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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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RESERVED ON:16.04.2013

PRONOUNCED ON: 16.05.2013

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W.P. (C) 8848/2006

SANTOSH KUMAR BHARTI

.....Petitioner

Through: Mr. Sakesh Kumar, Advocate.

versus

U.O.I. & ORS.

..... Respondents

Through: Ms. Barkha Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S.RAVINDRA BHAT

1. The petitioner challenges his removal from service from the CRPF. The petitioner, at the time of his removal, was posted at the office of the Commandant, 0122 BN, CRPF, Srinagar at Coy "E" Camp, Sakharpora.

2. Briefly, an incident took place on 18.08.1999 which resulted in the death of the petitioner's co-officer, Shri. A. Kerketta, due to the alleged mishandling of a weapon. The respondents alleged that the petitioner had been given a weapon, i.e., a firearm, which went off,

resulting in the firing of three shots which resulted in the death of Shri Kerketta. Immediately after the death, the petitioner was suspended and an FIR was lodged against him at Police Post Pakharpora, Police Station Charari Shareif. The police, after investigation, filed a charge sheet under Section 304A of the Indian Penal Code, 1860 IPC. Charges were framed and the petitioner denied his guilt.

3. After trial, the petitioner was acquitted on the ground that there existed 'reasonable doubt' about his involvement and role in the rash or negligent handling of the firearm. Concededly, no appeal against the acquittal was preferred. As noticed previously, the petitioner was suspended from his services from the day of the occurrence of the event itself.

4. After the petitioner's acquittal by the criminal court, departmental proceedings were instituted against him and a charge sheet for offences under Section 11(1) of the Central Reserve Police Force Act, 1949 was filed against him. On the basis of the enquiry conducted during the said proceedings, several witnesses whose depositions were recorded in the trial proceedings were also examined. The findings and report of the Enquiry Officer were considered by departmental authorities who found the petitioner guilty of negligence. This led to the imposition of penalty of his removal from service. The petitioner's appeal and revision to superior officers, questioning the order of removal, were of no avail; he therefore challenges the said orders in these proceedings under Article 226 of the Constitution.

5. Counsel for the petitioner contends that the initiation of departmental inquiry, culminating in the impugned order of removal, is illegal as it amounts to double jeopardy. The petitioner's counsel argues that the petitioner was acquitted of the charge of negligence by the court. Nevertheless, he has been vexed for the second time through departmental proceedings, in violation of Article 20(2) of the Constitution of India. It is also contended that where a person is exonerated from all charges by a competent criminal court, no subsequent departmental enquiry can be initiated against him for the same allegation and involving investigation and adjudication of the same facts. On this point, Counsel for the petitioner relies upon the Supreme Court's decision in *M. Paul Anthony v. Gold Mines Ltd*, AIR 1999 SC 1416, where the court held that a finding contrary to that of a criminal court in a departmental proceeding cannot be sustained, where the criminal court has acquitted the person relying upon the same set of evidence. In other words, contended counsel, the conclusions of a departmental enquiry proceeding cannot be contrary to the decision of a competent criminal court, on the same set of facts.

6. It is also contended that the proceedings are *ultra vires* Article 311 of the Constitution of India, as no opportunity of hearing was given to the petitioner after submission of the enquiry report and before passing the order of removal. Counsel for the petitioner also submitted that the Enquiry officer, while submitting his report, usurped the jurisdiction of the departmental authorities. It is argued that the enquiry report is tainted with bias. Further, learned counsel for

the petitioner also submits that no new ground was raised in the enquiry proceedings and hence the finding of the criminal court after due diligence should have prevailed. It is also alleged that the witnesses before the enquiry officer adduced false evidence, contrary to their statements in the criminal trial. It has also been urged before this Court that the punishment of removal from service rendered in this case is not proportionate and hence is arbitrary in nature. It has also been contended before this court that the punishment is violative of Article 20(3). It is submitted that the alleged act of the petitioner cannot be described as misconduct.

