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Court : Orissa

Decided On : Apr-08-2003

Reported in : 96(2003)CLT331

Judge : B. Panigrahi and ;B.P. Das, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : Criminal Jurisdiction Case No. 10880 of 2001

Appellant : Prasanna Kumar Panda

Respondent : Central Electricity Supply Co. Ltd. and ors.

Advocate for Def. : B.K. Pattanaik, P. Sinha and P. Choudhury

Advocate for Pet/Ap. : Party in person

Disposition : Petition dismissed

Judgement :

B. Panigrahi, J.

1. The writ petitioner has challenged the whimsical, arbitrary and illegal action alleged to have been meted out by the opp. parties.

2. Petitioner joined in service as Clerk 'A' under the Orissa State Electricity Board. Immediately after formation of CESCO, the service of the petitioner was transferred to their control and he was treated to be an employee of CESCO for all purposes. It is alleged that while the petitioner was functioning as cashier in the office of Executive Engineer Electrical Division No. I, Kendrapara, there was a short fall of an amount of Rs. 67,219,35 P. from the cash. Therefore, a report was lodged in Kendrapara Police Station against the petitioner under Section 409, IPC, which was registered as G.R. Case No. 1219 of 1992. However, the case ended in acquittal of the petitioner. The disciplinary authority appears to have simultaneously initiated a departmental proceeding for negligence in duty. The departmental proceeding could not be completed in time. Therefore, the petitioner has filed a writ petition in this Court in OJC No. 8424 of 2001 in which the opp. party No. 1 was directed to complete the proceeding prior to superannuation of the petitioner. Thus the disciplinary authority in hot haste without following the normal rules and procedures completed the departmental proceeding by directing the suspension period as such and further two increments with cumulative effect were stopped. After the punishment was imposed the petitioner filed an appeal before the appellate authority, but it did not yield any better result. The appellate authority while affirming the punishment further held that the punishment being disproportionate directed the petitioner to deposit Rs. 33,609.70 P. being 50 of the amount short fall. Thus the petitioner challenged the punishment imposed against him by the disciplinary authority as well as by the appellate authority.

3. The petitioner appeared himself in Court and argued his case in person. Much reliance has been placed on the judgment passed by the learned C.J.M., Kendrapara on 9.8.96 whereby an order of acquittal of the petitioner was recorded. It has been, inter alia, contended that since the learned C.J.M. on an elaborate consideration of the evidence on record passed an order of acquittal, there was no further ground for the Department to proceed with the inquiry into the very same allegations. It has been stated that once the evidence of the same witness who subsequently deposed in the departmental proceeding was disbelieved by the learned C.J.M., it is not understood as to what further circumstances prevailed upon the disciplinary authority to differ from the result of the criminal proceeding in holding that the charges against the petitioner were fully established. In course of

his submission our attention was drawn to paragraph 12 of the judgment wherein the learned C.J.M. held that P.W. 2 Sudarsan Biswal was a shirker of his duty and a liar. The evidence of P.W. 2 was held to be untrustworthy in the criminal proceeding as a result of which the petitioner who was an accused there had been acquitted.

4. Learned counsel appearing for the opp. parties while repelling the petitioner's contention has submitted that there was a short fall of Rs. 67,219.35 P. which was kept with the petitioner. The said amount was kept in the inner chamber of an iron safe with double lock system, one of such keys was always remaining with the petitioner and the other with the Revenue Divisional Accountant. The departmental proceeding was not only initiated against the petitioner but also against the Revenue Divisional Accountant. After an elaborate enquiry in the departmental proceeding the petitioner was held responsible for having acted in a careless and reckless manner resulting in loss of revenue of the opp. parties. Since it was in double lock, the petitioner as well as the Divisional Accountant were responsible for the financial loss occurred to the opp. parties.

5. It is true, there was a case lodged against the petitioner in a criminal court which ended in acquittal. But law is well settled that mere acquittal in a criminal case does not ipso facto exonerate an employee from the charges of misconduct and as such the disciplinary authority after due examination of the enquiry report and the show cause submitted by the petitioner awarded punishment, under Annexure-10, Since there was revenue loss, the appellate authority was competent to direct the petitioner for depositing 50% of the amount which was found shortage.

6. It is an admitted case of both parties that the petitioner was working as a cashier at the relevant time and an amount of Rs. 67,219.35 P. was found missing from the cash. Since the petitioner along with the Revenue Divisional Accountant were in charge of handling the cash jointly, therefore, both of them were responsible for making good of the cash. The petitioner cannot have grievance by stating that while there was no departmental proceeding against the Divisional Accountant, how the disciplinary authority as well as the appellate authority directed to recover 50% of the loss from the petitioner, it would be open to the

disciplinary authority to take steps to recover the balance amount from the Divisional Revenue Accountant. But that cannot be the sole ground to quash the punishment. In this case it has not been contended by the petitioner that the punishment imposed against him was shockingly disproportionate to the delinquency alleged to have been committed by the petitioner nor has there been any allegation that the proceeding was initiated on account of non-observation of the principle of natural justice. The disciplinary authority has given proper opportunity and a full-fledged hearing to the petitioner before imposing punishment. This Court cannot look into the punishment aspect acting as an appellate authority, There has been no mala fide alleged against the opp. parties. In this regard the judgment of the Supreme Court reported in AIR 1983 SC 454 in the case of Bhagat Ram v. State of Himachal Pradesh and Ors. has been relied on. It has been held therein :

'Let us make it abundantly clear that we are not sitting in appeal over the findings of the Inquiry Officer. In a petition under Article 226, the High Court does not function as a Court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse, the court can always interfere with the same.'

Therefore, on a careful cogitation of the facts and circumstances of this case and on a close scrutiny of the observation made by the disciplinary authority as well as the appellate authority, we find the punishment imposed against him was neither shockingly disproportionate to the delinquency nor based on no evidence.

7. Accordingly, there is no merit in this writ petition and the same is liable to be dismissed. No costs.

B.P. Das, J.

I agree.