HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.8722 OF 2011

Date: 07.08.2017

Between:

B.Nagabhushanam, S/o Chinnaveeranna,
Aged about 43 years, Ex-Conductor, E.No.401584,
APSRTC, Adoni, presently residing at Ternekal Village,
Devanakonda Mandal, Kurnool district.

.... Petitioner

And

The Regional Manager , APSRTC, Kurnool
and another

.... Respondents

The Court made the following:

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ORDER:

At the relevant point of time, petitioner was working as Conductor. On the allegation of involvement of petitioner in the murder of one Mr. Boya Gopal on 30.05.2007, Crime No.23 of 2007 was registered on the file of Rural Police Station of Adoni, Kurnool District, under Section 302 of Indian Penal Code. Petitioner was shown as accused no.1 in the said crime. Petitioner was arrested and by order of the Court, he was remanded to judicial custody on 20.06.2007. Charge sheet was filed. The petitioner was tried by the II Additional Sessions Court at Adoni in S.C.No.46 of 2009. By the judgment dated 06.04.2010, Sessions Court held petitioner not guilty of the offence alleged against him.

2. By order dated 28.06.2007, petitioner was placed under suspension and on the same day, charge sheet was drawn alleging three charges. The allegation in the first charge is tarnishing the image of the Corporation by involving in criminal offence; allegation in the second charge is failure to intimate to the competent authority regarding his arrest and remand to judicial custody and the allegation in the third charge is cheating the Corporation by obtaining Medical Directing letter from Depot Manager's Office on 01.067.2007 along with ED Pass by hiding the real facts. Domestic enquiry conducted in pursuant to the said charge memo resulted in imposing punishment of removal from service by the order of the disciplinary authority on 02.06.2008. Appeal and revision filed by the petitioner were rejected.

3. After the acquittal was granted to the petitioner, he filed W.P.No.25097 of 2010 challenging the order of suspension and charge sheet and consequential order of disciplinary authority affirmed in the appeal and revision. This Court disposed of the said writ petition by order dated 28.10.2010 granting liberty to the petitioner to make a representation claiming necessary relief duly enclosing the copy of the judgment in SC No.46 of 2009. Court directed respondents 2 and 3 therein i.e., the Regional Manager and the Depot Manager, respectively, to pass orders thereon within a period of two months. Court observed that the removal of the petitioner was solely on account of his involvement in criminal case or there existed any other factors needs to be verified by the respondents. Petitioner submitted his representation dated 28.12.2010 praying to reinstate into service by giving seniority, back-wages and all attendant benefits. In consideration of the said representation, the Regional Manager vide his order dated 15.03.2011ordered reinstatement of petitioner into service as afresh Conductor. He further ordered that petitioner should pay fresh security deposit and that basic pay should be fixed at the minimum of pay in the time scale of Conductor Grade II. Petitioner challenges this decision.

4. Heard learned counsel for petitioner and learned standing counsel for respondent-Corporation.

5. Learned counsel for petitioner would submit that disciplinary proceedings were initiated only on the ground of involvement of the petitioner in a criminal case. Thus, as a

consequence to the acquittal granted by the criminal Court, petitioner is entitled for all the benefits including restoration of his position obtaining as on the date of initial order of suspension and not granting those benefits is *ex facie* illegal. He further submits that in the CCA Regulations, there is no provision of reinstatement as afresh Conductor and the said punishment itself is liable to be set aside on that ground alone. There cannot be a punishment, which is not prescribed in the A.P.S.R.T.C. Employees (CC & A) Regulations governing the respondent-Corporation. In support of his contention, he placed reliance on the decision rendered by this Court in **Regional Manager, APSRTC, Kurnool v. Depot Secretary, APSRTC Employees Union, Kurnool**[1] (WP No.22599 of 2012).

6. The relevant facts are not in dispute. Petitioner was implicated in the crime; was arrested; and later prosecuted before the Sessions Court and ultimately acquitted. Soon after his arrest and detention came to the notice of the competent authority, petitioner was placed under suspension and initiated disciplinary proceedings. As noticed above, charge memo contained three charges. However, only the first charge relates to involvement of the petitioner in crime and as acquittal was granted by the Sessions Court, the said allegation does not survive. Thus two other charges are required consideration. In charge no.2, it was alleged that petitioner did not inform the competent authority about his arrest and detention. On coming to know about the involvement of the petitioner in a crime through local newspapers,

[1] LAWS (APH)-2015-3-7

competent authority requested the Inspector of Police, Adoni for report on his arrest. The Security Head Guard, Adoni, has collected all required documents from the Inspector of Police. Disciplinary authority observed that no intimation was given by the petitioner. The defence of the petitioner that he informed the Superintendent of Jail to inform the competent authority was rejected. With reference to the allegation in the 3rd charge, disciplinary authority opined that petitioner obtained fraudulently Medical Directing letter by stating that his wife's hand was fractured and admitted in a private hospital and that he intended to administer treatment in Tarnaka hospital. The defence of the petitioner that as the Doctor refused to discharge his wife, he could not take her to Tarnaka hospital and only after bail was granted, he took his wife to Tarnaka hospital and got treated was also rejected. Disciplinary authority opined that by giving false declaration and to create alibi of his involvement in criminal case, this Medical Directing letter was invented.

