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HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 4421 OF 2020**

- Shri Prayag Prasad, S/o Shri Dhanpad Prasad, aged about 37 years, Mining Sirdar (Gr.-C), NEIS No. 24908811, Gare Pelma IV/2 & 3, Raigarh Area, District Raigarh (CG)

... Petitioner**versus**

1. South Eastern Coal Fields Limited, through the General Manager Manager, (a Mini Ratna Company), Manpower Department, P.O./District Bilaspur (CG)
2. South Eastern Coal Fields Limited, through the Colliery Manager, (a Mini Ratna PSU Company), Gare Pelma, IV/2 & 3, P.O. Libra, Tamnar, District Raigarh (CG)

... Respondents

For Petitioner

: Mr. Ritesh Verma, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/11/2020**

1. Challenge in the present Writ Petition is to the disciplinary proceeding initiated against the Petitioner.
2. Petitioner was working with the Respondents as Mining Sirdar, Grade-3. An FIR was lodged against the Petitioner and the Central Bureau of Investigation (CBI) registered a criminal case against him for the offence punishable under Sections 120-B, 420, 468, 471 of the Indian Penal Code as well as under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and the Petitioner is being prosecuted before the Special Judge, CBI, Dhanbad. Meanwhile, the employer, i.e., the Respondents have initiated a departmental enquiry against the Petitioner which is under challenge in the present Writ Petition.
3. The main contention of learned Counsel for Petitioner challenging the same is that the witnesses in both the cases, i.e., the criminal case as also in the departmental enquiry, would be the same and in the event if the Petitioner is made to disclose his defence before the departmental authorities first, it may have an adverse bearing on the outcome of the criminal case wherein evidence would get adversely affected.

4. At this juncture, it would be relevant to take note of a couple of decisions that the Hon'ble Supreme Court has rendered on the issue in the recent past on this issue, in the case of **S. Sreesanth Vs. Board of Control for Cricket in India and Others**, reported in **2019 (4) SCC 660**, where in paragraphs 16, 17, 18 and again in 40 it has been held as under:-

“16. Shri Parag Tripathi further submitted that the Discharge Order has no bearing on the disciplinary proceedings which are subject matter of the present petition. It is trite law that proceedings by a disciplinary committee must be treated differently from a trial in a criminal case. It is submitted that there is vast distinction in the scope of inquiry between a criminal proceeding and a departmental inquiry. The question before the Sessions Court was whether appellant is guilty of offences under the aforementioned criminal statutes. On appreciation of the evidence, it may have been open for the Sessions Court to discharge the appellant under those specific statutes. The Sessions Court, however, did not deal with the question whether the appellant is guilty of violating the BCCI Code. In contrast, the scope of inquiry in the disciplinary proceedings initiated by respondent No.1 against the petitioner was entirely different as it was restricted to an examination of whether the appellant had breached the BCCI Code. The clauses which the appellant breached under the BCCI Code are entirely different from the offences under which the appellant had been charged before the Sessions Court. The ingredients required to establish a breach of the BCCI Code are also distinct and separate from the ingredients required to prove offences under the aforementioned penal statutes. Furthermore, in a criminal case, a defendant has a right to remain silent. However, on issuance of the SCN, the appellant had a duty to appear before the disciplinary committee and answer all relevant questions, to the satisfaction of the disciplinary committee.

17. Respondent No.1 further submits that the standard of proof in recording a finding of conviction in a criminal proceeding is distinct and different from a departmental proceeding.

18. It is submitted that the appellant has raised the issue of jurisdiction of the disciplinary committee alleging that Shri Srinivasan could not be a member of the disciplinary committee at the relevant time. At the outset, it is submitted that this argument is being raised for the very first time before this Court at the stage of the appellant filing a rejoinder to respondent No.1's counter affidavit and the same ought not be allowed by this Court. The appellant had the option of challenging the constitution of the disciplinary committee before the disciplinary committee itself, or at the least at the stage of filing the writ petition/writ appeal or even at the stage of filing SLP. However, the fact that the said argument is being raised for the first time at such a belated stage of the proceedings only goes to prove that the argument is a mere afterthought.

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40. A caveat needs to be put to whatever has been said above. We have upheld the decision of disciplinary committee of the BCCI on proof of charges which upholding of the decision of the disciplinary committee shall have no effect in the criminal appeal which is pending against the appellant against the discharge order. The conclusions and observations as recorded in the disciplinary proceedings under Anti-Corruption Code are entirely different from

proof of criminal charges which are on higher yardstick to prove. It is a well settled principle that criminal charge must be proved beyond reasonable doubt which is not applicable in disciplinary proceedings initiated by the disciplinary committee of the BCCI. We, thus, clarify that any observation in this judgment shall have no effect on the criminal appeal which is pending against the appellant pertaining to discharge order.

5. Reiterating the same principle, the Hon'ble Supreme Court in the case of **Karnataka Power Transmission Corporation Limited Vs. C. Nagaraju and Others**, reported in **2019 (10) SCC 367**, in paragraphs 9 and 13 has held as follows:-

“9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different.

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13. Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court.

6. Recently, again a three-Judge Bench of the Hon'ble Supreme Court in the case of **Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI and Another**, decided on 8.9.2020 in Criminal Appeal No. 575 of 2020 (arising out of SLP (Crl.) No. 5422 of 2015), the Hon'ble Supreme Court in paragraph 7 has made certain observations, the relevant portion of which is reproduced herein under:-

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

7. The aforesaid principles of law also were recently dealt with by the Hon'ble Supreme Court in the case of **Shashi Bhusan Prasad Vs. Inspector General, CISF and Others**, reported in **2019 (7) SCC 797**, wherein after considering the judicial pronouncements of the recent past, the Hon'ble Supreme Court in paragraphs 19, 21 and 22 as held as follows:

“19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that 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 an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. 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. Even 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 whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of ‘preponderance of probability’. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court.

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21. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and

evidence having no nexus/corelationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much 15 before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the Inquiry Officer had held him guilty, he was punished with the penalty of dismissal from service.

22. The judgment in G.M. Tank case(supra) on which the learned counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the charge in the criminal case and departmental enquiry were different having no nexus/corelationship based on different sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service.

8. Given the aforesaid legal pronouncements as it stand in recent past, this Court is of the opinion that it would not be proper at this juncture for exercising its extraordinary power under Article 226 of the Constitution of India to interfere with the disciplinary proceedings initiated against the Petitioner.

9. Another aspect which needs consideration is the fact that many a times it happens that the witnesses in criminal cases turn hostile and it results in acquittal. Likewise, many a times the criminal cases take a long period of time for its final disposal and in the process the delinquent employees crosses the age of superannuation and thereafter the employers find it difficult to impose punishment under the service law governing the concerned employees, in the light of the employee crossing the age of superannuation and it was all these factors which bore more in the mind of the Hon'ble Supreme Court while laying down the aforesaid principles of law.

10. In view of above, the present Writ Petition also does not call for an interference at this juncture.

11. Writ Petition thus deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE