

Shri Devinder Kumar Sharma Vs. the Managing Director Hp State Civil Supplies Corp.

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Court : Himachal Pradesh

Decided On : May-31-2011

Judge : Surinder Singh, J.

Acts : The Himachal Pradesh Administrative Tribunal Act

Appeal No. : C.W.P. (T) No.9680 of 2008

Appellant : Shri Devinder Kumar Sharma

Respondent : The Managing Director Hp State Civil Supplies Corp.

Advocate for Def. : Ms. Bhawna Dutta, Adv.

Advocate for Pet/Ap. : Mr. S.R. Sharma, Adv.

Judgement :

1. The petitioner filed an Original Application before the Erstwhile Tribunal. The Tribunal was abolished as such the application was transferred to this Court in terms of the Himachal Pradesh Administrative Tribunal (Transfer of Decided and Pending Cases and Applications) Act, 2008, and registered as CWP (T) No. 9680/2008.

2. The petitioner was a Sale Depot Incharge in Retail Shop Kashapat Tehsil Rampur, District Shimla, H.P. During the period 1.4.1988 to 26.6.1988 while posted as such, he is alleged to have misappropriated the essential commodities to the tune of `1,12,506.07 paise which fact came into the notice during the audit/physical verification of the retail shop. The petitioner was suspended, however, he is stated to have deposited/ reimbursed the amount of ` 47,128.25 paise to the Corporation.

The respondent Corporation also got registered the FIR against the petitioner on 3.11.1988 and simultaneously initiated disciplinary proceedings against him. In addition, the respondent corporation also filed a suit for recovery of the balance amount against the petitioner and his guarantors. Since the corporation had procured the fidelity Insurance Policy from Oriental Insurance Company, they were also impleaded them as the defendant. The suit was decreed on 30.8.1986 in favour of the Corporation and against the petitioner and his co-defendants for a sum of ` 10,000/- jointly and severally with proportionate costs, pending and future interest @ 6% per annum till its realization as per judgment Annexure A1, whereas in criminal case No. 22-2 of 93/1991 registered against the petitioner, he stood acquitted on 16.1.2002 by the learned Chief Judicial Magistrate, Kinnaur.

However, in the Departmental inquiry, he stood served but did not file written statement of his defence before the Inquiry Officer. Vide his communication (Annexure R3), he made request that since the police inquiry was going against him therefore, the departmental proceedings should not have been initiated. He felt no necessity to go and appear before the Inquiry Officer nor contested and answered the charges. He was accordingly informed about the dates fixed for hearing time to time and to take part in the inquiry, but he failed to turn up. As such he was proceeded against ex parte. The perusal of the inquiry report (Annexure R4) shows that TA and DA was also allowed to him for attending the hearing. The date for the purpose was fixed on 26.2.1991 but despite that he opted to remain absent.

3. On the evidence adduced before the inquiry officer, he came to the conclusion that the petitioner had misappropriated the corporation's stock to the tune of ` 72,439.7 paise. The report of the inquiry Officer was accepted by the Disciplinary Authority. The petitioner was again given an opportunity to make representation or submission on the aforesaid inquiry report vide Annexure R5 which was received by him on 4.6.1991. He sent reply Annexure R6 submitting that the aforesaid letter of the Disciplinary Authority would be attended upon by him on the final decision of the criminal case. After considering the aforesaid reply, vide office order dated 29th June, 1991, Annexure R7, petitioner was imposed the penalty of dismissal from service. The petitioner however, refused to receive the aforesaid order of dismissal. His dismissal was notified in the newspaper daily. He did not file any intradepartmental appeal. However, on 11.3.2002 (Annexure A5) he sent the joining report which was not responded.

4. The petitioner contended that he addressed various communications, requesting to re-instate him with back-wages and promote him to the higher post but it turned deaf ears to the respondent Corporation. As such, he sought the relief by means of present petition to reinstate him as Sale Depot Incharge with all consequential benefits and to give him the seniority and promotion, as per sealed-cover procedure.

5. The relief sought is objected to by the respondent Corporation on the ground of delay and laches and also that the embezzlement against the petitioner stood proved during the Departmental Inquiry as well as in the civil Suit in a decree passed against him. He did not file any appeal against the order of his dismissal and further that he was aware of the fact of the inquiry pending against him but he intentionally and deliberately did not contest it and the OA was filed after a lapse of 11 years from the date of his dismissal. The aim of filing the representation was only to enlarge the period of limitation. Thus after such a long time, a settled position cannot be allowed to be unsettled. Further that there is no bar to initiate criminal as well departmental proceedings simultaneously against a delinquent employee as both are independent of each other.

6. The learned counsel for the petitioner vehemently argued that the above facts go to show that the respondent Corporation started three proceedings against the petitioner simultaneously, which were unwarranted. He also submitted that by the acquittal in the criminal case, his joining report should have been accepted, by the respondent Corporation but they wrongly chose even not to respond.

7. I have considered the above arguments of the learned counsel. As a matter of fact, the acquittal in a criminal case ipso facto would not relegate the petitioner from the order of dismissal passed against him in the year 1991, which was not challenged in appeal. It is a previously concluded departmental enquiry therefore, subsequent acquittal will not, in any way render the concluded disciplinary proceedings invalid nor it would affect validity of finding of guilt or consequential punishment. Both have different standards of proof.

It has been held in *State Bank of Bikaner and Jaipur versus Nemi Chand Nalwaya* (2011) 4 SCC 584 by the apex Court that the standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings.

This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee, who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by nonchallenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.

8. Legally, there is also no bar to initiate Departmental proceedings and simultaneously file criminal case and/or the civil suit for the recovery of the embezzled amount.

9. Admittedly, while deciding the present petition, this Court is not sitting as a court of appeal on the dismissal order of the petitioner. Since the unchallenged dismissal order till date, i.e., for about a decade stares at the face of the petitioner and the civil suit was also decided against him, which proves embezzlement committed by him. Therefore, the relief sought in this petition cannot be granted to him.

10. The petition has no merit and is accordingly dismissed so also the pending application(s), if any.

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