

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.209/90

DATE OF JUDGEMENT: 11-11-1993

Between

P. Ramaiah

.. Applicant

and

1. Superintendent of Post Offices,
Guntakkal Division,
Guntakkal.

.. Respondents

2. Director of Postal Services(SR)
AP Southern Region,Kurnool-5

Counsel for the Applicant :: Mr B. Tharakam

Counsel for the Respondents :: Mr NR Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

[(As per Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.))]

This application is filed under Section 19 of the Administrative Tribunals Act to direct the respondents reinstate the applicant in service with continuity by setting aside the respondent's memo dated 28.11.1988 confirmed by the appellate authority as per his orders dated 29.11.1989, and pass such other order or orders as may deem fit and proper in the circumstances of the case.

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2. Facts giving rise to this OA in brief, may be stated as follows:

3. The applicant was originally recruited as Group 'D' official of PSD Guntakal and thereafter, he was promoted as Postal Assistant and worked at Guntakal Head Post Office from March, 1979 onwards. While he was working as Postal Assistant in the said Guntakal Head Post Office, he committed a huge fraud by misappropriating the Savings Bank Accounts standing open that at Guntakal Head Post Office. The ~~said~~ amount is said to have been misappropriated by the applicant with some others is said to be Rs.5.72 lacs. Soon after the said fraud came to light, the applicant was kept under suspension with effect from 13.10.1981.

4. In view of the seriousness of the fraud committed by the applicant, a case was registered ~~with~~ ^{by the} Central Bureau of Investigation for ~~is~~ enquiring into the alleged embezzlement of amounts in the savings bank accounts. After making necessary ~~xxxxxx~~ investigation the CBI filed a charge sheet against the applicant in the Court of Principal Special Judge for SPE & ACB cases, Hyderabad under CC No.5/1983 and later on transferred and renumbered as CC No.3/1984 on the file of I.Addl. Judge for SPE and ACB cases, Hyderabad.

5. In the charge sheet filed by CBI, the applicant was charged that he misappropriated the Savings Bank ~~after falsification of all bank~~ committed ~~offences~~ funds and thus was charged under Secs.409, 471 read with 467 IPC u/s 5(2) r/w Sec.5(1)(c) and (d) ^{and under} ^{of the} Prevention of corruption act. While the above criminal case was

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pending as against the applicant in the I Addl. Judge for SPE and ACB Cases, Hyderabad, a departmental enquiry was also ordered as against the applicant under Rule 14 of CCS(CCA) Rules, for his failure to account for the losses standing in certain accounts at Guntakal Headpost office.

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A memo of charges was delivered to the applicant and the applicant was asked to submit any written representation that he may wish to make against proposed departmental action within 10 days. The applicant submitted his representation on 19.4.1983. An enquiry officer and a presenting officer was appointed as per respondents Memo dated 22.4.1983. The Departmental Enquiry commenced on 6.5.1983 and completed on 19.10.1983. Before the Inquiry Officer could submit his report to the respondent for taking necessary action, the applicant filed Writ Petition No.2836/1984 in the Hon'ble High Court for pending disposal of the criminal case staying the enquiry proceedings as against him. The Hon'ble High Court as per its order dated 6.2.1984 passed in WP MP No.3567/1984 filed by the applicant, stayed the disciplinary proceedings until the criminal case pending as against the applicant is disposed of. On 14.8.87, the criminal case pending against the applicant in the Principal Special Judge for SPE/SCB cases was disposed of in the acquittal of the applicant from all charges. As against the Judgement dated 14.8.87 of the Principal Special Judge for SPE/ACB Cases, the State preferred an appeal in the Hon'ble High Court of AP. But the said appeal was also dismissed by the Hon'ble High Court dated as per its order dated 7.2.1989. Thus the acquittal of the applicant in the criminal case became final.

