

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00392/2016

Date of Reserve:30.04.2019

Date of Order:19.07.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Amiya Sankar Behera, aged about 37 years, S/o. Sri Bholanath Behera – at present working as Junior Accounts Officer, Office of the S.D.O. Phone-VII, 8/B, Jaydurga Nagar, Bhubaneswar-751 006.

...Applicant

By the Advocate(s)-M/s.A.K.Mohanty
P.K.Kar
D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Chief General Manager, Bharat Sanchar Nigam Ltd., Odisha Circle, B.S.SN.L. Bhavan, Bhubaneswar-751 002.
2. The General Manager (HR), Office of the C.G.M., BSNL, Odisha Circle, BSNL Bhavan, Bhubaneswar-751 002.
3. Sri Narahati Das, Dy. General Manager (HR) - cum – Inquiry Officer, Office of the C.G.M., BSNL, Odisha Circle, BSNL Bhavan, Bhubaneswar-751 002.

...Respondents

By the Advocate(s)-Mr.T.K.Mandal

ORDER

PER SWARUP KUMAR MSHHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To allow the Original Application.
- ii) To quash the disciplinary proceeding initiated against the applicant vide GM (HR&Admn.)-cum-Disciplinary Authority, Office of the CGM, BSNL, Odisha Circle, Bhubabneswar vide No.Vig.11-303/06(Pt.) dated 6.2.2016 (as per Annexure A/6) as well as Letter No.Vigl.11-303/2006-15 (part)/354 dated 5.5.2016 (as per Annexure-A/9) issued byt he CGM, BSNL, Odisha Circle, Bhubaneswar-cum-Appellate Authority.

- iii) To order and direct that the cost of litigation be paid to the applicant by the Respondent No.2 for torturing the applicant and dragging him into unnecessary litigation.
- iv) To issue any other order or orders, direction or directions as the Hon'ble Court deems fit and proper to meet the end of justice.

2. Facts of the matter in brief are that the applicant while working as Junior Telecom Officer (in short JTO), Rairangpur Exchange under TDM, Baripada, a criminal proceeding was initiated against him by the CBI on the allegation of misusing his position by providing non metered STD/ISD facility to certain subscribers. Resultantly, the applicant was placed under suspension with immediate effect under Sub Rule (1) of Rule 10 of CCS(CCA) Rules, 1965 vide order dated 18.2.2005 (A/1). In pursuance of the decision taken by the 3rd Review Committee, order of suspension was revoked vide Memo dated 30.6.2007. After preliminary investigation, the SP, CBI, Bhubaneswar registered a Criminal Case against the applicant on 26.10.2006 vide RC Case No.34(A) of 2006. Accordingly, charges were framed against the applicant which formed the subject matter of TR – 10 of 2008 under Section 120-B, 420 IPC and Sec. 13(2) read with 13(1) (d) of Prevention of Corruption Act for cheating BSNL to the tune of Rs.38,05,257/- by illegal creation of non-existing telephones and providing ISD calls without metering. Vide judgment dated 24.12.2014, the CBI Court held that the applicant not guilty of the offence under Section 120-B and 420 IPC and under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act and accordingly, acquitted him of the charge under Section 248(1) Cr.P.C. It is the case of the applicant that after about more than one year of the aforesaid judgment, a

Memorandum of Charge dated 6.2.2016 was issued to him containing the following Articles of Charges:

Article-I

That the said Amiya Shankar Behera while working as JTO, MBM Exchange, Rairang Pur has done unauthorized creation alteration, deletion and modification of telephone numbers very frequently and has done unauthorized creation of non-metered routes by using secret id code vested with him and thereby enabled non metered STD/ISD calls in said exchange causing loss in BSNL Revenue.

Article-II

That the said Amiya Shankar Behera, while working as JTO, MBM Exchange, Rairang Pur has misused BSNL amenities provided to him in his official capacity thereby causing loss to BSNL".

3. After receipt of the above Memorandum of Charge, the applicant submitted a representation dated 19.2.2016 to the Disciplinary Authority with a request to drop the proceedings since he has been honourably acquitted in the criminal case based on the same set of charges and same set of evidence. However, the Disciplinary Authority without intimating the result of that representation, went ahead and appointed Shri Narahari Das, Dy.General Manager (Admn.), Office of the CMG, BSNL, Odisha Circle, Bhubaneswar as the Inquiry Officer (IO). Against this action, the applicant submitted an appeal dated 27.4.2016 to the Appellate Authority, i.e., Chief General Manager, BSNL, Odisha to drop the departmental proceedings and the same was rejected vide communication dated 5.5.2016. In the above backdrop, the applicant has approached this Tribunal praying for the reliefs as mentioned to above.

