

**HON'BLE JUSTICE SRI SURESH KUMAR KAIT**  
**AND**  
**HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION No. 16820 OF 2017**

**ORDER:** (per the Hon'ble Justice Sri Suresh Kumar Kait)

Vide the present petition the petitioner, State of Telangana, has challenged the order, dated 28.03.2016, passed in O.A.No.5588 of 2012, whereby the learned Tribunal allowed the O.A. filed by respondent No.1 and consequently set aside the proceedings, dated 16.03.2012, and directed the respondents to reinstate respondent No.1 into service within a period of six weeks from the date of receipt of a copy of the order and regularize the period of suspension and also out of employment in accordance with Rules.

Learned counsel appearing on behalf of the petitioners submits that respondent No.1 was placed under suspension vide office D.O.No.268/2006, dated 08.02.2006, for the following delinquency:

“On 29.01.2006 at about 0700 hrs PC 1980 Sri D. Killer Babu abused HC 574 Sri T. Venkateshwarlu of 10<sup>th</sup> Bn APSP who was attach to 1<sup>st</sup> Bn., in filthy and vulgar language also attempted to beat HC 574”. He also argued with MTO in indecent manner and indisciplined manner.

On 31.01.2006, he was pass ported to report before OC “C” Coy camp at Padara Mahaboobnagar Dist., for performing duties, but he has not reported for duty. While he was under suspension in above case, on 27.03.2006 Sri R. Dharmendra Babu, SI of Police received a credible information about circulation of fake currency. He along with staff and (2) mediators i.e., N. Pedokoti Reddy, Asst., Panchayat Secretary, MRO Office, Guntur and Sri Balasubramanyam, R.I., MRO Office, Guntur rushed to MVR Bar and Restaurant, Nagarapalem and arrested S. Ravi Kumar for exchanging of fake notes and seized 11 fake notes of Rs.500/ denomination. A criminal case vide Cr.No.67/2006, U/s 489(b)(c) r/w 34 IPC of Nagarapalem L&O was registered and further investigation was taken up. On the confession of Sri S. Ravi Kumar, CI West (L&O) Guntur town along with the staff and mediator visited happy home towers, C Block, 3<sup>rd</sup> floor, flat No.202 at Rajender Nagar, R.R. Dist., on 28.03.2006 at 8 AM Sri J. Bhaskara Rao, CI of Police knocked the door and Veera Swamy came out of the flat and tried to close the door, Sri S. Ravi Kumar identified Veera Swamy and stated that he is the person who handed over fake currency notes of Rs.500/ denomination on 26.03.2006 at NGO Kalyanamandapam, Guntur for circulation among the public. Sri J. Bhaskar Rao, Inspector of Police immediately pushed the door by force with the assistance of the above persons and found the following personnel inside the said flat 1. Sri V. Veera Swamy, 2. Sri M. Prabhakar Gupta, 3. P. Someswara, 4. M. Sudhakar, 5. D. Killer Babu (i.e., respondent No.1).

Further, V. Veera Swamy confessed at two months back he paid Rs.50,000.00 genuine notes to Srikanth and received fake currency of Rs.1000/- denomination worth of Rs.1,50,000/- on 01.01.2006 at the house of respondent No.1 and he produced the machinery used to print fake currency notes and he made Sri M. Prabhakar Gupta to produce the following items.

1. UMAX ASTRA 4100 made in China Sl.No.C1 20054003708 Co. Scanner.
2. HP desk jet 3845 printer with cables.
3. AC power adaptor, power cable.
4. HP colour laser jet 2600 N Printer/1 with power card 1
5. HP colour laser jet print cartridge - 1
6. Royal executive bond transplant.
7. Royal Executive Bond transplant print-A4 size white paper bundles.
8. Royal Executive bond transplant print-A4 size white paper bundles.

The respondent No.1 was arrested and produced before the Hon'ble Court, Guntur."

Being aggrieved by the aforesaid order, respondent No.1 preferred appeal petition to DIG-I, APSP Bns, Hyderabad and the same was rejected by the appellate authority vide R.O.O.No.231/2010 (Rc.No.37/A3/appellant/2010), dated 08.06.2010. Again aggrieved by the said order, respondent No.1 filed revision petition, which was also rejected by revisional authority i.e., Additional Director General of Police, APSP, vide order, dated 06.03.2012, and the same was communicated to respondent No.1 vide D.O.No.551/2012, dated 24.03.2012.

Aggrieved by the above orders, the 1<sup>st</sup> respondent filed O.A.No.5588 of 2012 before the Andhra Pradesh Administrative Tribunal and the same was allowed vide order, dated 28.03.2016. Being aggrieved by the said order, the State Government has preferred the present writ petition, whereby stated that there are subsequent judgments passed by the Supreme Court wherein it is held that the punishment can be imposed in the department proceedings even if the person is acquitted in the criminal case on the grounds that the prosecution has failed to establish the charges in the criminal Court. The said view has been

taken by the Apex Court in **Divisional Controller, KSRTC v. M.G. Vittal Rao (3)**<sup>1</sup>.

Learned counsel submits that an enquiry was conducted and respondent No.1 was given full opportunity to prove his innocence. As per APCS (CC & A) Rules, 1991, all the due procedures have been followed in conducting and disposing the departmental action and there are no procedural irregularities. The disciplinary proceedings were conducted on the principle of preponderance of probabilities. As per the settled law, acquittal of the Government servants in the criminal case is not bar to proceed against them departmentally, which are conducted for contravention of Conduct Rules. Learned counsel further submits that the learned Tribunal has ignored this settled proposition of law and allowed the O.A. mentioned above filed by respondent No.1.

Respondent No.1 was appointed as a constable in APSP in 1<sup>st</sup> Bn., in the year 1992. He was placed under suspension pending enquiry and article of charge, dated 24.02.2007, was served upon him by the disciplinary authority. The charge framed against him reads as follows:

“Sri D. Killer Babu PC 1980 of HQ Coy 1<sup>st</sup> Bn., APSP., Hyderabad involved in a criminal case vide Crime No.67/2006 U/s. 489(b)(c) r/w 34 IPC of Nagarapalem L&O P.S., Guntur Dist., for printing of fake currency notes Rs.500 and Rs.1000 denominations and circulating.

Being a responsible Police Constable of a disciplined force, he should maintain absolute integrity, and do nothing which is unbecoming conduct of a Govt., servant but he failed to do so.

By the above act Sri D. Killer Babu PC 1980 has exhibited gross misconduct, lack of integrity and unbecoming conduct of a Govt., Servant. Thus, he violated Rule 3 of APCS (Conduct) Rules, 1964.”

It is pertinent to mention here that simultaneously a criminal case was registered in Crime No.67 of 2006 for the offences punishable under Section 489(b)(c) read with 34 IPC was registered against respondent No.1 and five others by Nagarapalem L&O Police Station, Guntur District for printing of fake

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<sup>1</sup> 2012 (1) SCC 442

currency notes. The said criminal case was tried as Sessions Case No.233 of 2007 by the III Additional Assistant Sessions Judge (FTC), Guntur and vide judgment, dated 24.04.2008, acquitted respondent No.1, who was the 6<sup>th</sup> accused in that case, while convicting the other accused. The said judgment has become final as not challenged by the respondents therein before the higher Court.

We note, the learned trial Court recorded in its judgment that basing on the confession of A1, as per Ex.P6, recovery was made from possession of A2 and A3 and no recovery was made from possession of A4 to A6. As such, Section 235 of the Indian Evidence Act clearly shows that first information report, which has been returned at the instance of a person, who is accused of an offence is inadmissible in evidence under Section 25 of the Evidence Act, unless some recovery in pursuance to his statement is made and that part only is admissible in evidence. Basing on Ex.P6, FIR Ex.P10 was issued and Ex.P6 is the statement of A1, upon which, FIR was registered. Subsequently, recovery was made from possession of A2 and A3 and no recovery was made from possession of A4 to A6, as such, no charges were proved against A4 to A6, as no recovery was made basing upon Ex.P6.

In addition to above, according to Section 489-D IPC, it is the duty of the prosecution to establish that the accused is in possession of machinery, which is used for purpose of counterfeiting currency notes and he did so knowingly. As no machinery was seized from the possession of A2 as contemplated under Section 489-D IPC and nothing was established against A2. Accordingly, A2 was also acquitted for the offences punishable under Section 489-D IPC.

In the present case, all the witnesses, who were in the criminal case, were examined in departmental enquiry, in addition to the commandant under whom



respondent No.1 was working and the said commandant only held preliminary enquiry, but by the final enquiry respondent No.1 was held guilty departmentally on the same set of witnesses as examined in Sessions Case No.233 of 2007.

We note, the learned Tribunal recorded in para 8 of its order that after completing the investigation, police filed charge sheet against six accused showing respondent No.1 as the 6<sup>th</sup> accused and also furnished copy of the judgment to the disciplinary authority. By ignoring the same, the disciplinary authority issued the impugned order. In the enquiry report, the witnesses examined are PW.1 – Sri Sk. Sirajuddin, Assistant Commandant, in whose Batalion respondent No.1 was working at the relevant point of time. PW.2 is Sri R. Dharmendra Babu, S.I. of Police, Nagarampalem (L&O) P.S. Guntur and PW.3 is Sri Bhaskar Rao, Inspector of Police, S.B. Guntur Town, who conducted investigation in the criminal case and filed charge sheet, which was tried as Sessions Case No.233 of 2007. The same witnesses, except the commandant, were examined in the Sessions Court also as witnesses. Similar case fell for consideration before the Supreme Court in case of **G.M. Tank v. State of Gujarat and another**<sup>2</sup>, wherein their Lordships have observed as follows:

“The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their

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<sup>2</sup> 2006 (4) SCJ 1

statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

In the case in hand, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the respondent No.1 and the charge before the Criminal Court are one and the same. It cannot be disputed that the nature of charge in the departmental proceedings in the criminal case is grave. In other words, charges, evidence, witnesses and circumstances are one and the same. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has failed to prove guilt of the respondent No.1 accordingly acquittal order was passed.

It is not in dispute that the judicial pronouncement was made after a regular trial and on hot contest. Therefore, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

In our opinion, such facts and evidence in the departmental as well as criminal proceeding were the same without there being any iota of difference, the respondent No.1 should succeed.

The ratio laid down in the above decision squarely applies to the facts of the present case. By applying the same, the impugned order in Rc.No.426/A6-

II/PR-10/06-09 and D.O.No.2020/2009, dated 31.12.2009, passed by the petitioners is sought to be set aside by the Tribunal. Accordingly, we find no reasons to intervene in the impugned order passed by the learned Tribunal, as there is no illegality and perversity in the said order. Finding no merit, we hereby dismiss the writ petition in limine.

Miscellaneous petitions, if any, shall also stand dismissed. No costs.

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**SURESH KUMAR KAIT, J**

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**Dr. SHAMEEM AKTHER, J**

Date: 01.06.2017  
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