

Ajay Kumar Vs. Gas Authority of India Ltd. and anr.

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Court : Delhi

Decided On : Aug-08-2013

Judge : Vibhu Bakhru

Appellant : Ajay Kumar

Respondent : Gas Authority of India Ltd. and anr.

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

08. 08.2013 LPA No.521/2013 AJAY KUMAR Appellant versus GAS AUTHORITY OF INDIA LTD. & ANR. .Respondents Advocates who appeared in this case: For the Appellant : Mr D.K. Aggarwal, Sr. Advocate with Mr Pramod Kumar. For the Respondent : Mr Sandeep Prabhakar & Mr Vikas Mehta for R-1. CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED, ACTING CHIEF JUSTICE HONBLE MR JUSTICE VIBHU BAKHRU JUDGMENT VIBHU BAKHRU, J 1.The present appeal impugns the judgment dated 15.03.2013 passed by a learned Single Judge of this Court in W.P.(C) No.1163/2012. The appellant had filed the writ petition, inter alia, seeking quashing of the order dated 24.09.2011 passed by the Disciplinary Authority whereby the petitioner had been dismissed from the services of the respondent no. 1 company.

2. The appellant joined the services of respondent No.1 company as an Executive Trainee w.e.f. 27.09.2007. The appellant was selected as Executive Trainee on

the basis of a written examination that was conducted by respondent no.1 company on 03.09.2006. The appellant was declared as qualified in the written examination and was called for a personal interview. The appellant took up his employment with respondent no.1 company after qualifying in the personal interview.

3. A complaint was received by the respondent no.1 company by an email allegedly sent by one Umesh Kumar (who admittedly could not be traced). It was alleged, in the complaint, that the appellant had not sat for his written examination but another person had impersonated the appellant and had taken the written exam as the appellant. Based on the aforesaid complaint, respondent No.1 company sent certain documents including the answer sheets of the appellant to the Government Examiner of questioned documents (GEQD). As per the opinion of the GEQD, the hand writing and the signatures on the answer sheets and other documents pertaining to the written examination did not match with the handwriting of the appellant. Based on this information, respondent no.1 initiated disciplinary proceedings against the appellant and framed following charges against the appellant: Shri Ajay Kumar took the employment in GAIL as Executive Trainee w.e.f. 27.09.2007 fraudulently by not writing the written examination himself at Kolkata Centre at Tirthapati Institution, 142/1, Rash Behari Avenue, Kolkata held on 03.09.2006 which was mandatory, but by another person impersonating Shri Ajay Kumar who had written the examination, thereby Shri Ajay Kumar got himself short listed for interview in the selection of Executive Trainee. By his above act, Shri Ajay Kumar violated Rule 4 (1) (i) & (iii) read with Rule 5 (iii), (xvii), (xxx) and (xxxvi) of GAIL Employees (Conduct, Discipline & Appeal) Rules, 1986; 4. The appellant was also suspended from service on 16.05.2009. Information regarding the incident was also forwarded to Central Bureau of Investigation. The appellant was arrested by CBI on 03.08.2009 and remained in custody till 18.08.2009 when he was granted bail. The CBI filed a chargesheet against the appellant in the criminal court on 16.04.2010.

5. In the meantime, the inquiry against the appellant proceeded and was concluded. The Inquiry Officer submitted the Inquiry Report dated 22.11.2010 wherein the appellant was found guilty of the charges framed against him. The

Disciplinary Authority forwarded the Inquiry Report to the appellant and it is not disputed that the appellant was afforded adequate opportunity for being heard.

6. The appellant was discharged in the criminal case by the Chief Metropolitan Magistrate, Delhi who found that there was insufficient evidence to proceed against the appellant in the criminal case filed by the CBI. The order discharging the appellant in the criminal case was forwarded by the appellant to the Disciplinary Authority.

7. The Disciplinary Authority considered the material placed before him including the Inquiry Report and the discharge order passed by the Chief Metropolitan Magistrate and passed an order dated 24.09.2011 imposing the penalty of dismissal from service on the appellant.

