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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	21.09.2021
DELIVERED ON	29.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal No.3273 of 2019

P.Arumugam

...Appellant

vs.

1. The Inspector General and
Commissioner of Police,
Salem City Police,
Salem.
2. The Deputy Commissioner of Police,
Law and Order,
Salem City Police,
Salem.

...Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 23.10.2018 passed by this Court in W.P.No.1820 of 2012.

Prayer in W.P.No.1820 of 2012: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified Mandamus, calling for the records relating to the orders in (1) P.R.No.44/H1/2009 dated 24.11.2010 of the Second Respondent and (2) Pro.C.No.Appl.14/H1/2010 dated 28.04.2011 of the first Respondent to quash the same and to issue consequential directions to the respondents to regularise the period of suspension from 15.06.2009 to 28.12.2009 as duty period for all purposes with all consequential benefits.

For Appellant : Mr.M.Ravi

For Respondents : Mr.K.V.Sajeev Kumar,
Government Advocate



J U D G M E N T

S.VAIDYANATHAN,J.

Aggrieved by the order dated 23.10.2018 passed by the learned Single Judge in W.P.No.1820 of 2012, the Writ Petitioner has come up with the present Appeal.

2. It is seen that, when the Appellant/Writ Petitioner was working as a Police Constable in Salem, two criminal cases were filed against him, one in Crime No.944 of 2009 for offences under Sections 341, 323 and 294(b) I.P.C. and the other in Crime No.617 of 2010 for offences under Section 341, 294(b) I.P.C. and 4(1)(j) of Tamil Nadu Prohibition Act. After investigation, charge sheets were laid against him and he was prosecuted for the above offences.

3. The allegation against the Appellant is that, on 14.06.2009, when he was in an inebriated state, he abused the defacto complainant and wrongfully restrained him. Hence, he was placed under suspension on 15.06.2009 and a Charge Memo was issued to him on 11.11.2009. Pursuant to the judgment dated 09.12.2009 passed by the Judicial Magistrate No.III, Salem in C.C.No.133/2009, the suspension was revoked and the Appellant/Writ Petitioner was taken back to duty.

4. Pursuant thereto, departmental proceedings were initiated against the Appellant/Writ Petitioner under Rule 3(b) of Tamil Nadu Police Subordinate and Service (D&A) Rules, 1955, for the same allegations. An Enquiry Officer was appointed to enquire into the charges and he submitted his Report on 13.09.2010 that, charges against the Appellant/Writ Petitioner were proved. Aggrieved by the same, the Appellant/Writ Petitioner made a detailed representation dated 05.10.2010 to the Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Salem City. Agreeing with the findings of the Enquiry Officer, the 2nd Respondent, vide proceedings dated 24.11.2010, imposed the punishment of 'reduction in time scale of pay by two stages for two years with cumulative effect', on the Appellant/Writ Petitioner. Challenging the same, the Appellant preferred an Appeal to the 1st Respondent. By an order dated 28.04.2011, the 1st Respondent rejected the Appeal, by holding that, the charges against the Appellant have been proved beyond all reasonable doubts, on the basis of sufficient evidence in the departmental proceedings.

5. According to the learned counsel for the Appellant, the learned Single Judge failed to consider that, the departmental proceedings and criminal proceedings in the case on hand are based on identical set of facts and the charges in both the



proceedings are one and the same. He contended that, if the acquittal was purely on technical grounds, i.e. lack of sanction, procedural deficiency, etc., then the Department can proceed further. But, once there is acquittal, the Department cannot proceed further. He went on to contend that, when departmental proceedings are called for against a Government Servant who is acquitted by the Court, it should be reported to the Government for necessary orders. In the absence of these procedures, the punishment imposed by the Disciplinary Authority as confirmed by the Appellate Authority is erroneous and the learned Single Judge ought not to have dismissed the Writ Petition on the ground that, departmental proceedings stand on a different footing than that of criminal proceedings.

6. Learned counsel for the Appellant drew the attention of this Court to PSO 33-A, 67 and 81 of the Tamil Nadu Police Standing Orders:

PSO 33.A: If certain facts affecting the charge were not placed before a criminal court or a definite aspect of the case was not considered by it, or if the acquittal was on purely technical grounds like lack of sanction, some technical defect in procedure, etc., or the facts found proved by the Court were held insufficient to make out a criminal offence but may make out a departmental irregularity, it is open to the departmental authorities to institute departmental proceedings into the connected matters.

In every such case where the departmental authority is of opinion that departmental proceedings are called for against the Government Servant who is acquitted in court, the facts of the case shall, within one month from the date of judgment (exclusive of the period required for obtaining copy) be reported to the Government for orders. Every case so reported shall be accompanied by a copy of the judgment in the criminal case.

67 . Procedure after acquittal.-

(2) (b) If certain facts affecting the charge were not placed before a criminal court or a definite aspect of the case was not considered by it ; or if the acquittal was on purely technical grounds like lack of



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sanction, some technical defect in procedure etc., or the facts found proved by the Court were held insufficient to make out a criminal offence but may make out a departmental irregularity, it is open to the departmental authorities to institute departmental proceedings into the connected matters.

(G.O.Ms. No. 841, Home, dated 13th March, 1967)

PSO 81. Departmental proceedings and prosecutions of Government Servants involved in Criminal misconduct:-

(3) (a) There is no bar to take simultaneous action, both departmental and criminal. Care should be taken to ensure that there is no wilful violation of the stay order of the proceedings if a court of competent jurisdiction orders such a stay. In the absence of such stay order, the disciplinary authority is free to exercise its lawful powers. Before initiating such criminal proceedings advice on evidence should be obtained from government Counsel and in more important cases from the Advocate-General. Where the conduct of an officer discloses a grave offence of a criminal nature, criminal prosecution should be the rule and not the exception. Where the competent authority is satisfied that there is no criminal case which can be reasonably against such an officer, criminal prosecution should not, of course be resorted to. But prosecution should not be avoided merely on the ground that the case might lead to an acquittal.

(b) Should the decision of the trial court, or the appellate court as the case may be, lead to the acquittal of the accused, it may be necessary to review the decision taken earlier as a result of the departmental proceedings. A consideration to be taken into account in such review would be whether the legal proceedings and the departmental proceedings covered precisely the same ground. If they did not, and the legal proceedings related only to one or two charges, i.e., not the entire field of



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departmental proceedings it may not be found necessary to alter the decision already taken. Moreover, it should also be remembered that while the court may have held that the facts of the case did not amount to an offence under the law, it may well be that the competent authority in the departmental proceedings might hold that the Government Servant was guilty of a departmental misdemeanour and he has not behaved in the manner in which a person of his position was expected to behave.

(c) Article 311 (2) of the Constitution provides that the person who is a member of the Civil Service of a State or holds a civil post under a State, shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The competent authority should observe strictly the statutory requirement of Article 311 (2) in all cases in which it is attracted. Compliance with these requirements is not, however required in case covered by clause (a) (b) or (c) of the proviso to that article. Where however, action is taken under clause (c) of this proviso on the basis of the conviction of a person in a court of law and the conviction is set aside on appeal, the orders passed under the proviso automatically becomes inoperative. If departmental action against him is considered desirable, it will be necessary to follow the provisions of the relevant disciplinary rules and where necessary, the substantive provisions of Article 311 (2).

7. To substantiate his case, learned counsel for the Appellant relied on the following Apex Court decisions:

(i) M.V.Bijlani vs. Union of India, (2006) 5 SCC 88

"23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been



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enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

(ii) G.M.Tank vs. State of Gujarat, (Appeal (Civil) No.2582 of 2006, dated 10.04.2006)

"... In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that, the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges evidence, witnesses and



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circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr.V.B.Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that, the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that, the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

(iii) Roop Singh Negi vs. Punjab National Bank, (2009) 2 SCC 570

"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same



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could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

8. On the other hand, learned Government Advocate appearing for the Respondents submitted that, though, charges against the Appellant/Writ Petitioner were established in the domestic enquiry, he was acquitted in the criminal case on benefit of doubt, as P.Ws.2 to 6 turned hostile. He further submitted that, criminal proceedings and departmental proceedings stand on a different footing and even after acquittal in the criminal case, the Department is entitled to proceed against the Appellant. According to the learned counsel, the Appellant's averment that, the alleged incident did not take place during the course of employment, cannot be accepted.

9. It is further stated by the learned Government Advocate that, the Appellant was involved in nine other incidents and charges were framed against him, and punishment was imposed. In the case on hand, charges against the Appellant were proved in the departmental proceedings, though, he was acquitted in the criminal case on benefit of doubt. Hence, according to the learned Government Advocate, the order of the learned Single Judge is perfect and it need not be interfered with.

10. In support of his stand, learned Government Advocate drew the attention of this Court to Rule 24 of Tamilnadu Police Law Manual. For better appreciation, the same is extracted hereunder:

Section 24 of Tamilnadu Police Law Manuals:

24. Integrity and devotion to duty. -

(1) Every Police Officer shall, at all times, maintain absolute integrity and devotion to duty.

