

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

* * * *

WP No.25759 of 2018

Between:

THE COMMANDANT, SAR CPL, HYD & OTHERS

...Petitioners

&

M. RAMESH

...Respondent

DATE OF JUDGMENT PRONOUNCED: 01-04-2019

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to
see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

***THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL
B. RADHAKRISHNAN**

&

***THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

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< **GIST:**

> **HEAD NOTE:**

! Counsel for Petitioners: Government Pleader for Services-I (TG)

^Counsel for Respondent: Sri TP Acharya

? Cases referred

1. (2006) 5 SCC 446
2. (1999) 3 SCC 679
3. AIR 1984 SC 626
4. (1997) 4 SCC 385
5. (2013) 1 SCC 598
6. (2016) 1 SCC 671

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

WRIT PETITION No.25759 of 2018

ORDER :: (*per Hon'ble Sri Justice A. Rajasheker Reddy*)

The petitioners, the Commandant, Special Armed Reserve Central Police Lines, (SARCPL), Amberpet, Hyderabad and others, have challenged the order dated 08-02-2016 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in OA No.1175 of 2013 wherein and whereby the Tribunal allowed the OA filed by the applicant-respondent herein and set aside the order dated 30-11-2012 which imposed the penalty of reduction in time scale of pay for two stages, for a period of two years, with cumulative effect on future increments and pension, besides treating the unauthorized sick period *w.e.f.* 19-05-2010 to 11-06-2010 as leave without pay and suspension period from 12-06-2010 to till he reported for duty as 'not on duty' and consequently directed to treat the suspension period as on duty for all purposes, without monetary benefit and monetary benefit, be restricted

to, subsistence allowance paid to the respondent, during his suspension period.

02. Facts briefly stated are that the respondent (applicant in the OA) is working as a Police Constable attached to SARCPL, Hyderabad, having been appointed in the year 1992 and continuing as such in the said post. The respondent was issued with proceedings dated 29-06-2010 placing him under suspension for his alleged involvement in a criminal case and in that connection arrested by the Police, Malkajgiri, Hyderabad, on 12-06-2010 and remanded to judicial custody. Besides registration of criminal case, articles of charges were framed by the Department, by initiating departmental proceedings and sought for his written explanation. Articles of charges framed reads as follows:-

Count no.1 :- *Gross misconduct in falsely reporting sick on 19-05-2010 and procured medical certificates for his fake illness with the intention to cover up his guilt of involving in a criminal case and his arrest by civil Police.*

Count no.2:- *Involvement of Sri M. Ramesh, PC 1361 in Cr.No.161/2010, u/s.392 IPC. On 18-04-2010 along with his nephew Sri M. Venkata Krishna intercepted the vehicle of victim Sri D. Dayanand and robbed cash of Rs.9700/- one gold ring and Nokia cell phone.*

03. The respondent submitted his written statement, but not satisfied with the explanation offered, enquiry was ordered. With due participation of the respondent in the proceedings, the Enquiry Officer conducted enquiry and submitted his report dated 25-03-2011 to the disciplinary authority holding the charges as proved. Thereafter, the respondent was provided with a copy of the enquiry report and asked to submit his remarks, who in turn, submitted his remarks along with a copy of the order in CC No.736 of 2010 wherein the competent criminal Court has acquitted him of the criminal charges. But the disciplinary authority by proceedings dated 30-11-2012 imposed the penalty stated supra. Aggrieved thereby, the respondent filed the OA before the Tribunal. The Tribunal by the order impugned in this writ petition, set aside the penalty imposed subject to certain directions noted supra. Hence, this writ petition by the Department.

04. In the counter affidavit filed by the respondent, *inter alia* it is stated that in the remarks submitted by him, it was

specifically brought to the notice of the disciplinary authority that the competent criminal Court has acquitted him of the self same charges, but the disciplinary authority without considering the same imposed penalty on him, which was rightly set aside by the Tribunal. It is also submitted that he reported sick *w.e.f.* 19-05-2010 to 02-07-2010 and during his sick period, he was arrested on 12-06-2010 and released on bail on 19-06-2010 and he was falsely implicated in the criminal case and as nothing could be recovered from him, and his involvement was based on presumptions, the criminal Court had acquitted him observing that the prosecution failed to prove his guilt beyond all reasonable doubt. That there is no misrepresentation to his superiors as he was already on sick leave and his arrest during the sick period was on a false ground and the falsity is substantiated by the acquittal order passed by the competent criminal Court.

05. The criminal case registered against the respondent, as borne out from the record, was for an offence punishable under Section 392 IPC, r/w. Section 34 IPC in Cr.No.161 of

2010. The criminal proceedings were set in motion based on the complaint lodged by one D. Dayanand complaining that on 18-04-2010, he after attending a party hosted by his friend at Ambika Wines at HB Colony, Moulali, and about 10.30 pm, and while he was going home and on the way when he reached Eveready Batteries Company, two unknown persons attacked him and due to the impact, the complainant fell down and became unconscious and when re-regained conscious and checked his belongings, he could realize that his cell phone (Nokia model no.58001), cash of Rs.9,700/- and one gold ring weighing 05.6 tola was stolen and he immediately reported the same to the Police Malkajgiri. During the course of investigation, the Police laid a trap with the stolen mobile IME no.354182023838103 through third eye of Police Internet Portal system and came to know that the stolen mobile cell phone is being used by the son of the respondent and on apprehending the nephew of the respondent, he spilled the details and stated that the son of the respondent is using the stolen mobile cell phone and he confessed to the crime

committed by him and the respondent on the fateful day; and that they distributed the stolen property equally. Based on the FIR lodged by the complainant, the above crime was registered and the accused *i.e.* the respondent (A-1) and his nephew (A-2) were remanded to judicial custody and later released on bail, and as they pleaded not guilty, trial proceeded, but the criminal case registered as CC No.736 of 2010 ended in acquittal as all the prosecution witnesses turned hostile and that order became final.

06. Heard the learned Government Pleader for Services-I for the petitioners and the learned counsel for the respondent.

07. In view of the rival contentions of the learned counsel for parties, the point that arises for consideration is whether in the facts and circumstances of the case, the impugned proceeding dated 08-02-2016 passed in OA No.1175 of 2013 is sustainable in law and; whether the order of acquittal recorded by the competent criminal Court in CC No.736 of 2010 is binding on the enquiry proceedings, as alleged by the respondent, as both the criminal and departmental

proceedings proceeded on the same charges more so when the complainant and the witnesses are one and the same.

08. The admitted facts are the respondent is a member of the disciplined force. The witnesses examined including the complainant and other witnesses are same in the criminal case and the departmental proceedings. The respondent was acquitted of the criminal charges by the competent criminal Court in CC No.736 of 2010 and order of the criminal Court became final. The respondent was acquitted on account of the complainant and the witnesses turned hostile and the acquittal of the respondent is not on hot contest of the matter, in other words it is not “an honourable” acquittal.

09. The respondent though claims to be on sick leave from 19-05-2010 to 02-07-2010 admits of being arrested on 12-06-2010 and remanded to judicial custody and his release on bail on 19-06-2010. According to the respondent's version he along with his nephew went to attend a treat hosted by some of his friends at Ambika wines at HB Colony and while they returning home, on reaching Eveready battery company, found

one cell phone on the road without *sim* card and he picked up and waited about 1 ½ hours at the said place, with a fond hope to return it the person to which the cell phone belong, but as none came to claim it, he took it to his house and his son used it for a day. The Tribunal was persuaded to accept the submission of the respondent primarily on the ground that the charges in the criminal case and the charges in the departmental proceedings, the complainant and the witnesses are same and the competent criminal Court has acquitted the respondent, during the pendency of the departmental proceedings, the disciplinary authority ought to have taken note of the fact of the findings of the competent criminal Court and exonerated him of the charges. It is convenient to refer to the relevant portion of the order of the Tribunal, which is as follows:-

“.....The main witness is the victim. In the absence of his witness and corroborate evidence to show that stolen property was recovered from the possession of applicant, the Enquiry Officer ought to have held him not guilty of the charges. The findings of the Enquiry Officer are based on surmises and conjectures, but not the

evidence linking the applicant to the so-called crime. But, the disciplinary authority, instead of disagreeing with the findings, impose the penalty in question. The impugned penalty order and the judgment of criminal Court in CC No.736 of 2010 were also cited, but no reasons are given as to why the penalty in question was imposed against the applicant even though the victim has turned hostile....”

10. The Tribunal relied on the decisions in **G.M.TANK vs.**

STATE OF GUJARAT,¹ CAPT. M. PAUL ANTHONY vs.

BHARAT GOLD MINES LIMITED² & CORPORATION OF THE

CITY OF NAGPUR, CIVIL LINES, NAGPUR vs. RAMCHANDRA

G. MODAK³ and observed that the judgment in criminal case

takes precedence over the findings of the Enquiry Officer, if

the incident is one and the same and accordingly set aside the

punishment imposed on the respondent.

11. It is contended by learned Government Pleader for

Services-I that the acquittal of the respondent in the criminal

case is not “an honourable” acquittal and the acquittal is only

on account of the complainant and witnesses turned hostile

and, therefore, the Tribunal ought not to have given much

¹ (2006) 5 SCC 446

² (1999) 3 SCC 679

³ AIR 1984 SC 626

credence to the finding given by the competent criminal Court in setting aside the punishment imposed by the disciplinary authority. The Tribunal proceeded on the ground that the order in the criminal case in acquitting the respondent ought to have been taken note of by the disciplinary authority, such an observation in our considered view cannot be appreciated for the reason that the acquittal in a criminal case is not an honourable acquittal and mere acquittal does not entitle the delinquent to automatic reinstatement, and as has been held consistently in various rulings of the Supreme Court, disciplinary action can be taken even after acquittal. The observation to this effect made by the Supreme Court in **UNION OF INDIA vs. BIHARI LAL SIDHANA**,⁴ at para 5 of the judgment deserves to be reproduced, which is as follows:-

“5.It is true that the respondent was acquitted by the criminal Court, but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules.....”

⁴ (1997) 4 SCC 385

12. To the same effect is the ratio laid down in ***DEPUTY INSPECTOR GENERAL OF POLICE vs. S. SAMUTHIRAM***⁵s

case by the Supreme Court, wherein it is held that mere acquittal of an employee by a criminal Court has no impact on the disciplinary proceedings initiated by the Department more so when the respondent was not honourably acquitted by the criminal Court, but only due to the fact that the witnesses turned hostile and other prosecution witnesses were not examined. It was further held that in the absence of any provision in the service rules for reinstatement, if an employee is even honourably acquitted by a criminal Court, no right is conferred on the employee to claim any benefit including reinstatement.

13. It is to be seen that the decisions relied on by the Tribunal are distinguishable and are of little help to the respondent's case. In ***BALJINDER PAL KARU vs. STATE OF***

⁵ (2013) 1 SCC 598

PUNJAB⁶ which considered the decisions in *G.M.Tank's* case (1 supra) and *Capt. M. Paul Anthony's* case (2 supra), the Supreme Court held that acquittal on account of witnesses turned hostile and appeared to have been won over in a criminal case, cannot be a ground to interfere with the dismissal order passed in departmental proceedings.

14. The Enquiry Officer considering the evidence of the official and other witnesses including the complainant came to the conclusion that the charges levelled against the respondent are proved and such a finding was accepted by the disciplinary authority. The Tribunal should not have disturbed the finding of the Enquiry Officer, as approved by the disciplinary authority, basing on the criminal Court judgment, which is not on merits. The degree of proof, in departmental proceedings which can proceed on preponderance of probabilities, unlike in criminal proceedings cannot insist for strict proof beyond all reasonable doubt. As seen from the version of the respondent himself in the enquiry,

