

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.399 of 1987.

Date of decision : April 29,1988.

Sripati Satapathy, aged about
43 years, son of late Narasingha Satapathy,
at present working as Postal Assistant,
Phulbani Post Office, At, P.O. and
District- Phulbani. ...

Applicant.

Versus

1. Union of India, represented
by its Secretary, Department of
Posts, Dak Bhawan, New Delhi.
2. Postmaster General, Orissa Circle,
At, P.O. Bhubaneswar, District-Puri.
3. Superintendent of Post Offices,
Phulbani Division, Phulbani 762001,
District-Phulbani.
4. Shri Raj Kishore Das, Enquiry Officer,
cum-Deputy Superintendent of Post
Offices, Cuttack City Division,
At, P.O. & District-Cuttack.

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Respondents.

For the applicant ...

M/s. Deepak Misra,
R.N. Naik &
A. Deo, Advocates.

For the respondents ...

Mr. A.B. Mishra, Senior Standing
Counsel (Central).

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C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *Yes*
 3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.
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J U D G M E N T

K.P. ACARYA, MEMBER (JUDICIAL)

In this application under section 19 of the Administrative Tribunals Act, 1985, the departmental proceeding drawn up against the applicant and the charges framed against him vide Annexure-2 is under challenge and sought to be quashed.

2. Shortly stated, the case of the applicant is that the criminal machinery was set into motion against him alleging that while he was the Sub-Postmaster, Nuagaon Sub-Post Office within the district of Phulbani during the period beginning from 25.2.1976 to 4.4.1976, the petitioner issued and arranged payment of fictitious money orders by manipulating records, documents etc. and misappropriating the amount for which a case under section 409/471 of the Indian Penal Code was registered against the applicant and the case was chargesheeted which formed subject matter of G.R. Case No. 53 of 1976, G.R. Case No. 83 of 1976 and G.R. Case No. 91 of 1976. The applicant was tried in all these cases by the Sub-Divisional Judicial Magistrate, Balliguda and the learned Subdivisional Judicial Magistrate convicted the applicant in all the three cases which were carried in appeal to the higher forum forming subject matter of Criminal Appeal Nos. 12, 13 and 14 of 1982. All these appeals were heard by learned Additional Sessions Judge, Phulbani who in a common judgment dated 19.9.1983 allowed all the three appeals setting aside the conviction and sentence passed against the applicant and acquitted the applicant of the charges levelled against him. The State Government filed application before the Hon'ble High Court of Orissa seeking leave to appeal against the order of

acquittal passed by the learned Additional Sessions Judge, which formed subject matter of Criminal Misc. Case No.90 of 1983 and the Hon'ble High Court of Orissa vide its order dated 16.1.1984 dismissed the criminal Miscellaneous application vide Annexure-1. Thereafter, a departmental proceeding under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was initiated against the applicant on the selfsame charges which forms subject matter of Annexure-2. While the departmental proceeding mentioned above is pending enquiry the applicant has filed this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the departmental proceeding is not liable to be quashed as it has been initiated due to the observations made by the learned Additional Sessions Judge, Phulbani in his judgment that this is a fit case for initiating departmental proceeding against the applicant even though the prosecution could not bring home the guilt against the applicant and it is furthermore maintained by the respondents that under law there is no bar to initiate a departmental proceeding against the applicant on the self-same charges especially when acquittal of the applicant is founded upon benefit of doubt having been awarded in favour of the accused, i.e. the present applicant.

4. We have heard Mr Deepak Misra, learned counsel for the applicant and Mr A.B Misra, learned Senior Standing Counsel(Central) at some length. Before we discuss the contentions put forward by counsel for both sides, it is worthwhile to note at the outset that the charges in the criminal

