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Court : Chennai

Decided On : Nov-25-1964

Reported in : AIR1965Mad502; [1967(14)FLR86]; (1965)ILLJ197Mad

Judge : M. Anantanarayanan, O.C.J.

Acts : [Constitution of India](#) - Article 226; Central Civil (Classification, Control and Appeal) Rules

Appeal No. : Writ Petn. No. 1256 of 1962

Appellant : Shaik Kasim

Respondent : The Superintendent of Post Offices, Chingleput Dn. and anr.

Judgement :

ORDER

(1) An interesting and important question arises in this writ proceeding, upon which I find that, though there is no paucity of authorities, the central principle has not been analysed or discussed at any length in any of the decisions cited before me. The problem involved is whether, when a Criminal Court acquits a Government servant upon grave charges involving offences under the Penal Code, and the acquittal is not upon some collateral ground, such as the absence of due sanction or a technical plea of defence, but substantially on the merits, a Domestic Tribunal, such as a higher authority exercising disciplinary jurisdiction, would be justified in disregarding the acquittal altogether, or in recording a conclusion inconsistent with

the acquittal, and finding the Government servant guilty of the identical charges, upon identical facts. The matter arises against the following background of established facts.

(2) The petitioner became a servant of the Government of India in the Posts and Telegraphs Department in 1936. From the year 1956, he was serving as Sub Postmaster at various places. On 9-3-1959, while he was serving at Arni, he received a notice with regard to ten charges framed against him. It is important, for our purpose, to scrutinise the substance of those charges. Charges 1 and 4 to 10 related to irregularities, mostly of a subsidiary character; charge 4, which appears to be the most serious, related to alleged incorrect entries in an attendance register from 8-1-1959 to 14-1-1959, regarding the permanent E. D. D. A. Charges 2 and 3 were very serious, taken together, and it is not disputed that upon the facts, which formed the basis of those charges, the Departmental authorities gave a complaint to the police to the effect that the writ petitioner was guilty of offences under Ss. 409, 467 and 471 I.P.C. The petitioner alleges that he took up the stand that he should be first prosecuted in the Criminal Court, and that the departmental authorities should abide by the decision of the criminal court. But, actually, the disciplinary enquiry was not held in abeyance. However, the petitioner was ultimately prosecuted in the sessions Court, Chingleput, under those sections, and acquitted in respect of those charges by the judgment of the court dated 11-10-1960.

(3) As far as the departmental proceedings are concerned, they went according to routine, and the explanation of the delinquent officer was obtained and an enquiry held. On 23-1-1960, by order of the Superintendent of Post Offices (first respondent) the petitioner was dismissed from service. Charges 1, 4 and 10 were held not proved; it is pertinent here to note that charge 4 was the most serious of the subsidiary irregularities alleged. Charges 2, 3 and 5 to 9 were held proved. Under the Central Civil (Classification, Control and Appeal) Rules, the petitioner filed a statutory appeal, and in April 1960 the director of Postal Services (second respondent) dismissed the appeal. A petition to the Director General of Posts and Telegraphs, New Delhi, also failed. The petitioner drew the attention of the authorities to the fact that with regard to charges 2 and 3, which were grave, he

had been acquitted by the Sessions Court, of the criminal offences involved, on the very facts. The argument, as submitted by the learned counsel for the petitioner (Sri Venugopal) might be put in the following form. The findings on charges 2 and 3 are bad, as there have been acquittals, on the substantial merits, on respect of those charges, by the Court of Session. In the face of those acquittals, a finding to the contrary by a domestic Tribunal would not be proper, and cannot be permitted to stand. With regard to the remaining established charges, namely, 5 to 9, they are minor misdemeanours altogether, assuming that they were rightly held proved, and that cannot possibly have led any authority to the inference that dismissal would be the appropriate punishment.

(4) The reasoning upon which the argument proceeds has to be carefully stated. In *Jerome D'Silva v. Regional Transport Authority*, : AIR1952 Mad853 a decision of Rajamannar C. J. and Venkatarama Aiyar, J., this reasoning appears in part. The most rigorous liability is the liability under the criminal law; for that very reason, a criminal trial proceeds upon principles of safeguards to the accused, and the most searching scrutiny of the facts. Where a man is acquitted upon grave charges arising out of the facts, on the substantial merits, and not merely on some technical plea, such as lack of sanction, it is not in consonance with principles of natural justice that a domestic forum, exercising disciplinary jurisdiction, should come to a different conclusion in departmental proceedings, whether before or after the criminal trial. In : AIR1952 Mad853 the matter was expressed in the following form:

'It would indeed be a strange predicament when in respect of the same offence, he should be punished by one Tribunal on the footing that he was guilty of the offence and that he should be honourably acquitted by another Tribunal of the very same offence. As primarily the Criminal Courts of the land are entrusted with the enquiry into offences, it is desirable that the findings and orders of the Criminal Courts should be treated as conclusive in proceedings before quasi judicial tribunals.....'

But, it is actually a little difficult to state the exact principle upon which such a proposition can be defended. Authorities are not lacking for the view that a mere

acquittal by a criminal court, does not necessarily absolve the concerned individual from liability, on the same facts, in disciplinary proceedings. Obviously, the principle can never be stated in any absolute or unqualified form. As I earlier expressed, where the acquittal is on a technical ground, or the facts are held established which would justify disciplinary action, but the criminal trial ends in an acquittal, because some necessary ingredient has not been proved beyond reasonable doubt, there might well be a case for contending that the departmental authorities could nevertheless punish. But, if, for instance a man is acquitted of a grave offence, like criminal misappropriation, on the ground that dishonest conversion is not at all made out it is certainly anomalous that a departmental authority should be permitted to differ and to hold that there was such dishonest conversion; and, further, to inflict punishment on that very basis.

(5) I shall now notice the several authorities that have been cited. In *Dalmer Singh v. State of Pepsu*, AIR 1955 97, it was held that even where there had been a regular trial, the judgment of the criminal court was not necessarily conclusive as regards departmental or disciplinary action. The prosecution might fail for technical reasons. In *Karuppa Udayar v. State of Madras*, AIR 1956 Mad 460 *Rajagopalan J.*, pointed out, with regard to a charge in the criminal Court under S. 420 I.P.C., that the question whether the concerned party could have been prosecuted in a criminal court or not, did not affect the jurisdiction of the Revenue Divisional officer to enquire into the truth of the charges but, obviously, this decision is peripheral to the main issue. The problem arises, where, instead of a mere possibility, there is an actual prosecution and acquittal, and the departmental authority attempts to punish the officer on the very same facts and charges. *Mahomed Ghouse v. State of Andhra Pradesh*, : AIR 1959 AP497 is a different matter altogether, for it was contended in that case that the fact that the brother of the petitioner was discharged on a complaint under S. 162 I.P.C., ought to have been taken into consideration by the Government in acting on the charge against him. Obviously, the fact that some other person has been discharged in a criminal case, cannot be conclusive in an administrative enquiry. In *Union of India v. Jayaram*, : (1960) IILLJ212Mad *Rajamannar C. J.*, and *Basheer Ahmed Sayeed J.*, observed that when there was an acquittal in a criminal court, in the absence of any further disciplinary proceedings launched by the Government, the plaintiff, who was under

suspension, would be entitled to continue in the employment, and ought to be re-instated.

(6) We may next examine *Mahomed Israil v. Sia Suran Sinha*, : (1962)ILLJ519Pat which concerned the alleged wilful falsifications of accounts by one in the position of an accused; the evidence adduced on behalf of the Management, which dispensed with the services of the petitioner, included certified copies of depositions of witnesses examined in the criminal court. Nevertheless, the Bench held that, though the evidence might not be sufficient for securing conviction in a criminal case, the management had every justification to deny re-employment, in the context of heavy suspicion relating to the charge. In *Radhakanta v. State of Orissa*, : AIR1962 Ori125 a Bench of that court held that the mere fact that the criminal court did not convict the plaintiff of the charges of criminal breach of trust, cheating and forgery, did not preclude the department from making a further probe into the matter, as the plaintiff had been acquitted upon the benefit of doubt.