⁶ (2016) 1 SCC 671

two things are discernable *i.e.* during the relevant period, he was on sick leave and on the fateful day, he along with the nephew went to attend a treat hosted by his friends at Ambika wines at HB Colony and while returning home in the night found a cell phone and he brought home and gave it to his son and his son used it for a day. It is true that none of the witnesses, including the complainant did not support the case of the prosecution nor the departmental proceedings. The case on hand is a case based purely on preponderance of probabilities and the sequence of events arranged together it connects the respondent with the alleged misconduct. It is contention of the learned counsel for the respondent that the prosecution failed to connect the respondent with the alleged crime, the competent criminal Court has acquitted and de-hors the same, the disciplinary authority proceeded in the matter and held the charges proved, without there being any material and it was rightly set aside by the Tribunal. It is also stated that the opinion formed by the Enquiry Officer that the respondent is guilty of misconduct being a Policeman, was

on assumptions and without any legal basis and material on record to support the same and, therefore, the Tribunal rightly disbelieved the finding of the Enquiry Officer and the impugned order warrants no interference.

15. In the departmental enquiry, though the complainant and other witnesses turned hostile, the Inspector of Police and the SI of Police, PS Malkajgiri, and during the course of investigation collected evidence and recorded the statements of witnesses and caused enquires and the crime party men laid a trap and located the house of the respondent through stolen mobile IMEI number through 3rd eye Police Internet portal and found the mobile phone of the complainant being used by respondent's son and on further investigation they arrested the respondent and his nephew and recovered the stolen property from the nephew of the respondent.

16. The respondent has admitted the fact that the cell phone of the complainant was found on the road on the relevant date and he picked up the cell phone. The respondent being a member of a disciplined force ought to have surrender

the cell phone in the nearest Police station, instead he took the cell phone with him and given it to his son for his use. It is also a fact that he was arrested and remanded to judicial custody. All these acts of the respondent goes to show that the respondent failed to inform about these acts, to his senior Officers of his unit and to avoid arrest falsely reported sick during the relevant period, as concluded by the Enquiry Officer in his report and accepted by the disciplinary authority.

17. It is also not explained by the respondent as to how he could attend the treat hosted by his friends on the fateful day, though he was on sick leave allegedly on account of back pain. The opinion formed by the Tribunal that the respondent is entitled for the benefit of a clean chit though the Enquiry Officer found that the charges framed against him as proved only on the ground that he is acquitted of the criminal charges by the competent Court, which is not “an honourable” acquittal, but on account of the witnesses turned hostile, cannot be judicially sustained. A judicious exercise of

discretion would not be apparent if the reasoning is not in accordance with law.

18. The presumption, though it cannot be inferred, the respondent being policeman could won over, if not terrorize the complainant and the witnesses, and that reason could not be ruled out for not turning up during the proceedings in the criminal case or in the departmental proceedings. It is equally true that it would be difficult to brand a witness who turned hostile is a witness who has been won over. However, evidence of a witness cannot be discarded in its entirety barely on the ground that he has turned hostile. The evidence of a hostile witness can still be relied upon if it is otherwise found trustworthy. The findings of the Enquiry Officer in the departmental proceedings is traceable to the misconduct alleged and proved against the respondent. The punishment imposed by the disciplinary authority is commensurate, if not deficient, with the misconduct on the part of the respondent. The respondent being a Policeman shown desperate character and such act on his part is against public interest. Such acts

on the part of the member of the disciplined force would tarnish the image of the Department. Rule 3 of the Telangana Civil Services (Conduct) Rules, 1964, requires that no Government servant shall behave in a manner which is unbecoming of such employee or derogatory to the prestige of the Government, though it is the exigencies of circumstances that determine as to what is becoming or unbecoming for a Government servant to do or not to do.

19. For the reasons stated and in the totality of facts and circumstances, the order of the Tribunal is wholly unsustainable and it is accordingly set aside. The punishment imposed on the respondent by the disciplinary authority is maintained. In the result the writ petition is allowed. As a sequel to the disposal of writ petition, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

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

WRIT PETITION No.25759 of 2018

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Dated: 01-04-2019

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