

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
(CIRCUIT AT PORT BLAIR)

No. O.A. 351/00069/2015

Date of order: 1.10.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Shri Mahesh Lall,
S/o. Shri Kishen Lall,
R/o. Caddlegunj,
South Andaman,
Pin - 744 108

... Applicant

- V E R S U S -

1. The Union of India,
Ministry of Home Affairs,
Service through the Secretary,
Department of Police,
New Delhi - 110 041.
2. The Director General of Police,
Andaman & Nicobar Islands,
Port Blair - 744 101,
South Andaman.
3. The Superintendent of Police,
South Andaman District,
Port Blair - 744 101,
South Andaman.

... Respondents

For the Applicant : Mr. K. Rao, Counsel

For the Respondents : Mr. S.K. Mandal, Counsel
Mr. S.C. Misra, Counsel

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard both sides.

2. This O.A. has been filed seeking the following reliefs:-



"a. To set aside and quash the memorandum No. SP(D)SA/DE-21/2011/542 dated 10th December, 2011 issued by the Superintendent of Police, South Andaman District, Port Blair.

b. To set aside and quash the order book No. 3652, dated 12th May, 2015 passed by the Director General of Police, A&N Islands (Appellate Authority).

c. To set aside and quash the order No. 103 dated 5th November, 2014 passed by the Superintendent of Police, South Andaman, District : Port Blair.

d. To pass an order directing the respondent authorities to reinstate the service of your applicant and to release all the consequential benefits of your applicants.

e. To pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."

3. The pith and marrow, the gist and kernel of the germane facts absolutely necessary for the disposal of the O.A. would run thus:-

The Police Department, at P.S. Pahargaon registered an FIR under Section 363/366(A)/376/342/376(g)/368/372/506/34 IPC on the complaint of Smt. Kaushamma, W/o. Late Appa Rao to the effect that the complainant's daughter namely Rama Devi was raped by some persons. Whereupon investigation started and thereafter the applicant and a few other persons were arrested and subsequently chargesheeted before the Magistrate Court and the Court of Sessions where trial was conducted, acquitted the accused. It so happened that even during the pendency of the criminal proceedings, the Police Department initiated departmental proceedings against the applicant, who is a Police constable. Charges were framed as against him.

4. In the departmental proceedings, neither the victim girl Rama Devi nor her mother B. Kausamma was examined. Ultimately, however, the enquiry officer held the applicant guilty of the charges. Based on that the disciplinary authority terminated him from service vide order dated 5.11.2014 and as against which an appeal was preferred before the


appellate authority for nothing but to be dismissed. Thereafter this O.A. has been filed seeking the aforesaid reliefs.

5. *The Ld. Counsel for the applicant placing reliance on the various annexures and also the criminal court judgment and the depositions recorded during departmental enquiry would develop his argument which could succinctly and precisely be set out thus.*

6. There is no molecular or miniscule, smidgeon or jot, iota or pint, shred or shard of evidence as against the applicant in support of the article of charge. Neither the complainant nor the alleged victim girl was examined before the enquiry officer in the disciplinary proceedings. PW-I Shri Barun Chandra Bhakta who was examined to prove the presence of the victim girl, on the relevant date in the rented room of Shri Probir Kumar Mazumder did not support the case of the State as that witness did not state anything before the enquiry officer. Merely on assumptions the enquiry officer rendered a finding of guilt as against the applicant, and it was adopted and upheld verbatim by the disciplinary authority as well as the appellate authority warranting interference at the hands of the Central Administrative Tribunal.

7. Per contra, the Ld. Counsel for the respondents would vehemently oppose the move for allowing the O.A. on various grounds which could succinctly and precisely, tersely and brief be set out thus.

8. This is a horrible case which took place in Andamans and because the complainant, namely, one B. Kausamma and her daughter the victim girl Rama Devi turned hostile before the criminal court they were acquitted and it cannot be stated to be an honourable acquittal and, therefore, the department proceeded with the departmental proceedings and held the applicant guilty. In departmental proceedings, proof beyond




all reasonable doubts is not required, only preponderance of probabilities is required. Keeping that in mind, the enquiry authority held the applicant guilty and it was accepted by the disciplinary authority and upheld by the appellate authority warranting no interference at the hands of the Central Administrative Tribunal.

9. The point for consideration is as to whether the disciplinary authority as well as the appellate authority held the applicant guilty based on any semblance of evidence warranting no interference at the hands of the Central Administrative Tribunal.

10. At the outset itself, we would like to reiterate the well settled as well as the trite proposition of law that Central Administrative Tribunal shall not act as an appellate authority over disciplinary authority and for that matter the courts also cannot assume the role of an appellate authority over the disciplinary authority in departmental proceedings. But one paramount and significant fact should be kept in mind that if any recording of guilt is made by the authority concerned without any admissible evidence, then it would amount to perverse order which would warrant interference by CAT. Once there is perversity in the order of the disciplinary authority or the appellate authority then necessarily interference of Central Administrative Tribunal is warranted. As such, keeping the aforesaid proposition in mind, we would like to analyse the records available. The article of charge is so grave that it is relating to kidnapping, detention, rape etc. The important fact that should be noted here is that neither the complainant namely, one B. Kausamma and her daughter the victim girl Rama Devi was examined before the enquiry officer. The enquiry report Annexure A-10, would reveal the following:

"I, being the inquiring authority is also in the same opinion as discussed by the presenting officer. Since, the complainant as well



as victim girl (PW-2 & 3) mother and daughter could not traced out, in that circumstances we may consider the statements recorded by the preliminary enquiry officer during preliminary enquiry and the statement recorded by JMFC Port Blair on 15.7.2011 u/s.164 Cr. PC.

FINDINGS

On assessment of evidence based on examination of witnesses, analyzing documents, other records of the departmental enquiry (Common Proceeding) as well as after going through the facts and circumstances of entire case, the charge framed against Charged Officers PC/1310 Mahes Lall and PC/1354 P.K. Mazumdar vide Memorandum No. SP(D) SA/DE/21/2011/542 dated 10.12.2011 stands proved."

The above excerpt and the perusal of the entire inquiry report would reveal that the enquiry officer simply relief on the previous record emerged during preliminary enquiry and investigation. Certain excerpts from Annexure A-17, the order of disciplinary authority would run thus:

AND WHEREAS, the standard of proof required in the Criminal Proceedings and the Disciplinary Proceedings are distinctly different. In the Criminal Case, the case has to be proved against the accused beyond reasonable doubt, whereas in a Departmental Proceedings, the standard of proof required is preponderance of probability. The acquittal of the charged officers are also no honourable acquittal, which can influence the Disciplinary Authority in any way. It is pertinent to mention that during the TIP, the victim had identified both PC/1310 Mahesh Lall & PC/1354 Prabir Kumar Mazumder as accused. Further during the course of recording of statement of victim u/s 164 Cr. PC, she had made allegation against both the charged officers. Later on during the trial, victim had turned hostile by not deposing/identifying the charged officers. Moreover, victim had made allegation against both the charged officers as is evident from the statements recorded during the preliminary enquiry by Insp. Jenifer Paul, an officer senior in rank to the charged officers. During DE proceedings, neither complainant i.e. mother of victim nor victim has appeared before the Presenting Officer for deposing. It was learned that both of them have left the Islands. From the fact on record, it appears and can be presumed that since the family of the victim is not financially sound, taking advantage of the situation both the charged officers have lured the victim for not deposing against them."

The aforesaid excerpts would also reveal that the disciplinary authority simply adopted the records emerged during preliminary

enquiry and investigation. Certain excerpts from Annexure A-19 the appellate authority order would run thus:

“Applying the principles laid down by the Hon’ble Supreme Court in respect of evidentiary value of the statement recorded during criminal investigation, effect of acquittal on the departmental proceeding the standard of proof required in the Departmental Proceedings, in the case titled as Commissioner of Police, New Delhi v. Narender Singh reported in 2006(U) SCC 256 wherein the Supreme Court has held that:-

“the evidentiary value of the said confession is concerned, Section 25 of the Evidence Act and Section 162 of the Cr. PC provide an embargo as regard admissibility of a confession in a criminal trial. The said provision have per se no application in a departmental proceedings.” Similarly in the instant case the statement recorded U/s 164 Cr. PC by Magistrate has rightly been relied upon by the Disciplinary Authority in its order dated 05.11.2014.

And, further that it is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a department proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of possibility would serve the purpose (Kamladevi Aggrawal vs- State of West Bengal & Ors. 2002 1 SCC 555), Kuldeep Singh vs- State of Punjab & Ors. 1996 10SCC 659 and Depot Manager, AP State Road Transport Corporation vs- Mohd. Yousuf Miya & Ors. 1977. I am of the view that the evidence which has come on record is sufficient to conclude that the victim minor girl Kumari Rama Devi was kidnapped, wrongfully confined, repeatedly raped, threatened and intimidated by the delinquents.

The inhuman act of these two members of a disciplined police force destroyed the dignity, self esteem and honour of the victim, a minor girl and the society will now look at her with apathy, hatred and disgrace. And, perhaps this could be one of the reasons for the sudden disappearance of victim and her mother (complainant), from these Islands without leaving behind any proper address of the place where they have gone. Else, it is quite possible that delinquent charged officers has threatened or induced the complainant and victim to leave the A & N Islands and are not available during DE proceedings.

The jurisdiction of the disciplinary authority to take action for misconduct does not require strict standard of proof beyond reasonable doubt. In many cases, the prosecution/department may not even file a charge sheet or initiate criminal action but in those cases too, if there is enough evidence on record which calls for the disciplinary action and also misconduct attributable to the delinquent officer, it is quite permissible to initiate departmental proceedings, even on the same set of facts, as are in a prosecution

complaint/case because there is a point to be decided by the employer as to whether a person whose conduct or action is of undesirable in nature should or should not be allowed to continue in service.

