

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00105/2015

Date of Reserve:24.04.2019

Date of Order:30.07.2019

CORAM:

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

Dr.Surendranath Behera, aged about 63 years, S/o. Late Hadibandhu Behera, permanent resident of Tikhiri, PO-Tikhiri, PS-Marsaghai, Dist-Kendrapara – at present residing at Arunodayanagar, PS-Badambadi, Dist-Cuttack.

...Applicant

By the Advocate(s)-Mr.S.B.Jena

-VERSUS-

Union of India represented through:

1. The Secretary to Govt. Of India, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. Director/E(O)I, Govt. Of India, Ministry of Railways, Railway Board, Railbhawan, New Delhi.
3. Union Public Service Commission represented through its Secretary, Dholpur House, New Delhi.
4. General Manager, South Eastern Railway, Garden Reach, Calcutta-47.
- 5.Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-47.
6. Divisional Railway Manager (P), Chakradharpur, South Eastern Railway, Dist-West Singhbhum, Jharkhand.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER (J):

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

- I) The Hon'ble Tribunal may be graciously pleased to declare that the order of Respondent No.3 imposing punishment of withholding 100% monthly pension and forfeiture of entire gratuity is arbitrary, illegal and not supported by rule of law and be pleased to quash/set aside the order dtd. 21.11.2012 of the disciplinary authority in annexure-7 and order of the reviewing authority dated 21.3.2014 in Annexure-A/10.

- ii) The Respondents be directed to release the monthly pension, gratuity, provident fund and other monetary benefit in favour of applicant with interest and within such time that may be stipulated by the Hon'ble Tribunal.
- iii) Further be pleased to direct the Respondents to allow all consequential benefits of promotion and regularize the service at par with his juniors as the applicant is lawfully entitled to with retrospective effect.

2. The short facts of the matter are that applicant while working as Senior Divisional Medical Officer, East Coast Railway, Bandamunda, the CBI registered a case against the applicant under Section 13(1)(d) read with Section 13(2) and Section 7 of the P.C.Act on the basis of a trap in which the applicant was caught red handed while taking a sum of Rs.1000/- as illegal gratification for writing prescription for a railway employee. On the basis of a complaint, the R.C.Case No.3 of 2009 was registered in the Court of the Special Judge, CBI, Bhubaneswar, which formed the subject matter in T.R. No.33 of 2008. While the matter stood thus, the applicant was issued with a Memorandum of Charge dated 09.01.2009(A/2 series) containing the following Article of Charge :

"Dr. Surendra Nath Behera, Sr.DMO/DPS while working as Sr.DMO/BNDM had committed grave misconduct on 24.02.1008 in as much as he demanded and accepted an illegal gratification of Rs.1000/- from Sri Uday Singh Sawaiyan, S/o. Sri Ghasi Ram Sawaiyan who was working as Safaiwala in S.E.Railway Hospital, Adityapur for his treatment violating the provisions contained in para – 602 and 633 of the Indian Railway Medical Manual – Volume – 1, 3rd Edition – 2000, which inter-alia states that "Medical attendance and treatment facilities shall be available, free of charge, to all Railway Employees, their family members and dependent relatives (as defined under Pass Rules) irrespective of whether the employees are in Gr.A, B, C or D, whether they are permanent or temporary" and was caught red handed by CBI/Bhubaneswar while demanding and accepting the illegal gratification.

By this above act, Sri S.N.Behera, the then Sr.DMO/BNDM now Sr.DMP/DPS committed grave misconduct as he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant in contravention of rule 3(1), (i),

(ii) & (iii) of Railway Services (Conduct) Rules, 1966 rendering himself liable for disciplinary action being taken against him in terms of Railway servants (D&A) Rules, 1968 as amended from time to time”.

3. In response to this, the applicant submitted a letter dated 18.12.2009 denying the charges in toto and requested to engage a defence counsel to defend his case during inquiry. Vide order dated 21.11.2012 as communicated vide A/7 dated 19.12.2012, the Disciplinary Authority imposed penalty of withholding 100% of the monthly pension on permanent basis and forfeiting the entire gratuity admissible to the applicant. In the meantime, vide judgment dated 22.12.2012, Special Judge, CBI, Bhubaneswar honourably acquitted the applicant with the following observations:

“The most disquieting aspect of the prosecution evidence is that the whole Super structure of the prosecution case on the foundation of prosecution case has caved in because of the nature of the evidence of the of the complainant. As already pointed out the complainant has admitted very candidly that he has no knowledge of the contents of the F.I.R. for which the allegation of prior demand, meeting with the accused on 23.2.2008 and asking the complainant to come to his residence on 24.2.2008 stands squarely falsified. The contention of the learned Special Public Prosecutor that the fact of demand and acceptance of illegal gratification by the accused and recovery of the tainted currency notes of Rs.1000/- consisting of Rs.500/- denomination from the accused have never been disproved by the evidence of D.W. 1 carries no legal conviction on the face of serious infirmities and deficiencies in the prosecution case. The very fact that the F.I.R. which is foundation of the prosecution case is virtually weak clearly shows that the super structure of the prosecution case is bound to collapse. The learned Public Prosecutor appears to have lost sight of the inherent deficiency of the prosecution case.

