

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 331 of 2021**

Shiv Kumar Pachori, S/o Late Shri S. L. Pachori, Aged About 65 Years
R/o Shahpur, Kureli, Tahsil Gadarwada, District Narsinghpur (M.P.).

---- Appellant**Versus**

1. Chhattisgarh Rajya Van Vikas Nigam Ltd., Lokesh Plaza, Shankarnagar Road, Shankar Nagar, Raipur (C.G.) Through Its Managing Director.
2. Managing Director, Chhattisgarh Rajya Van Vikas Nigam Ltd., Lokesh Plaza, Shankarnagar Road, Shankar Nagar, Raipur Chhattisgarh
3. Divisional Manager, C.G. Rajya Van Vikas Nigam Ltd., Antagarh Pariyojana Mandal Bhanupratappur, Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Aman Saxena, Advocate.
For Respondents	:	None.

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri N. K. Chandravanshi, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****30.11.2021**

Heard Mr. Aman Saxena, learned counsel for the appellant.

2. This appeal is presented against an order dated 10.02.2021 passed by the learned Single Judge in WPS No. 6824 of 2009, dismissing the writ petition.

3. The appellant was appointed as a Field Assistant in Antagrah Project of Van Vikas Nigam, Bhanupratappur on 19.09.1978. On 18.06.1984, he was placed under suspension on the allegation of involvement in illegal cutting and transportation of trees. On 24.07.1984, charge-sheet was issued to him containing four charges. A departmental enquiry was conducted and on culmination of the departmental enquiry, the service of the petitioner was terminated on 05.05.1988 holding the charges to be proved.

4. It is submitted by Mr. Saxena that on 13.06.1984, an FIR was lodged as FIR No. 49 of 1984 under Sections 120-B, 420, 467, 379 / 34 of the Indian Penal Code at Police Station, Antagrah, against the appellant and some other persons. It is submitted by him that by an order dated 04.09.2008 passed by the Judicial Magistrate First Class, Narayanpur, in case No. 01 of 2008, the appellant and others were acquitted. After acquittal in the criminal case, the appellant had submitted a representation on 03.03.2009 for re-instatement with all the consequential benefit and the same was arbitrarily rejected by an order dated 26.06.2009, and that being aggrieved, he had preferred the writ petition which came to be dismissed by the order under assailment.

5. It is submitted by him that the learned Single Judge did not appreciate the fact that the allegations in the departmental proceedings and criminal proceedings were same and therefore, the appellant having been acquitted in the criminal case, was entitled to be re-instated in the service. However, the learned Single Judge has held that since the appellant did not challenge the out-come of the disciplinary proceedings, there was no merit in the writ petition. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another***, reported in ***(1999) 3 SCC 679***.

6. We have considered the submission made by the learned counsel for the appellant and have perused the materials on record.

7. The admitted position is that after holding departmental enquiry, the petitioner was terminated from service on 05.05.1998. The aforesaid termination order was not assailed by the appellant in any forum.

8. In *Capt. M. Paul Anthony* (supra), the appellant had prayed for stay of the disciplinary proceeding till conclusion of criminal case, on the ground that the raid conducted at his residence was also the subject matter of criminal proceeding. The prayer for stay was not favourably considered, as a result of which, he had approached the jurisdictional High Court, which granted liberty to the authorities to stay departmental proceeding, if it was considered appropriate. However, the authorities decided to continue with the disciplinary proceeding and during the pendency of the criminal case, he was dismissed from service on the basis of the disciplinary proceeding initiated against him. The departmental appeal preferred by the appellant was also dismissed. On the basis of the materials on record, the Hon'ble Supreme Court came to the conclusion that the criminal case and the departmental proceeding were based on identical set of facts. The finding recorded by the enquiry officer indicated that charges against the appellant were sought to be proved by the police officers and *panch* witnesses, who had raided the appellant's house and had effected recovery. Those were the only witnesses examined by the enquiry officer, and on the basis of such testimony, charges were held to be established. It was in that background, the Hon'ble Supreme Court held that when the appellant was acquitted by a judicial pronouncement with the finding that the "raid and recovery" at his residence were not proved, it would be

unjust, unfair and rather oppressive to allow the finding recorded in a departmental proceeding to stand.

9. The present is not a case which can be said to be similar to the factual matrix as presented in ***Capt. M. Paul Anthony*** (supra). In the first instance, at no point of time, the appellant prayed for stay of the departmental proceeding on the ground that the charges in the departmental proceeding as well as charges in the criminal case are similar and that if the departmental proceeding is allowed to proceed further, the appellant would be put to grave prejudice as he would have to disclose the defence in the departmental proceeding while the criminal case is pending. It is only after being acquitted, that a plea was taken by the appellant in the representation filed that the charges in the criminal case and the disciplinary proceeding are identical. In the writ petition, there is no elucidation as to how the charges are similar. It is also not demonstrated how the evidence in the disciplinary proceeding and the criminal case can be said to be similar.

10. It is no longer *res integra* that criminal case and departmental proceeding can go on simultaneously, except when departmental proceeding and the criminal case are based on the same set of facts and the evidence in both the proceedings is common. It is because a criminal case and departmental proceeding operate in distinct and different fields. The standard of proof required in a disciplinary proceeding is different from what is required in a criminal case inasmuch as while in a departmental proceeding, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond all reasonable doubt.

11. In view of the above discussion, we are of the considered opinion that no case is made out for interference with the order passed by the learned Single Judge and consequently, the appeal is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N. K. Chandravanshi)
Judge

Hem