case framed against the accused (the present petitioner) is same as that of the charges levelled against the present applicant in the departmental proceeding and this fact was not disputed before us - rather admitted. Therefore, the moot question that needs determination is as to whether after order of acquittal having been passed in favour of the accused-petitioner, whether a departmental proceeding shall be maintainable against the same person on the self-same charges. We have no hesitation in our mind to say that if the acquittal is on a technical ground that is due to defective sanction order or of any reason of similar nature then a departmental proceeding is maintainable even after the order of acquittal has been passed in favour of the accused by a criminal court. This settled position of law was not rightly and fairly disputed at the Bar. So far as the present case is concerned, at the risk of repetition we may say that the Bench is called upon to determine as to whether a departmental proceeding is maintainable in view of the fact that in the operative portion of the judgment passed by the learned Additional Sessions Judge, Phulbani, it has been mentioned that benefit of doubt has been awarded to the accused, i.e., the present applicant. Mr Deepak Misra, learned counsel for the applicant, did not dispute the contention raised by learned Senior Standing Counsel(Central) that if it is purely a case of benefit of doubt then departmental authorities would be at liberty to initiate a disciplinary proceeding. But at the same time Mr Deepak Misra contended that there is an obligation and duty cast upon the Court to examine the judgment of the criminal court and find out from the trend of discussion and analysis of evidence as to whether it was a clean acquittal

or an acquittal based on benefit of doubt. In support of his contention Mr. Deepak Misra, learned counsel for the applicant relied upon a judgment reported in AIR 1965 Madras 502 (Shaik Kasim v. Superintendent of Post Offices, Chingleput Division and another). In the said case at paragraph 8 of the judgment the Hon'ble Judge observed as follows :

" Firstly, an Administrative authority, in initiating disciplinary proceedings, is not bound to wait for the verdict of a criminal court. But where the criminal court has tried the concerned person and acquitted him, it would be improper, and such a proceeding is liable to be quashed as not in consonance with the principles of natural justice, if the Administrative authority later initiates disciplinary proceedings on the identical facts, and identical charge and records a contrary conclusion. But, of course, the acquittal should have been substantially on the merits; technical acquittals on grounds like sanction may not inhibit departmental disciplinary proceedings, or a contrary verdict therein.

Secondly, there could be no rigid or inflexible rule that the finding of a criminal court is conclusive, in every sense, upon Administrative Authorities. If the finding is purely a technical acquittal, the Administrative Authority may conceivably punish, on the same facts. It can certainly punish where the acquittal is solely based on lack of sanction, or some technical defect in procedure. It could punish, on the same facts, for some lesser charge, which may not amount to a criminal offence, but may well amount to a grave dereliction of duty, entitling disciplinary action. xx xx xx

Thirdly, where the acquittal is substantially on merits, on identical facts and charges, it will not be proper for a disciplinary Tribunal to record a finding of guilt, and to punish thereon. This is a basic principle of jurisprudence, and I cannot see that it makes any difference that the departmental authority acts before the criminal proceeding, or after it. This court, in exercise of the jurisdiction under Art. 226 of the Constitution, would be justified in striking down the action based on such findings as not in consonance with principles of natural justice. Otherwise, grave anomalies might follow, as stressed by

Rajamannar C.J. and Venkatarama Aiyar J
in AIR 1952 Madras 853. "

Mr. Misra, then relied upon another judgment of the High Court of Madras reported in 1984 (1) SLR 409 (George Verghese v. The Food Corporation of India, Madras and another). In the said case after the petitioner before His Lordship was acquitted by a criminal court, chargesheet was issued by the department on the same grounds and therefore the High Court was moved to quash the charges. The Hon'ble Judge while distinguishing the principles laid down by the Hon'ble Supreme Court in the case of Corporation of the City of Nagpur, Civil Lines and another versus Ramachandra G. Modak and others reported in AIR 1984 SC 626 stated as follows :

" This statement cannot mean that in a case as the one on hand, it will be open to the Department to resurrect the same old charges on which petitioner faced a criminal trial and was acquitted, to proceed departmentally. It is not denied before me that the charges in the criminal Court and memorandum of charges now served on the petitioner are identical. If this be so, I see absolutely no jurisdiction on the part of the respondents to proceed departmentally. "

5. The next judgment on which reliance was placed by Mr. Misra, learned counsel for the petitioner is reported in ATR 1986 (2) CAT 264 (K. Nagarajan v. The Divisional Engineer) decided by the Madras Bench of the Central Administrative Tribunal. In the said case, the petitioner before the Madras Bench was a technician in the Telephone Exchange at Srirangam. The petitioner was charge-sheeted under section 420, Indian Penal Code and stood his trial before the Chief Judicial Magistrate, Tiruchirapalli, who by his judgment dated

