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

+ **Date of Decision: 04.08.2015**

% **RSA 165/2015**

MAHIPAL SINGH

..... Appellant

Through: Mr. R.K. Sahni, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Mr. Ruchir Mishra, Mr. Brajesh
Kumar and Mukesh Kr Tiwari,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment dated 06.01.2015 rendered by the learned ADJ-05, Central Distt., Tis Hazari Court in RCA No.9/2010, whereby the learned ADJ has allowed the appeal preferred by the respondent/UOI against the judgment passed by the learned SCJ cum RC (Central), Delhi in Suit No.930/06/82 filed by the appellant/plaintiff.

2. The Trial Court had decreed the suit filed by the appellant/plaintiff and declared the departmental inquiry and the consequent penalty imposed upon the appellant to be vitiated on account of breach of the principles of natural justice and violation of rules. Consequently, the appellant was

directed to be reinstated with all benefits and he was deemed to be in service. The First Appellate Court reversed the said findings and dismissed the suit of the appellant.

3. The brief facts are that the appellant/plaintiff was employed as a Security Guard (SG) at the CISF. At the relevant time, he was posted at Indian Drugs and Pharmaceuticals Ltd. at Rishikesh, Haridwar. A charge-sheet was issued to him on 18.09.1979 alleging that he had abandoned his duty post without permission of competent authority on the night of 4/5.09.1979 and obstructed other SGs in performance of their duty. He had prevailed upon SG K.R. Sharma and SG H.C. Mishra to leave their duty post, and go to canteen for taking tea against their wishes, as well as passed on the plant material on the other side of the wall in connivance with SG Rajinder Parshad and SG Shyam Sunder.

4. The appellant replied to the said charge-sheet, which was not found to be satisfactory. The same was followed by a departmental inquiry against the appellant and the co-delinquents. The inquiry found the appellant guilty. The said inquiry report was accepted by the disciplinary authority. The appellant was dismissed from service. The departmental appeal also failed. Consequently, he filed the suit in question to seek a declaration in respect of the inquiry and the disciplinary action taken against him. On the third charge, namely, the appellant was also criminally charged, and the same resulted in his acquittal.

5. The Trial Court framed the following issues on the basis of the pleadings of the parties:

- i) Whether the punishment after acquittal in the criminal case is

bad?

- ii) Whether the plaintiff was given full opportunity during enquiry proceedings?
- iii) Whether necessary and relevant documents were supplied to the plaintiff? If not, its effect?
- iv) Whether the appellate authority decided the appeal according to the rules?
- v) Whether a fair and proper enquiry was held against the plaintiff? If not, its effect?
- vi) Whether the order dated 28.4.81 is illegal, null and void?
- vii) Whether the notice under Section 80 is not valid or legal?
- viii) Whether the plaintiff is entitled to the relief claimed?
- ix) Relief.

6. All the issues were decided in favour of the plaintiff and against the defendant and, consequently the suit was decreed.

7. Before the appellate court, the appellant relied upon the following decisions:

- a) *Shri Bhagat Ram Vs. State of Himachal Pradesh & Ors.*, 1983(1) Services Law Reporter 626,
- b) *Shri S.N. Mukherjee Vs. Union of India*, JT 1990 (3) S.C. 630
- c) *P.P Gopalan Vs. DIG & Anr.*, 1986 LAB. I. C. 1980.

8. The First Appellate Court, while not disputing the propositions of law laid down in the decisions relied upon by the appellant, observed that the application of the decisions would depend on the facts of each case. The First Appellate Court then proceeded to consider each of the issues 1 to 6 and 8 together. So far as reliance placed on the judgment of his acquittal by the appellant is concerned, the First Appellate Court has held that the appellant had been charged on the first two counts only, and no charge was framed in respect of the allegation of passing of the plant material in connivance with the other SG. The decision of the criminal court acquitting the appellant was, therefore, held to be not material. The relevant extract from the impugned judgment on issue no.1 reads as follows:

