IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

OA No.894/94 Date of Decision:

BETWEEN:

P. Jeevan Kumar .. Applicant

AND

1. Director of Postal Services,
o/o Post Master General,
Hyderabad Division,
Hyderabad - 500 001.

2. Senior Superintendent RMS
Hyd.Stg. Division,
Hyderabad-500 027 .. Respondents.

Counsel for the Applicant: Mr. S. Prabhakar

Counsel for the Respondents: Mr. K. Bhaskara Rao

CORAM:

The Hon'ble Sri R. Rangarajan: Member (Admn.)

The Hon'ble Sri B.S. Jai Parameshwar: Member (Judl.)

..2

passed by the appellate authority is at annexure-I pages 13 to 23 to the O.A. The disciplinary authority and appellate authority are the respondents 1 & 2 in this O.A.

The applicant has filed this OA challenging the order dated 2.4.92 passed by the respondent No.2 and order Dt.15.7.92 passed by the respondent No.1 on the following grounds:-

(a) The subject matter of the charge related to an incident that took place on the intervening night of 26/27.9.83 while the applicant was on duty. It is further alleged that the applicant had consumed alcohol while on duty. With respect to the incident explained in charge No.1 the CBI conducted investigation and submitted a charge sheet against the applicant in criminal case No.11/88 on the file of IX Metropoliton Magistrate, Hyderabad.

It is stated that the applicant had submitted that since the criminal case was pending against him, the disciplinary proceedings should be postponed. He also relied upon the Government of India O.M. No.F 39/30/54-Estt. Dt.7.6.1965, and O.M.No. 39/8/64-Estt.A Dt.4.9.1964.

(b) That the disciplinary proceedings were conducted in haste;

(c) The evidence, the basis on which the applicant was found guilty is incredibly unfounded, sketchy and does not stand to judicial scrutiny. The only material witness M. Swamy was not examined in the inquiry proceedings;

The Inquiry Officer held the inquiry from 23.3.84 to 23.10.87. After concluding the inquiry the Inquiry Officer submitted his report on 19.8.88. The Disciplinary Authority accepting the findings recorded in his report Dt.19.8.88 imposed the penalty of removal from service ~~of~~ on the applicant by his order Dt.7.9.88. After exhausting the remidies available to him under the C.C.S. rules, the Applicant challenged the said order of punishment before this Tribunal in OA No.114 of 90. On 15.2.91 this Tribunal set aside the order of punishment solely on the ground that the Disciplinary Authority had not furnished the copy of the inquiry officers' report to the applicant before imposing the punishment.

This bench while setting aside the punishment gave directions to the disciplinary authority to proceed further after furnishing a copy of the report of the inquiry officer to the applicant.

Accordingly, the disciplinary authority furnished the copy of the report of the Enquiry Officer. On 19.8.91 the applicant submitted his explanation against the findings recorded by the Inquiry Officer. On 2.4.92 the Disciplinary Authority after considering the findings recorded by the Inquiry Officer and the explanation of the applicant imposed the penalty of removal from service by the Memorandum No. B/Adhoc/Disc. Dt.2.4.92. Against the said order of penalty the applicant prefered an appeal on 20.7.92 to the Director of Postal Services, Hyderabad. The Appellate Authority by his order Dt.15.7.93 rejected the appeal and confirmed the punishment imposed on the applicant.

The order of the Disciplinary Authority is at Annexure-A to the O.A. It is from page 24 to 33. The order

..4

The respondents filed a counter denying each and every ground and asserting that that the inquiry was conducted against the applicant in accordance with the CCS (CCA) Rules and following the principles of natural justics that they were under no obligation to stay the disciplinary proceedings till the conclusion of trial in CC No. 11/88, that acquittal in the criminal trial has no bearing on the disciplinary proceedings that the witnesses examined during inquiry admitted that certain transit bags were opened and broken seals, cords and lables were found beneath the pillow of the applicant that even the applicant had admitted before the official superiors that he had opened the transit bags that Swamy was not the lone witness in the inquiry that there are no merits in this O.A.

Pendency of criminal trial is not a bar to hold disciplinary proceedings. In the case of State of Rajasthan Vs. B.K. Mina reported in AIR 1997 Supreme Court page-13 the Hon'ble Supreme Court has observed as follows in paras 8, 11 & 17.

"

When the Original application came up for final hearing, the only ground urged by the respondent was that the departmental proceedings be not allowed to go on so long as the criminal proceedings are pending against him. It was opposed by the State of Rajasthan stating inter alia that inasmuch as the respondent has filed a detailed written statement of defence on 9.2.93 (in response to memo of charges framed against him) and because the respondent has disclosed all possible defences in the said written statement, there is no occasion or warrant for staying the disciplinary proceedings.

We are of the opinion that the order of the Tribunal is unsustainable both in law and on the facts of the case. In S.A. Venkataraman V. Union of India, AIR 1954 SC 375, thepetitioner therein was subjected to disciplinary proceedings in the first instance and was dismissed from service on 17th September, 1953. On 23rd February, 1954, the police submitted a charge-sheet against the petitioner therein in a Criminal Court in respect of the very same charges.

..7

(d) Confessional statement by him to the officials on the night of the incident has been used against him. It is stated that the confessional statement was extracted from him under duress and he cannot be found guilty on the basis of the statement given by him due to fear of his superior authority

(e) He was nothing to do with the transit mail bags which were found open. However, before the train reached Vijayawada certain officials found the transit bags opened and came to wrong conclusions

(f) During the inquiry some witnesses stated that he was in sober condition and that there was no medical evidence to prove his drunkenness.