7. The respondents object to the exercise of jurisdiction by this Court under Article 226. They argue that the departmental proceedings are in no manner vitiated or illegal, and do not amount to double jeopardy in light of several decisions of the Supreme Court holding that the acquittal of a public servant in a criminal proceeding is no bar against instituting a departmental proceeding on the same allegations. The reason for the same is that the burden of proof in criminal cases is 'beyond reasonable doubt' whereas in departmental proceedings, the threshold of burden of proof is reduced to a mere 'preponderance of probabilities'. Further, the learned counsel for respondents contends that this is not a case of acquittal on facts, after appreciation of all material evidence and circumstances, but on the Court granting benefit of doubt. The threshold for burden of proof in departmental proceedings being lower than in a criminal proceeding is emphasized to state that the public employer has the discretion to

independently initiate departmental proceeding and take such action as is warranted in law.

8. Counsel for the respondents further argues that a lethal weapon (LMG-36) was taken by the petitioner from the Unit Armourer and he proceeded to his room to prepare for operational duties. Whilst getting ready, he tried to shift the weapon from one bed to another when three rounds from that weapon came to be fired on the victim sitting on the same bed, which ultimately resulted in his death. The learned counsel for the respondent has urged that the petitioner got dressed and loaded the weapon with 10 magazines and loaded one of them, which was a clear act of negligence that ultimately led to the victim's death. It is submitted that the Petitioner's failure to handle the arm in accordance with the instructions given led to the occurrence of the tragic event.

9. The respondents also contend that the charges framed for the departmental proceedings were different from those in the criminal proceedings. Section 11(1) of the CRPF Act, 1949 empowers action against any negligence, i.e., in this case, violation of instructions on handling and custody of service weapons which cause death of the victim. Consequently, it is argued that a charge of this nature is dissimilar to a charge under Section 304-A IPC; consequently the findings in the latter, though rendered by a competent criminal court, do not amount to double jeopardy. It is also urged that the punishment awarded is proportionate to the gravity of the offence committed by the petitioner, which resulted in the death of the victim. The responsibility of each member of an armed force to keep his automatic

weapon in an intact and secure condition after adopting adequate safety measures while on duty and after completion of duty according to the instructions existing on the subject has been stressed. It is argued that the petitioner, despite having adequate training in this regard, failed to follow them, which resulted in a grave consequence. The respondent submits therefore, that the punishment awarded is proportionate and does not call for interference.

10. The Petitioner's argument that the present is a case of double jeopardy under Article 20(2) of the Constitution of India is not tenable. The question as to the effect of a criminal proceeding on the departmental proceedings is a question of fact and should be decided on a case to case basis. The Supreme Court, in *Pandian Roadways Corporation V. N. Balakrishnan* (2007) 9 SCC 755 held that whether the decision of a criminal court would be binding on the disciplinary authorities would depend upon other facts as well. Thus facts, charges and nature of evidence etc., involved in an individual case would largely determine whether the decision of acquittal has a bearing on the findings recorded in the domestic enquiry.

11. Counsel for the petitioner relied on *Capt. M. Paul Anthony V. Bharat Gold Mines Limited* AIR 1999 SC 1416 to say that acquittal in a criminal proceeding would inevitably lead to the preclusion of a departmental proceeding. This argument is misplaced as the Supreme Court in the same judgement held, after referring to a catena of cases, that there can be no bar for continuing both the proceedings in a criminal case and departmental proceedings except where both the

proceedings are based on the same set of facts and the evidence in both the proceedings is common. In departmental proceedings, factors which prevail on the authority may be many, such as enforcement of discipline or to investigate the level of integrity of the delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Where the charge against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case. In case the criminal case does not proceed expeditiously, the departmental proceedings cannot be kept in abeyance forever and may be resumed and proceeded with so as to conclude the same at an early date. The purpose is that if the employee is found not guilty his cause may be vindicated, and in case he is found guilty, administration may get rid of him at the earliest. This was articulated in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Ors.*, AIR 2005 SC 4217 in the following terms:

“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 the Rules and Regulations in force. The two proceedings, criminal and department 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 the 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.”

12. Generally, acquittal or initiation of criminal proceedings does not preclude departmental proceedings on a similar subject. This was again declared in *Nelson Motis V. Union of India and another*, AIR 1992 SC 1981 when the Court held that the nature and scope of a criminal case are different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. Likewise in *State of Karnataka and another V. T. Venkataramanappa*, (1996) 6 SCC 455 it was held that acquittal in a criminal case does not bar a departmental enquiry for the same misconduct.