“(5.3) It is settled law that even after acquittal in the criminal case, departmental action can be taken. Hon’ble Supreme Court has discussed this issue in number of judgments and we can refer to one of the judgments that is in the matter of South Bengal State Transport Corporation Vs. Swapan Kumar Dutta AIR 2006 SC 3583. In the judgment which has been relied upon by the Ld. Trial Court, Hon’ble Supreme Court has held that acquittal in the criminal case would affect the departmental proceedings, if the criminal prosecution is conducted on the same facts. Ld. Counsel for the plaintiff submitted that the statement of allegation on which the charges were framed was also the basis for prosecution of the plaintiff in the criminal case. According to Ld. Counsel for the plaintiff, the judgment in the criminal case falsifies that entire statement of allegation and the natural consequence is that the charges based on that statement of allegation have to fail. I do not agree with the

submission made by Ld. Counsel for the plaintiff on this point. The statement of allegation contains three parts. The first part deals with the allegation that the plaintiff left his post without permission. The second part deals with the allegation that he forced the other SG to leave their post. The third and the last part deals with the allegation of removal of plant material. In the criminal case only the third part of the allegation was considered and decided. There is no finding on the other two allegations which also form part of the charges framed against the plaintiff. Therefore, acquittal of the plaintiff in the criminal case has no bearing on the charges which were framed against the plaintiff. The charges can stand independently even if the third part of the allegation i.e. removal of plant material is not established. As the acquittal in the criminal case was not material, failure of the IO discuss its effect has no bearing on the merit of the case. Ld. Trial Court did not correctly appreciate the facts and the law while deciding this issue.”

9. On the second issue, namely, whether the appellant/plaintiff was given full opportunity during the inquiry proceedings, the First Appellate Court held that the appellant had been granted sufficient opportunity. The appellant/plaintiff had not pleaded that he was not informed about the right to be represented by a defence counsel. There is no basis for a general presumption that every constable rank officer is not aware of his rights. The charge sheet itself had informed the appellant of his right to be represented through a defence assistant, if he so desired. For that he had to submit his request with the consent of such member of the force who was willing to assist him. However, he had not done so. The appellant did not claim that he did not understand the contents of the chargesheet, and he did not raise

this issue of his not being provided defence assistant before the Inquiry officer.

10. Reliance was placed by the appellate court on ***Mansukhlal K. Bhalal Vs. Bank of India and Ors.***, 2006 SCC OnLine Guj 127, wherein it has been held that the employee has to show that there has been violation of the rules, and the principles of natural justice, and also to establish as to what prejudice he had suffered by the alleged violation of rules or principles of natural justice, which had not been done in the present case.

11. The First Appellate Court also takes note of the CISF rules framed in 2001 and observed that at the relevant time, there was no rule requiring the supply of documents to the charged employee. Reference was also made to the decision of this court in ***Rajender Singh Vs. Union of India & Ors.***, ILR (2006) 2 Del 543, which was also a case of a constable in CISF. The plea before this Court was that the delinquent had not been supplied with the documents. This plea was negated by the court by holding that the department had permitted him to inspect the documents and take extracts. This court did not hold that it was compulsory for the department to supply copies of the documents, even though they had not been demanded by him. In the present case as well, the appellant had been allowed to inspect the documents on demand and take its extract therefrom.

12. The submission of the appellant that he had not been provided an opportunity to cross examine the prosecution witnesses, and he had not been supplied copies of their statements was also negated. The First Appellate Court observed that the witnesses were examined during the course of inquiry. The appellant had admitted in his cross-examination before the

court, that the statement of the witnesses were recorded in his presence and he was given the opportunity to cross examine them and copies of the statements were supplied to him. The First Appellate Court observed that even if it were to be assumed that he had not been supplied with copies of the statement of witnesses, he had not pointed out any rule which requires supply of any document, when no such request had been made by him, and he had the opportunity to take notes during the proceedings.

13. On the aspect whether the relevant documents were not supplied to the plaintiff, and its effect, the First Appellate Court noted that the plaintiff had not even pleaded that he had made a request for supply of some documents and despite the same, they were not so supplied. Pleas of the appellant - that the appellate authority had not decided the appeal in accordance with the rules; that he had not been granted the opportunity of personal hearing by the appellate authority, and; that the appellate authority had not given detailed reasons in its order, were also rejected. The submissions were negated by the First Appellate Court by observing that the inquiry officer had made a detailed report; the disciplinary authority had considered the report of the inquiry officer, and; it had recorded the reasons before passing the order of dismissal dated 28.04.1981. The appellate authority had also passed a reasoned order dated 23.07.1981. The appellate authority had also considered the effect of acquittal of the plaintiff in the criminal case. The orders passed against the plaintiff could not be said to be non speaking. The plaintiff had not cited any rule which requires the appellate authority to give personal hearing to the appellant. Issue no.5 was also decided against the appellant/plaintiff in view of the findings returned

on issue nos.2 and 3.

