

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 726 of 2003**

- Aju Ram, aged about 48 years, S/o Late Shri Dharmu Ram, R/o Village Pitoli, Tahsil and District Kanker (C.G.)

---- Petitioner**Versus**

1. Commandant 30th Battalion, Special Armed Force, Jagdalpur, District Bastar (C.G.)
2. State of Chhattisgarh, through the Home Secretary, Dau Kalyan Singh Bhawan, Raipur, Tahsil and District Raipur (C.G.)

---- Respondents

For Petitioner
For Respondent-State

Shri C. R. Sahu, Advocate
Shri Akash Pandey, PL

Hon'ble Justice Mr. Prashant Kumar Mishra**Order On Board****24/06/2019**

1. Petitioner would call in question the legality, validity and correctness of the order dated 30.09.1996 i.e Annexure-A-4, whereby he has been dismissed from service upon proving of charges for which he was sent for departmental enquiry.
2. At the relevant time i.e. on 09.04.1996, the petitioner was posted as Constable at 30th Battalion SAF, Post Bheji, District Jagdalpur. During 9 to 10 pm, a scuffle took place between the petitioner and Constable Trademan 938 Mevalal, whereupon the petitioner brought out his service rifle, loaded 5 cartridges and pointed the rifle towards Mevalal. At that time, Constables Shankar Lal and

Babulal Sidar reached the place, intervened and taken the service rifle from petitioner's hands. At that time, one cartridge was found in the chamber of the rifle, whereas 4 cartridges were found in the magazine. For this act of the petitioner, Criminal Case No.5/1997 was registered for the offence under Sections 294 and 506-B of IPC. In criminal trial concerning the said offence, the petitioner was acquitted by the judgment dated 10.08.2000 passed by the JMFC Sukma. The petitioner was also proceeded departmentally by issuance of charge sheet vide Annexure-P-1 on two charges that he manhandled with Mevalal and pointed the service rifle towards him and that the said act of the petitioner was a threat to the security and life of the camp and its inmates. It also amounts to negligence, indiscipline and doubtful conduct.

3. In course of enquiry, as many as 14 witnesses were examined including Mevalal, Shankar Lal and Babulal, whose names have been mentioned in the charge sheet itself. In addition, other eye witnesses namely Rajbhan Singh, Mahidhar Prasad Sharma etc. were also examined. Rajbhan Singh had submitted a report to the Superior Police Officers and has proved the said report during his cross-examination by the Enquiry Officer. By a detailed analysis, the Enquiry Officer found both the charges proved against the petitioner. The Disciplinary Authority accepted the report of the Enquiry Officer and imposed penalty of dismissal from service, which has been affirmed in appeal.

4. The main ground of attack in this writ petition is that in the criminal case based on the same set of facts, the petitioner was acquitted, therefore, the punishment of dismissal from service deserves to be set aside. It is also argued by Shri C. R. Sahu, learned counsel for the petitioner that principles of natural justice were not followed while conducting enquiry, therefore, the order of termination suffers from arbitrariness.
5. Per contra, Shri Akash Pandey, learned State counsel would submit that the Enquiry Officer has found both the charges proved and there is no material to demonstrate that principle of natural justice was not followed, therefore, the order passed against the petitioner does not call for any interference.
6. The issue as to when a criminal case and a departmental enquiry should not be allowed to run simultaneously has been dealt with by the Supreme Court succinctly in the matter of **G. M. Tank vs State of Gujarat and Anr.**¹ In the said matter, the following has been held at paragraphs 28 & 29:-

“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

¹ AIR 2006 SC 2129

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. It is thus settled that there is no straitjacket or inflexible rule under which the departmental proceedings may or may not be stayed pending trial of the criminal case and there would be no bar to proceed simultaneously with the departmental enquiry and trial of a criminal case. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. While criminal trial is conducted in accordance with the proved offence as per the evidence defined under the Evidence Act; converse is the case of departmental enquiry, which relates to conduct or breach of duty of a delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law.
8. In the case at hand, the petitioner was sent for criminal trial on the allegation of causing hurt and criminal intimidation, whereas the charges in the departmental enquiry were of committing negligence, indiscipline and creating an atmosphere to inflict sense of insecurity putting the life of the inmates of the Police Camp at risk. Thus, the charges in the criminal trial and that in

the departmental enquiry were different in nature, though they may relate to a single event. A particular event may give rise a criminal case as well as misconduct under the relevant service rules. Therefore, acquittal in a criminal case may not by itself prove that the departmental enquiry should be set at naught on the basis of acquittal. Reverting back to the material available against the petitioner in the enquiry report, it is to be seen that almost all the witnesses examined in course of enquiry have deposed against the petitioner. The witnesses namely Rajbhan Singh, Mahidhar Prasad Sharma, Babulal, Shankar Lal and Mevalal have proved that they were present on the spot and had seen the petitioner pointing his service rifle towards Mevalal. In a naxal affected area like Bheji, Kota in the District of Jagdalpur, such indiscipline on the part of the member of uniformed service is not desirable. The petitioner did not cross examine most of the witnesses including the above mentioned witnesses in course of their deposition before the Enquiry Officer. The petitioner having himself waived his right to cross-examine the witnesses should not be allowed to argue that principles of natural justice have been violated.

9. It is also mentioned in the enquiry report that the entire enquiry was conducted in the petitioner's presence and he was supplied each and every document including the statement of witnesses and was also afforded full opportunity to cross-examine the witnesses. Thus, there appears no violation of principles of natural justice either before or during conduct of enquiry against the petitioner. The enquiry report would deal in detail the

evidence against the petitioner, therefore, it is not a case where the petitioner has been dismissed from service without there being any material against him.

10. The Supreme Court in the matter of **State Bank of Bikaner and Jaipur vs Nemi Chand Nalwaya**² has held that the Writ Court should not ordinarily interfere with the finding of the Enquiry Officer. Having examined the record, I do not find any illegality or perversity in the finding recorded by the Enquiry Officer, which is fully borne out of the materials available against the petitioner.
11. In view of what is discussed above, there is no ground for interference with the impugned order of dismissal from service.
12. The writ petition has no substance. It fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Nirala

² (2011) 4 SCC 584