7. Having regard to these facts, the explanation offered by the petitioner was rejected and order imposing punishment of removal from service was made. It is thus seen that two of the three charges leveled in the departmental proceedings are not the same, compared to the charge leveled in the criminal case, though they flow out of the incidents, in which petitioner was implicated in crime. The only basis on which petitioner sought for setting aside the punishment imposed and granting of consequential benefit is on the ground of acquittal in criminal case by the competent Court.

8. In order to appreciate this contention of the petitioner, it is necessary to briefly consider the scope of the acquittal granted by the competent criminal court vis-à-vis disciplinary action taken against an employee.

9. Criminal law requires that the charges leveled against a person must be proved beyond reasonable doubt and burden lies on the prosecution to establish the charges. Any deficiency and element of doubt will go against the prosecution. On the contrary, departmental proceedings are with reference to conduct of the employee and continuation of the relationship of employee and employer. The relationship of employee –employer is based on trust and confidence of the employer on the employee. Even if the employer has an element of doubt on the conduct and character of the employee, employer may not be willing to continue the employee in his service. However, before taking action against an employee in public service, the employer is required to follow due process and on establishment of charges leveled against him appropriate punishment can be imposed. In domestic enquiry on the charges leveled against the employee what is required is preponderance of probabilities of the charges leveled against him. If employee admits of the allegations made against him, there is no need to conduct enquiry and employee can straight away be dismissed. An admission made in any form can be used against him to hold him guilty. Circumstantial evidence can be taken into consideration to hold that the charge is proved and to impose appropriate punishment. Thus, nature of evidence required in the

departmental proceedings is quite different from the nature of evidence that is required in criminal proceedings.

10. In **DIVISIONAL CONTROLLER, KARNATAKA STATE ROAD TRANSPORT CORPORATION Vs M.G.VITTAL RAO**[2], Supreme Court reviewed the entire case law on the subject and held that even if a person stood acquitted by criminal Court, domestic enquiry can be held, as standard of proof required in domestic enquiry and that in a criminal case are altogether different. In criminal case, standard of proof required is beyond reasonable doubt while in domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. (Para 11).

11. Supreme Court held that CAPT M.PAUL ANTHONY Vs BHARAT GOLD MINES LTD AND ANOTHER[3] does not lay down the law of universal application. Facts, charges and nature of evidence, etc., involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. (Para 24).

12. In **KARNATAKA SRTC v. M.G. VITTAL RAO**[4]**,** Supreme Court held :

> "11…………………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.

[2] (2012) 1 SCC 442
[3] (1999)3 SCC 679
[4] (2012) 1 SCC 442

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19. In **SBI v. R.B. Sharma—(2004) 7 SCC 27**, same view has been reiterated observing that both proceedings can be held **simultaneously, except where departmental proceedings in criminal case are based on same set of facts and evidence in both the proceedings is common**. The Court observed as under: (SCC p. 31, para 8)

> "*8.* The purpose of departmental enquiry and of prosecution are two different and distinct aspects. 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 [a] public duty. The departmental enquiry is **to maintain discipline in the service and efficiency of public service**."

....

....

24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in *Capt. M. Paul Anthony*[8] does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry." (emphasis supplied)

13. On analysis of the precedents on the subject common thread that can be seen in the judicial pronouncements is merely because an employee is acquitted of the charges in the criminal proceedings, it does not automatically absolve an employee of the

charges leveled against him in the departmental proceedings, as a matter of course. It is also to be noted that even if the allegations are based on the same set of facts and material on record both in departmental and criminal proceedings, it does not automatically follow that employer is required to be restrained from proceeding departmentally. There can be no straitjacket formula to set aside departmental proceedings as a consequence to the acquittal in criminal case. Each case is required to be considered on its merits, by the Constitutional Courts whenever an issue of this nature comes up before the Court.

14. In the case on hand, as noted supra only first charge relates to involvement in crime. Two other charges are independent and directly relate to master and servant relationship. Thus, mere acquittal in criminal case has no bearing on the two other charges.

15. Learned counsel for petitioner further emphasized that question of appointment as a fresh candidate in exercise of disciplinary control does not arise and, therefore, the order impugned is liable to be set aside on that ground.

16. In W.P.No.25097 of 2010, petitioner challenged all the orders in the disciplinary proceedings. The Court was not inclined to set aside those proceedings, but granted liberty to the petitioner to make a representation. This Court directed the petitioner to make a representation and on making such representation, the Court directed the Regional Manager and the Depot Manager to consider the representation and to pass orders. The Court never directed to review the punishment earlier imposed, but only directed to

consider the representation. Thus, the order passed by the Regional Manager cannot be seen as in continuation to the earlier disciplinary proceedings. As noted above, the order of removal passed by the disciplinary authority was affirmed by the appellate authority and the reviewing authority. Having regard to the subsequent acquittal granted, decision was taken by the competent authority to grant limited relief to the petitioner. He, therefore, directed appointment of the petitioner as afresh Conductor. It appears that the Regional Manager took sympathetic view. Thus, it cannot be said that decision to appoint petitioner as Conductor afresh is erroneous. It is also relevant to note that in domestic enquiry charges are established by cogent material. In the facts of this case, the decision relied by the petitioner does not come to the aid of the petitioner.

17. I do not see any error in the decision of the Regional Manager appointing petitioner as Conductor afresh, impugned in the writ petition, warranting interference by this Court. Petitioner is not entitled to higher relief than what was granted by Regional Manager.

18. Writ petition is dismissed accordingly. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE P. NAVEEN RAO

Date: 07.08.2017
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