

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4636 of 2005

Prahlad Singh Sirmor S/o Late Shri Chandelal Sirmor, aged 28 years, R/o Village Sikola, Thana Patan, Tah. Patan, District-Durg (CG)

---- Petitioner

Versus

1. State Govt. of Chhattisgarh, through the Secretary, Home Department, DKS Bhawan, Raipur (CG)
2. Superintendent of Police, Durg (CG)
3. Inspector General of Police, Raipur (CG)
4. Director General of Police, Police Headquarter, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Vinod Kumar Sharma, Advocate
For State	:	Shri S.P. Kale, Dy.A.G.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/07/2017

Heard.

1. The petitioner has filed an original application in the year 2002 before the State Administrative Tribunal at Raipur. After abolition of the Tribunal, this case was transferred to this Court and has come up for hearing.
2. The petitioner has assailed the legality and validity of order dated 16.06.2001 dismissing the petitioner from service, imposed by way of penalty in a departmental enquiry as also the order dated 16.08.2001 dismissing the appeal and order dated 01.02.2002 dismissing mercy appeal.
3. Briefly stated, the facts of the case are that while continuing in service,

there was a report lodged against the petitioner by one Chandrika Bai alleging commission of offence under Section 354 IPC. It was alleged that on 11.11.1999 at about 7:30 pm, the petitioner caught hold of said Chandrika Bai in the field and outraged her modesty. Along with the petitioner, another person named Rewa Ram was also made accused. In the meantime, taking cognizance of the complaint against the petitioner made by said Chandrika Bai, the department had also parallelly instituted a departmental enquiry by issuing a charge sheet on 14.11.2000. In the criminal case, the charge against the petitioner was that at about 7:30 pm, in the evening of 11.11.1999, when the prosecutrix Chandrika Bai was going towards the field to respond to call of nature, the applicant came in and outraged her modesty. In the disciplinary enquiry, the charges against the petitioner were that while in police service, the petitioner used criminal force to outrage modesty and displayed unsocial behaviour bringing down the reputation of the police service. While the two proceedings were continuing parallelly, criminal case marched past the departmental proceedings and vide judgment dated 19.01.2001, the criminal Court acquitted the petitioner from the charges. The learned trial Court, after assessment of evidence, came to a definite conclusion that there was enmity between the family of the prosecutrix Chandrika Bai and the accused (petitioner herein) and incident was not supported by any independent witnesses and it was in the prime place of the village and therefore, the entire case of the prosecution was highly doubtful. Giving, therefore, the benefit of doubt, the petitioner was acquitted.

However, in the departmental enquiry, a finding otherwise was recorded, relying upon the evidence of the complainant Chandrika Bai and other witnesses, holding that the charges were proved and the petitioner was dismissed from service vide order dated 16.06.2001 which was later on affirmed in the first appeal as well as in the mercy appeal both.

4. Learned counsel for the petitioner raised threefold submissions which are

as below :-

(A) That, whatever is alleged to have been done by the petitioner against Chandrika Bai cannot be said to be done in the course of discharge of his duties as a police officer. The petitioner was on leave and it is the case of the prosecution that the incident happened in the village when the petitioner was not on duty. Therefore, it cannot be said to be misconduct within the meaning of the said word as understood in service jurisprudence.

(B) That, once the petitioner was acquitted of the criminal charges, the gravamen of charge in the departmental enquiry, based on the same set of facts and transaction and sought to be proved by the same set of evidence which was disbelieved by the trial Court in a criminal case, the enquiry ought to be dropped.

(C) That, under regulation 241 of the Police Regulations, once there is acquittal, without the permission of Inspector General of Police, the enquiry could not continue further. Neither in the impugned order nor in the appellate order, there is any mention of the fact that prior approval/permission of the Inspector General of Police was taken by the disciplinary authority after the order of acquittal was passed in the criminal case. Therefore, on account of violation of the mandatory provisions, the order of penalty is vitiated.

5. Per contra, learned State counsel submits that for the disciplined force like Police, special provisions have been made under Clause-11 of Regulation 64, which clearly cast duty on a police officer to always behave in a proper manner. The provision requires that even in his private life, police officer shall behave properly. Therefore, it is argued, an indecent behaviour of outraging modesty of a woman, though being in the private life affair, nevertheless, would be a misconduct warranting disciplinary action. The next submission of the learned State counsel is that even though there was

an acquittal, judgment itself shows that it was based on benefit of doubt and cannot be said to be a case of clear acquittal. Therefore, there was no legal impediment to continue with the departmental enquiry nor any bar under the law to record a finding otherwise than what was held in the criminal case. Lastly, it is submitted that Regulation 241 will have no application in a case where enquiry had already been initiated. It is submitted that once the enquiry is initiated and a criminal case parallelly continues, leading to acquittal, there would not be any need to take prior permission of the Inspector General of Police to proceed further in the departmental enquiry and the enquiry, even in such an eventuality, is required to be brought to its logical conclusion.

6. In so far as the first submission of the learned counsel for the petitioner is concerned, it is relevant to take note of specific provisions contained in the Police Regulations which are applicable in respect of Police Officer who belong to disciplined force. **Regulation 64 Clause-11** thereof which is relevant is extracted herein below :-

“(11) He shall act with respect and deference towards all officers of Government and with forbearance, kindness and civility towards private persons of all ranks. In private life he shall set an example of peaceful behaviors and shall avoid all partisanship.”

7. A reading of the aforesaid provision would show that the Rules of Conduct and Behaviour of a police officer obliges the police officer to behave in just and proper manner with all decency not only while on duty but also in his private life. It is not a case where the service rules deal only with the aspect of misconduct while in service unrelated to affairs in private, of the government servant. Though, this argument may be lucrative in case of those services where such kind of special provisions are not made, in case of a member of disciplined force, the rules requires much higher degree of conduct to be displayed not only while on duty but also when the police

officer is not on duty but acting in his private affairs. That directly flows from the plain language of the Rules of conduct as reproduced herein above. Therefore, I am not convinced with the submission of the learned counsel for the petitioner that the allegations did not pertain to an allegation of misconduct within the meaning of the service regulations applicable to the petitioner. The answer to the first ground, therefore, is in negative.

8. As far as the issue with regard to maintainability of disciplinary proceedings after acquittal is concerned, there has been judicial consistency in plethora of decisions that mere acquittal in a criminal case that too when acquittal is based on giving benefit of doubt to the accused, would not by itself, preclude holding of a departmental enquiry against a delinquent employee because degree and standard of proof in criminal proceedings and that in departmental proceedings are different. While in criminal matters, the degree of proof must satisfy the requirement of it being beyond reasonable doubt, a lesser degree of proof is sufficient to hold the charges proved in a departmental enquiry. It needs no authority for the proposition that in departmental enquiry, the standard of proof must only meet the requirement of preponderance of probability and not a higher degree of proof of it being beyond reasonable doubt.
9. While there are decisions and decisions on this aspect, it would be suffice to quote what was observed by the Supreme Court in the case of **South Bengal State Transport Corporation Vs. Sapan Kumar Mitra & Ors.** (2006) 2 SCC 584.

“9. We have heard the learned counsel for the parties and also examined the relevant records of this case. Although the Division Bench had not categorically said that the departmental proceeding could not be continued and punishment could not be imposed on the delinquent employee when the criminal case ended in acquittal, even then the learned counsel for the

respondents sought to argue this ground before us. In our view, this ground is no longer res-integra. *In Nelson Motis v. Union of India and Ors.*, [1992] 4 SCC 711 a three-Judge Bench of this Court observed at paragraph 5, as follows:

"So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case." (Emphasis supplied)

10. Similarly in *Senior Superintendent of Post Officer, Pathamthitta and Ors., v. A. Gopalan*, [1997] 11 SCC 239 the view expressed in *Nelson Motis v. Union of India and Ors.* (supra) was fully endorsed by this Court and similarly it was held that nature and scope of proof in a criminal case is very different from that of a departmental disciplinary proceeding and order of acquittal in the former, cannot conclude departmental proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued.

That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case departmental proceedings could not be continued and order of removal could not be passed."

Therefore, the second submission by the learned counsel for the petitioner must also fail.

10. This takes me to the third submission of the learned counsel for the petitioner which has considerable force. The submission is based on the provision contained in Regulation 241 of the Police Regulations. It is urged that the pre-condition to continue with the enquiry was given a go by. To appreciate this submission, I consider it appropriate to extract the relevant provision -

"241 Cases of acquittal When a police officer has been tried and acquitted by a criminal court, he must as a rule be reinstated. He may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment. If, however the acquittal, whether in the court of original jurisdiction or of appeal was based on technical grounds. Or if the facts established at the trial show that his retention in Government service is undesirable, the Superintendent may take departmental cognizance of his conduct, after obtaining the sanction of the Inspector - General."

11. A bare perusal of the provision would show that in an eventuality where a

police officer has been acquitted by criminal Court and the crime for which he was tried is the only basis for imposition of penalty in the departmental enquiry, then the employee should not be punished in the departmental enquiry. This being the normal rule, by way of exception, it has been further ordained that if facts of criminal case discloses that continuance of Govt. servant in the service is unwarranted, then upon obtaining the sanction from the Inspector General of Police, Senior Superintendent of Police may take cognizance. Therefore, the spirit of the provision is that in case of acquittal, the normal rule is that the employees should not be punished for the same act which constituted criminal charges and it is only in exceptional cases that with the permission of the Inspector General of Police, cognizance could be taken.