13. This Court, therefore, holds the Petitioner's submission insubstantial with regard to non-maintainability of departmental proceedings and concludes that there was no question of double jeopardy. Further, it is concluded that in a departmental proceeding a finding different from that made by a criminal court can be validly taken. That contradictory findings ensue in the two proceedings *ipso facto* is not a ground for setting aside an administrative action such as the decision in a departmental proceeding. The objectives of both are entirely different; the degree of proof varies substantially.

14. As regards the contention that there was lack of adequate opportunity to the petitioner during the enquiry proceedings, the Court is of the opinion that this ground was not made out. The record of inquiry was produced during the present proceedings. Likewise, a letter dated 21.10.2000, was addressed to the petitioner along with the Report of the Enquiry Officer, eliciting objections within 15 days. This fulfilled the requirement of opportunity to the petitioner to present his views in respect of findings rendered during the inquiry proceedings. The requirements of natural justice were consequently satisfied.

15. The prosecution had cited five eyewitnesses in the criminal case in support of its allegations regarding the rash and negligent act of the writ petitioner. However, all the five witnesses resiled from the statements recorded under Section 161. The first four witnesses even denied their presence and knowledge. However PW-5 admitted that he was present at the time of occurrence; he as well as some other witnesses had initially mentioned in the statement under Section 161 that the petitioner was alone in the room with the deceased. PW-5 admitted that he was present in the room at the stage of the incident. Beyond the deposition of these witnesses, the prosecution could not establish any other fact or material circumstance. Predictably, the prosecution's case failed.

16. In the departmental inquiry, in the present case, several witnesses were examined. The interesting feature during the course of these proceedings was that the respondents established that the

concerned weapon, LMG bearing number 15289341, had been issued to the petitioner. Likewise, the weapon and the spent cartridges (Ex. B-341 to B-343) had been fired from that weapon (produced as Ex. B-340 during the inquiry). The evidence of more than one witness further showed that the petitioner and the deceased were together in the room. Also, the deposition of PW-4 was that though accidental fire could take place from an LMG with loaded magazine and change lever on “R” or “A” position if weapon fell vertically on the butt with such force that the spring returned under pressure of 8-12 pounds, the breach block to the magazine comes back to an extent that the feeding horn comes behind the round in the magazine and takes it to the chamber in the forward motion without getting cocked. It was deposed that in such condition one round would be fired. It was further explained that more than one round could be fired, if a loaded magazine were fixed on the LMG, the change lever is on ‘A’ position and the weapon is manually cocked, and the trigger were to be pressed. The deposition of PW-1 in the inquiry clearly suggested that the change lever was in ‘A’ position when he went inside the room after hearing the gun shot sound; he also noticed that the gun was mounted on a bipod and was facing the deceased. These sufficiently proved that the petitioner was alone in the room when the incident occurred and the weapon which resulted in Kerketta’s death had been issued to him.

17. Counsel for the petitioner had contended that the departmental proceedings were vitiated because of violation of Article 20(3) of the Constitution of India. There is, however, nothing on record to suggest

any instance of self-incrimination of the petitioner in any statement made by him; in any event, there was no compulsion. This argument is, therefore, meritless.

18. The final contention before the court was that the punishment awarded during departmental proceedings was grossly disproportionate to the offence or misconduct the petitioner was charged with. The doctrine of proportionality limits the exercise of power to levels that are commensurate with or proportionate to the object to be achieved in respect of the concerned executive measure or order. The Courts generally do not, as held in *UP State Transport Corporation v. Subash Chandra Sharma* (2000) 3 SCC 324, interfere with the decision of the departmental authorities unless the punishment awarded is 'shockingly disproportionate' with the end sought to be achieved. In the present context, this Court is of the opinion that it is the responsibility of every public official or member of a police or armed force, having access to dangerous weapons, by virtue of the nature of his employment, to take adequate safety measures to ensure that no one is hurt and accidents as the one in the instant case do not occur. There seems to be no doubt in the present case that the incident occurred solely because of the negligence and omission on the part of the petitioner. His failure to adhere to the safety norms and instructions provided by the authorities, after sufficient training on this regard, has resulted in the death of a person. In light of this finding, it is concluded that the punishment imposed by

the departmental authorities is proportionate and cannot be termed “shockingly disproportionate.”

19. For the foregoing reasons, it is held that the petition lacks in merit; it is consequently dismissed, without any order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

MAY 16, 2013