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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 173 OF 1987  
~~TA No.~~

DATE OF DECISION 22.6.1987

KANAKSINH HIMMATSINH SOLANKI Petitioner

D.F. AMIN Advocate for the Petitioner(s)

Versus

THE SUPDT. OF POST OFFICES Respondent

J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. SRINIVASAN, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

Kanaksinh Himmatsinh Solanki,  
E.D. Branch Post Master, Zara,  
Via. Kothamba,  
Dist: Panchmahals.



.... Petitioner.

(Advocate: D.F. Amin)

Versus.

The Supdt. of Post Offices,  
Panchmahals division,  
Godhra - 389 001.  
Dist: Panchmahals.

.... Respondent.

(Advocate: J.D. Ajmera)

J U D G M E N T

O.A.No. 173 OF 1987

Date: 22.6.1987.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Kanaksinh Himmatsinh Solanki, holding the post of a Post Master, (now under suspension) at Zara (Dist: Panchmahal), in this application filed under section 19 of the Administrative Tribunals Act, 1985, has challenged the action of the Defendants- Respondents in initiating a departmental enquiry by serving him with the charge-sheet dated 29.1.1986 (Annexure 'B'). According to the case set up by the petitioner, the impugned action is bad in law as it amounts to "double jeopardy" inasmuch as, he has been acquitted by the Court of J.M.F.C., Lunawada in Criminal Case No. 208/86, wherein he was indicted of the offence punishable under section 409 of I.P.C on the accusation that he had defalcated a sum of Rs.3210/- including the amounts of remittance entrusted to him.

contd..... 3/-

2. Pending admission, notices were issued to the Respondents, in response whereof they have filed their written statement, opposing against the admissibility of the application. It is contended inter-alia that the action of departmental proceedings initiated against the petitioner is on the basis of departmental lapses which is quite distinct from the allegations of misappropriation for which he was tried by the Court. According to the Respondents the application is premature and liable to be dismissed.

3. Banking on the dictum of Gujarat High Court in Special Civil Application No.1232/76, Abdul Hakim Ahmed Vs. District Superintendent of Police & Ors. decided by the Hon'ble Mr. Justice M.P. Thakker (as he then was), it is straneously urged by Mr. D.F.Amin, the learned counsel for the petitioner, that the articles of charges levelled against the petitioner in the departmental enquiry are quite similar to the accusations for which he was charged by the Criminal Court. It was therefore submitted that once he was acquitted of the offence for which he was charged by the learned Magistrate in Criminal Case No.208/86, he can not be subjected to a departmental enquiry. It was however submitted by Mr. P.N.Ajmera for J.D.Ajmera on behalf of the Respondents that the departmental action has been initiated against the petitioner on the ground of dereliction of duty and not on the accusation relating to misappropriation which may amount to an offence under section 409 of I.P.C. for which he has been acquitted by the Criminal Court. In support of his submission he has relied on the case of "Corporation of the City of Nagpur, Civil Lines and Ors. Vs. Ramchandra & Ors. (1981(2) Service Law Reporter,p.274),

wherein it has been observed as under :

"Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is it's discretion in any way fettered."

3. It is now well settled that if the facts or allegations had come to be examined by a Court of competent jurisdiction and the Court has given a finding that the allegations are not true, then it is not permissible to hold a departmental inquiry in respect of a charge based on the same facts or allegations. If on the other hand, the Court has merely expressed a doubt as to the correctness of the allegation then there may be no objection to hold a departmental inquiry on the same allegations if better proof than what was produced before the Court or was then available is forthcoming. In short, it is permissible to hold a departmental inquiry after the acquittal, in respect of a charge which is not identical with or similar to the charge in the criminal case and is not based on any allegations which have been negatived by the Criminal Court.

4. Now under the Articles of charges it is alleged against the petitioner that he committed a breach of the provision contained under Rule 104(2) of Branch Office by not crediting the amount received by the Post Office under B.O. Receipts No.54 for Rs.100/- (dated 28.8.84), No.56 for Rs.200/- (dated 17.2.84) & No.59 for Rs.70/- (dated 29.7.84) on the same day. Prima facie, this nature of charge is quite distinct from the accusation of acts of misappropriation in respect of the amount entrusted to him for which he was tried in the Criminal Court. Further on perusal of the documents listed in

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support of the departmental charge levelled against the petitioner, it is quite obvious that the B.O. receipt No. 54, 56 & 59 and the petitioner's confession dated 22.10.84 were neither relied upon by the prosecution in the said criminal case nor even referred to by the learned Magistrate in the judgment rendered by him. Obviously, therefore, no conclusions or findings have been given by the criminal Court in respect thereof. Frankly speaking, the petitioner was acquitted by the Criminal Court as all the <sup>material</sup> witnesses were won over. It is therefore not possible to hold on the basis of the material brought on record that departmental proceedings are being initiated against the petitioner on the basis of identical charges or the same evidence. As the disciplinary authority has not still reached its conclusions after holding a regular inquiry, no question of identical or conflicting findings arises in the matter. It is quite possible that the departmental inquiry may end in favour of the petitioner. Even otherwise, it will be open for the petitioner to agitate the question of 'Double Jeopardy', after the findings are rendered by the Inquiry Officer in the Department proceedings, and orders are passed thereon by the Disciplinary authority.

5. Bearing in mind all the facts and circumstances as discussed earlier, there are no valid grounds whatsoever to quash the charge or action of the Respondents in holding a departmental inquiry against the petitioner. In this view of the matter, we do not find any merits in the present application and reject the same in limine.

  
(P. SRINIVASAN)  
ADMINISTRATIVE MEMBER.

  
( P. M. JOSHI )  
JUDICIAL MEMBER.