In ultimate appraisal of totality of evidence on record I hold that the prosecution has miserably failed to prove its case against the accused beyond all reasonable doubt. I, therefore, find the accused not guilty of the offence Under Section 13(1)(d) read with Section 13(2) and under Section 7 of the Prevention of Corruption Act, and acquit him under Section 248(1) Cr.P.C....”

4. In view of the above, the applicant submitted a review petition dated 18.02.2013 (A/9) to the President of India along with a copy of the judgment

of the CBI Court with a prayer to review the order passed in the disciplinary authority in the departmental proceedings, which was rejected vide order dated 19.03.2014, as communicated to the applicant vide letter dated 21.03.2014 (A/10). Hence, this Original Application seeking for the reliefs as already mentioned above.

5. The grounds urged by the applicant in support of his case are that for the purpose of his defence, the relevant documents viz., duty charge of the complainant, statement of the complainant, copy of written sanction for conducting the raid, copy of statement of witness from Railway Muster Roll of the complainant which were sought by him vide his application dated 15.03.2009 (A/3), were not provided to him. Consequent upon appointment of Inquiry Officer, the latter conducted the inquiry in clear violation of the principles of natural justice and in contravention of the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. Besides, ignoring the request of the applicant to call for additional relevant documents which were vital for arriving at the truth in the inquiry, the IO refused to allow examination of seven defence witness in a most blatant and illegal manner. The entire inquiry was conducted in absence of any defence witness. The manner in which the inquiry was conducted, the applicant was prevented from defending himself effectively and the inquiry was completed by the IO in a pre-mediated mind causing prejudice to the applicant.

6. The IO submitted his report to the Disciplinary Authority 3/16.08.2010 holding that the applicant is guilty of accepting illegal gratification in his residence of consideration money for treatment of the complainant. The applicant was supplied a copy of the report of the IO to which he submitted his defence statement on 01.02.2011., pointing out that a

large scale irregularities committed by the IO while conducting the inquiry. But without having regard to this, the Disciplinary Authority imposed punishment which is utterly perverse and based on no evidence.

7. The applicant has also alleged that in a total non application of mind and without adhering to the law laid down by the Hon'ble Supreme Court, Railway Board Orders/circulars for review of the decision taken in departmental proceeding on acquittal of a Railway servant by a court on the same charges, was not taken into consideration and therefore, the order as passed by the reviewing authority is de hors the settled principle of law.

8. On the other hand, opposing the prayer of the applicant, respondents have filed a detailed counter. Respondents have pointed out that the applicant has sought for plural remedy which is not consequential to each other and therefore, at the threshold the O.A. should be dismissed not being maintainable.

9. On the merit of the matter, it has been submitted that even if a person is acquitted from the criminal charges, punishment imposed by the departmental authority based on the D&A proceeding can sustain. According to them, since the degree of proof in the departmental proceedings and the criminal case is different from each other, mere exoneration by the court cannot actuate the outcome on the disciplinary proceedings. It is contended that the applicant has been imposed punishment consequent upon an inquiry conducted against him by following the due procedure of rules.

10. It has been submitted by the respondents that the applicant has challenged the order of punishment and the outcome of proceeding only on technical ground. While alleging some procedural irregularities, the applicant has failed to point out in which way he has been prejudiced. According to

them, in the absence of any written allegation against the Inquiry Officer, Presenting Officer or the Disciplinary Authority during continuation of the proceedings, it goes without saying that the proceeding had been conducted in a proper manner and the applicant has been afforded reasonable opportunity to defend himself. Respondents of brought to the notice of this Tribunal the decision of the Hon'ble Supreme Court in State Bank of Patiala vs. S.K.Sharma in which it has been held that even if procedural provisions are violation in course of inquiry and party failed to prove that prejudice has been caused to him, there is no need to interfere in such cases exercising power of judicial review. Respondents have submitted that during the course of departmental proceedings, the applicant has never raised any such complaint either before the IO or the Disciplinary Authority regarding violation of any rules or procedure. According to respondents, the Special Judge, CBI has gone to technicalities in the matter and arrived at a conclusion that preparatory action of the prosecution from the beginning was not in consonance with the law. They have submitted that while dealing with the departmental proceedings, the IO analyzed the evidence and documents available on record and arrived at a clear findings that the applicant is guilty of allegations levelled against him.

11. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission filed by both the sides.

