

**THE HON'BLE SRI JUSTICE RAMESH
RANGANATHAN**

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTI

WRIT PETITION No.20428 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed by the State against the order passed by the A.P. Administrative Tribunal in O.A.No.579 of 2013 dated 23.12.2013.

The 1st respondent herein, a Senior Assistant in the Forest Department, was issued charge memo dated 14.07.2005 and was, thereafter, imposed the punishment of reduction by two stages in the time scale by order dated 01.06.2009. He retired from service on 30.06.2009. The appeal preferred by him, against the order of punishment, was allowed on 29.09.2009 and a fresh enquiry was directed to be initiated. Thereafter, a fresh charge memo dated 16.05.2011 was issued. In the meanwhile C.C.No.496 of 2006, instituted against the 1st respondent before the Special Judicial Magistrate of First Class (Excise), Karimnagar, ended in his acquittal by judgment dated 29.11.2011.

The 1st respondent invoked the jurisdiction of the Tribunal contending, among others, that the action of the petitioners herein in initiating disciplinary proceedings after his acquittal in the criminal case was illegal and, in terms of Rule 9(2)(b)(ii) of the A.P.Revised Pension Rules, 1980 (for short 'the Rules), no enquiry could be initiated in respect of an incident which took place more than four years before such institution. The Tribunal allowed O.A.No.579 of 2013 by its order dated 23.12.2013, and set aside the charge memo dated 16.05.2011 on the ground that, once the employee is tried by the competent criminal court on the same charge and is acquitted, no disciplinary proceedings could have been initiated thereafter. The Tribunal arrived at this conclusion relying on the judgment of the Supreme Court in ***G.M.Tank vs. State of Gujarat***^[1].

Learned Government Pleader for Services would submit that even the criminal court, while acquitting the 1st respondent by its judgment in C.C.No.496 of 2006 dated 29.11.2011, had observed that the perpetrators of the fraud should be proceeded against departmentally; and, in the light of the observations of the criminal court, the petitioners herein were justified in initiating disciplinary proceedings against the 1st respondent. The relevant observations of the criminal court, in its judgment in C.C.No.496 of 2006 dated 29.11.2011, read as under:

When once perpetration is done by an unknown offender, he cannot be allowed to go scot free without being unearthed. The matter can be investigations at the departmental level by the concerned departments involved in the process and identify those who are responsible for the perpetration of large scale fraud and they should be departmentally proceeded against notwithstanding the fact that the criminal case filed against the accused has failed.

It is evident from the aforesaid findings of the criminal court that the petitioners herein were permitted to take departmental action against those involved, notwithstanding the fact that the criminal case filed by them against the accused had failed. The Tribunal has, therefore, erred in setting aside the charge memo on the ground that the 1st respondent was acquitted in the criminal case. To the extent the Tribunal held in favour of the 1st respondent, on this ground, the order, under challenge in this Writ Petition, is set aside.

The question of sanction, though canvassed before the Tribunal by the 1st respondent herein, was rejected, Sri P.S.Rajasekhar, learned counsel for the 1st respondent, would submit that, while the 1st respondent does not question the order of the Tribunal to the extent it held against him on the question of sanction, the 1st respondent is entitled to question the action of the petitioners herein in initiating disciplinary proceedings on the ground that it falls foul of Rule 9(2)(b)(ii) of the Rules, and as this question was not

examined, the matter should be remanded to the Tribunal.

A perusal of the order of the Tribunal shows that, as the 1st respondent was granted relief on the ground of his acquittal in the criminal case, the Tribunal did not examine whether the charge memo was liable to be set aside for contravention of Rule 9(2)(b)(ii) of the Rules.

The order of the Tribunal, to the extent it held in favour of the 1st respondent on the ground that he was acquitted in the criminal case, is set aside. The matter is remanded to the Tribunal for its consideration of the question whether or not disciplinary action could have been initiated against the 1st respondent in view of Rule 9(2)(b)(ii) of the Rules.

The writ petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

10th March 2015.
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Date: 10.03.2015

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