

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD
(Circuit Bench at Nainital)

(This the 28th Day of November 2018)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)
Hon'ble Mr. Mohd. Jamshed. Member (A)

Transfer Application No.331/0005/2018

Bishan Ram Tamta aged 53 years S/o Sri Teeka Ram, r/o Village Malli nail, PO Nali, Panuwanaula, District Almora.

..... Applicant

By Advocate: Shri H.C. Lohani

Versus

1. The Union of India through Secretary, Post & Telegraph Department Government of India, New Delhi.
2. Chief Post Master General Uttarakhand, Dehradun.
3. Superintendent of Post Office, Almora District Almora.

..... Respondents

By Advocate: Shri Rajeev Singh Bisht/Shri D.S. Shukla

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. The applicant had filed a Civil Misc. Writ Petition (S/S) No. 743 of 2013 before Hon'ble High Court of Uttarakhand and the said petition was remitted to this Tribunal in view of provision of Section 29 (2) of Central Administrative Tribunals Act 1985 vide order dated 20.03.2018 which has been registered as T.A. No. 331/0005/2018.

2. Applicant Bishan Ram Tamta seeks the following reliefs:-

- "(a) Issue a writ, order or direction in the nature of CERTIORARI to set aside the termination order dated 21.7.2005 (Annexure No.1) and appeal order dated 5.11.2012 (Annexure No.8) to the writ petition
- (b) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent No.3 to reinstate petitioner in its original post and ensure the payment of dues for which he is entitled.
- (c) Issue a writ, order or direction which this Hon'ble Court may deem fit and proper".

3. The case against applicant Bishan Ram Tampta is that while posted as Branch Dakpal in Post Office Branch Nali, the applicant in 1st week of May 2003, took the pass book from Harish Singh Bora in respect of his Fixed Deposit Account No. 133930 but did not give him a receipt and thereafter the applicant on 3.5.2003 forged the signatures of the account holder on the withdrawal form and sent the same to Account office Panuwanaula for approval, on receipt of order of disbursement of interest of Rs.877/-, applicant forged the signatures of Harish Singh and witness Naral Singh Bisth and after entering the amount in the pass book and other books of account, misappropriated the annual interest amount of Rs.877/- from the said account, and did not return the passbook to Harish Singh and violated Rules 134 (5) and 135 (vi) of Postal Manual read with Rule 21 of GDS (Conduct and employment) Rules, 2001 (hereinafter referred to as the 'Rules').

4. Proceedings under Rule 10 of the Rules were initiated against the applicant. The Enquiry officer vide order dated 20.6.2005 came to the conclusion that the charge stands proved against the applicant. The Disciplinary Authority (DA) on considering the material before itself vide order dated 21.07.2005 imposed the penalty of 'removal from employment' upon the applicant. No

appeal was preferred against the order of the DA by the applicant.

5. As per the record, applicant on same aforesaid facts was charged sheeted for offence u/s 409/420 I.P.C. in the Court of Chief Judicial Magistrate, Almora and was acquitted vide order dated 18.02.2012.
6. Applicant addressed letter dated 18.05.2012 (Annexure-A 4) to Superintendent of Post office Almora (Respondent No. 3) along with the judgment of the CJM and requested that since he has been acquitted, as per, the judgment, he be reinstated with immediate effect. This letter was disposed of by the Superintendent of Post Office vide order dated 29/30-5-2012 wherein it is averred that the criminal case was filed by the State and, as per, the judgment of the court, it is clear that after incomplete investigation by the IO, the report was presented in the court. Therefore, as per, Court order applicant was acquitted and no order was passed by the court against the Postal department and so, the request of applicant cannot be acceded to.
7. Applicant filed an appeal against the aforementioned order dated 29/30-05-2012 before the Chief Post Master, Dehra Dun (Respondent No. 2) who vide order dated 05.11.2012 dismissed the same observing that that criminal case and departmental proceeding are different proceedings and do not effect each other. The criminal case is based on criminal law and Departmental enquiry is based on departmental rules.
8. Applicant has challenged the orders dated 21.07.2005 passed by the Disciplinary Authority (D.A.) removing him from employment and order dated 05.11.2012 of Chief Post Master rejecting his prayer for reinstatement on the following grounds:-

- (i) Because Sub Divisional Inspector Post Office Almora inspected the Branch Post Office Nali where he found that a sum of Rs.877/- was misappropriated by the applicant and thereafter Sub Divisional Inspector Post Office Almora lodged an FIR against the applicant.
- (ii) A criminal case No. 760/06 was instituted against the applicant and during the course of trial, the learned trial court examined the 12 witnesses and has found that the prosecution has failed to proof its case and thereafter applicant was acquitted.
- (iii) Respondent No.3 has rejected the letter of reinstatement of the applicant and submitted that trial court has not given any direction to the Post Office regarding reinstatement of the applicant.
- (iv) Respondent No.2 has also rejected the appeal of the applicant stating therein that departmental enquiry is quasi judicial enquiry and as such order passed by respondent No.2 dated 18.5.2012 is correct and need no interference.

9. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
10. During the course of argument, learned counsel for applicant while challenging the impugned order reiterated the pleas taken in the O.A. and submitted that due to acquittal in the criminal case, he is entitled to be reinstated in service.
11. On the other hand, learned counsel for respondents argued that the applicant has not exhausted all the departmental remedies available to him. If he had any grievance against the impugned order dated 21.07.2005 passed by the Disciplinary Authority (D.A.)

removing him from employment, the remedy of filing an appeal against the said order was open to him, which he has not availed.