14. On the issue - whether the order dated 28.04.1981 was illegal, null and void, the First Appellate Court placed reliance on ***R.C. Sharma v. Union of India***, AIR 1976 SC 2037, wherein the Supreme Court considered the scope of a civil suit challenging the validity of departmental proceedings. It was held that a suit challenging the validity of departmental proceedings cannot be treated as an appeal from the findings in the departmental proceedings, or the punishment inflicted upon the delinquent officer, even if these are erroneous. The court while dealing with a departmental inquiry, in a civil suit, has to examine whether there is any infirmity which goes to the root of the jurisdiction and the conduct of the departmental proceedings, which vitiates the final outcome. It is only if the departmental proceedings are null and void, that a plaintiff in a suit could obtain relief. The plaintiff had failed to establish that the order imposing punishment, or the appellate order, was null and void.

15. The submission of counsel for the appellant, firstly, is that consequent upon his acquittal by the criminal court of the charge of theft, the entire departmental proceedings should get washed away.

16. I do not find any merit in this submission. This is for the reason that the criminal proceedings touched upon one of the aspects on which the appellant was noticed, namely, the removal of the articles from the premises of the IDPL in connivance with other SG. The criminal court was not concerned with aspects of the appellant leaving his own post while on duty, and of encouraging/obstructing others to do the same. The effect of the appellant's acquittal, as appears from the impugned judgment, was taken

into account by the appellate authority. Even otherwise, it is well settled that acquittal in a criminal trial may not, in every case, result in the similar charge being dropped in the departmental proceedings. This is for the reason that the standard of proof in criminal proceedings is much stricter, when compared to that applicable to departmental proceedings.

17. The next submission of counsel for the appellant is that the inquiry officer has also acted as prosecutor inasmuch, as, he has cross examined the appellant/delinquent and co-delinquent and there was no presenting officer appointed for the said purpose. Learned counsel has taken the court through some of the departmental proceedings in this regard. Reference has been made to the statement of PW-1. After recording the statement of PW-1 in chief, he was cross examined by the co-delinquent member. This is not the cross-examination by the inquiry officer. So far as the inquiry officer is concerned, he had put only one question to PW-1. The question and answer put to PW-1 reads as follows:

“Q.1 Did you ask SG Mahipal Singh as to what he had thrown out across the boundary wall?”

A.1 I did not ask him which might have lead to quarrel which I wanted to avoid till catching his accomplice from outside”.

18. Similarly, reference has been made to the statement of DW-1 Chander Bhan, the witness produced by the appellant/delinquent. Once again, it is seen that after recording the statement of DW-1, the IO put only one question to this witness. The question and answer put to DW-1 reads as follows:

“Q.1 How are you so sure about the above mentioned timings given by you?”

A. It was only the approximate time”.

19. A perusal of the aforesaid questions and answers put to the two witnesses by the IO does not, in any manner, display a premeditated mind or a bias of the IO. The question put to the witnesses were merely to seek clarification, and to give them an opportunity to throw light on aspects which were relevant to arrive at a correct finding by the IO. I would also like to observe that when a departmental inquiry is to be held against a charged officer, the same may either to be held by the disciplinary authority himself, or by an inquiry officer appointed by him, on his behalf. When an inquiry officer is appointed by the disciplinary authority to conduct an inquiry, the IO merely conducts a fact finding inquiry. He bases his report on the facts which emerge after holding the inquiry, in accordance with the principles of natural justice. He bases his conclusion/findings on reasons recorded in his report, on the basis of the evidence and materials produced before him. It is upto the disciplinary authority whether, or not, to accept the report of the IO in toto, or partially. It is the disciplinary authority who has to ultimately find the delinquent guilty and to punish him, if so found guilty.

20. In this background, even if the IO were to put questions either to the departmental witnesses, or the witnesses produced by the delinquent in his defence, the same cannot be termed as demonstrative of a bias. The bias of an IO cannot be premised on such conduct of the IO. The bias of an IO, which may vitiate the inquiry, should be such as result in adequate

opportunity being denied to the delinquent to present his defence, or to counter the evidence produced against him by the department.

21. For all the aforesaid reasons, in my view, there is absolutely no merit in this appeal. It is not pointed out how the impugned judgment suffers from any illegality or perversity. No substantial question of law arises for consideration by this court.

22. Dismissed.

VIPIN SANGHI, J

AUGUST 04, 2015

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