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W.A.No.158



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.1580 of 2019
and C.M.P.No.10796 of 2019**

K.Arul Stalin

...Appellant

VS.

1.The Assistant Security Commissioner,
Railway Protection Force,
Integral Coach Factory,
Chennai – 600 038.

2.The Inspector,
Railway Protection Force,
Special Intelligence Branch,
Integral Coach Factory/Shell,
Chennai – 600 038.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 03.01.2019 in W.P.No.17321 of 2013 passed by the learned Single Judge, dismissing the Writ Petition.

For Appellant : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.P.T.Ramkumar for R1 & R2



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J U D G M E N T

(Judgment of the Court was delivered by K.Kumaresh Babu, J.)

This Intra Court Appeal has been preferred by the unsuccessful petitioner challenging the proceedings of the first respondent wherein, the charges were framed against him was dismissed.

2.We have heard Mr.K.Venkataramani, learned Senior Counsel for Mr.M.Muthappan, learned counsel appearing for the appellant and Mr.R.T.Ramkumar, learned counsel appearing for the respondents 1 & 2.

3.Mr.K.Venkataramani, learned Senior Counsel appearing for the appellant would submit that the appellant was originally appointed in the year 1988 in the Railway Protection Force. While he was working as a constable at D&D Centre/ Furnishing / Integral Coach Factory, Perambur he was alleged to have been found in possession of copper cables and crimping sockets and therefore, he was arrested and taken to judicial custody on 05.03.2013. A criminal case was also registered against him and a charge memo was issued to him on the same set of facts upon which the criminal case had been registered on 04.04.2013. Thereafter, an enquiry notice dated 19.06.2013 was issued to the appellant. Hence, he had approached this Court by filing a Writ Petition seeking to quash the charge memo dated 04.04.2013 and to await the final outcome of the criminal case filed against him.



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4.Learned Senior Counsel would submit that the charge memo that had been issued to him was on the same set of facts upon which the criminal case had been filed against him and if the respondents are permitted to continue with the Disciplinary Proceedings and if a punishment being inflicted upon him and in the criminal proceedings if the appellant had been acquitted, then it would cause irreparable loss to him. He would further submit that in the present case, the appellant had been acquitted by a detailed judgment of the Criminal Court on 15.12.2021. He would further contend that the Criminal Court after analysing various evidence that was placed before it, had come to the conclusion that the prosecution had failed to prove the involvement of the appellant in unlawful possession of the Railway property. He would further contend that the Criminal Court had held that there is a doubt as to commission of the offence itself and in fact had recommended the higher Authority to avoid misuse of the statute as has been found in the case of the appellant.

5.He would vehemently contend that when the criminal Court had acquitted the appellant, there is no purpose in proceeding further with the Departmental Enquiry which had been initiated on the same set of facts. He would strongly rely upon a decision of the Hon'ble Apex Court in the case of ***Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.*** reported in (1999) 3

SCC 679 and contend that when the Departmental Proceedings and the criminal



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case were the same without there being any iota of difference, the distinction, which is usually drawn as between the Departmental Proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case. In the instant case, the appellant had been acquitted by a Competent Criminal Court. He would also request us to take judicial notice of the fact that no appeal had been preferred against the order of such acquittal by the Department which could only pre-conclude that the appellant had not committed any illegality for him to be also proceeded under the Disciplinary Proceedings. These aspects have been clearly overlooked by the learned Single Judge and therefore, he would submit that the order impugned in the Writ Petition could not be sustained and would have to be interfered with and the charge memo be quashed.

6. Countering his arguments, Mr.P.T.Ramkumar, learned counsel appearing for the respondents would submit that the Criminal Court had not given any categorical finding on the materials placed on record that the appellant was not in possession of the alleged materials belonging to the Railways. He would submit that the Criminal Court had recorded his acquittal on technical grounds. He would further submit that under the charge memo that was impugned in the Writ Petition, two charges were framed against the appellant.

The first charge relates to his desertion of duty and the second charge relates to



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him being in possession of the Railway property. He would also submit that the second accused in the criminal case, who was a receiver of the Railway property had confessed that in the past, he had been receiving the Railway properties from the appellant herein.

7.Further, he would submit that the witnesses shown in the charge memo, there are about four different witnesses, than that in the criminal case. He would also rely upon a judgment in the case of ***Karnataka Power Transmission Corporation Limited vs. C.Nagaraju and Another*** reported in ***(2019) 10 SCC 367*** and in the case of ***State of Karnataka and Another vs. Umesh*** reported in ***2022 (6) SCC 563*** and contend that the Disciplinary Proceedings are distinct proceedings from the criminal proceedings and submit that the acquittal by a Criminal Court would not preclude the Departmental Enquiry against the Delinquent Officer.

8.He would further submit that the judgment relied upon by the learned Senior Counsel for the appellant had been distinguished in very many cases, where the acquittal was due to lack of evidence before the Criminal Court. In this case, he would submit that the acquittal was on technicalities and therefore, he would submit that there was no error on the part of the learned Single Judge in dismissing the Writ Petition.



