

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 15 of 2018

Judgment Reserved On : 22/04/2019

Judgment Delivered On : 21/06/2019

- Om Prakash Singh S/o Late Shri S.P. Singh Aged About 53 Years Ex. Constable, C.I.S.F. Unit R/o Bhilai District Durg Chhattisgarh.

---- Appellant

Versus

1. Union Of India Ministry Of Home Affairs Through The Director General (North Sector) Central Industrial Security Force Block No. 13 C.G.O. Complex, Lodhi Road New Delhi - 110003.
2. The Deputy Inspector General C.I.S.F. Sector - 3 B.S.P. Unit Bhilai, District Durg Chhattisgarh.
3. The Commandant (Appointing - Authority) C.I.S.F. Sector - 3, B.S.P. Unit Bhilai District Durg Chhattisgarh.
4. The Deputy Commandant (Enquiry Officer) C.I.S.F. Sector - 3, B.S.P., Unit Bhilai, District Durg Chhattisgarh.

---- Respondent

For Appellant	: Shri VG Tamaskar, Advocate.
For Respondents	: Shri R.K. Gupta, Advocate.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Parth Prateem Sahu, JJ**

C A V Judgment

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. The appellant is aggrieved by the order passed by the learned

Single Judge on 28.11.2017 in WPS No.6819/2007 dismissing his writ petition which in turn had called in question the order dated 16.3.2007 passed by the competent authority dismissing the appellant's representation/appeal against the order of penalty whereunder the appellant was imposed punishment to retire him compulsorily on the strength of finding recorded against him in the disciplinary enquiry.

2. The appellant was appointed as Constable in the Central Industrial Security Force (for short 'CISF') in 1982. While he was posted at Hirri Mines on 14.5.2002, his wife and children illegally entered the place of his duty and started raising quarrel while using abusive language. They also tried to snatch the gun in his possession and in the said sequence, 3 rounds were fired from his gun. The appellant was tried for committing offence under Section 307 of the IPC for trying to commit murder of his wife. However, in the said criminal case, the appellant was acquitted.
3. For the appellant's act of causing fire from his service arms, a charge sheet was issued to him on 2.7.2002 to which the appellant submitted his defence on 10.7.2002 denying the charge. Thereafter a departmental enquiry was constituted against him appointing Deputy Commandant, CISF Unit, BSP Bhilai as enquiry officer. On appellant's appearance, his first plea was recorded but

thereafter the appellant did not participate in the proceeding despite receipt of repeated enquiry notices issued by the enquiry officer. Therefore, he was proceeded ex-parte and 13 witnesses were examined during the course of enquiry. Copies of all the statements were provided to the appellant and on conclusion of enquiry, report was submitted to the disciplinary authority finding the charge proved against the appellant. Copy of the enquiry report was supplied to the appellant on 6.4.2003 whereagainst he submitted his representation on 3.7.2003. Vide order dated 20.7.2003, the disciplinary authority i.e. Commandant, CISF Unit BSP, Bhilai, awarded penalty of compulsory retirement from service along with full pension and gratuity to the appellant.

4. After imposition of penalty, the appellant straightway moved before this Court by filing Writ Petition No.93/2006, which was disposed of on 8.1.2007 directing the competent authority to consider and decide the appellant's appeal/representation in the light of decision of the Supreme Court in the matter of **G.M. Tank Vs. State of Gujarat & Another** {AIR 2006 SC 2129}.
5. The appellant's representation/appeal was rejected on 16.3.2007 against which the present Writ Petition came to be filed and has been dismissed on merits.
6. We have heard learned counsel for the appellant and perused the

record.

7. The main thrust of argument raised at the Bar would revolve around the permissibility of imposition of penalty when the appellant has already been acquitted in the criminal case wherein he was charged for committing offence under Section 307 of the IPC against his wife in the same incident.
8. In the matter of **G.M. Tank** (Supra), the Supreme Court held thus at paras-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 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."

9. It is thus settled that there is no straitjacket or inflexible rule under which departmental proceeding may or may not be stayed pending trial in the criminal case and that 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 the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law.

10. When the appellant's argument is tested in the light of settled legal position, as has been held by the Supreme Court in the matter of **G.M. Tank** (Supra), it is to be noticed that in the criminal trial the appellant has been acquitted by giving benefit of doubt and it was not the case of clear acquittal. While in criminal case, he was charged for attempting to commit murder of his wife, in the departmental enquiry there was no allegation of attempting to commit murder of his wife, but the charge was of misusing service arms/gun by firing 3 rounds therefrom while on duty.
11. The facts constituting criminal case and the misconduct alleged in the departmental enquiry though arising from the same incident, are different in nature. Therefore, the learned Single Judge has rightly dismissed the writ petition preferred by the appellant.
12. There is no substance in the present Writ Appeal, it deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Parth Prateem Sahu)
Judge