Tribunal Application

Present: The Hon'ble Justice Pranab Kumar Chattopadhyay And The Hon'ble Justice Md. Abdul Ghani

Judgment On: 20.08.2010.

W.P.S.T. 570 of 2009

State of West Bengal & Ors.

Versus

Sankar Ghosh and another

Points:

Disciplinary proceeding- Whether finding of criminal court binds the disciplinary authority if the charges of both cases are similar-Service law.

Facts:

The respondent No. 1, a Sepoy of 2nd Battalion, Kolkata Armed Police faced a departmental proceeding on the allegation that he was arrested in connection with Khardah P.S. Case No. 383 dated 12.11.2003. The Disciplinary Authority initiated the disciplinary proceedings against the respondent No. 1. The departmental enquiry and criminal proceedings initiated against the respondent No. 1 are based on similar set of facts. In the disciplinary proceedings, the respondent No. 1 was found guilty and the Disciplinary Authority passed the final order imposing punishment of dismissal from service which was subsequently, affirmed by the appellate authority. The respondent No. 1 was, however, acquitted in the criminal trial. After the aforesaid acquittal in criminal trial, respondent No. 1 claimed reinstatement in service. The learned Tribunal directed the Disciplinary Authority to reinstate him in service in view of his acquittal from the criminal case pursuant to the judgment of the learned Additional Sessions Judge.

Held:

In the present case, when both the criminal and departmental proceeding initiated against the respondent No. 1 were based on identical set of facts and on the identical charge regarding involvement of the respondent No. 1 in connection with a dacoity case, the findings of the learned Additional Sessions Judge must prevail upon the Disciplinary Authority. Para 12

The learned Tribunal upon considering the materials on record and also the principles of law as settled by the Supreme Court, directed the Disciplinary Authority to reinstate the respondent No. 1 in service, since the learned Additional Sessions Judge while deciding the criminal case found the respondent No. 1 not guilty of the charges which were also the basis of the departmental proceeding initiated against the said respondent No. 1, there is no illegality and/or infirmity in the aforesaid decision of the learned Tribunal. Para 18

Cases cited:

(1993) 3 SCC 679 [Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. And another]; 1994 Supp (3) SCC 674 [Sulekh Chand and Salek Chand vs. Commissioner of Police and others]; (2006) 5 SCC 446 [G.M. Tank vs. State of Gujarat and Others]

For the Petitioners : Mr. Alok Kumar Biswas

For the Respondents: Mr. D. N. Ray

Ms. Mun Mun Tewari

PRANAB KUMAR CHATTOPADHYAY, J.

The respondent No. 1, a Sepoy of 2nd Battalion, Kolkata Armed Police (since dismissed from service) when working on deputation in the Traffic

Department of Kolkata Police faced a departmental proceeding being Proceeding No. 67 of 1st June, 2004 on the allegation that on 26th November, 2003 he was arrested in connection with Khardah P.S. Case No. 383 dated 12.11.2003. The Disciplinary Authority initiated the disciplinary proceedings against the respondent No. 1 upon serving the Memo of charges along with the statement of allegations and list of witnesses. The respondent No. 1 participated in the disciplinary proceedings.

2. In the present case, departmental enquiry and criminal proceedings initiated against the respondent No. 1 are based on similar set of facts. In the disciplinary proceedings, the respondent No. 1 was found guilty and the Disciplinary Authority passed the final order imposing punishment of dismissal from service which was subsequently, affirmed by the appellate authority.

3. The employee concerned namely, the respondent No. 1 was, however, acquitted in the criminal trial by the learned Sessions Judge, Barrackpore. After the aforesaid acquittal in criminal trial, respondent No. 1 claimed reinstatement in service. The Commissioner of Police, Kolkata did not pass appropriate order directing reinstatement of the said respondent No. 1 in service.

4. In the aforesaid circumstances, respondent No. 1 herein filed an application before the West Bengal Administrative Tribunal which was numbered as O.A. 3961 of 2008. The learned Tribunal ultimately decided the said application in favour of the respondent No. 1 herein by directing the Disciplinary Authority to reinstate him in service in view of his acquittal from the criminal case pursuant to the judgment of the learned Additional Sessions Judge.

5. Referring to the Police Regulations of Calcutta, 1968, it has been argued on behalf of the petitioners that the order of discharge or acquittal of a police officer cannot be a bar to award punishment in the disciplinary proceedings. It has been urged on behalf of the petitioners that the order of dismissal passed by the Disciplinary Authority, which was subsequently affirmed by the appellate authority, became final since the respondent No. 1 herein did not challenge the said orders before the learned Tribunal. Mr. Alok Biswas, learned Counsel of the petitioners further submitted that the acquittal of the respondent No. 1 in the criminal case is based on technical grounds and, therefore, the learned Tribunal should not have passed an order directing reinstatement of the said respondent No. 1 in service without appreciating that the order of dismissal from service in respect of the respondent No. 1 reached finality.

6. On examination of the charge-sheet issued to the respondent No. 1 by the Disciplinary Authority and considering the F.I.R. and also the charges framed against the said respondent No. 1 in connection with the criminal case we are satisfied that the criminal case as well as the departmental proceedings were based on identical set of facts namely, the alleged involvement of the respondent No. 1 in commission of a dacoity in connection with Khardah P.S. Case No. 383 dated 12th November, 2003.