(2) Every Police Officer shall take all possible steps to ensure integrity and devotion to duty by all subordinate Police Officer for the time being under his control and authority.



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(3) (i) No Police Officer shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

(ii) The direction of the official superior shall, ordinarily, be in writing. Oral directions to subordinates shall be avoided. Where the issue of oral direction becomes unavoidable, the official superior shall confirm in writing immediately thereafter.

(iii) A Police Officer shall, in the performance of his official duties or in the exercise of powers conferred on him, evade the responsibility devolving legitimately on him and seek instruction from, or approval of, a superior authority when such instruction or approval is not necessary in the scheme of distribution of powers and responsibilities.

Explanation.- A Police Officer who habitually fails to perform a task assigned to him within the time set for the purpose and with the quality of performance expected on him shall be deemed to be lacking in devotion to duty within the meaning of sub-rule (1).

11. Heard the learned counsel on either side and perused the material documents available on record.

12. It is not in dispute that, the Appellant/Writ Petitioner was involved in an incident on 14.06.2009, for which, both criminal proceedings as well as departmental proceedings have been initiated. The contention of the learned counsel for the Appellant that, no proceedings can be initiated or continued beyond the scope of the actual charge leveled against an employee may not be correct, as, in the present case on hand, the Department has considered about his involvement in the case. The next submission of the learned counsel for the Appellant that, even after acquittal, departmental proceedings should not go on, cannot be accepted, as, disciplinary proceeding is not a criminal trial and standard of proof requires that, preponderance of probability should be proved beyond reasonable doubt.



13. In the case on hand, the Criminal Court has acquitted the Appellant, as the case has not been proved beyond reasonable doubt and P.Ws.2 to 6 have turned hostile. That apart, in the domestic enquiry, applying the principle of preponderance of probability, charges have been established.

14. Reference to Section 67 of the Tamilnadu Police Standing Orders regarding procedure after acquittal will not be applicable to the facts of this case, as, on technical defect, the Criminal Court has acquitted the Appellant. This Court cannot go into factual and technical aspects, based on which, the Department takes a decision. Even assuming for the sake of argument that, the contention of the learned counsel for the Appellant is accepted, it can be applied, provided there is honourable acquittal and not otherwise.

15. At this juncture, it is worth referring to a recent decision of the Apex Court rendered in the case of Union of India vs. Methu Meda (Civil Appeal No.6238 of 2021, dated 06.10.2021) as regards 'honourable acquittal'. Relevant portion of the same is extracted hereunder:

"14. The expression 'honourable acquittal' has been considered in the case of S.Samuthiram, (2013) 1 SCC 598 after considering the judgments of Reserve Bank of India vs. Bhopal Singh Panchal, (1994) 1 SCC 541, R.P.Kapur, AIR 1964 SC 787, Raghava Rajagopalachari, (1972) 7 SLR 44; this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance and probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the Rules provide so."

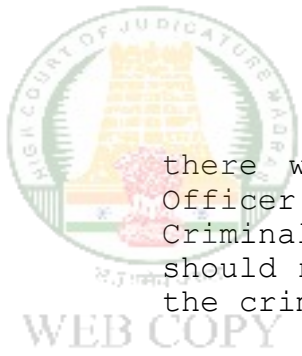


16. Reference to Police Standing Order 81(3) by the learned counsel for the Appellant would make it clear that, it is open to the Government to proceed against the Police Officials and it is the discretion of the competent Authority to review the decision in the departmental proceedings provided, there is honourable acquittal.

17. Departmental Orders and Instructions mentioned in the Madras Police Gazette (4), Madras dated 25.01.1969 makes it clear that, both departmental and criminal proceedings can go on, and a narrow interpretation if given, would amount to dropping of the departmental proceedings against delinquents who are acquitted on benefit of doubt. But, that is not the purpose for which, procedures have been contemplated. Even assuming that, there are some lapses in the procedures, unless otherwise, some prejudice is shown, the Appellant cannot contend that, the order of the learned Single Judge has to be interfered with.