(g) That the authorities failed to take into consideration his acquittal in the criminal trial;

(h) That the inquiry was conducted in violation of principles of natural justice. The inquiry officer failed to appreciate the possibility of involvement of Late Srinivasa Rao and Swami in the alleged misconduct;

(i) The respondent No.1 erred ... He held criminal case has no bearing on the departmental action.

(j) The respondents failed to note that the procedure laid down in the rule 14 (9) and 14(10) were violated; and

(k) The appellate authority failed to see that there is no medical evidence as to his drunkenness.

..6

expeditiously as the appointing authority is required to take a decision as to continuance of the applicant in service. Hence, we feel it may not be justified in defering the disciplinary action till the conclusion of Criminal trial. Therefore the contention of the applicant that the inquiry Officer concluded the proceedings in haste has no substance. More over it is for the Disciplinary Authority to take a decision as to continuance or otherwise of an employee who is under cloud. In such a situation the employer is not required to wait till the decision in the criminal trial.

The other grounds can be considered at this juncture.

It is stated that the authorities ignored the acquittal of the applicant in CC No.11/88. The incident occured on the intervening night of 26/27.9.93. While the applicant was on duty he had clandestinely broke open the transit bags with an intention to commit theft of the contents of the bags. On this allegation the applicant was prosecuted for the offence, punishable under Sec.379 read with Sec.511 of the Indian Penal Code. This allegation forms the subject matter of charge No.1 extracted above. The acquittal of the applicant in the criminal trial is in no way binding on the disciplinary athority. The disciplinary authority has to consider the material placed on record by the Presenting Officer and also by the applicant.

However the standard of proof in domestic enquiry is only preponderence of probabilities. If there is some evidence on record the disciplinary authority cannot be faulted. In the case of N. Rajaratnam Vs State of Tamil Nadu and another, the Hon'ble Supreme Court of India has been pleased to observe as follows:-

..9

The petitioner challenged the initiation of criminal proceedings on the ground that it amounts to putting him in double jeopardy within the meaning of clause (2) of Article 20 of constitution of India. A constitution Bench of this Court rejected the said plea holding that there is no legal objection to the initiation or continuation of criminal proceedings merely because he was punished earlier in disciplinary proceedings. It is thus clear - and the proposition is not disputed by Mr. K. Madhava Reddy, learned Counsel for the respondent - that in law there is no bar to, or prohibition against, initiating simultaneous criminal proceedings and disciplinary proceedings. Indeed not only the said two proceedings, but if found necessary, even a civil suit can also proceed simultaneously. Mr. Madhava Reddy, however, submits that as held by this Court in certain later decisions, it would not be desirable or appropriate to proceed simultaneously with the criminal proceedings as well as disciplinary proceedings.

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

"

In criminal trial the applicant was prosecuted for the offence punishable under S.379 r/w S.511 of the Indian Penal Code. It was a charge of attempt to commit theft. Rules and procedure Governing Criminal trial and Disciplinary proceedings are quite different and distinct. Morever, the Disciplinary proceedings should be concluded

..8

When the applicant himself admitted to have consumed alcohol the contention that there is lack of medical evidence to prove his drunkenness cannot be accepted. Further the applicant admitted the said fact before his superior official also. None the less statement recorded though not admissible under Sec.25 of the Evidence Act ~~are~~ is still admissible in disciplinary proceedings. The applicant has failed to prove that his confession was extracted by the official superiors by force and/or compulsion. Even accepting for the moment the official superior had extracted such a confessional statement from the applicant in view of his admission before the inquiry officer it may not be said that the applicant's statement was obtained from him by the Inquiry Officer under threat.

Therefore the statement of the applicant before the inquiry authority can be accepted as an admission of his guilt of charge No.2. In view of his own admission the statement made by the witness regarding his condition at the time of work may not be of much importance. A person consuming alcohol may remain in sober condition. It all depends upon the quantum of alcohol the person had consumed. Probably the witnesses examined during the inquiry found him to be in sober condition without knowing whether or not he had consumed alcohol. Their statement does not go to the extent to regard the charge No.2 as baseless. There was no need for the medical fitness on the charge of drunkenness of the applicant because he himself had admitted to have consumed alcohol on that night before the Inquiry Officer.

..11

" It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evi ence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

"

From the material placed on record we are of the opinion that there was sufficient material to establish charge No.1 levelled against the applicant. Discovery of broken seals, cards and labels beneath the pillow of the applicant is a strong circumstance which may not be lightly ignored. The applicant has not given satisfactory explanation for the presence of those materials beneath his pillow.

As regards the charge No.II it is alleged that the applicant had consumed alchohol on that night while he was on duty. The applicant had categorically admitted before the inquiry officer. The learned counsel for the respondents produced before us the proceedings sheet maintained by the Inquiry Officer wherein the applicant on his appearance before the inquiry officer plainly admitted that he had consumed alcohol. The principle of evidence is that the admitted facts need not be proved.

..10

The learned counsel for the applicant concluded that there was double jeopardy to the applicant and that Article 20 (2) of the constitution of India was violated. We are of the opinion that Article 20 (2) is not applicable to disciplinary proceedings. Therefore there is no substance in this contention. Disciplinary proceedings is not prosecution within the meaning of Article 20 (2) of the Constitution of India or a trial within the meaning of Sec. 403 of CRPC (old code). There is, thus no legal basis to bar disciplinary proceedings on the same fact in which a criminal proceeding terminated in favour of the delinquent employee with an order of acquittal.

Therefore there is no substance in the contention of ~~respondents~~ the applicant. There are no reasons to interfere with the impugned orders. It can not be said that in the present case there was no evidence for the disciplinary authority to take action against the applicant.

Hence we find no merits in this OA. The same is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.