(7) In *P. E. Ponnurangam v. General Manager and Competent Authority Mysore Government Road Transport*, AIR 1962 Mys 84 Bench of that court held that normally, if a person holding a civil post was found to have committed an offence under the Penal Code, he should be first prosecuted in a criminal court. If the criminal court enquires into the charge and acquits the civil servant of the charge, it would be extremely improper for any disciplinary authority to enquire again into that charge, and to hold him guilty of the very offence. In *Radhakrishna Mills Ltd. v. Presiding Officer Labour Court, Coimbatore*, : (1960)ILLJ678Mad Ramachandra Iyer J., (as he then was) held that where an employer takes disciplinary action against an employee on the ground that he was a guilty of a criminal offence, it is the duty of the employer to accept and treat as conclusive the findings and orders of a criminal court trying that offence. In *Qamarali v. State of M. P.*, AIR 1959 And 46 a single judge of that court held that a departmental authority could not be permitted to sit in judgment over a criminal court, and that where a sub-inspector of police was prosecuted for causing the death of a suspect, and was honourably acquitted, it is not open to the Departmental Authorities to hold an enquiry into a charge, the subsistence of which was the assumption of guilt in the criminal case. Under those circumstances, the further

proceedings in the departmental enquiry were a nullity. As far as the Supreme Court is concerned, reference might be made to *State of Andhra Pradesh v. Sree Rama Rao*, : (1964) ILLJ150SC . The following passage in the judgment of their Lordships is directly relevant:

'The Enquiry Officer appears to have stated that the judgment of the magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental enquiry against that public servant. In so stating the enquiry officer did not commit any error'.

In *Delhi Cloth and General Mills Ltd., v. Kushal Bhan*, : (1960) ILLJ520SC , we have this observation, which may be but incidental to the present context:

'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'.

Ridge v. Baldwin, 1962 2 WLR 716, is a decision that contains much matter of interest upon the relationship between a conclusion in the exercise of a criminal jurisdiction and the cognizance of it by an Administrative authority. The question was whether the Watch Committee who were seized of a matter of termination of employment, were justified in considering, inter alia, the observations of *Donevan J.*, in certain judgments on two indictments. Another aspect of this question will be found examined in *R. v. Metropolitan Police Commr.*, (1953) 2 ALL ER 717. In *General Council of Medical Education and Registration of United Kingdom v. Speckman*, 1943 AC 627 the question was whether a Medical Council could regard the decree in a divorce suit as prima facie evidence of adultery. On the basis of the dicta in these decisions, I think that the following principles may be said to emerge.

(8) Firstly, an Administrative authority, in initiating disciplinary proceedings, 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.

Secondly, there could be no rigid or inflexible rule that the finding of a criminal court is conclusive., in every sense, upon Administrative Authorities. If the finding is purely a technical acquittal is solely based on lack of sanction, or some technical defect in procedure. It could punish, on the same facts, for some lesser charge, which may not amount to a criminal offence, but may well amount to grave dereliction of duty, entitling disciplinary action. For instance, a school-master may be acquitted of a charge of rape alleged to have been committed against a girl-student in his care. But that cannot preclude the departmental authority, upon those very facts, from punishing him for grave impropriety in his relationships with the girl-students, which disentitles him to that office.

Thirdly, 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. The 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 Aiyar J., in : AIR1952 Mad853 .

(9) Applying these criteria to the present case, it is clear that the conclusions on charges 2 and 3 have to be struck down, and that only certain minor irregularities remain established. Even so, the question is, whether this court could interfere, where the dismissal could be justified on some of the charges proved. That matter was examined in detail by the Supreme Court in *State of Orissa v. Bidyabhushan*, : (1963)ILLJ239SC and the impact of this decision has been analysed by Jagadisan J., and myself in *State of Madras v. Srinivasan*, : (1966)ILLJ17Mad .

As we have pointed out, the findings that remain should be as to 'substantial misdemeanours' to justify the argument that this court will not interfere with the punishment imposed in the case (dismissal), though the officer is cleared in respect of certain charges. Applying this test, in the present case, very minor irregularities alone remain, with the exception of charge 4, in respect of which the petitioner was acquitted, which are not 'substantial misdemeanours' in any conceivable sense, and for which it is impossible to imagine, that any authority, exercising disciplinary jurisdiction, would have imposed the punishment of dismissal on those charges. In this view, I allow the writ petition, quash the order of dismissal, and release the matter for fresh determination, in the light of the charges which alone remain established against the writ petitioner, namely, charge 5 to 9. The parties will bear their own costs.

(10) Petition allowed.