instituted and that ends in acquittal of the accused, it will not be proper for the department again to proceed on the same charges.'

According to the above decision there is no bar against simultaneous initiation of criminal and disciplinary proceedings and that if a departmental enquiry is postponed till the decision of the Criminal Court, the decision of the Criminal Court should be taken into account and it cannot be overridden by continuing the departmental enquiry after the accused is acquitted on the same charges.

13. It is, however, significant to note that neither the Madras decision nor the Patna decision points out the statutory provision or the principle of law which bars initiation of the departmental proceeding in case of acquittal of the accused.

14. In *Bhagwat Charan v. State of Uttar Pradesh*, (1973 Labour and Industrial Cases, 1421) Mathur, J., of Allahabad High Court held that when a person has been honourably acquitted by the Criminal Court, the departmental proceedings on the identical charges are not permissible. His Lordship sought to derive support for his view from the following observations of the Supreme Court in *R. P. Kapur v. Union of India*, : (1966) IILLJ164SC .

'If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted; even in the case of acquittal proceedings may follow where the acquittal is other than honourable. The usual practice is that where a public servant is being tried on a criminal charge, the Government postpones holding a departmental enquiry and awaits the result of the criminal trial and departmental proceedings follow on the result of the criminal trial.'

15. The dictum of the Supreme Court that even in cases of acquittal, proceedings may follow where the acquittal is other than honourable, may lend itself to an inference that where the acquittal is honourable, disciplinary proceedings cannot follow. But such an inference is not possible in view of the pronouncements of the Supreme Court in other decisions as to the effect of such acquittal on disciplinary proceedings.

16. From the decision of the Supreme Court in *S. A. Venkataraman v. Union of India*. : 1954 CriLJ993 , it is clear that a civil servant against whom disciplinary action has been taken by the State on a charge of misconduct, can also be prosecuted in the Criminal Court, where such misconduct also constitutes a criminal offence and that Art. 20(2) of the Constitution is no bar for such prosecution.

17. In *Pratap Singh v. State of Punjab*, : (1966)ILLJ458SC , the Supreme Court observed thus at page 100.

'It is for the Government to decide what action should be taken against the Government servant for certain misconduct The Government has the discretion in every case, considering the nature of the alleged misconduct and other circumstances, whether a criminal prosecution should be launched or not. The Government is also free to conduct departmental proceedings, if instituted.'

The termination of criminal proceedings is brought about by conviction or acquittal of the accused. In the above decision the Supreme Court did not state that it was only when such termination of criminal proceedings was brought about by conviction of the civil servant. Government could start departmental proceedings and not when such criminal proceedings ended in his acquittal.

18. In *Delhi Cloth and General Mills Ltd., v. Kushal Bhan*, [1960-I L.L.J. 520], Wanchoo. J. (as he then was), speaking for the Court, observed as follows :

'It is true that very often employers stay enquiries pending the decision of the criminal trial Courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal

trial Court before taking action against an employee we may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial Court, so that the defence of the employee in the criminal case may not be judiced.'

The necessary implication from the above observation, is in our opinion, that an acquittal of the employee by the Criminal Court, does not take away the jurisdiction or competence of the employer to initiate disciplinary proceedings against such employee. Further, it is also clear from the above observations of the Supreme Court that principles of natural justice do not require the employer to wait for the decision of the Criminal Court before proceeding with the disciplinary enquiry on the same charge and so on same facts, though it may be advisable for the employer to so wait.

19. In *J. K. Cotton Spinning and Weaving Company Ltd. v. Its Workmen*, [1965-II L.L.J. 153], two employees, viz., Mahabeer Prasad and Chottelal, were tried for an offence of theft of certain articles of the employer and were convicted by the Criminal Court. In the appeals preferred by them, they were acquitted by the Sessions Judge. During the pendency of the trial in the Criminal Court, the employer initiated disciplinary proceedings against them. They did not appear before the enquiry officer, nor did they submit any explanation. The enquiry officer adjourned the enquiry to another date. Even on the adjourned date those two persons did not participate in the enquiry, but, contended that they would submit their statement before the Magistrate and also requested that, the enquiry should be adjourned till the decision of the criminal case. This requested was granted by the enquiry officer. After the decision in the criminal case, the enquiry was taken up. Mahabeer Prasad did not appear on the appointed date. The enquiry officer proceeded with the enquiry in the absence of Mahabeer Prasad, and after considering the evidence adduced before him found Mahabeer Prasad guilty of the charges leveled against him. As stated earlier, the workman was subsequently acquitted by the Appellate Court. In regard to disciplinary action against him an industrial dispute was raised and was referred by the Government to the Industrial Tribunal. The Industrial Tribunal recorded the evidence and held that the

management had utterly failed to convince that Mahabeer Prasad had really committed theft and it attached no importance to the finding arrived at by the enquiry officer. It also observed that the management was legally bound to consider the acquittal judgment of the appeal Court. The decision of the Industrial Tribunal was ultimately challenged before the Supreme Court which observed as follows in the course of its judgment :