8. The appellant preferred an appeal before the Appellate Authority against his dismissal from service, which was also rejected by an order dated 13.01.2012. Aggrieved by the action of the Disciplinary Authority as well as the Appellate Authority, the appellant filed the writ petition impugning the orders dated 24.09.2011 and 13.01.2012 passed by the Disciplinary Authority and the Appellate Authority respectively. The learned Single Judge, vide an order dated 15.03.2013, dismissed the writ petition filed by the appellant. Aggrieved by the same, the Appellant has preferred the present appeal.

9. The learned counsel for the appellant has strongly contended before us that the appellant has been dismissed from service on mere suspicion without there being any evidence on the basis of which the appellant could have been held guilty of the charge leveled against him. The learned counsel has also placed strong reliance on the order of the Chief Metropolitan Magistrate, Delhi discharging the appellant from the criminal case filed against him by the CBI. It is contended that once the criminal court has found that the evidence of GEQD was not sufficient/admissible against the appellant and has discharged him from the criminal case, the appellant could not be held guilty in the disciplinary proceedings, whose finding, it is contended, is solely on the basis of the opinion of the GEQD. It was pointed out that apart from the evidence of GEQD there was no other evidence available with the Disciplinary Authority on the basis of which the

appellant could have been held guilty in the departmental inquiry.

10. The Learned counsel for the appellant has placed reliance on the decision of Capt. M Paul Anthony v. Bharat Gold Mines Ltd. and Anr. : (1999) 3 SCC 67.in support of his contention that the appellant ought to be reinstated as the charge in the criminal case and the disciplinary proceedings were based on the same allegation and on the same evidence which had been found to be insufficient/inadmissible by the Chief Metropolitan Magistrate, Delhi.

11. We have heard the learned counsel for the parties at length.

12. The core of the controversy raised before us is whether the appellant could be held guilty of the charge of misconduct on the basis of the same set of facts and evidence on which the criminal court had declined to frame any charge. It is further necessary to consider whether there was sufficient evidence collected by or available with the Inquiry Officer to arrive at the finding that the appellant was guilty of the charges leveled against him.

13. It is settled law that proceedings in a criminal case and departmental proceedings operate in different fields. The disciplinary proceedings are concerned with ensuring that the employees conform to the rules of conduct which are prescribed by the employer and maintain discipline in relation to their employment. The disciplinary proceedings are to weed out persons who are considered unworthy of being a part of the employer organization. The criminal proceedings are with an object to punish the offender. The standards of proof and evidence required in the two proceedings are also different. The Supreme Court in the case of Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd. Haldia & Ors., (2005) 7 SCC 764.held as under:11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings - criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of

enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

14. In the case of *HPCL v. Sarvesh Berry*: (2005) 10 SCC 471, the Supreme Court while drawing a distinction between a departmental inquiry in a criminal case held as under:⁸ The purposes of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So, crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service.

15. It would also be relevant to refer to the decision of the Supreme Court in the case of *Nelson Motis v. Union of India and Anr*: (1992) 4 SCC 711, wherein the Supreme Court held as under:⁵ So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary

proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Although in that case, it was also observed that the acts which lead to disciplinary proceedings were not exactly the same as the subject matter of the criminal case.

16. In view of the settled law as indicated above, the fact that the appellant was discharged by the Chief Metropolitan Magistrate, Delhi from the criminal case filed against him by the CBI would not in any manner set up a fetter against the respondent no.1 company in taking disciplinary action against the appellant. The disciplinary proceedings initiated by the respondent no.1 company were completely independent of the criminal case filed by the CBI against the appellant. In view of the same, we are unable to accept the contention that the disciplinary proceedings were liable to be quashed on account of the appellant being discharged in the criminal case.

17. The reliance placed by learned counsel for the appellant on the decision of the Supreme Court in the case of Capt. M Paul Anthony (*supra*) is also misconceived. In the said case, the criminal case as well as the departmental proceedings were based on a police raid carried out at the residence of the appellant therein. The appellant was discharged in the criminal case as it was found that the raid and recovery alleged to have taken place at the residence of the appellant were not proved. In the meantime, the departmental proceedings had continued in absence of the participation of the appellant and were premised on the factum of the recovery of a gold ball and gold bearing sand alleged to have been recovered in the alleged police raid. It is in these circumstances that the Supreme Court held as under.

