

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17128 OF 2002

-

ORDER :

This petition is filed for a writ of *Mandamus* declaring the impugned proceedings No.V-11014/17/DOS/LC/SWS/02/4221, dated 03.06.2002, on the file of the Inspector General (SWS) Central Industrial Security Force, Mumbai, confirming orders of penalty imposed by the 3rd respondent vide proceedings dated 13/14-07-2001, as illegal and arbitrary.

The case of the petitioner is that while he was working as driver in the Central industrial Security Force, a charge memo under Rule 34 of the CISF Rules, 1969 was issued to him and same reads as follows;

“Gross misconduct and negligence in performance of duty in that No.971690046 HC/Dvr Nizamuddin of CISF Unit, SHAR Centre Sriharikota when detailed for driving duty in TATA Sumo bearing registered No.AP 23 E 4695 on 01.04.2001 at about 16:32 hours, while negotiating a turn in front of Gate No.III dashed the vehicle against culvert causing major damages to the vehicle as well as the culvert.”

Thereafter, the petitioner submitted explanation denying the aforesaid charge levelled against him. The respondents also appointed an Enquiry Officer and basing on the enquiry report, the 3rd respondent issued proceedings dated 13/14.07.2001 imposing a penalty of reduction of pay to the lowest stage from Rs.3,455/- to Rs.3,200/- in the time scale of Rs.3200-85-4900 for a period of two years with effect from the date of issue of the order with cumulative effect. The period of suspension from 09.04.2001 to 27.06.2001 was regularized without any pay and that period will not be counted as on duty. Aggrieved by the same, the petitioner

preferred appeal before the 2nd respondent and the same was rejected. Then the petitioner filed a revision petition before the 1st respondent and the same was also dismissed. Aggrieved by the orders passed by the Revisional Authority confirming the orders of the appellate and disciplinary authority, present writ petition is filed.

The respondents filed counter stating that when the petitioner was driving the TATA Sumo vehicle bearing No.AP 26 E 4695, at about 16.32 hours, the vehicle dashed the right side of culvert at gate II while negotiating a turn in front of Gate III and caused major damage to the said vehicle; that petitioner also sustained minor injuries; that the said accident occurred due to rash and negligent driving of the petitioner and thereafter he was placed under suspension and a charge Memo under Rule-34 of CISF Rules, 1969 was issued; that an enquiry officer was also appointed; and that basing on the report of the enquiry officer the respondents imposed punishment. It is also stated that the Appellate Authority and Revisional Authority considered the pleas raised by the petitioner and rejected the same. It is further stated that when the Disciplinary Authority, Appellate Authority and Revisional Authority considered the matter in detail and passed speaking orders, no interference is called for. It is further stated that a criminal case was also registered against the subject accident and the same is different from the departmental proceedings and finally sought for dismissal of the writ petition.

Sri D.Krishna Murthy, learned counsel for the petitioner submits that for the same incident, disciplinary proceedings as well as criminal proceedings are initiated against the petitioner and when the revision filed by the petitioner before the 1st respondent

is pending, the criminal case ended in acquittal on merits vide Judgment dated 12.11.2001 in STC No.195/2001 and that when the same was also brought to the notice of the Revisional Authority stating that the charges framed in disciplinary proceedings as well as criminal proceedings are identical, the Revisional Authority has not considered the same. He also submits that not only charges but also witnesses are common in both disciplinary proceedings as well as criminal proceedings. When the facts, charges and witnesses in both disciplinary and criminal proceedings are one and the same and when there is acquittal in criminal proceedings on merits, the findings of the department cannot stand. As the enquiry envisaged in departmental proceedings is summary in nature and the criminal proceedings ended in acquittal by elaborate enquiry, the findings given by the criminal courts are binding. He further submits that in identical circumstances, this court as well as Apex Court held that when findings in departmental proceedings and criminal proceedings are one and the same, the findings of departmental proceedings cannot stand. In support of his contentions he relied on the Judgments reported in ***S.K.Ramju v. Regional Manager, APSRTC, Nalgonda and other*** ^[1] AND in ***G.M.Tank v. State of Gujarat and another*** ^[2] .

