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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.248/99

New Delhi, this the 18th day of March, 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. N. Sahu, Member (A)

Smt. Parwati Singh,
Staff Nurse, P&T Dispensary No.2
C/o Rev. Michael Naik,
New Apostolic Church, 25 Vaishali,
Kotra Sultanbad, Bhopal

.....Applicant

(By Advocate Shri B.S. Banthia
with Shri T.S. Choudhary)

Versus

1. Union of India, through the
Secretary,
Department of Post & Telegraph,
Government of India, New Delhi.
2. The Director,
Postal Service (H.Q.)
M.P. Postal Service, Bhopal.

...Respondents.

(By Advocate: Shri D.S. Mahendru)

O R D E R (ORAL)

By Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant is aggrieved by the initiation of departmental proceedings. Her grievance is that the misconduct alleged in the charge memo formed part of the charge in an earlier criminal proceedings in which the applicant was acquitted. Her contention is that once the applicant was acquitted by criminal court on the basis of evidence produced in the case, it is not competent for the disciplinary authority to initiate the disciplinary proceedings on the same set of charges.

2. The charge states that the applicant was appointed as a Nurse in the department. As stated in her application, she was qualified in General Nursing
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and Midwifery. She also submitted photo copies of certificates of her qualifications including midwifery but, infact, the applicant was not qualified in Midwifery. She deliberately gave a false declaration that she was qualified as Midwife and she also filed false certificates attesting to her said qualification that she was qualified for Midwife. In the earlier criminal case filed against the applicant Under Sections 420, 467 and 471 the case of forgery was adjudicated against the applicant. The applicant was however convicted by the Trial Court but in the Appellate Court, on the appeal filed by the applicant, she was acquitted. It is, therefore, contended by learned counsel for the applicant that when she was acquitted by the appellate Court, it is only ^{CA} ^{LS} ^{LS} harrasing ^{LA} the applicant proceedings against her were once again initiated in a departmental enquiry, on the same charges, which ^{is} ^{not} ~~are~~ not permissible.

3. The Appellate Court proceeded on the premise that in the absence of the production of the original certificate the offence of forgery could not be made out. The prosecution in the case filed only the duplicate certificate alleging that the word "Midwifery" was added in the said duplicate certificate at a later stage and that the original certificate did not contain the word "Midwifery". Hence the offence of forgery could not be successfully made out on the basis of a duplicate certificate. On that ground the Trial Court was satisfied and the applicant was acquitted. It is pertinent to notice that the Appellate Court has also noticed that when the original documents are lost

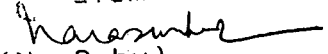
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untill the original document is retrieved and presented before the court the copy of the said document, which was obtained by the accused from the respective departments as secondary evidence and submitted to the P&T department. It cannot be admitted that the photo copy of certificate of educational qualification submitted by the accused to the P&T department has been fabricated by adding the word "Midwifery". It was also noticed that unless the prosecution present the original of the said certificate whose copy it is claimed to be fabricated by adding the word "Midfery" and submitted by the accused to its employer, the offence cannot be proved. Therefore the acquittal of the applicant by the Appellate Court cannot be said to be on merits in this case.

4. Secondly, the proof of misconduct which has to be established in the departmental enquiry is preponderance of probabilities whereas in a criminal case unless it was shown that the accused is guilty beyond reasonable doubt accused cannot be convicted. Hence the parameters in the departmental enquiries and the criminal court are different. It cannot be alleged that the acquittal of a person in a criminal case would preclude departmental authorities from proceeding with the enquiry.

5. In view of the above we do not find any merit in this case. The O.A. is, therefore, dismissed. No costs.


(N. Sahu)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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