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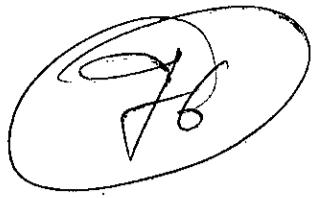
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6. After acquittal of the applicant in the said ^{case} Criminal ~~charges~~, the applicant was directed by the Inquiry Officer to submit his written plea, but the applicant did not choose to submit his written plea. ^{The Applicant} But on 2.12.1987 ^{wrote} to the Inquiry Officer for dropping the proceeding as against ^{him} ~~(the applicant)~~ as he was acquitted by the court. The applicant was once again asked by the Enquiry Officer for submitting his reply. ^{But the applicant} on 10.5.88 insisted that the departmental proceeding should be dropped as High Court has ^{issued} ~~ex parte~~ a stay on the same and unless the stay is vacated, the proceedings could not be continued. So after completion of the criminal proceedings, the respondents took action in the matter as the stay has become inoperative. In spite of opportunities to the applicant, the applicant did not submit his brief and did not ^{participate} in the inquiry before the inquiry officer and after the applicant was acquitted ^{in the said criminal case} ~~by the said criminal charges~~.

7. After Central Administrative Tribunal, ^{were} was constituted, the WP 2836/1984 filed by the applicant was transferred to the ^{Tribunal} CAP and numbered as TA 24/1988 and the same was dismissed by the Tribunal on 8.6.1989 as infructuous. So, ^{As} the applicant did not cooperate with ^{the} Enquiry Officer, the Enquiry Officer submitted his report to the Disciplinary authority and the ~~Disciplinary~~ disciplinary authority accepted the findings of the Enquiry Officer and dismissed the applicant as per the ^{from service it's} orders dated 28.11.1988. The applicant preferred an appeal as against the orders of the Disciplinary authority on 10.9.1989 and the same was rejected by the appellate authority as per ^{his} orders dated 29.11.1989. After the dismissal of his appeal,

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the applicant has approached this Tribunal by filing this OA for the relief as already ~~in~~ indicated above.

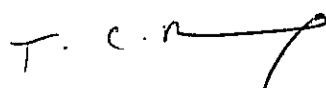
8. Counter is filed by the respondents opposing this OA.

9. In the counter filed by the respondents, it is maintained that the applicant had been dismissed from services as the ^{result of} charges as against the applicant in mis-appropriation of savings bank accounts were proved against him and acquittal in the criminal case, ^{had} absolutely ~~has~~ nothing to do with the punishment inflicted on the applicant in the Departmental enquiry and that, there are no merits in this OA and ^{hence}, this OA is liable to be dismissed.

10. We have heard Mr B.Tharadam, Counsel for the applicant ^{Standing} and Mr NR Devraj, Counsel for the respondents.

11. The first and foremost contention of the learned counsel for the applicant is, ^{that} the applicant has been acquitted by ^{the} competent criminal court on the charges against the applicant and the said acquittal had ~~been~~ subsequently been confirmed by ^{the} High Court of AP which is the appellate court ^{but} and hence, there is no justification on the part of the respondents in continuing the departmental inquiry as against the applicant and hence, this OA is liable to be allowed. In view of the contention raised by the learned counsel for the applicant, we may straightaway refer to a decision reported in AIR 1984 SC 626 Corpn of City of Nagpur and another Vs Ramchandra G. Modak and another respondents wherein, it is laid down as follows:

"The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after ^{his} acquittal in criminal case is a matter which is to be decided by the departmental after considering the nature of the findings given by the criminal court. Normally where the accused is ~~xx~~ acquitted honourably and



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completely exonerated of the charges, it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However, 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."

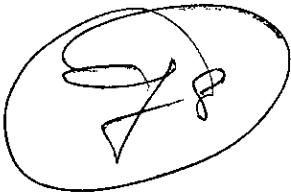
So, from the above said decision, it is quite evident that acquittal in a criminal case cannot be a bar for continuation of departmental inquiry and for taking necessary action in the departmental inquiry. Hence, the contention of the learned counsel cannot be accepted.

