

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.11447 of 2017

ORDER: (Per the Hon'ble Sri Justice A.Rajasheker Reddy)

This Writ Petition is filed challenging the order, dated 24.11.2015, in O.A.No.398 of 2015, on the file of the learned Administrative Tribunal, whereby and whereunder the learned Tribunal set aside G.O.Rt.No.113, Transport, Roads & Buildings (Vig.I) Department, dated 23.01.2014, which was issued for recovery of Rupees one lakh from the first respondent herein – applicant before the Tribunal (hereinafter referred to as, the applicant). The learned Tribunal also set aside the Show Cause Memo dated 23.01.2014 whereby the applicant was directed to show cause as to why he should not be imposed punishment of 25% cut in his pension based on the enquiry report.

2. Learned Government Pleader appearing for the petitioners submits that the scope of departmental enquiry and criminal proceedings are totally different. Though the applicant was acquitted in criminal case by giving benefit of doubt, the Tribunal construed the same as “honourable acquittal” and set aside the show cause notice and also proceedings for recovery of amount. She further submits that, ordinarily this Court will not interfere with the proceedings at the stage of show cause notice. It is for the disciplinary authority to consider the said aspect after the applicant files the explanation to the show cause notice. She also submits that in criminal case proof beyond

reasonable doubt is required to prove the guilt, whereas preponderance of probabilities is sufficient for indicting the delinquent officer in disciplinary proceedings. This distinction was not noted by the Tribunal while allowing the Original Application filed by the applicant. She also further submits that, the applicant himself admitted that he has committed mistake and basing on the same, recovery was ordered. Having admitted the same, it is not open for the applicant to challenge the same and the Tribunal has also lost sight of the said fact and passed the impugned order. She relied on **Samar Bahadur Singh v. State of Uttar Pradesh**¹ and **Avinash Sadashiv Bhosale v. Union of India**².

3. On the other hand, learned counsel for the applicant submits that the charges in the disciplinary proceedings and criminal proceedings are identical and the criminal Court acquitted the applicant on merits. As such, the Tribunal rightly set aside the proceedings impugned before it. He further submits that the disciplinary proceedings are summary in nature while the trial before the criminal Court is elaborate. As such, the Tribunal rightly set aside the impugned proceedings. In support of his contention, he relied on **G.M.Tank v. State of Gujarat**³ and **Government of Andhra Pradesh v. V.Yellaiah**⁴.

¹ (2011) 9 SCC 94

² (2012) 13 SCC 142

³ (2006) 5 SCC 446

⁴ 2014 (1) ALT 283 (DB)

4. In the instant case, the criminal Court in its judgment in C.C.No.269 of 2006, after considering the evidence, held that the acquittal is based on benefit of doubt. But, the Tribunal, construing the same as on merits, granted the relief. Though the charge is same in both the cases, in criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt, whereas in a departmental proceedings, the department has to prove only preponderance of probabilities (See **Samar Bahadur Singh's** case (supra)). When once acquittal is on benefit of doubt, it is not on merits. The Code of Criminal Procedure or any penal law does not define or mention anything like "honourable acquittal". It is only the Courts, which had coined the term as "honourable acquittal" depending on the facts and circumstances of each case meaning thereby acquittal on merits not on technical grounds. But, in the present case, when once acquittal is on benefit of doubt, it cannot be said to be on merits. The Tribunal has not distinguished the said fact.

5. In **Avinash Sadashiv Bhosale's** case (supra) it was observed as follows:

"57. Mr. Dwivedi, in our opinion, has rightly pointed out that the conduct of the criminal trial was in the hands of the prosecuting agency. Having registered the First Information Report, the Bank had little or no role to play, apart from rendering assistance to the prosecuting agencies. In our opinion, the failure of the prosecution in producing the necessary evidence before the trial court can not have any adverse impact on the evidentiary value of the material produced by the Bank before the Inquiry Officer in the departmental proceedings. Before the Inquiry Officer, the Bank had placed on the record all

the relevant documents which clearly establish that the appellant had exceeded his discretionary powers in purchasing the cheques and issuing demand drafts to show undue favour to the three construction companies named in the charge sheet. In view of the above, the findings recorded by the Inquiry Officer can not be said to be based on no evidence.

58. It is a settled proposition of law that the findings of Inquiry Officer cannot be nullified so long as there is some relevant evidence in support of the conclusions recorded by the Inquiry Officer. In the present case, all the relevant documents were produced in the Inquiry to establish the charges levelled against the appellant. It is a matter of record that the appellant did not doubt the authenticity of the documents produced by the Bank. He merely stated that the signature on the documents were not his. The aforesaid statement of the appellant was nullified by Mr. S.M. Mahadik, who appeared as a witness for the Bank. He clearly stated that he recognized the signature of the appellant as he had been working as his subordinate.

59. The findings recorded by the Enquiry Officer cannot be said to be based on no evidence. In such circumstances, the appellant cannot take any advantage of the findings of innocence recorded by the criminal court. The 'clean chit' given by the learned Magistrate was influenced by the failure of the prosecution to lead the necessary evidence. No advantage of the same can be taken by the appellant in the departmental proceedings.

60. We also do not find any merit in the submissions made by Mr. Jain that the order by the Disciplinary Authority is vitiated by non- application of mind. The extracts reproduced above would clearly indicate that the Disciplinary Authority was alive to all the submissions made by the appellant. The Disciplinary Authority had taken into consideration all the relevant material and only then concluded that the charges have been duly proved against the appellant. Furthermore, it is a matter of record that the appellant was duly supplied a copy of the Inquiry Report and he had submitted detailed objections to the same. These objections were placed before the Disciplinary Authority together with the Inquiry Report. Therefore, the appellant can not possibly claim that there has been a breach of rule of natural justice.

61. Similarly, the Appellate Authority has also given cogent reasons in support of its conclusion. This is also apparent from the extract of the order of the Appellate Authority reproduced above.

62. In view of the aforesaid, we find no merit in this appeal and the same is hereby dismissed.”

6. In view of the above, we are of the opinion that the Tribunal on erroneous view of the matter set aside the show cause notice as well as the recovery proceedings. One more aspect that is to be considered is, ordinarily Courts will not interfere with the proceedings at the stage of show cause notice, unless the same is without jurisdiction. It is not the case before the Tribunal that the authorities have no jurisdiction to issue the show cause notice. On that ground also the order of the Tribunal is liable to be set aside. No doubt the Apex Court in **G.M.Tank's** case (supra) held that when identical charges are there in criminal proceedings and disciplinary proceedings, the charges have to be quashed, if the acquittal is on merits. The facts before the Division Bench in **V.Yellaiah's** case (supra) are different, as such the same has no application to the facts of the case.

7. As far as recovery proceedings are concerned, the same is issued basing on enquiry report after issuance of show cause notice and after considering the explanation filed by the first respondent, as such no interference is called for.

8. For the aforesaid reasons, we are of the view that the impugned order of the learned Tribunal is liable to be set aside and the same is, accordingly, set aside. However, it is open for the applicant to file his explanation to the show cause notice, if

not already filed, and it is for the disciplinary authority to consider the same and pass orders in accordance with law.

The Writ Petition, to the extent indicated above, is allowed.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

18.02.2019
vs

