

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 06th day of April, 2011

ORIGINAL APPLICATION NO. 126/2007

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Brij Mohan son of Late Shri Mukut Bihari Lal by caste Shrivastava, aged about 61 years, resident of Chandra Vila, Patel Nagar, Topdhada, Ajmer. Presently as dismissed employee of the Post Office and dismissed by the Superintendent Post Officer, Ajmer.

.....Applicant

(By Advocate: Mr. P.N. Jatti)

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. Postmaster General, South Region, Ajmer.
4. Senior Superintendent Post officer, Ajmer Division, Ajmer.

.....Respondents

(By Advocate: Mr. V.S. Gurjar)

ORDER (ORAL)

This is the second round of litigation. In the first round of litigation, the applicant filed the OA No. 127/90 before this Tribunal challenging the dismissal order dated 14.04.1988, order dated 04.07.1988 by which the appeal of the applicant was dismissed by the Appellate Authority and the order dated 06.03.1989 by which petition of the applicant against the order of Appellate Authority was dismissed by the Member (Personnel), Postal Services Board, New Delhi.

2. This Tribunal vide its order dated 22.02.1995 without interfering with the orders of the Disciplinary Authority, Appellate Authority and



Member (Personnel), Postal Services Board, New Delhi dismissed the OA. It is not disputed that this order dated 22.02.1995 has not been challenged and this order dated 22.02.1995 has attained finality.

3. Now this present OA has been preferred by the applicant as vide order dated 22.08.1985, the Chief Judicial Magistrate has acquitted the applicant from offence under Section 409 of IPC by giving benefit of doubt as prosecution had failed to prove the guilt beyond doubt. Learned counsel for the applicant has placed reliance on Rules 81 & 82 of the Post and Telegraph Manual Volume III, which reads as under:-

"81. Once a charge sheet has been filed in the court against an employee, the departmental proceedings, if any, initiated against him on the same facts of the case should be kept in abeyance till the finalization of the criminal proceedings. Similarly, an appeal filed against the penalty imposed in the departmental case should not be disposed of, if in the meantime criminal proceedings on the same facts of the case have been initiated.

82. It is not permissible to hold departmental enquiry in respect of a charge based on the same facts or allegations which have already been examined by a Court of competent jurisdiction and the Court has given a finding that they are not true. If, however, that Court has merely expressed a doubt as to the correctness of the allegation, there may be no objection to hold departmental enquiry on the same allegation, if better proof than that was produced before the Court or was then available, is forthcoming. If the Court has held that the allegations are proved but they do not constitute the criminal offence with which the Govt. Servant was charged, then also it would be permissible to hold a departmental enquiry on the basis of the same allegations."

4. Learned counsel for the applicant has further placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Limited**, reported in JT 1992 (2) SC 456 wherein the Hon'ble Supreme court has held that



if on the same set of facts and evidence, an employee was acquitted in criminal trial, it would be unfair and unjust to allow the finding of the inquiry proceedings to stand. The dismissal of employee has to be set aside and reinstatement ordered.

5. Learned counsel for the respondent has strongly controverted the submission made on behalf of the learned counsel for the applicant and referred the case of **Govind Das vs. State of Bihar**, 1997(11) SCC 361 and more particularly, referred to para as reproduced as under:-

"The only ground which has been urged by the learned counsel for the appellant in support of this appeal is that since the appellant has been acquitted in the criminal case, the order for termination of his services should have been set aside. The learned counsel has placed before us a copy of the judgment of the criminal court whereby the appellant was acquitted. We have gone through the said judgment. We find that the acquittal of the appellant is based on the view that the charges are not proved beyond reasonable doubt. Since the standard of proof required to prove a charge of misconduct in departmental proceedings is not the same as that required to prove a criminal charge, the acquittal of the appellant in the criminal case, in these circumstances, could not, in our opinion, be made the basis for setting aside the order for termination of the services of the appellant passed in the disciplinary proceedings on the basis of evidence adduced in the departmental inquiry conducted in the charges leveled against the appellant. We, therefore, find no merit in this appeal and the same is accordingly dismissed. No orders as to costs."

By referring the aforesaid judgment, learned counsel for the respondents submitted that the OA preferred by the applicant is without any substance and merit and deserves to be dismissed in view of the settled preposition of law.



6. Learned counsel for the respondents also referred to the case of **Uttaranchal Roads Transport Corporation & Others vs. Mansaram Nainwal**, reported in 2006(6) SCC 366 wherein the Hon'ble Supreme Court had considered the case of Capt. M. Paul Anthony. In Para nos. 13 & 14 of the judgment, the Hon'ble Supreme court has held as under:-

"13. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent (See *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647, and *Union of India v. Dhanwanti Devi*, 1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leathem*, 1901 AC 495, Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expression which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expression are found and a case is only an authority for what it actually decides.

14. Unfortunately, the High court has not discussed the factual scenario as to how Anthony case had any

application. As noted above, the position in law relating to acquittal in a criminal case and question of reinstatement has been dealt with in Sidhana case, AIR 1968 SC 647. As the High Court had not dealt with the factual scenario and as to how Anthony case helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for long, it would be in the interest of the parties, if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order."

7. Learned counsel for the respondents further referred the case of **Suresh Pathrella vs. Oriental Bank of Commerce**, AIR 2007 SC 199, wherein Hon'ble Supreme Court is of the view that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. The yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

8. We have given our thoughtful consideration to the rival submission and have carefully scanned the judgments referred to by the rival parties. As it is not disputed that the applicant had himself filed Annexure A/9 by which his earlier OA No. 127/90 was dismissed vide order dated 22.02.1995 and the order passed by the Tribunal has not been challenged by the applicant. So far as interference of the order of Disciplinary Authority, Appellate Authority, Member (Personnel), Postal Services Board, New Delhi is concerned, the question does not arise in the second round of litigation merely because of acquittal from the criminal charges. The Hon'ble Supreme



Court in Para No. 22 of its judgment in the case of Suresh Pathrella (supra) had held as under:-

"The appellant acted beyond his authority in breach of Bank's Regulation. Regulation 3(1) of the Bank's Regulation required that every officer of the Bank at all times take all possible steps to protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a Banking Officer. It is a case of loss of confidence in the Officer by the Bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service, preceded by an enquiry, and to direct the Bank to take back the officer in whom the Bank has lost confidence, unless the decision to remove the Officer is tainted with mala fide, or in violation of principles of natural justice and prejudice to the officer is made out. No such case is made out in the present case."

9. Thus merely on the ground of acquittal in the criminal case, the applicant cannot claim as a matter of right that he should be taken back in service as held by the Hon'ble Supreme Court that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

10. The Hon'ble Supreme court in its judgment rendered in the case of Uttaranchal Road Transport Corporation & others has distinguished the order passed in the case of Capt. Paul Anthony and observed that according to the well settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the



principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above.

11. Upon careful perusal of the judgments rendered by the Apex court, relied upon by the respective parties, and looking to the facts & circumstances of the present case, we are of the view that the ratio laid down by the Apex court in the case of Suresh Pathrella and Uttranchal Road Transport Corporation & Others is fully applicable in the facts & circumstances of the present case. The applicant is not entitled to be reinstated in service on the ground of acquittal of charges giving benefit of doubt, as discussed hereinabove.

12. With these observations, the OA is dismissed with no order as to costs.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K.S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

AHQ