12. Regarding the plea of respondent that O.A. is not maintainable for not exhausting the alternative remedy, it would be relevant to quote Section 20 of the A.T. Act, 1985 which for ready reference reads as under:

"Application not to be admitted unless other remedies exhausted

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

13. Perusal of above shows that this provision is in a negative form and makes it clear that ordinarily Tribunal should not admit an application unless it is satisfied that all the remedies available to a person under the service rules have been exhausted.
14. In this context, it would be relevant to refer to GDS (Conduct & Employment) Rules, 2011 which for ready reference read as under:-

"13 Appeal (1) A Sevak may appeal against an order putting him off duty to the authority to which the authority passing the order regarding putting him off duty is immediately subordinate.

(2) A Sevak may appeal against an order imposing on him any of the penalties specified in Rule 9 to the authority to which the authority imposing the penalty is immediately subordinate".
15. The Rules provide for filing of an appeal against the order of the D.A., which appeal, admittedly has not been filed by the applicant. In the present case, since applicant has not exhausted the remedy of filing an appeal against the order of the D.A. as provided under the service Rules, we hold that the O.A. against the order of the D.A is not maintainable.
16. It has been argued by the Learned Counsel for the applicant that a criminal case for offence u/s 409/420 I.P.C. was filed against the applicant in the Court of Chief Judicial Magistrate, Almora and the grounds in the criminal case were similar to the charges mentioned in the disciplinary proceedings and wherein on conclusion of the criminal trial, the applicant was acquitted by the said Court. The applicant's contention is that after his acquittal in the criminal case, the impugned order in connection with his removal from service has become infructuous, as such, he is entitled to be re-instated in the service.

17. Per contra, learned counsel for the respondents submitted that acquittal of the applicant giving him benefit of doubt does not entitle him to his exoneration of the charge in the departmental proceedings. He stated that despite a Government official acquittal in a criminal case, giving him benefit of doubt, the punishment imposed in disciplinary proceedings can still be maintained against him and placed reliance on the judgment of the Hon'ble Supreme Court in the case of Union Territory, Chandigarh Administration and Ors. v. Pradeep Kumar, (2018) 1 SCC (L&S) 149.
18. In the present case criminal case, the Court, vide its judgment has acquitted the applicant giving him benefit of doubt.
19. On the question of effect of an acquittal in a criminal case upon the punishment imposed in a departmental enquiry, it has been held by the Hon'ble Apex Court in the following case:
 - A. Union Territory, Chandigarh Administration and Ors. v. Pradeep Kumar, (2018) 1 SCC (L&S) 149 that "10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Deputy Inspector General of Police and Another v. S. Samuthiram (2013) 1 SCC 598, in which this Court held as under:-
"The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere

acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

B. Commissioner of Police, New Delhi and Another v. Mehar Singh (2013) 7 SCC 685, the respondent was acquitted based on the compromise. The Hon'ble Apex Court held that:-

"A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this

Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* AIR 1964 SC 787 this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram* (2013) 1 SCC 598. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an

employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings."

20. Reference also may be made to Bharat Heavy Electricals Ltd v/s M.Mani (2018) 1 SCC (L&S) 178 wherein the Hon'ble Apex Court held that:

"Similarly, in our considered view, the Labour Court failed to see that the criminal proceedings and departmental proceedings are two separate proceedings in law. One is initiated by the State against the delinquent employees in criminal Court and other, i.e., departmental enquiry which is initiated by the employer under the Labour/Service Laws/Rules, against the delinquent employees.

20. The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal Court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic enquiry, which the employer had every right to conduct independently of the criminal case.

21. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal Court is of no avail. It is held that even if a person stood acquitted by the criminal Court, domestic enquiry can still be held - the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See Divisional Controller,

Karnataka State Road Transport Corporation vs. M.G. Vittal Rao-(2012) 1 SCC 442)

22. In the light of this settled legal position, the Labour Court was not right in holding that the departmental enquiry should have been stayed by the appellant awaiting the decision of the criminal Court and that it is rendered illegal consequent upon passing of the acquittal order by the criminal Court. This finding of the Labour Court is, therefore, also not legally sustainable.

32. In the case on hand, the appellant (employer) had conducted the departmental enquiry in accordance with law independently of the criminal case wherein the Enquiry Officer, on the basis of the appreciation of evidence brought on record in the enquiry proceedings, came to a conclusion that a charge of theft against the delinquent employees was proved. This finding was based on preponderance of probabilities and could be recorded by the Enquiry Officer notwithstanding the order of criminal Court acquitting the respondents."

21. Admittedly, the applicant has been proceeded for the same set of charges both in the disciplinary proceedings and in criminal proceedings. It is settled law that in criminal proceedings, the charge has to be proved beyond any reasonable doubt whereas establishment of preponderance of the charge in the disciplinary proceedings would be sufficient ground for taking action against the applicant, as laid down by the Hon'ble Supreme Court in the case of Union of India v. Sardar Bahadur, (1972) (4) SCC 618 that :

"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable

person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

22. In the present situation, the applicant has been acquitted in the criminal case on the basis of being entitled to benefit of doubt but it cannot be termed to be an 'honourable acquittal'. In view of this law as settled by Hon'ble Apex Court, there is no substance in the arguments of the learned counsel for the applicant that once the applicant has been acquitted by the Court, the dismissal orders ought to be set aside and the applicant be reinstated in the service.
23. After having given our thoughtful consideration to the materials available on record and the rival submissions, we have found no substance in the submissions of learned counsel for the applicant.
24. In the light of our above discussions, we have no hesitation in holding that the Transfer Application is devoid of merit and liable to be dismissed. Accordingly, the Transfer Application is dismissed. No costs.

(Mohd. Jamshed)

Member (A)

(Rakesh Sagar Jain)

Member (J)

Manish/-