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9.We have considered the rival submissions made by the respective counsels appearing on either side and we have perused the materials available on record.

10.The appellant had been issued a charge memo on 04.04.2013 wherein two charges had been framed.

Charge (I)

While deputed to perform 21.30-06.00 hrs duty at D&D on the intervening night of 04/05.03.13 was found to have deserted his duty point office building at D&D at about 04:35 hrs during the check made by the night officer Shri.S.Arivazhangan, ASIPF/Fur. Thereby he failed to carry out his duties with due promptitude and diligence and is charged for neglect of duty under Rule 146.2(i) and 147 (iv) of RPF Rules, 1987.

Charge (II)

During the confidential watch of IsPF/CIB and Fur with staff on 05/03/13 outside factory premises behind furnishing welfare centre at about 04:00 hrs the constable was found with the unlawful possession of Railway Copper cables and crimping sockets outside factory compound wall backside of the welfare centre/Fur. Thus the constable has conducted himself in such a manner which reasonably brings discredit to the reputation of the force, thus violating the provisions of Rule 146.4 of RPF Rules 1987 and also acted in manner unbecoming of a government servant violating the provisions of Rule 3i1) (iii) Railway Services Conduct Rules.



A criminal case had been initiated against the appellant for offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

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11.From the facts narrated by the respective counsels, it could be seen that the appellant was found with the Railway property (copper cables and crimping sockets) in a shoulder bag outside the premises by a Patrolling Team attached to the Integral Coach Factory.

12.A perusal of the judgment of the Criminal Court in the instant case where the appellant was acquitted, it could be seen that the Court had gone about as if the prosecution has been initiated based upon the seizure of the Railway property from the appellant by one Narayana Babu, who was a CID Inspector of ICF without handing over the accused to the jurisdictional Inspector.

13.In giving such a finding, the Criminal Court had wholly erred in failing to note that the Authority under the aforesaid Act had power to arrest and forward the suspect to the Magistrate for custody and also conduct an enquiry upon which the concerned Magistrate can impose punishment as enumerated under the said Act. Further, the Criminal Court had not given any specific finding as to whether the appellant was not in unlawful possession of the Railway Property and the appellant had also not let in any evidence or produced



any materials to substantiate that he was not in possession of the Railway Property.

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14.Be that as it may, the first charge that has been framed against the appellant is that he had deserted his duty on a particular time and date and the second charge is that he had conducted himself in involving in a manner which will bring discredit to the reputation of the Force as he was working as a constable and he was found in unlawful possession of certain Railway property outside the factory compound wall. There are about three witnesses as against the first charge and there are about eight witnesses as against the second charge.

15.From the list of witnesses with regard to the second charge, it could be seen that there are four witnesses named in the charge memo as regards to the second charge who have not been shown as prosecution witness before the Criminal Court.

16.From the facts narrated above, it could be seen that the charge memo in its entirety is not on the same set of facts upon which the criminal proceedings have been initiated and therefore, the judgment relied upon by the learned Senior Counsel in support of his contention would be of no help.



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17.It is pertinent to note that the Hon'ble Apex Court in the case of ***Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh*** reported in **(2004) 8 SCC 200** had distinguished the judgment relied upon by the learned Senior Counsel in Capt.M.Paul Anthony's case and had concluded that when the acquittal was due to lack of evidence before the Criminal Court and when there was sufficient evidence available before the Labour Court in upholding the order of termination, then there is no error in the order passed in the termination. Further a judgment of the Hon'ble Apex Court in the case of ***Karnataka Power Transmission Corporation Limited vs.C.Nagaraju and Another*** reported in **(2019) 10 SCC 367** had also relied upon the aforesaid judgment and rendered its finding upholding that the acquittal in a Criminal Case does not preclude the Departmental Enquiry against the Delinquent Officer and that the Disciplinary Authority is not bound by the judgment of the Criminal Court where evidence produced in the Departmental Enquiry is different from that produced during the criminal trial.

18.For better appreciation, the relevant paragraphs are extracted hereunder:

“12. In *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh* [*Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh*, (2004) 8 SCC 200 : 2004 SCC (L&S) 1067] this Court was concerned with the validity of the



termination of the services of workmen after acquittal by the criminal Court. Dealing with a situation similar to the one in this case, where the acquittal was due to lack of evidence before the criminal Court and sufficient evidence was available before the Labour Court, this Court was of the opinion that the judgment in M. Paul Anthony case [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] cannot come to the rescue of the workmen.

13. Having considered the submissions made on behalf of the appellant and Respondent 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.”

19. In the present case, as we have found the first charge does not

relate to the criminal case and the second charge which relates to the



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criminal case is sought to drive home by four other witnesses who were not examined during the criminal case. Hence, in view of the ratio laid down by the Hon'ble Apex Court extracted supra, we are of the opinion that the respondents are not precluded from continuing with the Departmental Proceedings that had been initiated by them against the appellant.

20.In fine, the Writ Appeal fails and is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.S.K.,J.) (K.B.,J.)
19.09.2023

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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To

- 1.The Assistant Security Commissioner,
Railway Protection Force,
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Chennai – 600 038.
- 2.The Inspector,
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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

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