The appellate authority relied on the decision of the Hon'ble Apex Court in **Commissioner of Police, New Delhi v. Narender Singh** reported in **(2006) 4 SCC 265**. The said judgment of the Hon'ble Apex Court would point out that confession made by the accused during investigation by police in a criminal case could be proved before the department proceedings in spite of the embargo contained in Section 25 and 26 of the Evidence Act and nowhere in the said judgment it is stated that the statement of the victim and other witnesses recorded under Section 161 of Cr. PC could be directly taken as evidence even in the absence of examining those witnesses before the enquiry officer. This important distinction in this case was not noticed by the appellate authority.

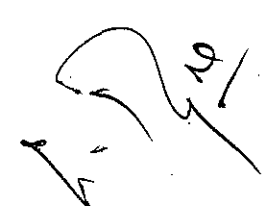
It is not the law that merely based on the statements recorded during preliminary enquiry and investigation and the statement recorded U/s 164 of Cr. PC and the medical report, in a case of this nature, simply the charged official could be held guilty of rape and other acts, even though Session Court acquitted the charged official, who was accused therein. The Hon'ble Apex Court's decisions were not interpreted and understood properly by the appellate authority. The respondent authorities relied on medical evidence, but the Learned Sessions Judge in his judgment observed thus:-

"PW 6 is the Doctor who examined the victim and according to the opinion there was no injury and no sign of violence or inflammation to the victim and the victim was stated to be sexually habiatuated."



The appellate authority simply relied on the statement recorded U/s 164 of Cr. PC and the medical report for holding the charged officer guilty of rape without in any way highlighting as to how that is permissible factually and legally as per law. The fact remains that the author of such previous statement was not subjected to cross-examination.

11. No doubt not even for a moment we hold that all statements recorded by the police during police investigation or the statement recorded U/s. 164 of Cr. PC cannot be taken into consideration by the disciplinary authority. The disciplinary proceedings are different from criminal proceedings in stricto sensu. However, those statements should be proved in the way known to law. For that there should be corroboration by the witnesses who gave the statements before police or if the same witness goes against the previous statement, there should be cross-examination of that witness and it should be elicited out that the witness turned hostile or won over etc. But in this case, indebutably and indisputably those witnesses did not appear at all. Even PW1, Shri Barun Chandra Bhakta who was relied upon to prove the circumstantial evidence turned turtle and he did not support the case of the State in the disciplinary proceedings. PW-2 and PW-4 are the SIs, who investigated into the matter. PW-3 is the preliminary enquiry officer, who gave his evidence. As such, it is crystal clear that in the absence of admissible piece of evidence to prove or establish the preponderance of probabilities, the enquiry officer rendered a finding of guilt as against the applicant and it was upheld by the disciplinary authority as well as the appellate authority erroneously.



12. The Ld. Counsel for the respondents would try to explain and expound by pointing out that the whereabouts of the said, B. Kausamma and her daughter the victim girl Rama Devi were not known and that was why they could not be examined before the disciplinary authority. It is a shocking news for CAT that Police Department itself which is conducting the disciplinary proceedings could not secure the presence of the complainant as well as the victim girl.

13. We are of the considered view that no stones should be left unturned for securing the presence of the complainant as well as the victim girl at the expense of the State and even if they are in the Mainland their presence should be secured at the cost of the State and they should be examined, otherwise it would be presumed that the department concerned did not take appropriate action in conducting the departmental proceedings.

14. Whereas, the Ld. Counsel for the applicant vehemently opposed the move for ordering fresh enquiry from the stage of examining the witnesses on the main ground that an innocent applicant should not be made to suffer for no fault of him. According to him his client was innocent and the criminal court honourably acquitted his applicant and thereafter in the departmental proceeding though there was no evidence; yet he was victimized, and once again he should not be subjected to further proceedings for no fault of him. Here we would like to point out that because some of the officers in the departmental proceedings, did not take appropriate steps in conducting the departmental proceedings, the justice should not be the victim.

15. It is crystal clear that the Hon'ble Apex Court pointed out that even in criminal case, if an accused has to be acquitted for non-conducting of



the proceedings in the prescribed manner, yet further trial from the stage of which it was not conducted properly, should be started afresh and there should be logical end to it. As such, keeping in mind the said dictum of the Hon'ble Supreme Court, we are of the view that while setting aside the order passed by the disciplinary authority as well as the appellate authority, we would like to mandate that the disciplinary authority should conduct the enquiry from the stage of examination of witnesses afresh by securing the presence of the complainant as well as the victim girl, and complete the enquiry as per A&N Police Manual, 1963 and law as expeditiously as possible.

16. The disciplinary authority as well as the order of the appellate authority is therefore set aside and as a sequel the applicant has to be reinstated in service pending such enquiry, however, it is open for the department to place him under suspension or assign unimportant post to him at the authority's discretion so that he would not be in a position to interfere with the conducting of the enquiry, during the pendency of such enquiry.

16. Ordered accordingly.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP