

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6819 of 2007

Om Prakash Singh S/o Late Shri S.P. Singh Ex-Constable C.I.S.F. Unit
Bhilai District Durg (Cg) At Present R/o Village-Khajur Korma P.S. Rajoun
Narbada Bazar District Banka (Bihar)

---- Petitioner

Versus

1. Union Of India, Ministry of Home Affairs, Through the Director General, (North Sector) Central Industrial Security Force, Block No.13 CGO complex Lodhi, Road New Delhi, 110 003.
2. The Deputy Inspector General C.I.S.F. Sector -3 B.S.P. Unit Bhilai District Durg Cg
3. The Commandant (Appointing Authority) C.I.S.F. Sector-3 B.S.P. Unit Bhilai District Durg (Cg)
4. The Deputy Commandant (Enquiry Officer) C.I.S.F. Sector 3 B.S.P. Unit Bhilai District Durg Cg

---- Respondents

Shri V.G.Tamaskar, counsel for the petitioner/s.
Shri Rajkumar Gupta, counsel for respondent No.1.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/11/2017

1. This petition is directed against order dated 16/03/2007 by which petitioner's representation / appeal against charges has been dismissed.
2. The petitioner had earlier approached this Court by filing writ petition No.93/2006 seeking quashment of the penalty order on the ground that in view of acquittal from criminal charges, penalty order has been set aside, vide order dated 08/01/2007, the writ petition was disposed off with a direction to consider and decide the case of the petitioner in the light of decision of the Supreme Court in the case of **G.M.Tank v. State of Gujarat & anr., AIR 2006 SC 2129**. Thereafter, impugned order was passed.

3. Learned counsel for the petitioner argued that the allegation of commission of offence under Section 307 IPC that the petitioner fired gunshot on his own wife with intention to kill, the petitioner was acquitted vide judgment dated 28/02/2004 passed by the Third Additional Sessions Judge in Sessions Trial No.213/02. He would further submit that in the criminal case, his wife and son and many other witnesses were examined and none of them have supported the case of the prosecution that the petitioner made any attempt to kill his wife by firing gunshot bullet. It is submitted that once the petitioner is acquitted from the criminal charges, on same set of allegations and similar transactions, the disciplinary authority could not have punished the petitioner on charges of misusing the firearm given to him as a member of the armed force. Learned counsel for the petitioner places reliance upon the decision of the Supreme Court in the case of **G.M.Tank** (Supra). Lastly, it is submitted that in the present case, the petitioner was wrongly proceeded ex-parte. The petitioner ought to be afforded opportunity of hearing and without due opportunity, the impugned penalty order was imposed. Therefore, the order is liable to be interfered with on this ground also.

4. Learned counsel for respondent No.1 would submit that the scope of departmental enquiry and criminal proceedings are different and charges in two proceedings requires different degree of proof. He would submit that while in criminal case, the allegation against the petitioner of having committed offence under Section 307 IPC, in the departmental enquiry, the charges against the petitioner was that during the period the petitioner was on duty, he misused his service weapon and fired three rounds, due to which, one woman was wounded. The petitioner being member of the disciplinary armed force acted in irresponsible manner. On this charge, enquiry was held and from the evidence on record, the enquiry officer found the charges proved, on the basis of which, disciplinary authority imposed penalty of compulsory retirement. He would further submit that after direction was issued by this Court in WPS No.93/2006, the competent authority remitted the records and applying the judgment of the Supreme Court in the case of **G.M.Tank** (supra) held that penalty imposed does not warrant any interference.

5. Before proceeding to deal with contention of learned counsel for the petitioner, I deem it necessary to refer to the legal position with regard to the impact on the proceedings and orders in a departmental enquiry upon acquittal of the delinquent employee in criminal proceedings.

6. Their Lordships in the Supreme Court, after survey of number of decisions,

in the case of **G.M.Tank** (supra), laid down following principles of general applications -

“28. In the case of [Ajit Kumar Nag vs. General Manager \(PJ\), Indian Oil Corpn. Limited, Haldia & Ors.](#), (supra) , this Court in paragraph 11 held as under:

"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 Rules and Regulations in force. The two proceedings criminal and departmental 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 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. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a

criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

29. This Court in the case of Depot Manager, A.P. State Road Transport Corpn. Vs. Mohd. Yousuf Miya & Ors., (supra), in paragraph 8 held as under: "The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the

delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

7. The case of the petitioner would require examination by applying the said principles.

8. The charge against the petitioner in the criminal case was that he fired gun shots on his own wife with an intention to commit murder. The petitioner was, however, acquitted of the criminal charges. Ultimately, the conclusions in the judgment of the Criminal Court show that the petitioner was given benefit of doubt and it was not a case of clear acquittal. Moreover, after going through the order of the Trial Court, this Court found that number of prosecution witnesses including the wife did not support the case of the prosecution and stated that some one fired gunshot and witnesses of the prosecution turned hostile. Even though there was a report placed before the Court that the bullet was fired from the service gun of the petitioner, for want of clear and credible evidence of petitioner having fired gunshot with an intention to kill his wife, the petitioner was acquitted of the charges.

9. In the departmental enquiry, as the order passed by the disciplinary authority goes to show that there are number of witnesses who appeared in the departmental enquiry to depose regarding the petitioner fired several rounds of gun shot, the petitioner was acquitted of the charges of commission of offence under Section 307 IPC. There was ample evidence for the disciplinary authority to come to the conclusion that the petitioner, as a member of disciplinary force, all of a sudden opened several rounds of gunshots. Once there is an evidence to this effect, the departmental enquiry against the petitioner with regard to commission of offence could not be set at not on the ground that the petitioner was acquitted of the charges of commission of offence under Section 307 IPC. It be noted that in the departmental enquiry, there was no allegation against the petitioner that he attempted to murder his wife.

10. The principles applicable in a case where departmental enquiry and

criminal case are pallelly proceeding are different. Present is a case where the petitioner was finally acquitted and an order of penalty was passed in the departmental enquiry.

11. I also find that the penalty is only to compulsorily retire and the impugned order shows that the petitioner would not only be entitled to retiral benefits as a retired employee but Gratuity would also be payable to him.

12. Therefore, in view of above consideration, I am not inclined to interfere with the impugned order. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge