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HIGH COURT OF CHHATTISGARH, BILASPUR--

Writ Petition No. 2812 of 2004

V.P. PRAKASHAN, S/o Late Padmanabhan Chaigaon,
C.I.S.F. No.833210027, P/R Village- Imliya, P.S. Sultanpur,
Distt. Raisen (U.P.), Posted- CISF UNIT, BSP, Rajhara,
Tah. & Distt. Durg (C.G.)

---- Petitioner

Versus

1. Union of India, Through : Secretary, Ministry of Home
Affairs (Central Industrial Security Force), Govt. of India,
NEW DELHI
2. Deputy Inspector General, Central Industrial Security Force
Unit- Bhilai Steel Plant, Bhilai Nagar, Tah. & Distt. Durg
(C.G.)

---- Respondents

For Petitioner : Mr. V.G. Tamaskar, Advocate.
For Respondents : Mr. N.K. Vyas, Asst. Solicitor Genral

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/02/2017

(1) The petitioner, who was working as Constable in the CISF, served with charge sheet under Rule 36 of the C.I.S.F Rules 2001 on 28.09.2002 for gross indiscipline and violation of the order of Superior Authority. He was charge sheeted on the allegation that while he was posted as Guard Commander, he could not prevent other members who have manhandled with one lady Janki Bai on 28.08.2002 and dragged her from the village to mines gate which amounts to



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total derogation towards duty, indiscipline and by his act reputation of force has been tarnished.

(2) The enquiry was conducted in accordance with the principle of natural justice. Smt. Harpreet Kaur, Deputy Commandant CISF, was appointed as Enquiry Officer. The petitioner submitted his reply to the charge sheet on 09.10.2002. After due enquiry, the Enquiry Officer, after appreciating the evidence available on record, has submitted enquiry report dated 22.02.2003 establishing the misconduct committed by the petitioner.

(3) The Disciplinary Authority, by its order dated 6.5.2003 inflicted penalty of reduction to the lower stage from Rs.3965/- to 3200/- in the time scale of pay of Rs.3200-85-4900/- for a period of one year i.e. from the date of passing of the order.

(4) The petitioner filed appeal thereagainst before the appellate Authority. The appellate Authority, by its order dated 12.12.2003, rejected the appeal by affirming the order of Disciplinary Authority.

(5) In the meanwhile, after passing of the order by the Disciplinary Authority, the petitioner was acquitted of the criminal charges levelled against him by the jurisdictional criminal court extending the benefit of doubt on 19.09.2003.

(6) The petitioner filed instant writ petition under Article 226/227 of the Constitution of India on the ground that since he has been acquitted of the criminal charges by the jurisdictional criminal court on 19.09.2003, subsequent affirmation of penalty by the Appellate Authority is not sustainable and prayed for quashing of the order dated 06.05.2003 passed by the Disciplinary Authority and final order dated 12.12.2003 passed by the Appellate Authority.

(7) Return has been filed by respondents contending that departmental enquiry was conducted strictly in accordance with rules and in accordance with principle of natural justice, charges levelled against the petitioner have been found proved in the enquiry. It has further been submitted that charges under departmental enquiry and criminal charges are quite different and distinct from the charges levelled against the petitioner and punishment imposed is in accordance with rules, as such, the writ petitioner is liable to be dismissed.

(8) I have heard learned counsel appearing for the parties and also considered their rival submissions and gone through the record with utmost circumspection.

(9) Question for consideration in this case is, whether the acquittal of the petitioner from the criminal charges after imposition of penalty in the departmental enquiry has any

impact on the disciplinary proceeding so initiated and penalty imposed by the respondent-department.

(10) It is well settled law that mere acquittal of an employee by the criminal Court has no impact on the disciplinary proceedings initiated by the disciplinary authority unless there is a provision in the Service Rules for reinstatement on account of acquittal.

(11) In the matter of Southern Railway Officers' Association v. Union of India¹, their Lordships of the Supreme Court have held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Court reiterated that order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge and states as under:-

"37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge."

(12) In the matter of State Bank of Hyderabad v. P. Kata Rao², their Lordships of the Supreme Court have held that there cannot be any doubt whatsoever that the jurisdiction of

1 (2009) 9 SCC 24

2 (2008) 15 SCC 657

the superior Courts in interfering with the finding of fact arrived at by the Enquiring Officer is limited and that the High Court would also ordinarily not interfere with the quantum of punishment and there cannot be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith. Relevant part of the report states as under:-

"The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another³, however, remains unshaken although the applicability thereof has been found to be dependent on the fact situation obtaining in each case."

(13) In the matter of Deputy Inspector General of Police & another v. S. Samuthiram⁴, their Lordships of the Supreme Court have held that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the department and further held that in absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim reinstatement. It was held as under:-

3 (1999) 3 SCC 679

4 (2913) 1 SCC 598

"26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules."

(14) Very recently, above stated principles have been followed and reiterated by their Lordships of the Supreme



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Court in State of West Bengal and others v. Sankar

Ghosh⁵ and observed as follows:-

“18. We indicate that the respondent could not lay his hand to any rule or regulation applicable to the police force stating that once an employee has been acquitted by a criminal court, as a matter of right, he should be reinstated in service, despite all the disciplinary proceedings. Even otherwise there is no rule of automatic reinstatement on acquittal by a criminal court even though the charges levelled against the delinquent before the enquiry officer as well as the criminal court are the same.....”

(15) In the matter of Divisional controller, Karnataka State Road Transport Corporation v. M. G. Vittal Rao⁶,

their Lordships of the Supreme Court after a detailed survey of various judgments rendered in this behalf held that question of considering reinstatement after decision of acquittal or discharge by competent criminal court arises only and only if dismissal from service was based on conviction by the criminal court in view of provisions of Article 311(2), second provision of Constitution or analogous provisions in the statutory rules applicable in a case and states as under:-

“11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from services was based on conviction by the criminal court in view of the provisions of Article 311(2)(b) [*sic* Article 311(2) second proviso (a)] of the Constitution of India, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no

5 (2014) 3 SCC 610

6 (2012) 1 SCC 442



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help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied."

(16) Applying the principle of law laid down by the Supreme Court in the above referred cases in the facts and circumstances of the case, it is *quite vivid* that in the departmental enquiry, the petitioner was found guilty and he has been punished and later on he has been acquitted extending the benefit of doubt and there is no provision in the applicable service rules for reinstatement on the acquittal in the criminal charges, therefore petitioner is not entitled for any relief. In view of above discussion, the writ petition being devoid of merit is liable to be and is hereby dismissed, leaving the parties to bear their own cost (s).

Sd/-
Sanjay K. Agrawal
Judge

D/-