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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 4080 of 2004

- Manoj Sharma

---- Petitioner

Versus

- The State Of C.G.& Ors.

---- Respondent

For Petitioner : Shri Parag Kotecha, Advocate.
For Respondents : Shri Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

18/04/2016

1. The petitioner would assail the legality and validity of the order passed by the SP, Rajnandgaon on 11.3.2003 dismissing him from service; the appellate order dated 9.6.2003 passed by the IG, Police, Raipur Range and the order dismissing his mercy petition by the DGP, PHQ, Raipur in October, 2003 whereby his appeal and mercy petition were dismissed.

2. The petitioner was appointed as Constable in the District Force Rajnandgaon on 7.5.1993. He was served with a charge sheet in February, 2003 vide Annexure-P/1 imputing the following 3 charges:-

(i) he remained unauthorizedly absent for a period

of 43 days from 21.9.2002 to 4.11.2002 which violated Rule 3 of the CG Civil Services (Conduct) Rules, 1965.

(ii) he committed indecent act with the prosecutrix and thus committed serious misconduct tarnishing the image of the department.

(iii) despite having been punished earlier, he did not improve upon his conduct and thus making himself unsuitable for rendering service in the Police Department.

3. The petitioner denied the charges on which a departmental enquiry was constituted in accordance with law. Prosecutrix Smt. Nand Kumari, her brother Dashrath, SI Gulab Das, Inspector M.P. Dubey, ASI S.L. Hariharno were examined by the Presenting Officer whereas the petitioner presented himself to be cross-examined and thereafter one more defence witness Atul Prakash Lader was also examined by him. After duly considering the material available on record, the enquiry officer submitted enquiry report on 18.2.2003 finding that all the charges against the petitioner are proved. The disciplinary authority i.e. SP, Rajnandgaon concurred with the finding recorded by the enquiry officer and imposed punishment of dismissal from service. The appeal and mercy petition preferred by the petitioner were also dismissed.

4. It is argued by learned counsel for the petitioner that in Criminal case bearing ST No.169/2002, he was acquitted of the charge under Section 376 of the IPC, therefore, charge No.(ii) has failed. For charge No.(i), it has been proved by the defence witness No.1 i.e. Shri Lader that the petitioner was sanctioned leave and in respect of charge No.(iii), he would submit that past conduct cannot be considered as an independent charge. He would refer to the

judgments in the matters of **S. Bhaskar Reddy & Anr. Vs. Superintendent of Police & Anr.** {2015 AIR SCW 571} and **State of Uttaranchal & Ors. Vs. Kharak Singh** {2008 AIR SCW 7507} to contend that when the delinquent has been acquitted in criminal trial, order of dismissal based on same set of facts deserves to be set aside as also for the proposition that the petitioner has not been afforded proper and reasonable opportunity of hearing.

5. Per contra, learned State Counsel would argue that departmental enquiry and the criminal proceeding, though based on same set of facts, are evaluated on independent and separate evidence, therefore, mere acquittal in criminal case would not affect outcome of the domestic enquiry. He would further submit that the petitioner was sanctioned leave of only 2 days and the past conduct has been taken note of for imposing punishment.

6. In criminal case, the petitioner has been acquitted of the charge under Section 376 of the IPC on appreciation of statements rendered by the prosecution witnesses before the criminal Court whereas in departmental enquiry proceeding, the prosecutrix was independently examined as prosecution witness and she has reiterated her version as was told to the Investigating Officer who investigated the offence. It is not a case where charge No.(ii) was worded on the basis of FIR itself but charge No.(ii) was for misbehaving or behaving with the prosecutrix in an indecent manner and there was no reference to the pendency of the criminal case while formulating the charge No.(ii).

7. It is settled law that if the contents of the FIR as a whole are lifted and reproduced in the charge sheet during domestic enquiry, both

of them being based on same set of facts, the law laid down in **S. Bhaskar Reddy** (Supra) may apply. However, when the prosecutrix was independently and separately examined during the enquiry proceeding to prove charge of indecent behaviour by the delinquent, the finding on the said charge would be separate and distinct from the finding recorded by the criminal Court.

8. It is held by the Supreme Court in **Noida Entrepreneurs Association Vs. Noida and others** {(2007) 10 SCC 385} that mere acquittal in criminal case would not affect outcome of the enquiry proceeding which is based on the evidence recorded during the domestic enquiry. It is held thus in paragraphs 15 & 16:-

> "**15**. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in ***Union of India* v. *Bihari Lal Sidhana***[1]. It was held in para 5 as follows: (SCC pp. 387-88)
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> > "*5*. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government

1 (1997) 4 SCC 385

> servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."
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> **16.** The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

9. In **Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao**[2], it has been held by the Supreme Court that question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only if dismissal from services was based on conviction by criminal court in view of provisions of Article 311 (2) second proviso (a) of Constitution. In case where enquiry is independent of criminal proceedings, acquittal in a criminal court is of no help and that even if a person stands acquitted by a criminal court, domestic enquiry can be held, since standard of proof required in a domestic enquiry and that in a criminal case are different.

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2 (2012) 1 SCC 442

10. It is also to be seen that in criminal case, the evidence is appreciated on the principle of proof beyond reasonable doubt whereas in the domestic enquiry it is appreciated on the principle of preponderance of probability. Therefore, the fundamental principles on which domestic enquiries are decided being different in nature, mere acquittal would not assist the delinquent for exoneration in the domestic enquiry.

11. Apart from charge No.(ii) which has some relevance with the criminal trial, the petitioner was also charged with remaining unauthorizedly absent for 43 days. The petitioner went on leave on 20.9.2002 on the ground that his mother was not well and the said leave was sanctioned only for two days. However, the petitioner did not attend the duties till 4.11.2002. Thus the petitioner remained unauthorizedly absent for 43 days.

12. Record of the enquiry proceeding placed before this Court would establish that the petitioner was served with 3 notices on 23.9.2002, 28.9.2002 and 24.10.2002 directing him to attend duties, however, he failed to respond and came back to join only on 5.11.2002. Thus unauthorized absence had occasioned because during this period the petitioner was under detention on account of FIR lodged by the prosecutrix. The petitioner being member of the disciplined force, remaining unauthorizedly absent even after being released on bail was serious misconduct as held by the Supreme Court in **Commissioner of Police, New Delhi and Another Vs. Mehar Singh** {(2013) 7 SCC 685, para-35}, in the following manner:-

> "**35.** The police force is a disciplined force. It shoulders the great responsibility of maintaining

> law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."

13. Learned counsel for the petitioner has also argued that the petitioner was not afforded opportunity of hearing inasmuch as he was not allowed to properly cross-examine the witnesses produced by the Presenting Officer and moreover, statements of witnesses were not supplied to him.

14. Record of the enquiry proceeding does not contain any such request either oral or in form of any application where the petitioner has complained to the enquiry officer that he is not provided proper opportunity of hearing. Thus, the petitioner

acquiesced with the procedure adopted by the enquiry officer without any demur, therefore, in the absence of any visible prejudice being caused to the petitioner, the plea of violation of principles of natural justice is not sustainable.

15. The third charge concerns his previous conduct and his failure to improve upon his conduct despite previous punishments and warning. On this count, it is argued that for all previous misconduct the petitioner has already been punished, therefore, those incidents of misconduct could not have been formulated as separate charge for imposing another punishment on the petitioner.

16. True it is that a delinquent cannot be punished in a departmental enquiry merely for the reason that on previous occasions also he was visited with some kind of penalty unless the misconduct on the basis of which fresh enquiry is initiated is independently proved on the basis of material adduced by the Presenting Officer. In the case at hand, the petitioner has admitted in his statement, as mentioned at page-4 of the enquiry report, that the departmental enquiries were constituted twice against him and he has been visited with 12 punishments during his career.

17. A careful reading of charge No.(iii) establishes that the said charge concerns failure of the petitioner to improve upon his conduct and this charge is based on his previous punishment but previous punishment itself is not charge. The gravamen is his failure to improve his conduct. Thus it is not a case where the petitioner has been punished twice that is to say the earlier punishment and based on that the present punishment. Even otherwise the fact that an employee was earlier proceeded departmentally and has been awarded minor or major punishment can always be considered for

appreciating the adequacy or proportionality of the punishment in any fresh DE proceeding. If despite previous punishment, an employee fails to improve upon his conduct, the said previous conduct can always be considered to weigh or assess the nature of punishment to be imposed in fresh subsequent enquiry.

18. For all the aforestated reasons, this Court does not find any substance in this writ petition, which fails and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve

HEADLINES

Mere acquittal in criminal case is not a ground for reinstatement, if the termination is outcome of a departmental enquiry.