'Where the Industrial Tribunal finds that there is nothing improper unfair in enquiry conducted by the domestic Tribunal and where the action taken against workmen was not actuated by any ulterior motive and where the principles of natural justice have not been infringed, it is beyond the powers of Industrial Tribunal to set at nought the action taken by the management which lay within its competence and under the standing orders. Whether the material before the domestics Tribunal was adequate or not whether the particular witness upon whom reliance was placed by the Tribunal should have been believed or not was entirely a matter for the consideration of the domestic Tribunal.'

The Supreme Court quashed the orders of the Industrial Tribunal and of the Labour Appellate Tribunal. It is pertinent to note that the order passed by the employer in the disciplinary proceedings, was affirmed by the Supreme Court in spite of the fact that Criminal Court had acquitted the employee in respect of the charge of theft which was the very same charge leveled against him in the disciplinary proceedings. It is clear from this judgment that the acquittal by a Criminal Court does not bar the employer from taking disciplinary proceedings respect of the same charge.

20. Mr. Desai, learned counsel appearing for petitioner sought to distinguish the decisions of the Supreme Court in Delhi Cloth Mills case (supra) and J.K. Cotton & Spinning Weaving Company's case (supra) on the ground that those two cases dealt with industrial employment and hence are inapplicable to the case of a person who holds a civil post under the State and who has been acquitted by a criminal Court.

21. But, we do not think that on principle there can be any material distinction between disciplinary proceedings against an industrial worker and that against a

civil servant in regard to the effect of an acquitting in a criminal trial acquitting him on a substantially the same charge as in the disciplinary proceedings.

22. Mr. K. S. Puttaswamy, learned first additional Government advocate, relied upon two decisions of Kerala and Bombay High Courts in *Spadigam v. State of Kerala*, [1970-I L.L.J. 718], and *Bhaurao Dagadu v. State of Maharashtra* (Vol. 7, 1972 S.L.R. 699). These two decisions deal with cases of persons who held civil posts under the State Governments and against whom disciplinary proceedings were instituted after acquittal by the Criminal Courts.

23. In *Spadigam's* case, the petitioner was tried for offences punishment under Ss. 409 and 477A of the Indian Penal Code and was convicted by the Magistrate of Kalpetta, but, was acquitted in appeal. He was also acquitted in two other cases in which he was prosecuted in connection with the irregularities in maintaining the accounts. Subsequently disciplinary proceedings were initiated against him in respect of the very same charges under Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960. The disciplinary proceedings Tribunal found him guilty of the charges. After considering his explanation, the Government passed an order dismissing him from service. The dismissal order was challenged by him before the High Court of Kerala. One of the contentions urged before the High Court was that the disciplinary proceedings were barred in view of the acquittal by the Criminal Court on substantially the same charges. Mathew, J., referred to the decisions of the Supreme Court and other High Courts and said :

'A Criminal Court acquitting an accused on the merits of a case would not bar disciplinary proceedings against him on the basis of the same facts.'

His Lordship disagreed with the reasoning of the Madras High Court in *J. D'Silva v. Road Transport Authority*, A.I.R. 1952 853 and *Shaik Kasim v. Superintendent of Post Offices, Chingleput Division* and another, [1965-I L.L.J. 197], in those decisions. Further in para 7 of his judgment his Lordship observed as follows :

'I do not think that judgment of a Criminal Court acquitting an accused on the merits of a case would bar disciplinary proceedings against him on the basis of the same facts, or that the judgment would operate as conclusive evidence in the

disciplinary proceedings. The reason for it is not for to seek. A criminal Court requires a high standard of proof for convicting an accused. The case must be proved beyond reasonable doubt. The acquittal of an accused by a Criminal Court only means that the case has not been proved against him beyond reasonable doubt. Such a standard of proof is not required for finding a person guilty in a disciplinary proceeding. It would be enough if there is a preponderance of probability of his guilty. Normally, in a civil case, account must be taken in of a doubt only if it result in a rational opinion that a facts in issue is less likely than not, whereas in criminal case account must be taken of a doubt if it results in rational opinion that the contradictory of the issue is more than a remote possibility.'

24. After referring, to the observations of the Supreme Court in *State of Andhra Pradesh v. Sri Rama Rao*, [1964-II L.L.J. 150], His Lordship said in para 11 of his Judgment thus :

'The object of criminal law and its enforcement though criminal proceeding is different from that of disciplinary proceeding. A criminal proceeding is mainly intended to punish persons who have broken 'the king's peace,' and thus to show the indignation of the community to criminals whereas disciplinary proceeding is intended to maintain the purity and efficiency of public service. Then again in a criminal trial, the only evidence admissible is that which is made admissible under the provisions of the Evidence Act. A Tribunal conducting an enquiry in a disciplinary proceeding is not bound by the strict rules of evidence.'

The above decision of the Kerala High Court clearly brings out the distinction between the purpose served by the criminal proceedings and that of the disciplinary proceedings, and also the distinction between criminal proceedings and disciplinary proceedings in regard to standard of proof and rules of evidence applicable.

25. In *Bhaurao Dagadu v. State of Maharashtra*, (1972) 1 Service Law Reporter 699, (supra) a police officer who was charged with the offence of taking bribe was acquitted by the criminal Court. But as a result of a departmental enquiry held on the same facts, he was dismissed from service. Dealing with a contention similar to the one urged in the present case, the Bombay High Court observed :

'The domestic Tribunal, such as the dismissing authority in departmental proceedings, does not violate any rule of law or any other principle of law, when it chooses to ignore the findings of the criminal Court and decides to act on the evidence led before him, and ultimately comes to the conclusion that such a police officer is not fit to be retained in service in spite of his acquittal by the criminal Court. He also does not violate any principle of natural justice merely by ignoring such findings of the criminal Court, where otherwise he has recorded his findings after giving full opportunity to the delinquent to have his say.'

From the aforesaid two decisions relied upon by the learned First Additional Government Advocate, the following points of distinction between the criminal proceedings and the disciplinary proceedings emerge :

- (1) A disciplinary proceeding is not a criminal trial.
- (2) In criminal proceedings the purpose sought to be achieved is protection of the public while in disciplinary proceedings the purpose sought to be achieved is purity and efficiency of public service.
- (3) A criminal Court requires high standard of proof for convicting an accused, while such a standard of proof is not required for finding a person guilty in disciplinary proceedings and it is enough if there is preponderance of probability of the delinquents guilty.
- (4) Unlike in a criminal proceeding, in a disciplinary proceeding the strict rules of evidence and the provisions of the Evidence Act do not apply.
- (5) Initiation of disciplinary proceedings against a civil servant acquitted in a criminal trial on the same charge is not violative of any provision of law or principles of natural justice.

Thus criminal proceedings and disciplinary proceedings undoubtedly operate in different fields. It is well-settled that the findings given by a criminal Court is irrelevant in civil proceedings. For instance, if an accused is acquitted of the offences of criminal misappropriation or breach of trust or cheating, a civil Court can make a decree against him if there is evidence to fasten civil liability on him. It

is not uncommon that even though a criminal Court acquits an accused of a charge of rash and negligent driving, the Motor Accidents Claims Tribunal holds that this negligence is established and awards compensation for the death or injury resulting from his negligence. In such cases there is bound to be conflict between the decisions of the civil Court and the criminal Court. Can it be said that such conflict would shake the confidence of the public in the judiciary or can it be said that in such circumstances initiation of civil proceedings in spite of acquittal by the criminal Court would be improper or the criminal Court would be improper or unfair or would amount to circumventing the acquittal made by a competent criminal Court

26. Thus, we are unable to agree with the view taken by this Court in *Ekambaram* and *Mainuddin Alisab Kazi's* case (*supra*) that when a civil servant is acquitted in a criminal Court it would be improper circumvention of the order of acquittal made by the competent criminal Court if the disciplinary authority enquires in to the charge and holds him guilty on the very same evidence which was produced before the criminal Court and was disbelieved by it, and that the confidence of the public in the judiciary would be undermined. The view expressed in those two decisions that such acquittal by the criminal Court bars disciplinary proceedings in the same charge, conflicts with the decisions of the Supreme Court referred to above. Therefore, we are of the opinion, that these two decisions do not lay down the law correctly. We, therefore, overrule those two decisions of this Court.

27. Our answer to the question referred to us, is as follows :

'An order of criminal Court acquitting an accused in the merits of a case, would not bar the disciplinary authority from holding him guilty and imposing punishment in disciplinary proceedings under the Mysore (Karnataka) civil Services (Classification, Control and Appeal) Rules, on the basis of the same facts and accusations in respect of which he was tried and acquitted by the criminal Court.'