

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No. 4967 of 2001**

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Decided on: October 28, 2009

Harish Chand, Ex. H.C
S/o Late Sh. Krishan Chand
R/o Village Ahmed Pur, Majra
Post Office Bichpri
District Sonapat
Haryana

..... Petitioner

Through: Mr. Arun Bhardwaj, Advocate

versus

1. Lt. Governor
National Capital Territory of Delhi
Through Addl. Commissioner of Police, Southern Range
PHQ I P Estate
New Delhi.

2. Deputy Commissioner of Police
West District Rajouri Garden
New Delhi

3. Deputy Commissioner of Police
District West
New Delhi.

..... Respondents

Through: Mr. Sunil Bagai, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MADAN B. LOKUR, J. (ORAL)

1. The Petitioner is aggrieved by an order dated 1st June, 2001 passed by the Central Administrative Tribunal, Principal Bench in OA No.865/2000.
2. The Petitioner was working as a Head Constable incharge of the Malkhana where the case property in criminal cases is kept.
3. It appears that the Petitioner handed over charge to his successor and later it came to the notice of the Respondents that some items were missing from the Malkhana. In fact the Petitioner had not deposited some items in the Malkhana but had misappropriated them.
4. On these broad facts, a departmental charge sheet dated 14th February, 1988 was issued to the Petitioner containing the following two charges:-
 1. One motor-cycle made "Yazdi" bearing regn. No.DEF-9364, chasis No.B-228215 engine No. BD-250-367537, colour black, was seized vide DD No.30, dated 06.12.1984 PPP Vihar, PS Nangloi u/s 60 DP Act, 1978 by HC Kartar Singh (IO) HC Harish Chand, No.30/W failed to deposit the motor-cycle with the Distt. Nazir but did not physically deliver the motor-cycle to Distt. Nazir. You were asked to daily register the relevant entry by the Distt. Nazir which you did on 18.06.1997, but you did not delete it from road certificate No.7/21 datd 10.04.1986, at PS Nangloi accordingly. Thus a false entry was made regarding depositing the motor-cycle in the records.
 2. One gold chain weighing 20 grams and one scooter engine No.03E-703/301210 was seized vide FIR No.34 dated 01.01.1986 u/s 992/34 IPC, PS Nangloi. You did not deposit the articles with the Distt. Nazir but made entry to this effect vide road certificate No.15/21 dated 15.04.1986, that the same was deposited. As such you appropriated the article seized in the case.
5. A little earlier, some time in 1987, a criminal prosecution was also launched against the Petitioner with the filing of an FIR No. 270/87. The importance of this FIR is that, according to learned counsel for the Petitioner, the allegations made against him in the departmental charge sheet

as well as in the criminal prosecution were similar if not the same. Since the Petitioner was acquitted of the criminal charge, he should have been found not guilty in the departmental enquiry as well. We propose to deal with this a little later.

6. The departmental enquiry against the Petitioner continued on the basis of the charges framed against him and the Petitioner apprehended that an adverse order may be passed which might prejudice the criminal trial. Therefore, he filed an Original Application No.1482/1988 before the Tribunal praying that no final order be passed in the departmental enquiry. This Original Application was dismissed by an order dated 17th January, 1992 and liberty was granted to the Respondents to pass a final order in the matter.

7. The Enquiry Officer then gave his report finding the Petitioner guilty of the charges framed against him and on the basis thereof the Disciplinary Authority of the Petitioner passed an order on 11th June, 1992 dismissing him from service. The Petitioner preferred a Departmental Appeal but that was rejected. Thereafter, the Petitioner preferred an Original Application before the Tribunal being O.A. No.263/1994 which was dismissed by an order dated 25th February, 1994. The Tribunal noted that there was no merit in the case filed by the Petitioner and in fact the Petitioner required the Tribunal to sit in appeal over its earlier decision given in OA No.1482/1988. The decision of the Tribunal rendered on 25th February, 1994 was challenged by the Petitioner by filing an SLP in the Supreme Court but that was withdrawn on 13th February, 1995. Consequently, the dismissal of the Petitioner attained finality.

8. A couple of years later, the criminal prosecution against the Petitioner was decided by the Metropolitan Magistrate by his order dated 11th February, 1998. The Metropolitan Magistrate gave the Petitioner the benefit of doubt and acquitted him of the charges framed.

9. Consequent upon his acquittal, the Petitioner moved the Respondents for his reinstatement and for quashing the order of dismissal but since he did not receive any favourable reply, he filed OA No.865/2000 out of which the impugned order has arisen.

10. It was contended by learned counsel for the Petitioner, both before the Tribunal as well as before us, that the charges framed in the departmental enquiry and in the criminal prosecution were similar if not the same and if the Petitioner is acquitted in the criminal prosecution there can be no reason for his being found guilty in the departmental enquiry on the basis of the same evidence.

11. We have gone through the order passed by the Metropolitan Magistrate on 11th February, 1998. We are reproducing from the judgment the broad allegations made against the Petitioner in the criminal case:-

“The brief story as alleged by the prosecution are that, a complaint was made by MHCM HC Kuldeep Singh, that on 2.10.86 while he was joined as MHCM, the HC Harish Chander, previous incharge of MHCM handed over the charge and asked to the HC Harish Chander and inspite of theseveral times directed him to hand over the charge, he made lot of delay and without giving the complete charge of the MHCM, he made DD entry 9B date 18.5.87 without informing to anyone made the endorsement in the registger no.B and joined in the police station of Sultan Puri, He was directed to check all the items of the Mal Khana while taking over and handing over the possession, from the reluctant attitude of the accused were in doubts and the accused did not given the complete charge. All the registered were checked and found that the accused did not handed over the charge of FIR 71/84U/sec. 379 IPC. The case property of one iron garder and 300 blades, FIR No.128/.... No. U/sec. 373/78 and DD No.18A..... One ball milling machine and one ransister were not found and apart

from the above articles were checked and founds or some of the goods are lower then its quantity mentioned in the register and also found several cutting and over writing in the road certificate No. /21, 7/21, 15/21, 18/21, 19/21, 22/21, 24/21 37/21, and 38/21 of the 1986. The cash and several articles scooter, and motor cycle etc were not deposited to the District Nazir. Apart from the case property of FIR No.52/85 and 192/81 were also not deposited in the Mal Khana and also found the bogus entry in the register No.19, Explanation of HC Harish Chander accused were also called several times who inspite of the inquiry made to the accused did not given any satisfactory reply and found that the above mentioned items were not deposited in the Malkhana. Therefore, it were found that accused Harish Chander has himself, appropriated the certain articles and amount as, alleged against him dishonestly and converted the same to his own use. During the said tenure, the accused has also committed the forgery of the record maintained in the malkhana by cutting, over writing and additional alteration that intend to defraud authority for the purpose of cheating. The accused had also used the said forged record as genuine to the authority knowing that it was a forged report/record as well as made the false entry in the accounts records of the said malkhana knowingly and intentionally to defraud the authority. After completing the investigation, the report U/sec. 173 Cr.P.C. was prepared.”

12. A comparison of the allegations as noted by the Metropolitan Magistrate and the charges levelled against the Petitioner in the departmental enquiry clearly shows that there is no similarity between the two and both are completely different. Therefore, in our opinion, it is factually incorrect to contend that the allegations against the Petitioner in the two proceedings were similar if not the same.

13. That apart, we find that the standard of proof required in a criminal trial is completely different from the standard required for proving the guilt of a delinquent official in a departmental enquiry. While in a criminal trial, proof is required beyond reasonable doubt, what is required in a departmental enquiry is only a finding of guilt on the preponderance of probability. There is a catena of judgments in support of this proposition:

14. In *Suresh Pathrella v. Oriental Bank of Commerce*, (2006) 10 SCC

572 the Supreme Court observed in para 11 of the Report that: -

“This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities”

15. This has been reiterated in *West Bokaro Colliery (TISCO Ltd.) v.*

Ram Pravesh Singh, (2008) 3 SCC 729 where the Supreme Court observed

in para 20 of the Report as follows: -

“It is well-settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.”

16. In *Commissioner of Police, New Delhi v. Narender Singh*, (2006) 4

SCC 265 the Supreme Court observed in para 12 of the Report that: -

“It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose.”

17. We find that under these circumstances, merely because the Petitioner

was acquitted of the charges framed against him in the criminal prosecution,

it would not absolve him of the charges framed in the departmental enquiry.

We have noted that not only the charges are different but also the standard of

proof required in the two proceedings is different. That being the position,

we do not find any infirmity in the view taken by the Tribunal. It may be

noted that this is not a case of `no evidence' or of any perversity in the view taken by the departmental authorities.

18. There is no merit in the writ petition.

19. Dismissed.

MADAN B. LOKUR, J

OCTOBER 28, 2009
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MUKTA GUPTA, J