4. The grounds on which the applicant has based his claim are that the charges levelled against him in the departmental proceedings and the charges in the criminal proceedings are based on the same set of facts and same set of evidence. He having been honourably acquitted in the criminal proceedings, it was not proper on the part of the respondents to initiate departmental proceedings against him based on the similar set of charges. According to

applicant, law is well settled by the decision of the Hon'ble Supreme Court in **G.M.Tank vs. State of Gujarat (AIR 2006 SC 2129)** that it could be unjust and unfair to allow the findings recorded in the departmental proceedings to stand after acquittal in the criminal court in cases where the departmental proceeding and the criminal cases are based on identical and similar set of facts and charges in criminal case and departmental proceeding is one and the same. It has been pointed out that the Hon'ble High Court has categorically laid down that where the departmental proceeding and the criminal case are based on identical and similar set of facts and the charges in a departmental case as well as the charges before the criminal court are one and the same and both are dependent on same set of evidence, it was not just and fair and rather oppressive to allow the findings recorded in the departmental proceeding to stand.

5. Applicant, by placing reliance on the decisions of the Hon'ble Supreme Court in **Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. [(1999) 3 SCC 679]** and in case of **Corporation of City of Nagpur vs. Ramachandra G.Modak [AIR 1984 SC 626]** has submitted that where the accused is acquitted honourably and is completely exonerated of the charge in the criminal case, it would not be expedient to continue a departmental inquiry on the very same charge or grounds or evidence.

6. Further, the applicant has brought to the notice of this Tribunal the decision of the Hon'ble Supreme Court in **Kusheswar Dubey vs. M/s.Bharat Cooking Coal Ltd. [AIR 1988 SC 2118]** in which the Hon'ble Supreme Court stayed the disciplinary proceeding as the criminal case and the departmental proceeding were grounded upon the same set of facts.

7. It is the case of the applicant that the charges framed against him in the criminal case and in the disciplinary proceedings are grounded upon the same set of facts and the same set of evidence. Since he has been honourably acquitted in the criminal case, the order of punishment as passed by the disciplinary authority is not tenable in the eye of law. In this regard, he has laid emphasis on the decision of the Hon'ble High Court of Orissa in **Sailendra Nath Mohanty vs. Union of India & Ors. [2014 (I) ILR-CUT 1070]**.

8. Per contra respondents have filed a detailed counter. According to respondents, after receipt of the judgment of the CBI Court, the applicant submitted a representation dated 24.6.2015 to the CGM, BSNL, Odisha Circle to settle his case pertaining to the suspension period, pending increment and promotion to the cadre of Sub divisional Engineer. On receipt of the same, the office of CMTD, Bhubaneswar called for self contained note and Vigilance Clearance (in short VC) from the Circle Officer with a request to intimate if any other disciplinary case was initiated/pending against the applicant. However, on the advice of the Vigilance Officer, the Chief General Manager, BSNL, Odisha Circle revisited the case details along with the order dated 24.12.2014 passed by the CBI Judge and it was decided to initiate departmental proceeding against the applicant in consequence of BSNL Corporate office Letter No.262-29/08-VM-V dtd. 21.07.2008 and accordingly, GM(HR&A) cum Disciplinary Authority started the disciplinary proceedings by issuing the Memorandum of Charge dated 6.2.2016. The applicant submitted an objection to the appointment of Sri N.Das as IO and requested the DA to change him which was not acceded to. The applicant, therefore, filed an appeal on 27.4.2016 before the CGM, BSNL which was also dismissed vide communication dated 5.5.2016. Thereafter, the applicant had approached this Tribunal in O.A.No.332 of 2016

praying therein for grant of service benefits in view of his acquittal in the criminal case. This Tribunal vide order dated 23.05.2016 disposed of the said O.A. with a direction to the CGM, BSNL, Odisha Circle to consider and dispose of the representation dated 24.06.2016 of the applicant with a speaking order within two months from the date of receipt of the order. In compliance with the aforesaid direction, a speaking order dated 14.07.2016 was passed.

