

S. Krishnamurthy Vs. Chief Engineer, Southern Railway, P.T. Madras and anr.

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Court : Chennai

Decided On : Oct-21-1964

Reported in : AIR1967Mad315; [1966(12)FLR311]; (1966)IILLJ697Mad

Judge : Anantanrayanan and ;Ramamurti, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161; Prevention of Corruption Act; Railway Establishment Code

Appeal No. : Writ Appeal No. 321 of 1964

Appellant : S. Krishnamurthy

Respondent : Chief Engineer, Southern Railway, P.T. Madras and anr.

Judgement :

(1) The appellant seeks to institute this appeal from the judgment of Srinivasan, J. in W. P. 120 of 1962, under the following circumstances. The appellant was a senior clerk in the Southern Railway in 1958, when disciplinary proceedings were instated against him on an averment that he had demanded and accepted illegal gratification in a sum of Rs. 30 from one Kulasekharan, upon a promise to obtain a post for threat individual in railway service. Prior to the disciplinary proceedings, a complaint had been made to the police, which resulted in the prosecution of the petitioner for an alleged offence under S. 161, I.P.C. read with certain provisions of

the Prevention of Corruption Act. The writ petitioner was convicted, and, ultimately, acquitted, but, on a technical ground relating to the processual law. It is sufficient here to set forth the following extract from the judgment of Somasundaram, J. who dealt with the matter:--

"The result is that the accused (appellant) was undoubtedly in possession of Rs. 30 given by P.W. 2, which was certainly given for the purpose of getting a job for P.W. 2, as Khalasee."

It was held by this court that there was a defect in the charge, which amounted to a material irregularity, and vitiated the conviction.

(2) Disciplinary proceedings were commenced against this appellant after his acquittal and his reinstatement in service, upon the same broad ground of facts. Those disciplinary proceedings resulted in the dismissal of the appellant, and he then filed W. P. 120 of 1962 before the learned Judge (Srinivasan J.)

(3) The following questions would arise in this case: (1) Where there has been a criminal prosecution upon a certain set of facts and on ultimate acquittal, is it open to the concerned departmental authorities to institute subsequent departmental proceedings in disciplinary jurisdiction and to dismiss the employee? In other words, does an acquittal by a criminal court, for whatever reason, operate as a virtual exemption from all other liability ensuing from administrative action? (2) Can the departmental authorities pursue a procedure, like a disciplinary enquiry, which has relatively less safeguards and protection for the concerned employee, when it was open to them to have successfully prosecuted the employee in a criminal court, and they ultimately failed to do so? (3) Can such departmental proceedings be initiated in the absence of a specific rule in the Railway Establishment Code, to the effect, that, even if a criminal prosecution ends in an acquittal, it is open to the department to take departmental action?

(4) Upon the first two points, which are really interlined, the learned Judge (Srinivasan, J.) referred to the dicta in *Jerome D'Silva v. Regional Transport Authority*, . There are certain

pertinent observations in that Bench decision on the broad principle, and the following remarks might be extracted here:

"It would indeed be a strange predicament when, in respect of the same offence, there should be punishment by the 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 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."

With respect, we agree with this enunciation of the principle. But, as the learned Judges rightly emphasises, it has no relevance at all to the present context of facts. In the present case, the acquittal was not based upon any finding that the appellant did not receive illegal gratification. On the contrary, there is a specific finding by the learned Judge (Somesundaram J.) though it might be obiter in character to the effect that the bribe was given to, and taken by, the appellant. The acquittal was on a technical ground relating to the criminal processual law. We are unable to see how, under those circumstances, the appellant could claim any exemption from subsequent disciplinary proceedings. Rajagopalal J. observed in *Karuppa Udaya v. State of Madras*, AIR 1956 Mad 460, that a departmental enquiry was not precluded, merely because there was an offence cognisable under the Indian Penal Code, which would be tried, or might have been tried. Another case definitely against the view urged for the appellant is *State of Orissa v. Sailabehari*, . This decision

proceeded to the length of holding that, where a criminal court did not record an honourable acquittal, but gave the accused the benefit of doubt, and observed that there was strong suspicion, this did not preclude further departmental enquiry in respect of the same subject-matter.

(5) Under those circumstances, it appears to be very clear to us that the appellant could have been proceeded with, in disciplinary jurisdiction, upon the present facts, notwithstanding the ultimate acquittal on the criminal charge.

(6) With regard to the other point urged, of parallel procedure, we are unable to see that it has really much validity of force. The point is sought to be based on certain observations of Mukjerji, J. in *Nripendra Nath v. Chief Secy. to Govt., West Bengal*, . But as the learned Judge points out the Calcutta High Court did not claim to decide the issue at all, it was specifically left open by the Judges of the Bench. The learned Judges observed--

"Where two procedures are available, and one that denies the public servant effective protection by testimonial compulsion, summons for compelling witness and documents, and by excluding the Evidence Act is applied to prejudice him in preference to the other procedure which does not create such handicaps, this raises a serious question of discrimination, and violation of equality before the law and equal protection of laws under Article 14 of the Constitution."

(7) Even this principle has really no application to the present facts. We could understand the point if the appellant had been proceeded with departmentally and dismissed, under the procedure available in disciplinary jurisdiction, prior to the commencement of proceedings in a criminal court, which proceedings had ultimately terminated in his acquittal, on the merits. But that is not the case here. The Criminal proceedings came first, and there was an acquittal; but that was not on the merits. Further, there was a specific finding that illegal gratification had been received. It was after this, that the departmental enquiry was initiated. No doubt, that enquiry might not have possessed all the attributes and features of a criminal trial; it might have been lacking in certain features of protection to the delinquent officer. But to argue from this that Article 14 is thereby infringed would lead to the patent absurdity that, wherever it is possible to prosecute a Government servant in a court of law, the authorities, would be precluded from proceeding against him departmentally, under any conceivable circumstances. We do not think that this can ever be the true situation at law. As we have emphasised, it may be a different matter where the departmental procedure is first initiated, and, ultimately, there is a criminal trial with an acquittal on the merits of the charge, fully exonerating the accused.

(8) The oats point does not deserve any separate treatment at any length. Whether the concerned railway Code provides for such instances or not, the right to exercise disciplinary jurisdiction is always there when a charge of sufficient gravity is alleged against an employee. The utmost that can be gathered from Jerome D'silva's case, cited earlier is that where the charge relates to the identical subject matter of the criminal trial, and there has been an acquittal on the merits, at the trial, it might not be proper for the departmental authority to arrive at some other finding inconsistent with that acquittal. Under the circumstances, we are of the view that the learned Judges (Srinivasan J.) was perfectly justified in declining to interfere in exercise of the writ jurisdiction in this case. The appeal fails and is dismissed.

(9) Appeal dismissed.

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