34. .The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

18. In the present case, the departmental proceedings are not premised on any criminal case. The Chief Metropolitan Magistrate, Delhi found that the evidence of

the GEQD was not sufficient/admissible for convicting the appellant and thus, declined to frame the charges. Consequently, no trial was undertaken. However, the departmental proceedings were indisputably conducted in accordance with the principles of natural justice. The appellant participated in the departmental proceedings and also cross examined the handwriting expert, on whose evidence the appellant has been found guilty of the charges framed. It is also relevant to point out that the Supreme Court in the case of Capt. M Paul Anthony (supra) reiterated the settled position that the departmental proceedings were different from a criminal case and that the standards of proof were also different. The relevant extract from the said decision is quoted below:¹³. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. In our view, the facts of the present case are materially different from the facts in the case of M. Paul Anthony (supra).

19. The next question that is required to be considered is whether there was sufficient evidence and material available with the Inquiry Officer to conclude that the appellant was guilty of the charge leveled against him.

20. A perusal of the report submitted by GEQD indicates that the questioned writing marked as Q-1 to Q-12 which were the writings on the question booklet No.111718, OMR Sheet, attendance sheet etc. submitted at the time of the written examination were opined not to match with the admitted writings and specimen writings of the appellant. The handwriting expert (Deputy Government Examiner) was produced as a witness on behalf of the management before the Inquiry Officer and was also crossexamined. During the examination, he gave clear evidence that the person who had written specimen writings/signatures referred as S-1 to S-13

and admitted writings/signatures A-1 to A-3, A-6 to A-24, A-27 to A-49 and A51 to A-77 had not written/signed the questioned documents marked as question Q-1 to Q-12.

21. In our view, the evidence of the handwriting expert was sufficient for the Inquiry Officer to return his finding that the appellant was guilty of the charges. We are not called upon to examine or re-appreciate the evidence placed before the Inquiry Officer. The only limited reason for us to refer to the evidence of the handwriting expert was to examine whether there was any evidence available with the Inquiry Officer to proceed and arrive at a conclusion. In this regard, indisputably, the answer sheets, question paper, attendance sheet and other documents submitted at the time of the written examination were available with the Inquiry Officer alongwith the evidence of the handwriting expert and, thus, the contention that there was no evidence before the Inquiry Officer to find the appellant guilty is clearly erroneous.

22. We are also unable to accept the contention of the learned counsel for the appellant that the report of the handwriting expert could not be relied upon by respondent No.1 in as much as the same had been found to be insufficient/inadmissible by the Chief Metropolitan Magistrate, Delhi.

23. In the case of HPCL v. Sarvesh Berry (supra), the Supreme Court has also noted the distinction between the standards of proof and evidence in the two proceedings are different and has held as under:8. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short the "Evidence Act"). Converse is the case of departmental enquiry. The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position.

24. It is, thus, settled law that the standard of proof required in a criminal trial is different from the standard of proof that is required in departmental proceedings. While, the evidence of a handwriting expert may not be sufficient to proceed

against an accused in a criminal trial, nonetheless, the same may constitute sufficient material for finding the accused guilty in a departmental proceeding.

25. We may further add that, in the present case, the departmental proceedings were completely independent of the criminal case filed against the appellant and respondent No.1 company as was not fettered in any manner in conducting disciplinary proceedings against the appellant. The charge leveled against the appellant was not based on the criminal case filed against the appellant and thus could be inquired into independently in the disciplinary proceedings conducted under the rules of service applicable to the employees of respondent No.1.

26. The learned Single Judge has also come to the conclusion, and in our view rightly so, that an acquittal by a criminal court would not automatically result in the appellant having a right to be reinstated into service and there is no reason which would warrant interference in the decision of the Disciplinary Authority or the Appellate Authority of respondent No.1. We find no reason to differ from the decision of the learned Single Judge. The present appeal is, therefore, dismissed with no order as to costs. VIBHU BAKHRU, J BADAR DURREZ AHMED, ACJ
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