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Court : Jharkhand

Decided On : Feb-29-2008

Reported in : [2008(2)JCR25(Jhr)]; (2009)ILLJ155Jhar

Judge : M.Y. Eqbal, J.

Appellant : Pradeep Kumar Singh;anil Prasad and anr.;umesh Sharma

Respondent : Bharat Coking Coal Limited and ors.;state of Jharkhand and ors.;central Coalfields Limited and ors.

Disposition : Application dismissed

Judgement :

M.Y. Eqbal, J.

1. In all these writ petitions, the question that falls for consideration is as to whether continuance of departmental proceedings pending conclusion in the criminal trial is justified in the facts and circumstances of the present case.

2. In this writ petition, the petitioner seeks issuance of appropriate direction restraining the respondents from taking any adverse decision against him till the decision of Cr. Appeal No. 1170 of 2005 in view of the show cause notice issued by the respondents in contemplation of the departmental proceeding.

3. The petitioner while working as mazdoor was implicated in a criminal case along with 7 other persons in respect of a dispute of a pond under Sections 147, 148, 149 and 307, IPC. The trial Court convicted the accused persons including the petitioner by judgment dated 29.8.2005. The petitioner thereafter filed W.P.S. No. 651 of 2006 for stay of departmental proceeding which was dismissed in terms of order dated 13.4.2006 on the ground that the departmental proceeding was initiated not on the basis of conviction in a criminal case, rather on the ground of allegation against the petitioner that he was in the habit of remaining absent from his duties. However, in the said departmental proceeding, the petitioner was asked to join duty with the stoppage of one increment vide order dated 11.9.2007. The petitioner thereafter was again charge-sheeted on the ground of conviction in a criminal case and Inquiry Officer was appointed. Inquiry Officer conducted the inquiry and submitted his report. The petitioner thereafter submitted his explanation and requested the respondents not to take any adverse action till the pendency of the criminal appeal. Since the respondents did not respond to the said request, the writ petition has been filed.

4. In this writ petition, the petitioners seek a similar direction upon the respondents not to proceed with the departmental proceeding till disposal of a criminal case lodged against the petitioners on the same set of facts.

5. It appears that the petitioner while working as Junior Engineer in the Rural Engineering Organization, Works Division, Simdega, were implicated in a criminal case and was put under suspension on the ground of some irregularities committed in the distribution of food grants. The said order of suspension was, however, quashed by this Court in W.P. (S) No.690 of 2006. In the meantime, police investigated the case and submitted charge-sheet. Respondents, thereafter, initiated a departmental proceeding against the petitioners and a memo of charge was served on the petitioners. The petitioner's case is that both the criminal proceedings and the departmental proceeding are based on the same set of facts and evidence as such requests were made for staying the departmental proceeding till disposal of the criminal case.

6. In this writ petition, the petitioner seeks a similar direction for staying the departmental proceeding initiated against him till the conclusion of criminal case pending before the Chief Judicial Magistrate, Hazaribagh. In this case, petitioner was posted as Deputy Chief Engineer when accident took place in the mines in which some persons lost their lives due to roof fall and inundation. FIR was lodged against 11 persons including the Chairman-cum-Managing Director, Central Coalfields Limited. The petitioner was served with a charge-sheet of a departmental proceeding. The petitioner thereafter requested for stay of the departmental proceeding till the disposal of criminal case initiated on the basis of complaint filed by the Regional Inspector of Mines under Sections 72A and 72C of the Mines Act. According to the petitioner, the charge of negligence leveled against him was same both in the criminal case as also in the departmental proceeding.

7. We have heard the learned Counsel appearing for the petitioners and also learned Counsel appearing for the respondents.

8. Before answering the question involved in these writ petitions, I would first like to discuss some of the principles of law laid down by the Supreme Court in catena of decisions.

9. In the case of Capt. M. Paulanthony v. Bharat Gold Mines Ltd. and Anr. : (1999)ILLJ 1094 SC . the Supreme Court laid down certain guidelines in the case of commencement of departmental and criminal proceedings simultaneously. Paragraph 22 of the decision is worth to be quoted herein below.

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are 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.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, 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.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

10. In the case of *Union of India and Ors. v. Ramesh Kumar* : AIR 1997 SC3531 , the fact of the case was that the respondent was arrested on the ground that he accepted illegal gratification. He was placed under suspension. The trial Court convicted him under Prevention of Corruption Act. As a result of this conviction, the disciplinary authority dismissed him from service by invoking CCS (CCA) Rules, 1965 without holding disciplinary inquiry. The High Court admitted the respondent's appeal against his conviction and execution of sentence was suspended. After four years of dismissal, respondent filed an application in the Central Administrative Tribunal seeking his reinstatement in service. The tribunal allowed the application. The matter went upto Supreme Court. The Supreme Court revised the order of the tribunal and held as under:

6. A bare reading of Rule 19 shows that the disciplinary authority is empowered to take action against a Government servant on the ground of misconduct which has

led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate Court the order of dismissal based on conviction stands obliterated and the dismissed Government servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide the disciplinary authority to await disposal of the appeal by the appellate Court filed by a Government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of Law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389, Cr PC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Government servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because the appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell into error in holding that by suspension of execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of criminal appeal by the High Court.