18. As rightly contended by the learned Government Advocate, violation of Rule 24 of the Tamilnadu Police Law Manual, at any stage of service till the date of retirement, is a serious misconduct, as, a Police Officer is always a Police Officer till the age of retirement. Even though the learned Government Advocate has pointed out that, the Appellant is involved in nine past misconducts, this Court is not inclined to take note of the same in the present Appeal, as, firstly, there is no averment that, the past misconducts of the Appellant were brought to the notice of the learned Single Judge and secondly, even assuming that, it was brought to the notice of the learned Single Judge, unless otherwise, past records are put to the employee and comments are asked for, the same cannot be relied upon at the present stage. However, in the present case on hand, the involvement of the Appellant is amply proved in the departmental enquiry, for which, the punishment of 'reduction in time scale of pay by two stages for two years with cumulative effect' has been imposed and the same cannot be held to be disproportionate to the gravity of the misconduct. Scope of interference with the punishment is very limited, unless and until it shocks the conscience of the Court, moreso, in the case of an Uniformed personnel.

19. In the Apex Court decision relied on by the learned counsel for the Appellant in Roop Singh Negi's case (supra), it has been held that, the power of judicial review could not be refused to be exercised by the High Court. It is no doubt true that, the Court is empowered to interfere, when there is a perverse finding or when there is no evidence. But, the Court cannot appraise the evidence and come to a different conclusion. In the case on hand, it is not the case of the Appellant that,



there was no evidence at all against him before the Enquiry Officer. It is his case that, he has been acquitted by the Criminal Court and for the involvement in a Criminal case, he should not be axed in the departmental proceedings as well as in the criminal proceedings.

20. Learned counsel for the Appellant has relied on the Apex Court decision in M.V.Bijlani's case (supra) to contend that, although departmental proceedings and criminal proceedings stand on a different footing, as the Enquiry Officer performs a quasi-judicial function, he must arrive at a finding taking note of the verdict in the criminal case, and that, the decision of the Criminal Court will be binding on the departmental proceedings. But, we are not inclined to accept the said contention in the light of the judgment rendered by the Apex Court in the case of M/s.Karamchand Ganga Pershad vs. Union of India reported in AIR 1971 SC 1244, wherein, it has been held that, the decisions of the Civil Courts are binding on the criminal Courts and the converse is not true.

21. Yet another reliance was made by the learned counsel for the Appellant to the Apex Court decision in G.M.Tank's case (supra) to contend that, it will not be prudent to continue with the departmental proceedings after acquittal on the basis of the very same charges. In the said case, it appears that, Charge Sheet was issued to the Appellant therein in the Criminal case, which was converted into a Charge Memo. The Court held that, nothing prevented the Appellant to challenge the same even before disposal of the criminal case.

22. But, in the case on hand, during the pendency of the criminal proceedings, the Appellant has been placed under suspension and Charge Memo has been issued. However, during the pendency of the departmental proceedings, he was acquitted by the Criminal court. Pursuant to the acquittal, the Appellant was again placed under suspension and imposed punishment by the Disciplinary Authority and the same was confirmed by the Appellate Authority. Hence, the contention of the learned counsel for the Appellant that, in the departmental proceedings, the decision of the Criminal Court was not taken into account, is not acceptable and the averment of the Appellant that, the alleged incident did not take place while on official duty and that, there is no violation of Rules, is not correct.

23. In view of the foregoing and in view of the ratio laid down by the Apex Court in the case of Padma Sundara Rao vs. State of Tamilnadu, (2002) 3 SCC 533, decisions relied on by the learned counsel for the Appellant are not applicable to the case on hand. For better understanding, relevant portion of the



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decision rendered in Padma Sundara Rao's case (supra) is extracted below:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

24. Even after acquittal, the Department is entitled to proceed with the enquiry. The Apex Court in a recent decision has held that, departmental proceedings and criminal proceedings can go on simultaneously. The Court has nowhere held that, in case, the criminal case ends in acquittal, departmental proceedings should be concluded or not proceeded further. As observed by us earlier, both criminal proceedings and departmental proceedings stand on a different footing and involvement of the Appellant in a criminal case attracting Rule 24 of the Tamilnadu Police Laws Manual is established and punishment has been rightly imposed by the Disciplinary Authority, as confirmed by the Appellate Authority.

25. The contention of the learned counsel for the Appellant that, there is no violation of Rules by the Appellant may not be correct, as any act by the Police Officials will attract punishment falling under Rule 24 of the Tamilnadu Police Law Manual and many misconducts will be treated as one of official duty.

26. In view of the foregoing, this Court finds no reason to interfere with the order dated 23.10.2018 passed by the learned Single Judge in W.P.No.1820 of 2012 and the same is confirmed. Accordingly, the Writ Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar



(aeb/vm)

To:

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1. The Inspector General and Commissioner of Police,
Salem City Police,
Salem.
2. The Deputy Commissioner of Police,
Law and Order,
Salem City Police,
Salem.

W.A.No.3273 of 2019

NK[co]
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