

A.S.Manjrekar	...	Appellant
versus		
Bombay Port Trust and Anr.	...	Respondents

Mr. K.P.Anilkumar with Mr. Priyanka Kumar, Ms. Roshmi Nipani, for Appellant.
Mr. R.S.Pai with Mr. Anand R. Pai, Ms. Rama Rageshwaran i/by M/s. Mulla and
Mulla and Craigie Blunt and Caroe, for Respondents.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 3rd OCTOBER, 2019

1. This Letter's Patent Appeal is filed by the original petitioner who was employed by the respondent No.1 - Bombay Port Trust, as a watchman. He has challenged the judgment of the learned Single Judge dated 7th June, 2010 in writ petition No.3406 of 1997. The learned Single Judge has dismissed the writ petition and confirmed the award of the Central Industrial Tribunal, in which the tribunal had dismissed the reference of the workman against the departmental action of dismissal taken by the respondent No.1 - BPT.

The appellant-workman was employed as a watchman by BPT. Allegedly, on 6th July, 1988 he was found in unauthorized possession of tin of oil of one gallon at

about 5.30 p.m. in the evening near the open space opposite the fire station in the premises of BPT. A criminal case was instituted against him, which was tried by the Metropolitan Magistrate, Mumbai being case No.309/P/1988. The learned Magistrate by his judgment dated 10th February, 1989 acquitted the workman of the charge of theft levelled against him. In the meantime, the employer had placed the workman under suspension. After the judgment of the acquittal rendered by the learned Magistrate, he was visited with the chargesheet dated 7th March, 1989. This chargesheet contained two charges. Charge Article I was that :

“Article – I

Shri Manjrekar committed an act listed in Regulation 22(2) of the Bombay Port Trust Rules and Regulations for non-Scheduled Staff in that when checked by the Crime Detection Branch of Yellow Gate Police Station at 5.30 p.m. on 6th July, 1988 near the open space opposite Fire Station, Prince’s Dock, he was found to be in unauthorized possession of a refined vegetable oil tin of one gallon capacity. He has thus failed to maintain absolute integrity and devotion to duty and violated Regulation 3(1) of the Bombay Port Trust Employees (Conduct), Regulations, 1976.

3. Charge Article – II was a sequel to the first charge alleging that before the Investigating Officer on 23rd August, 1988 the workman had falsely stated that he had chased a vagrant carrying the oil tin, which he dropped and ran away upon being challenged. It was at which point of time, the police officer during the round came and inquired with the delinquent about being in possession of the oil tin.

4. The delinquent employee denied both the charges, upon which a departmental inquiry was conducted. The inquiry officer submitted his report dated 26th September, 1989. He held that the charge Article – I was proved. However, with respect to charge Article – II, he was of the opinion that for raising his defence, the delinquent cannot be chargesheeted. Whether such a defence is believed or not is a different question. He cannot be held guilty of making a false and misleading statement by way of his defence.

5. Copy of the inquiry report was supplied to the delinquent. He made his representation against the finding therein. The disciplinary authority by his order dated 1st January, 1990 concurred with the finding of the inquiry officer. He held that the principles of natural justice were followed. He found that there were no extenuating circumstances to impose lesser punishment. Accordingly, by an order dated 1st January, 1990, he imposed punishment of dismissal from service.

6. The delinquent filed the departmental appeal and review. After both the proceedings were dismissed, he raised the industrial dispute. The tribunal rendered Award Part I holding that the principles of natural justice were followed and the enquiry was properly conducted. In Part II Award dated 15th July, 1996, he held that the action of the management in dismissing the workman from service was just legal and proper.

7. The delinquent thereupon approached this Court by filing writ petition.

The learned Single Judge dismissed the writ petition by the impugned judgment. Before the learned Single Judge, the delinquent had contended that once he was acquitted by the criminal court, the departmental proceedings could not have been initiated on the same set of evidence and could not have been held guilty of the charges. The learned Single Judge rejected the said contention, dismissed the petition and confirmed the award of the industrial tribunal. Thereupon, the present appeal has been filed.

8. Appearing for the appellant-workman, learned counsel raised the following contentions : (i) the chargesheet was based on wrong foundation. He submitted that the chargesheet refers to the rules and regulations applicable to the non-schedule employees, whereas the workman was the schedule employee; (ii) the inquiry officer was not the employee of the BPT. This was impermissible as per service rules; (iii) the chargesheet was vague, it refers to lack of devotion to duty in general terms, no specific misconduct is alleged. In support of this contention, he has placed heavy reliance on the decision of the Supreme Court in the case of Capt. M. Paul Anthony V/s. Bharat Gold Mines Ltd. & Anr.¹ (iv) after acquittal by the criminal court, the departmental proceedings were not maintainable on the same set of evidence once the criminal court had acquitted the workman; (v) the disciplinary authority committed an error in holding that the charge was proved.

1 (1999) 3 SCC 679

9. He submitted that the disciplinary authority as well as appellate and reviewing authorities have not given any reasons. In other words, these orders are unreasoned orders.