12. In the written notes of submission filed by the applicant, it has been submitted that the decision taken in the criminal case has binding effect on the disciplinary proceedings in view of the fact that the charges, documents relied upon and witnesses in both the proceedings are the same and similar. It

has been submitted that both the disciplinary proceedings as well as the criminal proceedings were initiated based on the complaint of Shri Singh Sawaiyan, PW-1 which on his admission before the criminal case falsified and accordingly, criminal case was dropped and therefore, the disciplinary proceedings is bound to fall to the ground . Applicant has brought to the notice of this Tribunal the decision of the Hon'ble Apex Court in **Ramanlal Mohanlal Oandya v. State of Bombay (AIR 1960 SC 961)** in which it has been held that in case of bribery mere recovery of money divorced from circumstances under which it is claimed is not sufficient for conviction. Further, in the case of **Suraimal vs. State reported in AIR 1979 SC 1408**, it has been held that mere recovery of money itself cannot prove the charge. Based on this, it is the case of the applicant that the IO held the charge proved as GC notes were seized from his coat pocket. Applicant has cited the decision of Hon'ble Supreme Court in **Panalal Damodar Rathi vs. State of Maharashtra reported in 1979 (4) SCC 526** in which it has been held that when there was no corroboration of testimony of complaint regarding demand or acceptance of bribe, it is to be accepted that the version of the complaint is not corroborated and version of the complainant cannot be relied upon.

13. On the other hand, in the written notes of submission, it has been submitted by the respondents that exoneration of the criminal charges by the court cannot abridge the right of the authorities to proceed departmentally. According to respondents, it is the settled position of law as enunciated by the Hon'ble Supreme Court that there is no bar for initiation of disciplinary proceedings even after conclusion of the criminal proceedings. It is the contention of the respondents that the authorities prima facie being satisfied that there are materials available on record which are quite enough to arrive

at a conclusion that the applicant is guilty of demanding and accepting bribe, the decision of the disciplinary authority in this regard cannot be called in question. According to them, there has been no procedural violation in the proceedings and the applicant has been provided reasonable opportunity to defend his case. Therefore, the O.A. being devoid of merit should be dismissed.

14. From the pleadings of the parties, the following points emerge for consideration:

- i) Whether acquittal of the applicant by the CBI Court can obliterate the punishment imposed on him on account of disciplinary proceedings.
- ii) Whether the respondents have conducted the disciplinary proceedings by following the due procedure of rules.

15. It is the settled position of law that there is no bar to proceed departmentally even if the charged official is acquitted of the criminal case. In this connection, we would like to quote the relevant part of the decision of the Hon'ble Supreme Court in **Capt.M.Paul Anthony vs. Bharat Gold Mines Limited (AIR 1999 SC 1416)** 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”.

16. Having regard to the authority of law as cited above, we are of the view that acquittal of the applicant by the CBI Court cannot obliterate the powers of the authority to initiate disciplinary proceedings and impose appropriate punishment on the delinquent. Therefore, we answer the point in issue (i) above in the negative and in favour of the respondents.

17. The second point is whether the respondents have conducted the disciplinary proceedings by following the due procedure of rules. It is the case of the applicant that there has been violation of procedure while conducting disciplinary proceedings against him. However, the applicant has not specifically brought to the notice of this Tribunal as to the alleged procedural irregularities by which he has been prejudiced. Further, the applicant has taken a plea that the advice of the UPSC based on which, punishment was imposed, having not been communicated calling upon him to submit his written representation, there has been a violation of the principle of natural justice. It is to be noted that we do not find any where either in the written brief submitted by the applicant to the disciplinary authority or in the review petition or in the present O.A., any such ground to have been taken by him requiring the respondents to effectively counter the same. In the absence of any such point raised beforehand thus facilitating the respondents to defend their action, it would not be proper for the Tribunal to take cognizance of the same at this belated stage. We also do not come across non-observance of the principle of natural justice which has resulted in defeating the course of justice in the instant case. It is not a case where recording of statement of witness has taken place in the absence of the applicant nor the witness whose

statement was relied upon by the disciplinary authority to initiate disciplinary action was examined in absence of the delinquent/applicant. Applicant has nowhere pleaded that the charge levelled against him does not disclose any misconduct and therefore, the same is vague. The Hon'ble Supreme Court in the case of Nand Kishore Prasad vs. State of Bihar & Ors. (1978) 3 SCC observed as under:

"...before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallized by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e., evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India vs. H.C.Goel, AIR 1964 SC 364, "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules".

18. Similarly, the Hon'ble Supreme Court in Bank of India and another vs. Degala Suryanarayana (AIR 1999 SC 2407) has observed as under:

"strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings".

19. Having regard to the facts and circumstances of the matter, we are of the opinion that this not a case where the applicant has been imposed punishment based on no evidence and therefore, the impugned orders passed by the respondents do not warrant interference by this Tribunal.

20. For the reasons discussed above, the O.A. is held to be without any merit and the same is accordingly, dismissed, leaving the parties to bear their respective costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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