

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED WEDNESDAY THE THIRTIETH DAY OF AUGUST ONE THOUSAND
NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 179/89

P. P. Kuttappan

Applicant

Vs.

1. Sr. Supdt. of RMS,
RMS 'TV' Division, Trivandrum,
2. K. P. Joseph, Assistant Supdt. of RMS
TVM/RMS/II, Trivandrum
(Inquiry Authority), and
3. Union of India, represented by its
Secretary, Ministry of Communications
New Delhi

Respondents

M/s. O. V. Radhakrishnan,
K. Radhamani Amma and
Raju K. Mathews

Counsel for the
applicant

Mr. P. Santhalingam, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

In this original application, the petitioner seeks to quash paras(ii) and (iii) of Ext. A-4 order dated 25.11.1988, which read as follows:-

" ii) directs that a further enquiry should be held under the provisions of the CCS (CCA) Rules, 1965 against ~~the~~ Shri P.P. Kuttappan on the allegations which led to his compulsory retirement from service;

iii) directs that the said Shri P. P. Kuttappan shall under sub rule (4) of Rule 10 of CCS (CCA) Rules, 1965, be deemed to have been placed under suspension with effect from 29.7.87 and shall continue to remain under suspension until further orders."

He also prays for a direction to reinstate him in service granting all service benefits, with full pay and allowances

due to him had he not been suspended as per the order at Ext. A-3 dated 26th August, 1981.

2. The petitioner, while working as Sorting Assistant, Sub Record Office, Tiruvalla, was placed under suspension under Rule 10(1) of the CCS (CCA) Rules, 1965 since he was chargesheeted by the Detective Inspector, CBCID Explosive Cell, Quilon for the offences punishable under Sections 467, 468, 471 and 320 I.P.C. and Section 52 of Indian Post Office Act. The case was registered as CC No. 55 of 1984 in the Judicial First Class Magistrate's Court, Kayamkulam. He was convicted by the Judicial First Class Magistrate as per judgment dated 30.6.1987 at Ext. A-2

3. On the basis of the above judgment, the petitioner was compulsorily retired invoking the power under Rule 19(1) of the CCS (CC&A) Rules 1965. He filed Criminal Appeal No. 66 of 1987 before the Additional Sessions Court-I, Mavelikkara. This appeal was allowed and Ext. A-3 dated 26.3.88 is the judgment in the Criminal Appeal. Consequently, the first respondent set aside the order of compulsory retirement from service passed against the applicant as per memorandum dated 28.9.1987. But the first respondent decided that a further enquiry should be held under the provisions of CCS (CC&A) Rules, 1965 against the applicant on the allegations which led to his compulsory retirement from service. Accordingly, Ext. A-4 order has been issued by the first respondent, which directed that the applicant

shall be deemed to have been placed under suspension w.e.f. 27.9.87 under Rule 10(4) of the Rules, 1965. The petitioner contended that the first respondent can place him under deemed suspension invoking the power under Rule 10(4) only in case he decided to hold a further enquiry and such further enquiry is permitted under the rules. According to him, such further enquiry is specifically barred when a competent court has passed an order of acquittal on merits after evaluating the evidence produced in the case. He has also submitted that the proposed enquiry under A-5 memorandum would be illegal and cannot be proceeded with though the first respondent appointed the third respondent as Enquiry Officer as per Ext. A-6 and posted the enquiry. According to the petitioner, the present departmental proceedings initiated against the petitioner subsequent to the verdict of the Criminal court, by which he was held not guilty of the charges on the same set of facts and allegations, are incompetent, unauthorised and totally without jurisdiction.

4. The case is hotly contested by the respondents. The respondents have filed a counter affidavit. They say in the counter that after the judgment in the criminal court, the matter was reexamined in the light of the judgment in Criminal Appeal No. 66 of 1987 and after considering the circumstances of the case, it was decided to initiate departmental action against the applicant under the provisions of Rule 10(4) of the CCS (CC&A) Rules, 1965.

According to the learned Senior Central Govt. Standing / Ext. A-5 memorandum of charges levelled against the applicant and the charges in the criminal case are entirely different. A close reading of the judgment in the Criminal Appeal will prove that the said appeal was allowed not because of the applicant was found innocent but because the charge against him were not proved beyond a reasonable doubt. It is a fact that the petitioner has been acquitted by the Appellate court on technical ground, but that would not stand in the way of initiating further proceedings under Rule 10(4) of CCS (CCA) Rules by the respondents.

5. Arguments of the learned counsel for the petitioner and that of the ACGSC were heard. We have also examined the documents of this case carefully. The learned counsel for the petitioner placed reliance on Rule 10(4) of the CCS (CC&A) Rules, 1965 which reads as follows:-

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case."

According to the learned counsel, the proviso to the above rule bars a further enquiry in this case because the decision has been rendered by the Appellate Court

in terms of the above Rule and the Appellate court has unequivocally found that the evidence adduced by the prosecution does not establish the guilt of the accused. The departmental enquiry contemplated at Annexure-5 after the above verdict on the identical facts dealing with the guilt of the accused is impermissible and it is an instance of victimisation and harrasment of a low paid employee like the petitioner. The action of the first respondent is unjust and vitiated by arbitrariness and malafides. He has also placed strong reliance in the decision reported in A. K. Balakrishnan Nair Vs. Supdt. of Postoffices, Ernakulam Division (1982 KLJ 149). He submitted that, in that case the same provision was considered by the Kerala High Court in a more or less identical facts and circumstances and held that when an order of dismissal was set aside, the delinquent officer should be deemed to have been restored in service. Thus under Rule 10(4), he shall not be deemed to have been placed under suspension by the appointing authority if they propose an enquiry against him on the same allegation on which the penalty was originally imposed on him. In other words, the invocation of Rule 10(4) can be defeated only if the charges are wholly unrelated. In that case, the learned judge found on facts, after comparing the allegations both in the criminal case and the departmental enquiry, that the allegations are dissimilar and came to the conclusion that Rule 10(4) of the rules is not attracted to the case. The learned counsel for the petitioner also

brought to our notice the decision reported in 1982 KLT 608 (D.I.G of Police Vs. Sankaran) a case dealing with Rule 10(6) (i)&(ii) of Police Department Enquiry, Punishment and Appeal Rules, 1958, Kerala. But, we are afraid that this is not a case dealing with the question of deemed suspension and hence it is not helpful for deciding the issue arising in this case, unlike the earlier one referred to above.

6. In the instant case before us, the applicant was charged for offence punishable under Section 467, 468, 471 and 420 of IPC and Section 52 of the Indian Post Office Act 1988, whereas in the departmental proceedings, he has been charge sheeted for violating the provisions of Rule 3 of CCS (Conduct Rules) 1964, namely exhibiting lack of integrity devotion to duty and acting in a manner unbecoming of a Government servant. Thus, the charges levelled against the petitioner in the criminal case and the departmental enquiry are entirely different and dissimilar. Moreover, the method of proof in a departmental enquiry is also different from the standard of proof and evidence required in a criminal prosecution for convicting the accused. Hence, there is no reason for assuming that the petitioner who was acquitted in the prosecution on the basis of the benefit of doubt, will not be found guilty in a departmental enquiry. There is some possibility of the petitioner being found guilty on the existing materials in the enquiry.

7. It is now established law that criminal trial is distinct from Departmental enquiry and where acquittal is

on technical grounds or other than honorable, disciplinary proceedings may follow (R.P Keshav v. Union of India, AIR 1964 SC 787. The Supreme Court in Corporation of Nagpur and another v. Ramchandra G.Modak and others/ went on to the extent of observing that :-

" Normally where the accused is acquitted honorably 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."

We, however, feel that in this case the rulings and principle that an acquittal in a criminal trial does not debar disciplinary proceedings, do not apply. These rulings

apply in case/disciplinary proceedings have to be taken.

In this case, however, the disciplinary authority on the basis of conduct which had led to the conviction of the petitioner, had already taken action under Rule 19 of CCS (CCA) Rules and retired him compulsorily. He cannot at his level reopen the disciplinary proceedings by reviewing his own order. Such an order of de-novo disciplinary proceedings can be passed only by appellate or revisional authority.

8. Rule 10(4) of CCS(CCA) Rules envisages "further enquiry" by the disciplinary authority where the original order of punishment of compulsory retirement has been set aside by a Court of law purely on technical grounds without going into the merits of the case. He cannot pass orders for de-novo disciplinary proceedings as has happened in this case.

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9. In the wordings of the impugned order at Annexure-A4 it is evident that the first disciplinary proceedings referred to in para 1 of that order are being revived de-novo in para 4 of the order on the ground of conduct which led to his compulsory retirement based on conviction on a criminal charge.

10. Instead of holding "further enquiry" as contemplated in Ext.A-4 order, the disciplinary authority has served the petitioner with a fresh charge sheet at Ext.A5 (p53 of the paper book) on the same facts and allegations on which he was prosecuted and exonerated in appeal. Where under proviso to rule 10(4) even further enquiry cannot be held where the Court has exonerated one on merits as in this case, holding of de-novo disciplinary proceedings on the same facts and allegations on which he had been compulsorily retired and reinstated and exonerated by criminal Court in appeal will be wholly illegal.

11. We have checked up and find that the allegations of theft, forgery and misappropriation are the same between the criminal trial and the disciplinary proceedings.

12. To sum up, for the following reasons the order of de-novo disciplinary proceedings are illegal:-

(a) The disciplinary authority had already exhausted his power of punishment by retiring him under rule 19 of the CCS(CCA) Rules on the ground of conduct leading to conviction.

(b) The conviction having been set aside, the compulsory retirement goes.

(c) The allegation of facts both in the criminal proceedings and disciplinary proceedings now being

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restarted, are the same - theft, forgery, misappropriation which have not been accepted by the Criminal Court.

(d) Rule 10(4) envisages "further enquiry" to be ordered by the disciplinary authority, not "de novo" disciplinary proceedings again on a closed case. This can be done by the appellate or revision authority only.

(e) Even "further enquiry" is barred by the proviso to rule 10(4) whereas in this case the appellate Court had gone into the merits of the case and exonerated the petitioner.

13. Accordingly sub paras (ii) and (iii) of the impugned order at Ext.A4(p 16) will have to be set aside and the petitioner/to be reinstated with full back wages.

In the aforesaid case of Corporation of the city of Nagpur, the Supreme Court allowed the disciplinary proceedings to continue, but, "In the respondents are acquitted, we direct that the order of suspension shall be revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry". Thus, in the instant case before us since the petitioner has been acquitted and reinstated, he will have to be given full back wages. The competent authority, however, will be at liberty to take de-novo disciplinary proceedings in accordance with law with prospective effect only. In the circumstances, we allow the application, set aside clauses (ii) and (iii) in the penultimate para of the impugned order dated 25.11.88 at Ext.A-4, as also the Memorandum dated 5.1.89

at Ext. A-5 and subsequent orders dated 17.1.89 at Ext. A-6 and direct the respondents to reinstate the petitioner with full back wages from the date of his compulsory retirement till reinstatement. The competent authority, however, will be at liberty to direct and initiate de-novo disciplinary proceedings, if so advised, in accordance with law.

14. There will be no order as to costs.

N. Dharmadan
(N. DHARMADAN) 30.8.89
JUDICIAL MEMBER
30.8.1989

S. P. Mukerji
(S. P. MUKERJI)
VICE CHAIRMAN
30.8.1989

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