CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 493 1987
T.A. No.

DATE OF DECISION 20.10.1987

Mr. P.Bhaskara Rao Petitioner

Mr. P.S.N.Murthy. Advocate for the Petitioner(s)

Versus

Addl.Collector of Customs,Customs House Visakhapatnam and another. Respondent

Mr.Jagannath Rao, SCCG, Advocate for the Respondent(s)
rept. by Sri.G.Parmeshwar Rao, advocate.

CORAM :

The Hon'ble Mr. B.N.Jayasimha, Vice Chairman, CAT., Hyderabad.

The Hon'ble Mr. D.Surya Rao, Member (J), CAT., Hyderabad.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes.
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?

MGIPRRND—12 CAT/86—3-12-86—15,000

(BNJ)
VC

(DSR)
M(J)

Original Application No.493 of 1987

The applicant herein is a Senior Grade Preventive Officer, working in Customs House, Visakhapatnam. He questioned the order of suspension No.S.2/6/86-Estt dated 7.7.1986 and 31.12.1986 respectively. Two charges were framed against the applicant which read as follows :-

> " Article-I
> That the said Sri.P.Bhaskara Rao (applicant) while functioning as Preventive Officer (SG) during the period of May 1986 to July 1986 committed misconduct by knowingly abetting the smuggling of goods and harbouring persons engaged in smuggling of goods.
>
> Article-II
> That during the aforesaid period and while functioning in the aforesaid office and the said Sri.P.Bhaskara Rao (applicant) due to his activities against the interests of the State and for contravention of the various probibitions and restrictions imposed under the Customs Act, 1962, Import Trade Control Act, Foreign Exchange Regulations Act was detained under Sec.3(1)(i) and (v) of the COFEPOSA Act by the State Government of A.P., and was put in the Central Prison, Hyderabad.
>
> By the aforesaid acts, Sri.BhasakaraRao (applicant) failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and contravened Rules 3(1)(i), (II) and (iii) of the Central Civil Services (Conduct) Rules, 1964."

2. The applicant states that the High Court of A.P. in W.P.No.18099 of 1986 by its judgement dated 11.12.1986 had issued a Writ of Habeas Corpus questioning the detention order of the State Government under COFEPOSA. The High Court while disposing of the Writ Petition concluded that there

was no material whatsoever for establishing the grounds indicated in the order of detention.

3. The facts of the case beiefly stated are - The applicant was employed in the Customs Department, Visakhapatnam. The applicant was placed under suspension by an order dated 7-7-1986 on the ground that disciplinary action was contemplated against the applicant. While this was so, by an order in G.O.No.4182 dated 31st October 1986 of the Government of Andhra Pradesh, the applicant was detained U/S 3(1)(i)(v) of the COFEPOSA. The grounds on which the applicant was detained are furnished to him in the order dated 31.10.1986 No.1702/Genl.A/86-7, Govt. of A.P. G.A.D. The applicant thereupon filed W.P.No.18099 of 1986. By a judgment dated 11-12-1986 the High Court directed the release of the applicant and accordingly he was released on 12-12-1986. Thereafter the respondents issued a charge memo dated 31-12-1986 for the purpose of taking departmental action against him. The charge memo was based on the same material for which the applicant was kept under detention i.e. based on the two statements of Paul Wilson and Srinivasa Rao. The applicant's contention before us is that since the High Court found that no reliance could be placed on the grounds given for detention, the same grounds cannot now be made the basis for a charge memo ~~for taking disciplinary~~ for taking disciplinary

action against him.

4. On behalf of the respondent, a counter is filed stating that the order of suspension has since been reviewed and the applicant was reinstated to duty on 8-9-1987. It is stated that though the High Court had set aside the order of detention, departmental disciplinary proceedings are distinct from the judicial proceedings and that the competent authority is not precluded, from placing the applicant under suspension, and proceeding with the disciplinary proceedings. It is also stated in the counter that the action under COFEPOSA is different from the departmental action under the CCS(CCA) Rules. The two proceedings are independent actions and not inter-related. It is, therefore, within the competence of the Department to go ahead with the departmental action.

5. We have heard the learned counsel for the applicant and Shri G.Parameswara Rao, advocate representing Shri K. Jagannatha Rao, learned Standing Counsel for the Central Govt.

6. The issue for consideration in this case is whether it is open for the Department to proceed with the departmental inquiry on the same facts and on the same material in regard to which ~~which~~ the High Court on merits held that the applicant is not guilty of involvement in smuggling.

The ~~issue~~ point to be noted is that the statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against the applicant are the same as the grounds for detention mentioned in the letter No.1702 dated 31.10.86 of the State Government. The High Court in its judgment dated 11.12.1986 in W.P.18099 of 1986 observed as follows :-

> " An enquiry was conducted and the statements of the members of the crew were recorded. Relying on the statements of Mr. Paul Wilson, Electrical Officer on board the vessel in question and Mr. G.Srinivasa Rao, 3rd Engineer, the detaining authority was satisfied that it was necessary to detain the detenu as he was indulging in smuggling activities.
>
> The learned counsel submits that there is absolutely no material against the detenu and there is not even scope for strong suspicion and if officers are to be detained on some suspicion based on no material whatsoever, then no officer can be safe. In other words, the submission is that the detaining authority has grossly erred in ordering the detention of the detenu as there is no material whatsoever justifying such detention.
>
> Mr. Paul Wilson, Electrical Officer on board the vessel in his statement dated 4.7.1986 given before the Assistant Collector of Customs (Preventive) deposed that he came into contact with the detenu during the previous voyage at the Visakhapatnam Port and that the detenu used to go to his cabin when the vessel was in the port to see Video films and on one occasion the detenu requested Mr. Paul Wilson to help his friend Raju Babu in buying a video cassettee recorder. Mr. PaulWilsson also stated that Raju Babu gave him Rs.10,000/- and that thereafter he gave the VCR to Raju Babu and that Mr. Paul Wilson also added that apart from the detenu he did not know any other Customs Officers. He did not state in his statement that the detenu was paid any amount.
>
> What all that we find in his statement is that the detenu recommended him to purchase a VCR for Raju Babu said to be the friend of the detenu. Unlike in the

cases of other detenus, there is no allegation at all against this detenu that he gave any assurance for clearing the contraband goods or that he asked any members of the crew to purchase goods on his behalf and bring them to Visakhapatnam. We have carefully considered the entire statement of Mr.Paul Wilson. The only act attributed to the detenu was that he recommended to Mr. Paul Wilson to purchase one Video Cassette Recorder for his friend Raju Babu. Mr.Paul Wilson doesnot thereafter implicate the detenu. According to his statement, he himself developed some contact with Raju Babu and took money from him. Paul Wilson has clearly stated that during the last voyage in May 1986 he gave Rs.4,000/- to Engine Serang Anthony Rodrigues on behalf of 3rd Engineer Mr. Srinivasa Rao and others and that the money should be paid to Customs Officer Mr. Rehman, but he does not say that any amount was given to the detenu. Therefore, this statement of Mr.Paul Wilson doesnot give scope to infer that the detenu has been indulging in abetting the smuggling of goods.

Similarly the only other statement of Mr. G.Srinivasa Rao also doesnot implicate the detenu. Mr.Srinivasa Rao stated that he gave money to Mr.Satyam E.T.Casab of the vessel to buy VCRs and he brought those sets to be delivered to a fisherman whom Mr.Satyam knows. Towards the end of his statement he just mentioned that Mr.Raju used to come to the ship with Customs Officer, Viz; the detenu, during the vessel's stay at the port. There is no other incriminating material. It can be seen that Mr.Srinivasa Rao does not make any allegation against the detenu in this case except stating that he came to the ship with Raju.

The learned Advocate General submits that Raju to whom a reference is made gave Rs.15,000/- to Mr.Srinivasa Rao as stated by him for buying contraband goods and that the detenu used to come to the ship in the company of Raju and, therefore, it can reasonably be inferred that he is abetting smuggling. We are not able to find even the remote connection about the smuggling activity between the said Raju and Bhaskara Rao, the detenu. There is no whisper in any one of the statements that BhaskaraRao in any manner facilitated the smuggling. As a Customs Officer he might have gone on board the vessel and some-times either Raju or Raju Babu might have also come to the ship. But something more is necessary even for mere inference that the detenu had in some manner or other facilitated the smuggling. Thereis not even a whisper that he gave any assurance at any time like the other Customs Officers.

> Therefore, we are of the view that there is no material before the detaining authority for ordering detention and the grounds based on the statements of Mr.Paul Wilson and Mr. Srinivasa Rao must be held to be non-existent and irrelevant so far as the detention of the detenu is concerned.
>
> Accordingly the detention order is quashed and the respondents are directed to release the detenu forthwith. The writ petition is allowed."

It is thus seen that the High Court has gone into the various ~~grounds~~ facts/materials mentioned in the grounds of detention and came to the conclusion as stated above. ~~In the circumstances~~, the charge-memo is also based on the same statements of Mr.Paul Wilson and G.Srinivasa Rao. The learned counsel for the applicant contends that the decision rendered in (A.P.Naidu vs. General Manager, SCR & Others) 1983(1) SLJ 352 would directly apply to the facts of this case. That was the case where a Railway employee was charged and had been acquitted by a Criminal Court. A Departmental inquiry was commenced on the basis of the same facts and allegations. It was held as follows :-

> " In any case, the clear pronouncement of the Supreme Court in R.P.Kapur vs. Union of India, would debar the department from proceeding against a civil servant departmentally after the civil servant was acquitted in a criminal trial on merits. In the above case the Supreme Court ruled "Even in case of acquittal proceedings may follow where the acquittal is other than honourable." The Supreme Court did imply in this case that where acquittal is honourable and such a course would not be open to the employer. In view of the above observations in Kapur's case (supra) the contrary view earlier taken by the Supreme Court can no longer be taken as representing the correct view of the law on the topic.

The real question that, therefore, arises is whether the present charge is the same or at least substantially the same as the charge for which the petitioner was tried by the Criminal Court. Regarding the obtaining of the vouchers the petitioner's defence before the CriminalCourt was that the vouchers were among the documents seized and suppressed by the South Central Railway. It appears to me that the trend of the judgment of the CriminalCourt was to hold that the South Central Railway responsible for withholding of both the account books and those vouchers. If that were to be so, the present departmental charge would be substantially the same as the criminal charge. It would, for that reason, be unfair and incompetent for the South Central Railway now to charge the petitioner for failure to obtain the vouchers. For that reason alone the present departmental inquiry is liable to be declared invalid."

7. The contention of the learned counsel for the respondents is that the decision rendered in the above case relates to a case wherein the Officer has been acquitted by a Criminal Court. It cannot be applied to a case where the ~~would not apply to persons where the~~ is dealing with an High Court ~~had considered the~~ order of detention under COFEPOSA ~~or~~ under Article 226 of the Constitution. He also relied upon a decision of the Supreme Court in M.P.State vs. Veereshwar Rao AIR 1957 P.592. ~~The~~ The relevant paras are extracted below :-

"This Court has recently held in Om Prakash Gupta vs.State of U.P.Criminal Appeals Nos. 42 of 1954 and 3 and 97 of 1955: (S) AIR 1957 SC 458) (A), that the offence of criminal misconduct punishable U/S 5(2) of the Prevention of Corruption Act II of 1947 is not identical in essence, import and content with an offence under Sec.409 of the Indian Penl Code. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate S.409 of the Indian Penal Code. In the common judgment in those appeals the conclusion has been expressed in the following words:

> ' Our conclusion, therefore, is that the offence created U/S 5(1)(c) of the Prevention of Corruption Act is distinct and separate from

> the one under S.405 IPC and, therefore, there can be no question of S.5(1)(c) repealing S.405 IPC'
>
> In view of the above pronouncement, the view taken by the learned Judge of the High Court that the two offences are one and the same, is wrong, and if that is so, there can be no objection to a trial and conviction U/S 409 of the Indian Penal Code even if the respondent has been acquitted of an offence U/S 5(2) of the Prevention of Corruption of Act 2 of 1947. Sec.403(1) of the Criminal Procedure Code only prohibits a subsequent trial for the same offence, or on the same facts for any other offence for which a different charge from the one made against an accused person might have been made U/S 286 of the Criminal Procedure Code, or for which he might have been convicted U/S 287 when the earlier conviction or acquittal for such an offence remains in force. It is obvious that S.403(1) has no application to the facts of the present case, where there was only one trial for several offences, of some of which the accused person was acquitted while being convicted of one. On this ground alone the order of the High Court is liable to be set aside. The High Court also relied on Art.20 of the Constitution for the order of acquittal but that Article cannot apply because the respondent was not prosecuted after he had already been tried and acquitted for the same offence in an earlier trial and, therefore, the well-known maxim " Nemo debet lis vexari, si constat curice quod sit pro una et eadem causa" (No man shall be twice punished, if it appears to the court that it is for one and same cause)" embodied in Art.20 cannot apply".

8. The ratio of decisions rendered above would show that where a person has been acquitted in a Criminal Court, a departmental action cannot be taken against him for the same offence. In other words, a charge memo issued for the departmental action cannot be the same as the charge for which the employee was acquitted in a Criminal Court. In the judgment of Supreme Court, it is clear that the Supreme Court did not agree with the view of the High Court that the two offences are one and the same and therefore held that the offence of

the Criminal mis-conduct punishable under Section 5(2) of the Prevention of Corruption Act, is not identidal in essence, import and content with an offence under Section 409 of the Indian Penal Code and therefore Section 403(1) of the Criminal Procedure Code is not applicable. The facts of the present case as indicated above would show that the High Court of Andhra Pradesh had gone into very same facts which forms the basis of the charge in the departmental action and had found that those grounds cannot be relied upon for the detention of the applicant under COFEPOSA. The High Court gave a specific finding that the statement of Mr.Paul Wilson does not implicate the detenu and it does not give a scope to ~~interfere~~ infer that the detenu has been indulged in abetting any smuggling of goods. The High Court also stated in regard to the statement of Shri G.Srinivasa Rao that there is no whisper in any one of the statements that Bhaskara Rao (applicant) in any manner facilitated smuggling. The question for consideration is, in the face of these findings of the High Court, can an enquiry officer in a departmental proceedings take a view different from that of the High Court. Can such a view be validly taken differing with the conclusion arrived at by the High Court after an analysis of the material placed before it? Can the same material be a subject of ~~materials placed before the enquiry~~ an enquiry in a

departmental action and is it open for an enquiry officer in a departmental enquiry to come to a veiw different from that of the High Court? We do not consider that this is permissible. Conclusions arrived at by the High Court are binding on all authorities and on the same material there can be no departmental enquiry. It is seen that the charge memo is based on the very same material which forms a part of the grounds for detention of the applicant under COFEPOSA. ~~In view of this matter, we hold~~ It is not as though departmental action has been initiated for violation of departmental rules or other mis-demeanour. In view of this we hold that no departmental enquiry can therefore be proceeded with and the departmental enquiry initiated against the applicant has to be set aside. The application is therefore to be allowed. Accordingly we quash the order in Charge Memo No.S-2/6/86-Estt.P T(ii) dated 31-12-1986 passed by the Additional Collector of Customs, Customs House, Visakhapatnam (1st respondent) and allow the application.

Dictated in the open Court.

(B.N.JAYASIMHA)
Vice Chairman

(D.SURYA RAO)
Member(J)

Dated: October 20, 1987.

vsn