On the other hand, Sri T.Venkat Raju Goud, appearing for the respondents submits that the scope of Disciplinary Proceedings and Criminal Proceedings are different. He further submits that in Departmental Proceedings mere probability of occurrence of incident is sufficient for coming to a conclusion that the delinquent employee is not fit for continuation in employment. But whereas, in Criminal Proceedings, proof beyond reasonable doubt, is required. As such, when the Departmental Proceedings were conducted basing on the enquiry report and necessary

punishment was imposed after taking lenient view in view of his past good service and young age, the same cannot be liable to set aside basing on the Judgment in Criminal Proceedings.

In the present case the charge levelled against the petitioner, witnesses examined in both Criminal as well as Disciplinary Proceedings are one and the same and the Criminal Court at para-13 held as follows;

“PW.4 in his cross-examination admitted that red gravel was spread on the eastern road margin at the scene of offence and it was unrolled. There was turning at the scene of offence. The vehicle was not inspected by the Motor Vehicles Inspector. PW.2 admitted in his examination in chief that while the accused was driving the TATA Sumo in normal speed at the III gate turning, the vehicle got skid and dashed against the culvert. The vehicle was not inspected by the Motor Vehicle Inspector and there is no Motor Vehicle Inspector report to show that the accident was not occurred due to the mechanical defects. More over the red gravel was spread on the road at the scene of offence and gravel was not rolled. So there is possibility for the vehicle while passing on the gravel at the turning likely to skid the tyres. Thereby, the accused lost control over the vehicle and the vehicle dashed to the culvert. This fact leads a long way to show that there is no rashness and negligence on the part of the accused. Therefore, the prosecution failed to establish the ingredient of offence punishable under Section 279 IPC. Hence, the accused is entitled for acquittal.”

A perusal of the aforesaid Judgment rendered by the Criminal Court in STC.No.195/2001 goes to show that for the same incident, disciplinary proceedings as well as criminal proceedings are initiated against the petitioner and the petitioner was acquitted on merits in the criminal proceedings.

The learned counsel for the petitioner also relied on the

Judgement of the Supreme Court in **G.M.Tank's case** and this Court in **S.K.Ramju's case** in support of his contention that when the facts, charges and witnesses in both disciplinary and criminal proceedings are one and the same and when there is acquittal in criminal proceedings on merits, the findings of the department cannot stand.

The Supreme Court at paras 30 and 31 of **G.M.Tank's case** held as follows;

“In this case the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles there from. The investigating Officer, Mr.V.B.Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust

and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though, finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in **Paul Anthony's** case (supra) will apply. We therefore, hold that the appeal filed by the appellant deserves to be allowed.”

This Court at para 10 of **S.K.Ramju's case** held as follows;

“In that case there was absolutely no iota of difference between the criminal case and the departmental proceedings, and as such, it was held that the departmental proceeding is vitiated in law. In the instant case, we are of the opinion that the case of the appellant stands on a better footing in the sense, the misconduct which is said to have been committed by the appellant goes out of factual matrix, which was also subject matter of criminal case and not independent. It is not a case where the petitioner was charged with any misconduct unconnected with the said accident. In any event, as it has been held by the criminal Court that the appellant was not guilty of the charge of causing death, and he had not been acquitted on the ground of benefit of doubt, we fail to understand as to how despite the said finding of competent Court of law, the reputation of the respondent-Corporation has been damaged.”

In view of the above facts and circumstances and in view of the law laid down by the Apex Court as well as this Court in the

Judgments referred supra, I am of the opinion that the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

08.10.2015

t k

[\[1\]](#) 2001(3) ALT 72 (D.B.)

[\[2\]](#) 2006(4) SCJ 1