12. It is nextly contended by the learned counsel for the applicant that as the applicant had been tried on the same charges in the criminal court as well as in the Departmental inquiry, and as the same witnesses are examined that the finding in the criminal court will operate as estoppel in the departmental inquiry and in view of this position, that the finding given as against the applicant in the departmental inquiry cannot be accepted. To support this contention, the learned counsel for the applicant relied on a decision reported in 1970 SC 1381 Lalita and others Vs State of UP respondent wherein it is laid down as follows:

"Where an issue of fact has been tried by a competent court on a former occasion and a finding of fact has been reached in favour of accused, such a finding would constitute an estoppel or resjudicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding ~~fixing~~ the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence

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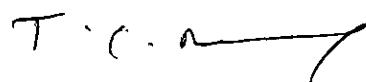
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In the said case, the Supreme Court was dealing with regard to finding of fact reached in favour of the accused on a former occasion in a criminal case. But, we are not dealing here a criminal case as against the applicant. We are concerned with a departmental proceeding. The facts of AIR 1970 SC 1381 are completely different from the facts of this case. No decision or authority had been cited by the learned counsel for the applicant which supports the view that the findings of the criminal court in a case where the accused is acquitted binds the parties in a disciplinary proceeding. The said decision cited by the learned counsel for the applicant absolutely has no relevance to the facts of this case and the said judgement is not applicable to the facts of this case. Hence, the contention of the learned counsel that the finding in the criminal court binds the respondents herein cannot at all be accepted.

13. But, nevertheless, we have perused the records. The records go to show that the charge in the criminal case was that the applicant had misappropriated an amount of Rs.5.72 lacs whereas, in the departmental inquiry, the charges framed against the applicant were that he failed to account certain deposits accepted by him in certain accounts and that there was violation of the rules of P&T Manual read with instant Counter Service Rules for Savings Bank. So, the charges that were framed as against the applicant in the said criminal court and the departmental inquiry appear to be distinct and separate. The witnesses that were examined in both the cases are also not same. So, that being the position, the contention of the learned counsel for the applicant that the acquittal of the applicant

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in the criminal court precludes the respondents from continuing the disciplinary proceeding, or that, the findings in the criminal case binds the parties in departmental proceeding cannot at all be accepted.

Madras High Court

In this context, we may also refer to a decision reported in 1991(1) SLR 448 PJ Soundararajan and another Vs Deputy General Manager, Unit Trust of India wherein it is held as follows:

"So far this court is concerned, the settled view is that, even though there could have been an acquittal in the criminal proceedings, still prosecution of disciplinary proceedings would not be barred. In MN Rubber Co.Ltd, Vs S.Natrajan and Presiding Officer (1985) 2 LLJ 364 a Bench of this Court opined that departmental proceedings can be taken even after the original case too initiated in report of identical charge which might have ended in acquittal. This principle to a very great extent indicates that departmental proceedings have got to be viewed from independent angle of testing the charges levelled therein and they have got to be viewed from independent standard and the decision in favour of the employee in the criminal proceeding need not necessarily stand in the way of prosecution of the disciplinary proceedings against him. It would be a different matter if the service rules or regulations lay down a contrary position. In such a case, the service rules or regulations will certainly govern. There could also be a service rule or a regulation interdicting the prosecution at parallel level, the disciplinary proceedings, along with the criminal proceedings. In such a contingency also, such a service rule or regulation has to govern. This is not the position in the present case.

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"On a careful perusal of the above passage, the ultimate guidance which this court could get is, that, as to whether in the facts and circumstances of a particular case, there should, or, should not be such simultaneity of the proceedings, should receive judicial consideration and the court will decide in the given circumstances of a particular case, as to whether the disciplinary proceedings should be interdicted pending criminal trial. We already pointed out certain features, which in our view, are relevant and which dissuade us from interdicting the disciplinary proceedings, taking note of the pendency of the criminal proceedings. At the risk of repetition, we may point out that the charges levelled against the petitioners in the disciplinary proceedings will have to be tested from different angles and in particular, keeping in mind the enforcement of discipline and the level of integrity amongst the staff in the administration of the respondents. That need not necessarily be a factor to be taken note of in the criminal proceeding. We could not subscribe our support to the straight jacket formula, advanced by the learned counsel for the petitioners that whenever disciplinary proceedings and criminal proceedings are grounded on the same set of facts, there should be an interdiction of the disciplinary proceedings awaiting the decision in the criminal proceedings."

