

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

*yes
Departmental
Enquiry*

O.A. No. 334 OF 1991.
F.AxxNox

DATE OF DECISION 28-1-1993

S. Natesan Iyer, **Petitioner**

Applicant-in-person. **Advocate for the Petitioner(s)**

Versus

Union of India & Ors. **Respondents**

Mr. N.S. Sheyde, **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

S. Natesan Iyer,
Assistant Electrical Foreman,
Power Supply Installation,
Western Railway (Traction Distribution)
Mehmedabad.
Residing at Block No. M-1
Room No. 8,
Prashant Apartments,
Opp. S.T. Nagar,
Nadiad.

..... Applicant.

Versus.

1. Union of India, owning,
Representing and Administrating
through the General Manager,
Headquarter office,
Western Railway,
Churchgate, Bombay.
2. Senior Divisional Electrical
Engineer (Traction Distribution)
Western Railway,
DRM Office,
Vadodara.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 334 OF 1991

Date: 28-1-1993.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard applicant-in-person, Mr. N.S. Shevde
learned advocate for the respondents.

2. The applicant working as Assistant
Traction Foreman in the Western Railway, Headquarters
at Mehmedabad, has filed this application under
section 19 of the Administrative Tribunals Act, 1985,
seeking the relief that the charge-sheet issued
against him being No. E.308/7/3/145 dated 21st
January, 1991 by the respondent No.2 under Rule 9 of
the Railway Servant (Discipline and Appeal) Rule, 1968

be quashed and the respondents be directed not to hold any departmental enquiry against him on the charges which are subject matter of criminal prosecution against him.

3. The applicant has alleged in the application that on 24th November, 1990 he in the capacity of Secretary, Western Railway Employees Union, sent notice by registered post staging demonstration against contract system. It was circulated to railway employees. The copy of the said notice affiliated leaflet is produced at Annexure A-2. On 12th December, 1990, according to the applicant, the Secretary of the Union, along with about 150 participants staged demonstration at village Gothaj railway station, that the Secretary was on leave on this date. The demonstration was started at about 9-00 hrs. and according to the applicant, the engine drivers of Express train stopped the trains by ^{ee} saying the demonstration. It is alleged by the applicant that on 13th December, 1990 the respondents lodged complaint and registered criminal case No. 3551/91 against the applicant and two others. the copy of the same is produced at Annexure A-3. Thereafter, on 31st January, 1991, the applicant has been served with the impugned charge sheet Annexure A-1 dated 21st January, 1991 by the respondent No. 2. The article of charge against the applicant as per the charge sheet

Annexure A-1 dated 21st January, 1991 is as under:

"Stopping of Trains 8033 UP (3 minutes) and 2637 UP (6 minutes) at GTE by standing in between the track and infringing the construction work of loop at GTE Station".

The statement of imputation of misconduct or misbehaviour in support of the Article of Charge framed against the applicant is as under:

"On 12.12.90 you have infringed the Rly. working by standing in between the UP tracks which caused detention to 8033 UP Howrah Express from 10.03 to 10.06 hrs. (3 minutes) and 2637 UP Trivandrum Express from 11.12 hrs to 11.18 hrs (6 minutes). You also infringed in the working of construction of loop at GTE Station."

It is alleged by the applicant that in case where the criminal action and the disciplinary proceedings are grounded up on the same set of facts, the disciplinary proceedings should be stayed. During the pendency of this application, the applicant filed M.A. 206/92 alleging that he has been acquitted by the learned Joint Judicial Magistrate (F.C.) Anand, in a Criminal Case No. 3551/91 by judgment dated 27th May, 1992 filed by the respondents. It is alleged by him that the charges against him in Annexure A-1 in the departmental proceedings and the charge in the complaint in the criminal case were same and as the applicant has been exonerated and set free by the Criminal Court, the respondents should have dropped the enquiry on the basis of the charge sheet Annexure A-1. It is alleged

by him that he requested the disciplinary authority to drop the charge sheet on 11th January, 1992 and thereafter but there is no response from the disciplinary authority.

4. The respondents have filed the reply contending that the two trains referred to by the applicant were not stopped by the Drivers but the applicant infringed the railway working by standing in between the UP tracks causing detention to 8033 UP Howrah Express and 2637 UP Trivandrum Express. It is further contended by the respondents that the applicant also infringed in the working of construction of loop at Gothaj station. It is contended that the applicant had no legal right to obstruct or infringe the running of the trains or construction work. The respondents have relied on the charge sheet dated 21st February 1991 vide Annexure A-1 for the contents thereof and have contended that the applicant has caused detention of both the trains mentioned in the statement of imputation of misconduct and has also infringed in the working of construction loop of Gothaj Station. It is contended that even after decision of the criminal case, a departmental enquiry can be initiated against the employee under certain circumstances and mere disposal of a criminal case is no bar to initiate departmental inquiry. It is contended that there is no illegality in conducting the

departmental enquiry against the applicant on the facts and circumstances of the case. It is contended that a complaint had been filed against the applicant and two others disclosing offence committed by them whereas the departmental enquiry has been initiated against the applicant for the misconduct committed by the applicant under the Service Conduct Rules. It is contended that the applicant has violated the Service Conduct Rules and hence the action has been correctly initiated by the disciplinary authority. It is contended by the respondents that the application be dismissed with cost.

5. The applicant has filed rejoinder contending or that there is no good/sufficient reason to proceed with the departmental enquiry. It is contended in the rejoinder that subject matter in the criminal proceedings and the departmental proceedings were same and as the trains were not stopped, no misconduct was done by the applicant. It is contended that the Criminal Court at Anand has rightly taken subject matter under section 174 of the Indian Railways Act i.e., obstructing running of trains etc. and the Court has acquitted the applicant. It is contended that the charges in the criminal proceedings and in the departmental proceedings are same and as the applicant is not found guilty as being innocent for the offence punishable under section 174 of the Indian Railways Act, it is not open for the

department to proceed with the enquiry and hence the charge sheet Annexure A-1 should be quashed.

6. The applicant submitted that the departmental enquiry against him should be dropped and the charge-sheet issued against him Annexure A-1 dated 21st January, 1991 should be quashed and set aside because he is acquitted by the Criminal Court in criminal case No. 3551/91 filed against him and two others by the respondents by the learned Second Joint Judicial Magistrate (F.C.) Anand as per the judgment in that case dated 27th May, 1992. The applicant submitted that the allegations and the Articles of Charge in the departmental enquiry against him and the charge were similar against him in the criminal prosecution and as he is acquitted in the criminal case filed against him, the charge sheet should be quashed and the departmental enquiry should be dropped against him by the respondents. He relied on the two decision in support of his above submission. The first decision is K. Nagarajan v/s. The Divisional Engineer, ATR 1986(2) CAT p.264. The CAT Madras Bench in the said matter has considered in its judgment, the decision in Corporation of Nagpur v/s. Ramchandra G. Modak (A.I.R. 1984 S.C. 626) which dealt with the case of pending departmental enquiry. The case before the Tribunal was about the institution of a fresh departmental enquiry after the acquittal of an accused in a criminal

case. According to the C.A.T., the principle enunciated in the decision in Corporation of Nagpur (Supra) will be applicable to the institution of a fresh departmental enquiry also after the acquittal of an accused in a criminal court. The C.A.T. has observed as under:

"The counsel for the respondent argued that the law on this matter is now settled and invited reference to 1984 A.I.R.626 - Corporation of Nagpur V. Ramchandra G. Modak where it has been held that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor its discretion in any way fettered. In this case, the departmental authority had chosen to exercise his power to proceed against the applicant by instituting the departmental enquiry.

In view of the Supreme Court decision in A.I.R. 1984 referred to above, we are not discussing the other references cited by the learned counsel for applicant. In 1984 A.I.R. 626 - Corporation of Nagpur v. Ramchandra Modak, referred to above, the Supreme Court held -

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. 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 charge 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 its direction (discretion) in any way fettered. However, as quite some time has

elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so."

7. The Tribunal then observed that the decision of the Hon'ble Supreme Court in Corporation of Nagpur case (supra) starts saying that it would not be expedient to continue departmental inquiry on the very same charge or grounds or evidence. Nevertheless, the departmental authority is vested with the power to continue the inquiry at its discretion. However, before taking any decision in exercise of the power vested in the departmental authority, it would be necessary to consider whether it is really worthwhile to continue with the departmental inquiry and whether there is sufficient evidence and good ground for that. The decision of the Supreme Court shows that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered. The Central Administrative Tribunal relying on this principle also observed in K. Nagarajan's case (supra) there has to be a careful application of the mind by the departmental authority concerned to the judicial pronouncement in the criminal case and there must be good and sufficient reasons to initiate the

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departmental inquiry notwithstanding the acquittal by the criminal court if the charge is similar based on this case the same facts. The C.A.T. held in that case, "... in/ admittedly, the facts are identical. Apart from the same witnesses and the same documents as in the criminal case before the Chief Judicial Magistrate, Tiruchirapalli, are sought to be relied upon by the department in the departmental inquiry" and on facts the C.A.T. held that in the light of the overwhelming evidence in favour of the applicant in the Magistrate's Court, it would be futile to go through the departmental inquiry. Therefore, the main question to be considered/whether it is really worthwhile to continue with the departmental enquiry and whether there is sufficient evidence and good grounds for that, notwithstanding the acquittal by the criminal Court if the charge is similar based on the same facts. The second decision relied on by the applicant is Prafulla Chandra Mohapatra V/s. State of Orissa & Ors., 1192(3) All India Service Law Journal, Hon'ble Supreme Court p. 190, in which / held that the decided case be court has can not/restarted merely because / observed adversely in case of co-accused. In our opinion this decision will not help the applicant because the decision of the Hon'ble Supreme Court was based on the facts that when the court found acquittal of the appellant in that case there was no justification to restart the disciplinary proceedings more than 11 years after the retirement of the appellant.

8. The applicant at first wanted to make a blanket proposition that disciplinary proceedings could not continue in the face of the acquittal of the applicant in the criminal case. In our view, there is no substance in this submission. A similar submission was made before the Hon'ble Supreme Court in the case of Nelson Motis V/s. Union of India & Anr. reported in JT 1992(5) SC page 511 and the said submission was negatived by the Supreme Court in the following words which we reproduce below:

"5. So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case."

9. Therefore, the material question to be considered is that if the applicant is acquitted in a criminal case, whether or not the departmental enquiry pending against him should be dropped or should continue. The Hon'ble Supreme Court has held that 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 charge 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 its discretion in any way fettered. The applicant submitted that the subject matter in the criminal proceedings against him and the departmental proceedings against him is the same. Para-1 of the judgment of the criminal court in Criminal Case No. 3551/91 against the applicant and two others shows that the applicant and two others were charged for offence / under section 174 of the Indian Railway Act inasmuch as the accused person in that case under their leadership in order that their demands be satisfied, staged demonstrations, at the Gothaj railway station, on 12th December, 1990 between 10.00 to 11.15 hrs forcibly stopped both, Howra and Trivandrum Express trains on the railway lines and delayed their departure. The Article of Charge against the applicant in the charge sheet Ann. A-1 dated 21st January, 1991 is as under:-

"Stopping of Trains 8033 UP (3 minutes) & 2637 UP (6 Minutes) at GTE by standing in between the track and infringing the construction work of lpop at GTE Station."

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And the statement of imputation of misconduct in support of the Article of Charges framed against the applicant is as under:-

"On 12.12.90 you have infringed the Rly. working by standing in between the UP tracks which

caused detention to 8033 UP Howrah Express from 10.03 to 10.06 hrs. (3 minutes) and 2637 UP Trivandrum Express from 11.12 hrs. to 11.18 hrs. (6 minutes). You also infringed in the working of construction of loop at GTE Station."

The applicant submitted that the charge sheet Ann.A-1 departmental should be quashed and set aside and the enquiry be dropped because the subject matter of the disciplinary proceedings and enquiry proceedings is the same. while the learned advocate for the respondents submitted that for offence the applicant and two others were charged under section 174 of the Indian Railway Act as mentioned in para-1 of the judgment in Criminal Case No. 3551/91, while in the departmental proceedings against the applicant he is also further charged for infringing of the under Railway Service(Conduct) Rules, 1966 construction work at GTE Station. The learned advocate for the respondents submitted that the standard of proof in a criminal trial is in accordance with the provisions of Indian Evidence Act and the Criminal Procedure Code, while in a departmental enquiry it has to be seen whether the principle of natural justice are observed or not and whether there is preponderance of probability. He submitted that the departmental proceeding is started against the applicant under Rule 9 of Railway Servant (Discipline and Appeal) Rules, 1968, not only for infringing the railway working by standing in between the UP track which caused detention but also for the charge that the applicant had infringed the working of

construction of loop at GTE Station. He therefore submitted that the charge against the applicant in the departmental inquiry as per the charge sheet is not identical as the charge against the applicant in the criminal case and therefore the charge sheet can not be quashed nor the departmental inquiry can be dropped as urged by the applicant. He also submitted that even the decision relied on by the applicant in K. Nagarajan's case (supra) given by the Central Admn. Tribunal says 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 discretion fettered. He submitted that in the instant case, the departmental inquiry against the applicant and the criminal case which was filed against the applicant are not on the very same charge or subject matter or evidence.

10: We have considered the submissions made before us by both the sides. We have also given our anxious considerations to the decisions cited by the applicant and we respectfully follow the ratio in the decision in the Corporation of Nagpur V/s. Ramchandra Modak decided in AIR 1984 SC p.626 which is referred to in the decision in K. Nagarajan V/s. Divisional Engineer, ATR 1986(2) CAT p.264 relied on by the applicant.

In the instant case, as observed above, though the applicant is acquitted in the criminal case against him, it would be for the department to consider in the

departmental inquiry which is pending against the applicant, the factor whether it is worthwhile to continue the departmental inquiry as the applicant is acquitted. More over, the charge in the criminal case and the departmental inquiry is not the same but as observed above, there is further the charge in departmental inquiry against the applicant that he has also infringed the construction work of loop at GTE Station. In view of these facts, we can not accept the submission of the applicant that the charge sheet Annexure A-1 should be quashed and set aside and the departmental proceedings against him should be dropped. Hence we pass the following order:

O R D E R

Application is dismissed. No orders as to cost.

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(R.C.Bhatt)
Member (J)

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(N.V.Krishnan)
Vice Chairman

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