12.Learned Deputy Advocate General vehemently urged that this provision would be applicable only in the circumstances where an occasion arises to initiate departmental enquiry after an acquittal. He submits that where charge sheet has been issued and departmental proceedings are running parallelly and the criminal case is decided before conclusion of the departmental enquiry, though ending in acquittal of the delinquent employee, the procedure laid down under Regulation 241 of the Police Regulations need not be followed.

13.After giving my anxious consideration to the submissions made by the learned counsel for the State, I am unable to accept the same. The spirit of the provisions contained in Regulation 241 is that where there is an acquittal, ordinarily, the disciplinary action should not be taken to impose any penalty where the gravamen of charge in both the cases are one and the same. If that is the spirit of the Rule, provision contained in Regulation 241 has to be given just fair and logical interpretation to include even a case where charge sheet was issued in the departmental enquiry but before conclusion, the criminal case ended in acquittal. At this stage, occasion does arise for the disciplinary authority to consider whether or not enquiry should continue and penalty should be imposed on the

delinquent employee when he has been acquitted in the criminal case. The vital issue for consideration in such a case would be whether the charges in the departmental and criminal case are substantially one and the same. If, that is the spirit of the rule, to ensure its universal application, in all cases where charge sheet has been issued before or after the acquittal, the normal rule would be that an employee would not be punished on the same charges in the departmental enquiry.

14. This Court is not oblivious of the settled legal position, which has been referred to herein above, that mere acquittal from criminal charges would not hold the hands of the disciplinary authority to hold a departmental enquiry. But then, in the present case, there is a special rule, statutory in nature, regulating the course of action to be adopted, in a situation where the police officer/employee has been acquitted of the criminal charges, in such a case, institution or continuance of departmental enquiry and imposition of penalty must necessarily conform to the statutory requirement. The rule of general application is with exception that in an appropriate case where the facts of the trial disclose that continuance of an employee in service is unwarranted, with the prior approval of the Inspector General of Police, Senior Superintendent of Police can take cognizance of the matter. Therefore, unless there is prior approval taken, the enquiry could not proceed further much less imposition of penalty.

15. A pre-condition for exercise of power is ordinarily held to be mandatory in nature. In the case of **M. Pentiah and Ors. Vs. Muddala Veeramallappa and Ors.** (AIR 1961 SC 1107), it was held as under:

“17. In this context learned counsel for the appellants invoked the doctrine of law that an action of a statutory corporation may be ultra vires its powers without being illegal and also the principle that when a statute confers an express power, a power inconsistent with that expressly given cannot be implied.”.....

In the case of **Haridwar Singh Vs. Bagun Sumbrui and Ors.**

(1973) 3 SCC 889, it was propounded as below:

“15. Where, however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to acquisition of the right or authority (see *Maxwell, Interpretation of Statutes*, 6th edition, pp. 649-650).

16. In this case, we think that a power has been given to the Minister in charge of the Forest Department to do an act which concerns the revenue of the State and also the rights of individuals. The negative or prohibitive language of rule 10(1) is a strong indication of the intent to make the rule mandatory. Further, rule 10(2) makes it clear that where prior consultation with the Finance Department is required for a proposal, and the department on consultation does not agree to the proposal, the department originating the proposal can take no further action on the proposal. The cabinet alone would be competent to take a decision. When we see that the disagreement of the Finance Department with a proposal on consultation, deprives the department originating the proposal of the power to take further action on it, the only conclusion possible is that prior consultation is an essential pre-requisite to the exercise of the power. We, therefore, think that the order passed by the Minister of Forest, Government of Bihar on December 13, 1970, settling the coup in favour of the 6th Respondent was bad and we quash the order.”

In yet another decision in the case of **Anirudhsinhji karansinhji jadeja and Anr. Vs. State of Gujarat** (1995) 5 SCC 302, it was held as under :

“11. The case against the appellants originally was registered on 19th March, 1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20A (1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A (1) was not exercised by the DSP at all.”

16. Therefore, where a provision, which is in the nature of pre-condition for exercise of power, exists in the statutory rules, it would be a mandatory requirement, violation of which would necessarily vitiate the action taken.

17. To be doubly sure, as to whether or not such permission was granted by Inspector General of Police or not, this Court has gone through records of the departmental enquiry in original which was produced for the perusal of this Court by the learned counsel for the State. There is no order, communication, in the records to show that for proceeding further in the departmental enquiry or before imposing penalty, prior approval of the

Inspector General of Police was taken. This is not even reflected from the impugned order passed by the disciplinary authority. Therefore, violation of mandatory provision contained in Regulation 241 is quite manifest and must vitiate the proceedings and consequent order of penalty.

18.I, therefore, hold that the impugned order being violative of provision of Regulation 241 of the Police Regulations is bad and in Law and it is set aside. The petition is accordingly allowed. The petitioner shall be reinstated in service. However, taking into consideration the totality of the circumstances, I am inclined to grant only 25% of the back wages to the petitioner.

Sd/-
(Manindra Mohan Shrivastava)
Judge