10. On the other hand, counsel for the management opposed the appeal contending that after following the principles of natural justice, the departmental inquiry was conducted. The charges were held to have been proved on the basis of reliable evidence brought on record. The tribunal has also assessed such evidence and came to the conclusion that the action of the employer was just and proper. The learned Single Judge has also examined all aspects of the matter. He therefore, submitted that the Letters Patent Appeal be dismissed. He relied on the decision in the case of *Manager, R.B.I. Bangalore V/s. S. Mani & Ors.*² He also drew our attention to a recent decision of the Supreme Court in the case of *Management of Bharat Heavy Electricals Limited V/s. M. Mani*³.

11. Having heard the learned counsel for the parties and having perused the documents on record, we find that the evidence on record has been assessed at several levels. Once the oral inquiry was over, the inquiry officer submitted his report. In such inquiry report, he had discussed the evidence at length and found that the Charge Article I was duly established. With this finding, the disciplinary authority agreed after taking into account the representation of the delinquent. This order was

² AIR 2005 SC 2179

³ (2018) 1 SCC 285

subjected to appeal and review and thereafter, challenged before the tribunal. The tribunal has once again examined the evidence on record and by reasoned order, while rejecting the reference of the workman, come to the conclusion that the action of the employer was just and proper. Thereafter, the learned Single Judge has also examined such evidence and found no reason to interfere with. At various levels thus, findings of facts arrived at during the inquiry have been scrutinized. We have absolutely no reason to take a different view.

12. The delinquent has also not raised any ground of breach of natural justice in conduct of the inquiry, except for suggesting that the inquiry officer was not correctly appointed. His counsel, we may recall, had argued that the inquiry officer was not the employee of the BPT and he therefore, could not have been appointed as inquiry officer. For two reasons, we are not inclined to accept this contention. Firstly, during the entire inquiry, no such ground was raised. In other words, the delinquent participated in the conduct of the inquiry right upto the stage where the final order of punishment was passed, without raising any dispute about the authority of the person so appointed, to act as a inquiry officer. Secondly, even before us, no service rules or regulations have been cited to argue that as per the service rules of the employer, no person who is not an employee could act as an inquiry officer. Unless there is any such restriction imposed in the service rules, such limitation cannot be readily presumed. It is well known in the service parlance, the disciplinary authority who on account of

his responsibilities and lack of sufficient time is unable to conduct the inquiry himself, may appoint a person to act as inquiry officer who would allow the parties to produce evidence on record and conduct inquiry in consonance with the service rules and principles of natural justice and submit his report to the disciplinary authority. The findings of the inquiry officer are in the nature of his conclusion and recommendation to the disciplinary authority and are not binding to the disciplinary authority. This contention of the appellant is therefore, rejected.

13. We do not find that the chargesheet is either vague or invalid, since it in general terms, alleges lack of devotion to duty on the part of the employee. If one reads the chargesheet as a whole and in particular, the imputation of the charge Article – I, the stand of the department which comes out is that the delinquent was found in his unauthorized possession of oil tin when he was challenged by police officer during the round. The chargesheet points out that the delinquent had removed such vegetable oil tin unauthorizedly from the shed where such oil tins were stored. He had tried to take it for his own use and had kept the tin in his bag. When he was about to leave the dock, his suspicious movements aroused curiosity in the policemen of the crime detention squad of the nearby police station. His bag was searched and he was found in possession of the tin of vegetable oil.

14. Thus, the charge was specific. Details of imputation of charge were also specific and delinquent was not left to guess, as to the precise charges levelled against

him and against which he was defending himself. Merely because the chargesheet refers to a regulation pertaining to non-schedule employee, whereas the delinquent was a schedule employee, would not vitiate the chargesheet. It can at best be said to be a curable defect and not foundational error which could vitiate the entire departmental proceedings. The orders of disciplinary and higher authorities cannot be stated to be non-reasoned orders. While agreeing with the findings of the inquiry officer, it is not necessary to discard entire evidence on record.

15. We now come to the last surviving contention of the appellant and one which was most strenuously argued before us namely that after the acquittal of the criminal court, the employer could not have held the charge which was identical in nature as proved.

16. Before advertng to the materials on record in this context, we may trace the legal position as laid down by various decisions of the Supreme Court. In the case of *Depot Manager, Andhra Pradesh State Road Transport Corporation V/s. Mohd. Yousuf Miya, etc.*⁴, a three Judge Bench of the Supreme Court had considered at length the permissibility and adviseability of simultaneous proceedings against an employee before the criminal court as well as departmently. In such decision, it was observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the

4 AIR 1997 SC 2232

question is whether the respondent is guilty of such misconduct as would merit his removal from service or a lesser punishment. Whereas in the criminal proceedings, the question is whether the offences registered against him are established and if established, which sentence should be imposed. It was further observed that the standard of proof, the mode of inquiry and the rules governing the inquiry and trial in both the cases are entirely distinct and different. It was concluded that staying of disciplinary proceedings pending criminal proceedings should not be a matter of course. It was observed that 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. It was observed that in departmental proceedings, strict standard of proof or applicability of the Evidence Act, stand excluded. The proof in such case is not as high as in an offence in a criminal charge. The evidence required in departmental enquiry is not regulated by the Evidence Act.