7. From the report of the Enquiry Officer in connection with the departmental proceeding No. 67 of 1st June, 2004, we find that the said Enquiry Officer examined four witnesses namely, the complainant of Khardah P.S. Case No. 383, Dr. Pranay Prasun Mitra, A.S.I. Dudh Kumar Halder of Khardah Police Station, S.I. Jiban Chakraborty, Investigating Officer of the criminal case and Sub-Inspector A.S. Ali of Kolkata Police. The Enquiry Officer on assessing the evidence on record held that the charge

of dacoity levelled against the respondent No. 1 has been proved although the other charge that the said respondent No. 1 had no stay out permission from the Traffic Department was not established since the said Enquiry Officer found that the respondent No. 1 got the stay out permission from his parent unit i.e. 2nd Battalion, Kolkata Armed Police.

8. In the criminal case, 15 witnesses were examined by the learned Additional Sessions Judge including the aforesaid witnesses who were examined by the Enquiry Officer in connection with the departmental proceeding. On examination of the judgment of the learned Additional Sessions Judge we find that the said learned Sessions Judge discussed the evidence adduced by the witnesses and ultimately came to the conclusion that the respondent No. 1 herein was not identified by the complainant or any other witnesses during the T.I. Parade and the motor cycle in question was not seized from the custody of the said respondent No. 1 and finally, money recovered from the respondent No. 1 was not part of the booty but it was part of the loan amount which the said respondent No. 1 received from the police co-operative.

9. The learned Additional Sessions Judge, Barrackpore after assessing the evidence on record held the respondent No. 1 not guilty of the charges under Sections 395/412 I.P.C. and Sections 25(1)(a)/27/35, Arms Act and, therefore, acquitted the said respondent No. 1 of the said charges.

10. The learned Tribunal on examination of the relevant documents including the report of the Enquiry Officer filed in connection with the departmental proceeding, F.I.R. lodged in connection with the criminal case, charge-sheet and also scrutinising the judgment of the learned Additional Sessions Judge, Barrackpore specifically held that the order of acquittal was

passed by the learned Sessions Judge on merits and on proper appreciation of evidence which, in our opinion, is just and proper.

11. The learned Additional Sessions Judge on assessing the evidence adduced by 15 witnesses as produced by the prosecution found the respondent No. 1 not guilty of the charges under Sections 395/412 I.P.C. and acquitted the said respondent No. 1 of the said charges whereas the Disciplinary Authority on the recommendation of the Enquiry Officer held the respondent No. 1 guilty in connection with the charge of dacoity and imposed the punishment of dismissal from service, which was ultimately affirmed by the appellate authority.

12. In the present case, when both the criminal and departmental proceeding initiated against the respondent No. 1 were based on identical set of facts and on the identical charge regarding involvement of the respondent No. 1 in connection with a dacoity case, the findings of the learned Additional Sessions Judge must prevail upon the Disciplinary Authority.

13. The learned Tribunal relying on the findings of the learned Additional Sessions Judge, therefore, rightly held that the respondent No. 1 herein should be reinstated in service as the findings of the judicial authority should prevail upon the findings of the Disciplinary Authority.

14. The learned Counsel of the respondent No. 1 relied on the following decisions in support of his arguments:

1) (1993) 3 SCC 679 [Capt. M. Paul Anthony
vs. Bharat Gold Mines Ltd. And another]

2) 1994 Supp (3) SCC 674 [Sulekh Chand and
Salek Chand vs. Commissioner of Police and
others]

3) (2006) 5 SCC 446 [G.M. Tank vs. State of

Gujarat and Others]

15. In the case of Capt. M. Paul Anthony (Supra), Hon'ble Supreme Court held:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

16.In the case of Sulekh Chand and Salek Chand (Supra), Hon'ble Supreme Court also held:

"2……It is not in dispute that the proposed departmental enquiry also is related to the selfsame offence under Section 5(2) of the Prevention of Corruption Act. The judgment acquitting the

appellant of the charge under Section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits……"

17. In the case of G.M. Tank vs. State of Gujarat (Supra), Hon'ble Supreme Court observed:

"20……The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice."

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"30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. 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 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 its 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. "

"31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed. "

18. The learned Tribunal upon considering the materials on record and also the principles of law as settled by the Supreme Court in the aforesaid decisions, directed the Disciplinary Authority to reinstate the respondent No. 1 in service, since the learned Additional Sessions Judge while deciding the criminal case found the respondent No. 1 not guilty of the charges which were also the basis of the departmental proceeding initiated against the said respondent No. 1. We do not find any illegality and/or infirmity in the aforesaid decision of the learned Tribunal. In our opinion, the learned Tribunal has considered and decided the issues raised before it strictly in accordance with law and there is no scope to interfere with the same.

19. Therefore, we affirm the impugned judgment and order passed by the learned Tribunal and direct the petitioners herein to comply with the directions of the learned Tribunal without any further delay but positively within a period of four weeks from the date of communication of this order.

20. In the aforesaid circumstances, this writ petition stands dismissed.

21. In the facts of the present case, there will be no order as to costs.

22. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

[PRANAB KUMAR CHATTOPADHYAY, J.]

MD. ABDUL GHANI, J.

I agree.

[MD. ABDUL GHANI, J.]