In the above decision, the Madras High Court had also relied on a decision reported in AIR 1988 SC 2118 Kushashwar Vs M/s Bharat Coking Coal Ltd. We respectfully follow the Madras High Court decision in this OA as the ~~as per working plan and~~ ~~same is~~ applicable to the facts of this case, ~~which~~ ⁱⁿ all fours

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14. It is also contended by the learned counsel for the applicant that the applicant had been denied reasonable opportunity in this case, as the applicant had been prevented from examining the witnesses on his behalf and that, he had not been allowed to cross-examine the witnesses. Records disclose that the applicant himself, at certain stage, kept away from the inquiry. The Enquiry Officer had directed the applicant to submit his written brief on 19.11.1987 after the termination of the criminal case for which, the applicant had as against him replied that the departmental action/may be dropped as he had been acquitted by the criminal court. If the applicant had not cross-examined any witnesses in the Departmental inquiry that were examined prior to his acquittal in the criminal case, he could have approached the Enquiry Officer and made a request to summon those witnesses who were examined by the inquiry officer in his absence for the purpose of the said cross-examination. But the applicant never appeared to have approached the Enquiry officer on any date after his acquittal in the criminal case. He appears to have been under the belief that after his acquittal in the criminal case, the departmental proceedings are liable to be terminated, which of course, was a wrong notion of the applicant. As could be seen, the Enquiry Officer had also given ^{same} ~~repeated~~ opportunities to the applicant to submit his written representation for which there was no proper response from the applicant.

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Under these circumstances, the Enquiry Officer had submitted his report to the Disciplinary authority, ~~which~~ who had accepted the findings. In view of the facts and circumstances of the case, it is not open for the applicant to contend that the applicant had been denied reasonable opportunity. As a matter of fact, the applicant had ~~xxxx~~ failed to avail ~~any~~ opportunity.
 ~~.....~~ and after having failed to avail the reasonable opportunity given to him by the Enquiry Officer, it is not open to ~~xxxxxx~~ turn around and contend that the applicant had not been given reasonable opportunity. Hence, the contention of the learned counsel for the applicant that the inquiry is vitiated due to the fact that reasonable opportunity had not been provided, is hereby negatived.

15. It is faintly argued on behalf of the applicant that the appellate authority without applying its mind had confirmed the order of the disciplinary authority dated 28.11.1989 dismissing the applicant from service. As already pointed out while narrating the facts, ~~.....~~ the dismissal order according to the applicant, was received by him on 5.12.1988 and the appeal had been preferred by him on 10.9.89 and not within 45 days which the prescribed period ~~.....~~ time limit for preferring an appeal. So, the appellate authority is justified in dismissing the appeal of the applicant as time barred without giving any reasons. A person who is negligent in approaching the competent authority and allows his remedy ~~.....~~ to become time barred cannot turn around and say that he is entitled to be given an order

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on merits. But nevertheless, we have gone through the records in this case. There cannot be any doubt about the fact that the applicant is fully responsible for violation of rules and regulations resulting in the mis-appropriation of a huge amount. In view of the oral and documentary evidence as against the applicant, it is not open for him to contend that this OA is liable to be allowed merely on the ground that the appellate authority had not given on merits a detailed order. As already pointed out, the appellate authority was within its right in not giving a speaking order and rejecting the appeal as time barred as the applicant had not approached the appellate authority in time.

16. It is faintly contended that this is a case of no evidence. To prove the charges as against the applicant, 33 documents had been marked and 12 witnesses had been examined. The perusal of the oral and ~~xxxxxx~~ documentary evidences would never give any room to any doubt that the applicant is responsible for violation of the rules of P&T manual read with ~~instanc~~ counter service rules for Savings Bank resulting in mis-appropriation. So, the contention of the learned counsel for the applicant that this is a case of no evidence cannot be accepted at all.