17. This decision in the case of *Depot Manager, Andhra Pradesh State Road Transport Corporation (supra)* came up for consideration in a later decision in the case of *Capt. M. Paul Anthony (supra)*, in which Two Judge Bench of the Supreme Court culled out the principles as under :

“22. The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simulataneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identifical and similar set of facts and the charge in the criminal case agaisnt the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

18. Considering the facts of the case on hand, in the said decision of Capt. M. Paul Anthony (supra), the Supreme Court concluded as under :

“34. There is yet another reasons for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, “the raid conducted at the appellant’s residence and recovery of incriminating articles therefrom”. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of

approach and burden of proof, would not be applicable to the instant case.”

19. It can thus be seen that the Court in the said case found that the criminal case and the departmental inquiry were based on identical facts. The findings recorded by the enquiry officer were based on the same evidence which was already examined by the criminal court, in which the Court had come to the conclusion that no search was conducted nor any recovery made from the residence of the delinquent and thus the whole case of the prosecution was thrown out and accused was acquitted.

20. In the case of *Manager, R.B.I. Bangalore V/s. S. Mani and Ors.*⁵ a similar issue came up for consideration before the three Judge Bench of the Supreme Court. The following observations of the Court may be noted :

“13. Recently in Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Another [(2004) 8 SCC 200], one of us, Santosh Hegde, J., speaking for a 3 – Judge Bench observed :

“25. The next contention addressed on behalf of the respondents is that the Labour Court ought not to have brushed aside the finding of the criminal Court which according to the learned Single Judge “honourably” acquitted the accused workmen of the offence before it. We have been taken through the said judgment of the criminal Court and we must record that there was such “honourable” acquittal by the criminal Court. The acquittal by the criminal Court was based on the facts that the prosecution did not produce sufficient material to establish its charge which is clear from the following observations found in the judgment of the criminal court : “Absolutely in

5 AIR 2005 SC 2179

the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC.”

26. Learned counsel for the respondents in regard to the above contention relied on a judgment of this Court in the case of Capt. M. Paul Anthony. In our opinion, even that case would not support the respondents herein because in the said case the evidence led in the criminal case as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence, this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. It is to be noted that in that case the finding by the Tribunal was arrived at in an ex parte departmental proceeding. In the case in hand, we have noticed that before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal Court and the Labour Court were entirely different. Therefore, it was open to the Labour Court to have come to an independent conclusion dehors the finding of the criminal Court....”

It was observed :

“From the above, it is seen that the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. The observations therein indicate that the Labour Court is not bound by the findings of the criminal Court.”

21. In the case of Management of *Bharat Heavy Electricals Ltd.* (supra) it was reiterated that the acquittal in criminal proceedings would not necessarily result into

the exoneration in the departmental inquiry. In the said case, the employee was acquitted of the charge of theft in criminal case, but was found guilty during the departmental inquiry. While upholding the action of the management, the Supreme Court made the following observations :

“22. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal court is of no avail. It is held that even if a person stood acquitted by the criminal court, domestic enquiry can still be held – the reasons being that the standard of proof required in a domestic enquiry and that in 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. (See Karnataka SRTC v. M.G.Vittal Rao (2012) 1 SCC 442 : (2012) 1 SCC (L & S) 171”

22. With this legal background, we may revert to the facts on record. The learned Magistrate found that the prosecution had examined four witnesses. Two of the panch witnesses, P.W.2 and P.W.4 had turned hostile. Their testimony was therefore, discarded. P.W.3 Ashok A. Raorane, Police Officer, who had caught the delinquent at the site, had supported the prosecution. The learned Judge refused to base the conviction on his testimony on the ground that there is no independent corroboration to his evidence by an independent witness like the panch witness. This was the main ground on which the delinquent came to be acquitted. As against this,

in the departmental inquiry, several witnesses were examined including P.W.3 in the criminal case. Taking into account all such statements, the inquiry officer held that the Charge Article I was proved. With such finding, the disciplinary authority concurred. This finding was subjected to appeal, revision and reference and examined in writ petition. We do not find that the ratio as discussed by the Supreme Court in the case of Capt. M. Paul Anthony (*supra*) can be applied in such set of facts. To begin with this was not a case where the learned Magistrate had found the prosecution case completely not reliable rejecting the very theory of delinquent being intercepted by police officer on duty. The learned Magistrate did not convict the accused only on the ground that except for P.W.3 there was no other independent witness who had corroborated this allegation.

23. The theory of the difference of level of proof required in criminal trial viz-a-viz departmental inquiry would squarely apply in the present case. As is well settled, the nature of proof required to convict the accused in criminal case is one the charge being proved beyond reasonable doubt against the nature of proof of preponderance of probabilities applicable to departmental proceedings. The evidence before the criminal court and in the departmental proceedings was not identical.

24. In the result, the Letters Patent Appeal is dismissed.

(S.J.KATHAWALLA,J.)

(AKIL KURESHI,J.)