

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No.O.A.788 of 1997

Date of order : 15.9.2002

Present : Hon'ble Mr. B.V. Rao, Judicial Member
Hon'ble Dr. A.R. Basu, Administrative Member

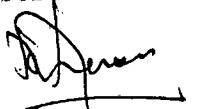
RAJ KUMAR SAMUI
VS.
UNION OF INDIA & ORS.

For the applicant : Mr. J.R. Ghosh, counsel
For the respondents : Mr. S. Chowdhury, counsel

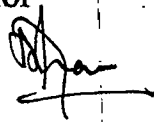
ORDER

Per Dr. A.R. Basu, A.M.

The applicant has filed this O.A. against the order of his removal from service dated 18.5.1993 issued by the Additional Divisional Railway Manager, S.E. Railway, Kharagpur and also against the reinstatement in service in the lower time scale of the Chief Operation Manager, South Eastern Railway, Garden Reach, Calcutta and against the 50% of the pay for about 2 months. The facts of the case in brief is that the applicant was appointed as Engine Cleaner on 9th July, 1964 in Kharagpur Division of South Eastern Railway and was promoted to the post of Driver in the year 1984. On 31.3.93 while he was working, Down Mecheda knocked at the rear of Down Puri Passenger which was standing on Platform No.1 of Birshibpur Station. The applicant alleges that the accident occurred due to wrong signaling by the Assistant Station Master of Birshibpur Station, tampering of home – signal by the maintenance staff of signaling department at the material time and as a result of wrong information given to the Control




Office by the Assistant Station Master, Birshibpur stating that the Down Puri Passenger has already left the said station. However, no casualty took place. After the accident a fact finding inquiry was held and departmental enquiry was started. Major penalty chargesheet was issued to the applicant and he was suspended with effect from 31.01.1993 vide order dated 01.02.1993. At the same time court case was started before the Judicial Magistrate under Section 279 and 427 of the Indian Penal Code. After the departmental enquiry the charges were proved and the applicant was removed from service by order dated 18.5.1993 issued by the Additional Divisional Railway Manager, South Eastern Railway, Kharagpur. The applicant filed an appeal and thereafter the Chief Operation Manager, South Eastern Railway by order dated 21.9.1993 reinstated the applicant after setting aside the removal order. However the pay of the applicant was reduced from Rs.1950/- to Rs.1600/- in the grade of Rs.1600-2600/-. As per the order of the Chief Operation Manager the applicant was reinstated with effect from 21.1.1993 but the period from the date of removal to the date of reinstatement i.e. from 20.5.1993 to 21.9.1993 has been treated as leave without pay whereas the applicant received only half of his pay during the suspension period from 31.1.1993 to 19.5.1993. The applicant has further stated that the allegation against him was identical in the departmental inquiry as well as in the criminal case. However, the Ld. Judicial Magistrate, New Court, Howrah in his judgment and order dated 31.5.1996 acquitted the applicant and discharged from his bond. The applicant thereafter submitted copy of the said judgment and appealed to the respondent authorities for



restoration of his original service but they did not respond to his request. He filed number of representations which were not considered by the respondent authorities. Feeling aggrieved by such action of the respondents, the applicant has filed this O.A. claiming the following reliefs:-

- (a) Direction upon the respondents each of them, their officers, subordinates and agents quashing the order of suspension dated 1.2.93 as contained in Annexure 'A';
- (b) Direction upon the respondents each of them, their officers, subordinates and agents quashing the order of removal from service dated 18.5.93 as contained in Annexure 'C'
- (c) Direction upon the respondents each of them, their officers, subordinates and agents quashing the order of re-instatement with reduction to lower time scale dated 21.9.93 as contained in Annexure 'D';
- (d) Direction upon the respondents each of them their officers, subordinates and agents to restore the service of the applicant to the position as it was before the suspension order dated 1.2.93 and to pay to the applicant the arrear of pay and allowance as to the effect of restoration;
- (e) Any other order or orders as to your Lordship deem fit and proper.

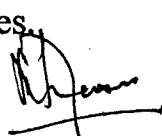
2. The respondents have filed written reply disputing the claim of the applicant. The respondents have stated that while working in Train NO.16 the applicant violated the Rules GR 3.02, SR 3.02-03, GR 9.02(3), SR 9.02 (b)(1) as a result of which there was a collision between down Mecheda and down Puri Passenger at Birshibpur station on 31.3.93 at about 6.28 hrs. After the accident an enquiry was conducted by a board of enquiry Officer. The applicant was held responsible for violating the aforesaid rules and Rule 3.01(ii) & (iii) of Railway Service Conduct Rules, 1966 and, therefore, the statement of the applicant that the accident occurred due to the wrong



signaling of Assistant Station Master/Birshibpur station, tampering of home signal by the maintenance staff of signaling department at the material time is not correct. The respondents have also stated that due to the aforesaid accident there was a court case under Section 279 and 427 of IPC in the court of honourable Judicial Magistrate's new Court Howrah. The respondents had no knowledge about the said case until receipt of the judgment dated 26.5.1997 from Sri R.K. Samui, the applicant in this O.A.

3. Ld. Counsel for the applicant has corroborated the statement of the applicant. Ld. Counsel has argued that since the charges levelled against the applicant in the disciplinary proceeding as well as in the court case were same and since the applicant has been acquitted by the criminal court, the penalty imposed on the applicant should be set aside and he should be given all consequential benefits.

4. Ld. Counsel respondents has argued that the applicant had been proceeded against for violating the Rules GR 3.02, SR 3.02.03, GR 9.02(3), SR 9.02(b) (1) & in violation of rule 3.01(ii) & (iii) of Railway Service Conduct Rule 1966 and he was acquitted by the Judicial Magistrate for the charges levelled against him under Section 279 and 427 of IPC. Ld. Counsel for the respondents has also stated that acquittal ipso facto does not vacate the order of punishment imposed upon the delinquent employee. The respondents' counsel has stated that acquittal by a criminal court will not debar the employer from exercising power in accordance with the rules and regulations in force. The criminal and departmental proceedings are entirely different and they operate in different fields and have different objectives.



The rule relating to appreciation of evidence in the two proceedings is also not similar and , therefore, the O.A. should be dismissed.

5. We have heard the Id. Counsel for both sides and have perused the pleadings. From a perusal of the record it appears that the applicant was chargesheeted under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 for not maintaining devotion to duty Rule 3 of the Railway Service Conduct Rule, 1966 which reads as under:-

“General. (1) Every railway servant shall at all times:-

- (i) maintain absolute integrity:
- (ii) maintain devotion to duty ; and
- (iii) do nothing which is unbecoming of a railway or Government servant.

(2) (i) Every railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all railway servants for time being under his control and authority;

(ii) No railway servant shall, in the performance of his official duty or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.”

The applicant was found guilty on preliminary enquiry and therefore proceeded under Rule 9 of the Railway Servants(Discipline & Appeal) Rules, 1968. The applicant was suspended and was subsequently removed from service on 18.5.1993. The applicant thereafter filed an appeal before the authorities concerned and the appellate authority set aside the order of removal of the applicant and reinstated him in service after reducing his pay.



to a lower time scale of Rs.1600 from Rs.1950/-in the scale of Rs.1600-2600/-. In the meantime the applicant who was facing a criminal proceeding under section 279 and 427 of IPC was acquitted and was discharged from the bond. The applicant was removed from service on 18.5.93 ,later reinstated in service after reduction in rank on 21.9.93 and acquitted from criminal case on 31.5.1996. The main question involved here is whether the acquittal of the applicant by the court of Judicial Magistrate on 31.5.1996 in any way affects the punishment inflicted on him as a consequence of departmental enquiry on 18.5.1993 and thereafter on 21.9.1993. In the case of *Captain M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.(supra)*, 1999 AIR, SCW- 1093. In the said case the question before the Hon'ble Apex Court was as to whether the departmental proceeding and the proceeding in a criminal case launched on the basis of the same set of facts can be continued simultaneously or not. In the instant case the departmental proceedings had been completed and penalty was imposed on 18.5.1993. However, on appeal the applicant was reinstated but reduced in rank on 21.9.1993. The court of the Judicial Magistrate acquitted him from the criminal case from 31.5.1996 and as such the acquittal was later than the punishments imposed by the respondent authorities. On a perusal of the record it appears that the applicant was proceeded under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. List of witnesses by whom Article of Charge were framed against the applicant is as under:-

1. Sri M. Chakraborty, E/Driver of 202 DN
2. Sri Y.V. Rao, Guard of 202 DN



3. Sri D.K. Sandhukhan, Guard of M-16 DN
4. Sri A.K. Manna, ASM/BSBP
5. Sri H.N. Karmakar, ESM-I/BSBP
6. Sri S.K. Moitra, SI-I/KIG
7. Sri Ab. Alamgir, Rg. Clerk/BSBP
8. Sri S.C. Moitra, Dy. CHC/KGP
9. Sri S.C. Das, TOI/TPKR
10. Sri B.K. Roy, PWI/ULB
11. Sri Lachman Rao, TR/BSBP

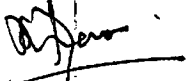
In the criminal proceeding we find that only p.w.1 was the Assistant Station Master, Birshibpur. P.W.2 is the railway Station Master and he was Deputy Station Master at the relevant time. P.W.3 is the Electric Driver of the DN 202 Puri Express. P.W.4 is the person who made formal FIR. The evidences in the criminal proceedings and the witnesses examined in the departmental proceedings are entirely different. Thus the evidences in both the proceedings were not entirely identical or based on similar set of facts. The witnesses examined were also different. Therefore, the plea of the Id. Counsel for the applicant that as the applicant was acquitted by the criminal court, the order of his removal from service and punishment of reduction in rank should be set aside, is not tenable. In a case of ***R.P. Kapur v. Union of India v. Union of India & Anr. AIR 1964 SC 787*** it has been held that:-

“If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow, where the acquittal is other than honourable.”



In the case of *Corporation of the City of Nagpur, Civil Lines, Nagpur & Anr. v. Ramchandra G. Modak & Ors. AIR, 1984 SC-626* the question involved was that if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue or not. It was held that 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 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 its direction (discretion) in any way fettered.

In the case of *Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh & Anr., 2004 AIR SCW 5256* it was argued before this Court on behalf of the respondent Sangh that the Labour Court ought not to have brushed aside the findings of the criminal Court which according to the learned single Judge "honourably" acquitted the accused workmen of the offence before it. In the case of *Ajit Kumar Nag v. General Manager(P), Indian Oil Corporation Limited, Haldia & Ors., 2005 AIR SCW 4986* the Apex Court held that as far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings, criminal and



departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with Service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In a departmental enquiry on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the applicant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside. In the case of *Depot Manager, A.P. State Road Transport Corpn. v. Mohd. Yousuf Miya & Ors.* (Supra), 1997 AIR SCW 2098 it has been held that:-

"The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched



for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law."

In the case of *G.M. Tank v. State of Gujrat & Anr.*, 2006 AIR SCW 2709 it has been held that :-

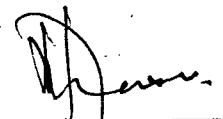
"Departmental enquiry and criminal proceedings – Based on identical and similar set of facts and evidence – Same witnesses examined in criminal case – Criminal Court 'honourably' acquitted employee. Findings to contrary recorded in departmental proceedings, unfair and oppressive – Dismissal order liable to be set aside."

In the present case the departmental proceeding had been completed much earlier and penalty had been imposed on the applicant though the applicant was acquitted by the criminal court. The evidences and witnesses in the disciplinary and criminal cases were also different.

6. In view of the facts mentioned above, we find no force in the O.A.

Accordingly the O.A. is dismissed. No order as to cost.


MEMBER(J)


MEMBER(A)