9. Respondents have submitted that the standard of proof in the criminal case is beyond all reasonable doubt whereas in the departmental proceedings, the burden of proof is preponderance of probabilities. Respondents have pointed out that the Hon'ble Supreme Court in **Pandian Roadways Corporation vs. N.Balakrishnan (2007) 9 SCC 755** has held that whether the decision of a criminal court would be binding on the disciplinary authorities would depend upon other facts as well. Thus facts, charges and nature of evidence etc., involved in an individual case would largely determine whether the decision of acquittal has a bearing on the findings recorded in the domestic inquiry. Relying on the decision in **Capt.M.Paul Anthony vs. Bharat Gold Mines Limited (AIR 1999 SC 1416)** respondents have submitted that the contention of the applicant that his acquittal in a criminal proceeding would inevitably lead to the preclusion of a departmental proceeding holds no water, in view of the observation made by the Hon'ble Supreme in the very same judgment as follows:

“...after referring to a catena of cases, that there can be no bar for continuing both the proceedings in a criminal case and departmental proceedings except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common. In departmental proceedings, factors which prevail on the authority may be many, such as enforcement of discipline or to investigate the level of integrity of the delinquent or other staff. The standard of proof required in those proceedings is also different from the one required in a criminal case. While in departmental proceedings the standard of proof is

one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Where the charge against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case. In case the criminal case does not proceed expeditiously, the departmental proceedings cannot be kept in abeyance forever and may be resumed and proceeded with so as to conclude the same at an early date. The purpose is that if the employee is found not guilty his cause may be vindicated, and in case he is found guilty, administration may get rid of him at the earliest. This was articulated in **Ajit Kumar Nag v. General Manager (PJ), Indian Coil Corporation Ltd., Laidia and Ors. (AIR 2005 SC 4217)** in the following terms:

- "11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force.

The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings".

The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

12. General, acquittal or initiation of criminal proceedings does not preclude departmental proceedings on a similar subject. This was again declared in **Nelson Motis vs. Union of India & Anr. (AIR 1992 SC 1981)** when the Court held that the nature and scope of a criminal case are different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. Likewise in **State of Karnataka and another vs. T.Venkataramanappa (1996) 6 SCC 455**, it was held that acquittal in a criminal case does not bar a departmental enquiry for the same misconduct".

10. Based on the above position of law, the respondents have pointed out that they are within their right to initiate departmental proceedings against the applicant albeit he has been acquitted in the criminal case by the CBI Court and therefore, the O.A. being devoid of merit is liable to be dismissed.

11. Applicant has filed a rejoinder to the counter which is more or less reiteration of the same facts as averred in the O.A.

12. This matter came up for admission on 21.6.2016. This Tribunal while directing notice to the respondents, as an interim measure directed that the departmental proceedings in respect of the applicant shall continue. However, final orders, if any, on conclusion of the proceedings, shall be passed only with the leave of this Tribunal. This interim order is in force as on date.

13. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission submitted by both the sides. The short point to be decided in this case is whether after being honourably acquitted in the criminal case, the applicant could be proceeded against on the same set of charges and the same set of evidence as in the criminal case. In this connection, we have also gone through the decisions of the Hon'ble Supreme Court.

14. The position of law in this regard is very clear. Acquittal in a criminal case cannot be used as a straight jacket system thus, restraining the

departmental authorities to proceed against the applicant departmentally. In this connection, the rulings of the Hon'ble Supreme Court cited in the preceding paragraph come to the aid of the departmental authorities to initiate disciplinary proceedings against the delinquent employee even if he has been honourably acquitted in the criminal case, the nature and scope of a criminal being different from those of a departmental disciplinary proceedings. It has been held by the Hon'ble Supreme Court that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.

15. It is seen from A/5, the judgment passed by the learned Special Judge, CBI, Bhubaneswar that due to non-furnishing of certificate by some of the witnesses including PW-6, their statements were not be relied upon for the purpose of coming to a finding that the applicant had committed offence in question beyond reasonable doubt. Similarly, non-furnishing of certificate under Section 65(B) of the Evidence Act by the appropriate authority was also one of the grounds for not relying upon the call details and other data collected through electronic equipments. Besides that when the inquiry had already been concluded and the I.O. had already submitted its report to the

Disciplinary Authority, it cannot be said that the applicant will be highly prejudiced if he is compelled to face the departmental proceedings in question, in view of further fact that the criminal case in question has already been disposed of.

16. Although the point regarding delay of about 10 years in issuing of Memorandum of Charge for the incident relating to the year 2006 was urged during the course of argument, in the absence of any specific pleading to that effect by the applicant in the O.A. and in the absence of any pleading and material to show that the applicant has in fact been seriously prejudiced for the delay in initiation of the departmental proceedings, this Tribunal will not go into the said aspect. Besides that, if such a ground would have been taken by the applicant in his O.A., then the respondents could have got an opportunity to produce materials before this Tribunal regarding the circumstances under which there was delay in the matter and whether it is duly explained or not. In view of this,, we are, not inclined to interfere in the action taken by the respondents. Accordingly, we grant leave to the respondents to pass final orders on conclusion of the disciplinary proceedings and to this extent order dated 21.06.2016 stood modified.

15. For the foregoing reasons, the O.A. fails. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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