11. In the case of *Kendriya Vidyalaya Sangathan and Ors. v. T. Srinivas* : (2004)IIILLJ769SC . the respondent while working as Upper Division Clerk was arrested by CBI after a trap and was charged under the offence of Prevention of Corruption Act. During pendency of the trial, the appellant-employer decided to initiate departmental proceeding against the respondent and charge memo was

issued. The respondent challenged the said decision of the appellant to hold a departmental enquiry while a criminal trial on identical fact was pending against him before the competent Court. The tribunal passed an order which amounted to staying the departmental proceeding till disposal of the criminal trial. The High Court agreed with the order passed by the tribunal. The Supreme Court while allowing the appeal held as under:

10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.

11. In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, a reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the respondent in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The Court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seem to be almost similar to the facts of this case, held that the tribunal fell in error in staying the disciplinary proceedings.

14. We are of the opinion that both the tribunal and the High Court proceeded on an erroneous legal principle without taking into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges, in this background it is not necessary for us to go into the second question whether at least Charge-3 by itself could have been permitted to be decided in the departmental enquiry as contended alternatively by the learned Counsel for the appellant.

12. In the case of *South Begnal State Transport Corporation v. Sapan kumar Mitra and Ors.* : (2006)ILLJ 1087 SC , the Supreme Court observed:

19. There is yet another aspect which is to be considered by us before we conclude this judgment. From a bare perusal of the order of the Division Bench, we find that the Division Bench also found that the findings of the disciplinary authority in passing the order of removal were perverse. We are unable to agree with this view of the Division Bench. In *Roshan Di Hatti v. CIT* this Court, while considering the question of perversity of a finding, held that when the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination, the decision can be said to be perverse. It is, however, true that if perversity is shown and proved, it would be open to the writ Court to hold as such. But in our view, this was not a case of perverse finding. It appears that the disciplinary authority on consideration of the reports of the inquiry officer and the District Magistrate and evidences adduced before them, came to a conclusion of fact that it was due to rash and negligent driving of respondent No. 1, the accident had occurred and as a result of this, 15 lives were lost and some passengers were seriously injured. However, it cannot be said that for non-supply of the inquiry report, it can legitimately be held that such a finding of the disciplinary authority was perverse in nature. In any view of the matter, when copies of the inquiry report have been directed, by the learned single Judge, to be supplied to respondent No. 1, and thereafter the departmental proceedings to continue there was no earthly reason for the Division Bench to interfere with such an order and decide the matter

by going into the merits and direct quashing of the departmental proceedings at the appellate stage.

13. In the case of Commissioner of Police, New Delhi v. Narender Singh : AIR 2006 SC1800 , respondent was a Constable in Delhi police. Pursuant to the FIR lodged against him, he was arrested. Subsequently certain firearms from the armoury were found with certain persons accused therefor. Some confessions were made by the accused on the basis of which respondent was arrested. However, the respondent was discharged from the criminal case. There-after, a departmental inquiry was initiated against the respondent on the basis of the said confessional statement made by him. The departmental enquiry culminated in his dismissal from service. The said order was challenged before the Central Administrative Tribunal who set aside the order. After unsuccessfully approaching the High Court the department filed appeal before the Supreme Court. Allowing the appeal, the Supreme Court observed:

13. It is now well settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.

14. In the case of Uttaranchal Road Transport Corporation and Ors. v. Mansaram Nainwal : (2006)IIILLJ505SC , the respondent was a driver in U.P. State Road Transport Corporation and was plying bus which met with an accident. A disciplinary inquiry was initiated against him in which charges against the respondent were found proved and he was dismissed from service. The respondent preferred appeal which was also dismissed. An industrial dispute was raised by the respondent. The Labour Court found the respondent guilty and held the termination justified. Challenging the order of the Labour Court, the writ petition was filed which was allowed. The High Court took the view that in the criminal trial, the respondent was acquitted and, therefore, the order of termination was liable to be set aside. Allowing the appeal, the Supreme Court observed:

10. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this

Court in Union of India v. Bihari Lal Sidhana. It was held in para 5 as follows: (SCC pp. 387-88)

5. It is true that the respondent was acquitted by the criminal Court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent Government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Clarification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary Government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of Government employee does not automatically entitle the Government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary Government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a Government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.¹² Though the High Court had not indicated as to how the decision of this Court in Anthony case laid down as a matter of law that whenever there is acquittal in a criminal trial reinstatement is automatic, in all probabilities basis was para 36 of Anthony case which reads as follows : (SCC p. 695)

36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned single Judge, insofar as it purports to allow the writ petition, is upheld. The learned single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having

been acquitted by the criminal Court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs. 15,000/-.¹⁴ Unfortunately, the High Court has not discussed the factual scenario as to how Anthony case had any application. As noted above, the position in law relating to acquittal in a criminal case and question of reinstatement has been dealt with in Sidhana case. As the High Court had not dealt with the factual scenario and as to how Anthony case helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for long, it would be in the interest of the parties if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order.

15. In the case of Suresh Pathrella v. Oriental Bank of Commerce : AIR 2007 SC199 , again the question came for consideration before the Supreme Court as to effect of acquittal of a delinquent in a criminal case. Answering the question, the Supreme Court observed.

10. It was also brought to the notice of the Division Bench that there are three other criminal cases pending against the appellant being RC1(E)/97 SIU(X), RC2(E)/96 SIU(X) and RC6(E)/96 SIU(X) where the amount of loss involved to the Bank is stated to be Rs. 1.64 crores, Rs. 1.77 crores and Rs. 2.55 crores, respectively.

11. In our view, the findings recorded by the learned single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

12. It is not the case of the appellant that the enquiry has been conducted without affording an opportunity to the appellant or behind the back of the appellant and thereby violated the principle of natural justice. It is, however, contended by the counsel for the appellant that the opinion of handwriting expert in respect of the complainant Mr. G.C. Luthra said to have been procured by the enquiry officer after the enquiry was closed had not been furnished to the appellant, despite request and, therefore, a reasonable opportunity has been denied to him.

16. In the case of NOIDA Enterprises Association v. Noida and Ors. 2007 (112) FLR 1139, the Supreme Court observed:

14. There can be no straight-jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the cases gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

16. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in Union of India and Anr. v. Bihari Lal Sidhana. It was held in paragraph 5 as follows:

5. It is true that respondent was acquitted by the criminal Court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent Government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary Government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of Government employee does not automatically entitle the Government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a

decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary Government servant the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a Government servant accused of the enquiry or to continue in services of the employee instead of conducting the enquiry or to continue in service a Government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.¹⁷ The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

In the case of *Pandiyar Roadways corporation Ltd. v. N. Balakrishnan* (2007) 9 SCC 755. the Supreme Court again laid down the provision as to the effect of acquittal in criminal proceedings:

20. However, there is another aspect of the matter which cannot be lost sight of. The respondent, in the meanwhile, has been acquitted. The factum of his acquittal has been taken into consideration by the Division Bench, which was considered to be an additional factor. Ordinarily, the question as to whether acquittal in a criminal case will be conclusive in regard to the order of punishment imposed upon the delinquent officer in a departmental proceeding is a matter which will again depend upon the fact situation involved in a given case.

21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of *Cap. M. Paul Anthony v. Bharat Gold Mines Ltd.* and *G.M. Tank v. State of Gujarat*, However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted

out to the delinquent officer, inter alia, when : (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. of Police v. Narender Singh). or, where the delinquent officer was charged with something more than the subject matter of the criminal case and or covered by a decision of the civil Court (see G.M. Tank, Jasbir Singh v. Punjab and Sind Bank and NoidaEnterprises Assn. v. Noida. para 18).

17. From the decisions referred to herein above, it can safely be concluded that there is no bar in conducting departmental proceeding and criminal case simultaneously. However, if the departmental proceeding and criminal case are based on identical and similar set of facts and the charges and the criminal case against the delinquent employee is not grave in nature, it is desirable to stay departmental proceeding till conclusion of the criminal case. In the Services Rules, if there is a provision for proceeding departmentally on the ground of misconduct leading to his conviction by a competent Court of law, then merely because of pendency of criminal appeal, the departmental proceeding cannot be stayed. It is also well settled that when there is serious charges of acceptance of illegal gratification, then it is desirable not to allow the delinquent to continue in service. It is equally well settled that if the employee has been acquitted of the charges, the same by itself could not be a ground not to initiate departmental proceeding against him or drop the same in the event an order of acquittal is passed. The yardstick and standard of proof in a criminal case is different from the departmental proceeding. The standard of proof in a criminal case is a proof beyond reasonable doubt, whereas the proof in a departmental proceeding is preponderance of probabilities. However, the facts remain that there cannot be straightjacket formula as to in which case departmental proceeding is to be stayed. All depends on the facts and circumstances of the case and the seriousness of the charges leveled against the employee which led to departmental proceeding and criminal proceeding.

18. In the light of the aforesaid proposition of law laid down by the Supreme Court, the departmental proceedings initiated against the petitioners cannot be stayed till

disposal of criminal cases pending against them.

19. For the aforesaid, these writ applications are dismissed. However, it is observed that in the event, petitioners are acquitted in criminal cases, they may file representation before the concerned authorities which shall be considered in accordance with law.

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