27.3.1981, acquitted the petitioner holding that the prosecution had failed to prove the offence. After acquittal, memo of charges was served on the petitioner initiating departmental proceeding under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which was sought to be quashed as the charges were identical. Hon'ble Member of the Madras Bench held that it would not be advisable to initiate a departmental proceeding against the petitioner on the selfsame charges in relation to which the petitioner has already been acquitted. Reliance was also placed by learned counsel for the petitioner on another judgment reported in AIR 1987(1)CAT 148 (Kanwar Lal Sabharwal v. The General Manager, Northern Rly, New Delhi and others) decided by the Central Administrative Tribunal, Delhi Bench. Hon'ble Members of the Delhi Bench held as follows :

" However, if the acquittal is on merits, the departmental proceedings are being held for the same misconduct for which the delinquent public servant has already been given a clean acquittal and the evidence whereby the misconduct in the departmental proceedings is sought to be established is also substantially the same, the holding of departmental enquiry is unfair and would be offensive to the rules of equity and fairplay. "

Hence the proceeding was quashed.

In another judgment reported in ATR 1987(1) CAT 645 (D.G.Mane v. Union of India), the Hon'ble Members of the New Bombay Bench of the Central Administrative Tribunal had taken the very same view.

6. On the basis of the aforesaid judgments learned counsel for the petitioner submitted that even if the words ' benefit of doubt ' has been used by learned Additional Sessions Judge, Phulbani in his judgment of acquittal, yet a duty is cast on

this court to analyse the evidence discussed by learned Additional Sessions Judge, and to find out whether it is a clean acquittal by virtue of the fact that learned Additional Sessions Judge has come to a positive finding that the prosecution failed to prove its case beyond reasonable doubt. In other words, learned counsel for the petitioner meant to say that if learned Additional Sessions Judge has not come to a finding that the case was not proved beyond reasonable doubt then the petitioner is out of court and the departmental proceeding could be initiated on the selfsame charges.

7. In order to negative the contentions of learned counsel for the petitioner learned Senior Standing Counsel (Central) relied upon a judgment reported in AIR 1963 SC 1723 (State of Andhra Pradesh and others v. S. Sree Rama Rao) and contended that the findings arrived at by the criminal court has no binding effect on the enquiring officer conducting a departmental proceeding. Before we express our opinion on the aforesaid judgment relied upon by learned Senior Standing Counsel (Central) it is necessary to state the facts of the case. Sri S. Rama Rao was, at the material time, in charge of the Police-station Kodur, within Visakhapatnam district. A case of burglary was reported at the Police-station on 19.2.1954. One Durgalu who was found absconding was suspected to be the author of the crime and this Durgalu was apprehended on March 5, 1954 who was ultimately handed over to the Officer-in-Charge of Kodur Police station being accompanied by four village servants. No entry to the above effect was made in the Station Diary

though Durgalu was found in the Police-station from March 5, 1954. On 7.3.1954, S.Rama Rao kept a Headconstable in charge of the Police-station and left for Kakinada on casual leave and he reported on 12th March, 1954. After the departure of S.Rama Rao some constables arrested one Reddy Simhachalam and brought him on 7.3.1954. Three police constables tortured Simhachalam who became unconscious and the dead body of Simhachalam was found floating in a well near the Police-station. A preliminary enquiry was conducted by the Revenue Divisional Commissioner, Narsipatnam and in the enquiry Durgalu made a statement that he had witnessed the torture over Simhachalam by three constables who were then charge-sheeted under sections 304(2) and 201 read with section 114, Indian Penal Code for causing the death of Simhachalam and for causing disappearance of the evidence of his death. Before the Sub-Magistrate, Durgalu retracted from his statement stating that he was induced to make the statement that he was an eye witness to the occurrence. The Sub-Magistrate discharged the police constables on the ground that the sole occurrence witness had turned hostile. A departmental enquiry was initiated against the Officer-in-Charge of the Police-station on an allegation of having wrongfully confined Durgalu in the Police-station. The Officer-in-Charge was found guilty of the allegations and was removed from service. After punishment was awarded S.Rama Rao invoked the jurisdiction of the High Court under article 226 of the Constitution and the High Court held that a person should be punished only after the entire evidence in the case had

been considered and he is found liable beyond reasonable doubt otherwise the conclusions of the departmental authority were vitiated. In addition to the above the High Court observed that the orders passed by the departmental authorities were vitiated because the Enquiring Officer declined to summon and examine two witnesses for the defence even though a request in that behalf was made and there is no charge against Rama Rao for having falsified the record by omitting to write what had happened in the Police-station. Hence, the High Court quashed the order of punishment and the matter was carried in appeal by the State of Andhra Pradesh to the Supreme Court. Their Lordships were pleased to observe as follows :

"The Enquiry Officer had accepted the evidence of witnesses for the State that Durgalu was handed over to the respondent on March 5, 1954 and the observation that the respondent may have the benefit of doubt if the judgment of the Magistrate is considered "sacred truth" appears to have been made in a somewhat sarcastic vein, and does not cast any doubt upon the conclusion recorded by him. The Enquiry Officer appears to have stated that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental enquiry against that public servant. In so stating the Enquiry Officer did not commit any error. The first ground on which the High Court interfered with the order of the punishing authorities is therefore wholly unsustainable. "

The aforesaid observations of Their Lordships of the Supreme Court have no bearing at all to the facts of the present case because S. Rama Rao was admittedly not an accused before the Magistrate and furthermore the allegations in the criminal case was completely different from the charges levelled against Rama Rao. In such circumstances, the case decided by Their Lordships of the Supreme Court being clearly distinguishable from the facts of the present case the above

mentioned principle laid down by Their Lordships have no application to the facts of the present case.

8. Learned Senior Standing Counsel (Central) next relied upon judgments reported in 1973(2) SLR 238 (Bhagwat Charan v. State of Uttar Pradesh and others); 1973(2) SLT 430 (Union of India v. B.S. Misra); 1973(2) SLR 564 (Khusi Ram v. Union of India) and another judgment reported in ATR 1987(1) C.A.T.101 (D.C. Choudhary v. Senior Superintendent of Post Offices, Hoshangabad Division, Hoshangabad) to substantiate his contention that unless the acquittal is clean and honourable one, a departmental proceeding can be initiated. We have perused all these judgments. In the said judgments Their Lordships are of the view that if the acquittal is honourable one, then no departmental proceeding should be initiated on the selfsame charges. It is worthwhile to state here that the judgments which were relied upon by Mr. Deepak Misra, learned counsel for the applicant, nowhere we could find that the Court has to analyse the evidence and find out from the trend of discussion that the Criminal court had given a clean and honourable acquittal despite the fact of using the word 'benefit of doubt'. The ratio decidendi of all these judgments relied upon by learned counsel for the applicant and learned Senior Standing Counsel (Central) goes to the limited extent of saying that once the acquittal is an honourable and clean one then only no departmental proceeding should be initiated on the self-same charges. So far as the present case is concerned, no doubt at some places the appellate court has stated that the prosecution has failed to prove a part of its case beyond reasonable doubt

yet in the concluding portion of the judgment the appellate court states that benefit of doubt is to be awarded to the accused appellant i.e. the present applicant and hence he was acquitted. The principle of benefit of doubt in a criminal trial has been explained in a plethora of judgments and especially in the case of Sarwan Singh Rattan Singh v. State of Punjab reported in AIR.1957 SC 637 wherein Their Lordships have held that there is a long distance for the prosecution to travel between 'may' and 'must' and therefore, under the same principle, even if the Criminal court comes to a finding that the prosecution case may be true yet acquittal is recorded in favour of the accused on the principle of benefit of doubt. In our opinion, the present case is covered by the said principle and therefore, the case at hand being one ^{of} benefit of doubt and not clean and honourable acquittal, we think there cannot be any impediment for the department to initiate a departmental proceeding.

9. Thus, we find no merit in the case which stands dismissed leaving the parties to bear their own costs. The stay order granted earlier, stands automatically vacated. We direct that the departmental proceeding initiated against the applicant should be concluded within 120 days from the date of the first commencement of the enquiry and the first date of commencement of the enquiry should be fixed within one month from the date of receipt of a copy of this judgment.

.....23.4.88.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 29, 1988/S. Sarangi.

.....23.4.88.....
Vice-Chairman.