17. The learned counsel for the applicant relied on a decision reported in 1976(1) SLR 133 Kundan Lal Vs Delhi Administration wherein, it was laid that when a Government servant is acquitted by a criminal court, ~~xxxxxx~~ departmental inquiry on the same charges is not permissible if the Govt. servant's acquittal being not on the technical grounds. But, in view of the 1984 SC 626 decision cited above, we are not prepared to follow the decision of the Delhi High Court.

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18. The learned counsel for the applicant relied on a decision reported in 1987(4) SLR 670 DG Mane Vs Union of India and others wherein it is laid down that the Departmental inquiry initiated against a Govt. servant after a gap of three years after his acquittal in the criminal charges is improper. The said decision is not applicable to the facts of this case, as Departmental inquiry had been initiated as against the applicant herein, when criminal case was pending against him.

19. The learned counsel for the applicant relied on a ~~date~~ decision reported in 1987(1) SLR 592 Kanwar Lal Sabharwal Vs General Manager, Northern Railways wherein it was held that it would be unfair, ~~unfair~~ improper and against the rules of equity and fair play to conduct departmental inquiry on identical charges against a Government servant who was acquitted in a criminal case. As already pointed out, we have already made it clear that the charges framed against the applicant in the criminal court and the charges framed in the Departmental inquiry are distinct and separate. Hence, the said decision 1987(1) SLR 592 relied by the learned counsel for the applicant is not applicable to the facts of this case. But the decision ~~of the~~ ^{Madras High Court} reported in 1991(1) SLR 448 to which a reference has already been made in this judgement, is applicable to the facts of this case.

20. The learned counsel for the applicant argued that only the applicant had been proceeded by the respondents in the departmental inquiry whereas, ^{Official} some others who were also involved in the non-accounting and mis-appropriation of the said amounts no departmental action or criminal action was taken and in view of this position that the application is liable to be allowed and the applicant is liable to be exonerated. Others, who were said to have been involved

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in the mis-appropriation are said to have repaid the amount misappropriated by them. So, no departmental or criminal proceedings were initiated as against them. But as the applicant had not returned the amount for which he was responsible for the said-mis-appropriation, the department had proceeded with the inquiry as against the applicant. So, it is not open for the applicant to compare himself with others who had repaid the mis-appropriated amounts.

21. It is contended by the learned counsel for the applicant that the witnesses examined in the departmental inquiry were also involved in the said misappropriation and as the said witnesses are accomplices, it is not safe to rely on their evidences and act on the same. But even if it is accepted that the said witnesses are ~~xxxx~~ accomplices, their evidence in this case is corroborated by documentary evidence. As a matter of fact, in a criminal case, conviction can be based on the uncorroborated testimony of an accomplice (Refer AIR (39)1952 SC 54 Rameshwar Vs State of Rajasthan). But, as a rule of prudence, corroboration with regard to evidence of accomplices, is insisted. But, documentary evidence in this case amply corroborates the oral testimony of the said witnesses whom the learned counsel for the applicant describes them~~x~~ as accomplices. So, the oral and documentary evidence as already pointed out amply proves the charges in the departmental inquiry as against the applicant. So, we see no force in the contention that the enquiry has been vitiated due to the fact that reliance has been placed on the evidence of accomplices.

22. The learned counsel for the applicant contended that the punishment of dismissal is excessive and disproportionate to the gravity of the charge(s) proved as against the applicant. In our opinion,

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nothing less than dismissal will be appropriate punishment to the applicant herein. The Disciplinary authority had rightly punished the applicant by dismissing him from service. We see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

(T.CHANDRASEKHARA REDDY)
Member(Judl.)

(A.B. GORTHI)
Member(Admn)

Dated: 11-11-1993

mvl:

Drawn and checked
Deputy Registrar(J)

To

1. The Superintendent of Post Offices,
Guntakal Division, Guntakal.
2. The Director of Postal Services (SR)
A.P. Southern Region, Kurnool-5.
3. One copy to Mr.B.Tharakam, Advocate, 12-11-1493
Boudhanagar, Secunderabad.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Deputy Registrar(J)CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.
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1st Attd
P.M.D.