

Senior Superintendent Of Post Offices, ... vs A. Gopalan on 21 February, 1997

Equivalent citations: JT1998(9)SC332, 1999LABLC234, (1999)ILLJ1313SC, (1997)11SCC239, AIR 1999 SUPREME COURT 1514, 1997 (11) SCC 239, 1998 AIR SCW 3896, 1999 LAB. I. C. 234, (1998) 9 JT 332 (SC), (1999) 82 FACLR 784, (1999) 1 LABLJ 1313, (2000) 1 LAB LN 92, (1999) 2 SCT 295, (1998) 7 SERVLR 445, (2000) ALLCRIC 165, 1998 SCC (L&S) 124

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Bench: S.C. Agrawal

ORDER

1. Delay condoned.

2. Special leave granted.

3. The respondent, A. Gopalan, was employed as Sub-Postmaster, Kalanjoor, during the period from 14-8-1984 to 22-8-1985. Departmental proceedings were initiated against him on two charges of misconduct. The first charge was that while he was functioning as Sub-Postmaster, Kalanjoor on 21-8-1985, he fraudulently effected a withdrawal of Rs. 8000 without the knowledge of the depositor from Savings Bank Account No. 150657 of Kalanjoor so standing in the name of Smt. T.K. Radhamony by himself putting the signature of the depositor on the application for withdrawal and he took the amount himself. The second charge was that while functioning as Sub-Postmaster, Kalanjoor, during the period from 14-8-1984 to 22-8-1985 he failed to account for the amounts of Rs. 379 and Rs. 799 realised by him as customs duty from the addressees in respect of hand foreign parcels on 14-8-1984 and 21-8-1984, the dates of delivery of those parcels. An inquiry was conducted into charges and the inquiry officer found that both the charges were established. The report of the inquiry officer was accepted by the disciplinary authority who imposed the penalty of dismissal from service on the respondent. On appeal the penalty was reduced to compulsory retirement by the appellate authority.

4. It appears that the respondent was prosecuted in a criminal court in respect of the offences under Sections 407, 467 and 477A I.P.C. disclosed in the first charge regarding the withdrawal of Rs. 8000 by him. In the said criminal proceedings the respondent was acquitted by the Judicial Magistrate, First Class, by the judgment dated 31-8-1987 on the view that benefit of doubt must be given to the respondent and that the offence has not been established beyond reasonable doubt. The said judgment of acquittal was affirmed in appeal by the High Court.

5. The appellant filed an application [OA No. 1045 of 1991] before the Central Administrative Tribunal, Ernakulam Bench (hereinafter referred to as "the Tribunal"). By the impugned judgment dated 15-6-1993 the Tribunal has held that after the acquittal of the respondent by the criminal court, which was affirmed in appeal by the High Court, a punishment should not be imposed in the departmental proceedings based on the finding relating to the first charge regarding withdrawal of Rs. 8000 and the same has to be set aside. As regards the second charge, the Tribunal held that the question of punishment has to be reviewed because the punishment was related to two charges and since the finding on the more serious of the charges has been set aside as unsustainable, the order to the extent of imposing the punishment could not be sustained. The Tribunal, therefore, allowed the application and set aside the order of punishment with the direction that the appellate authority will consider the question of punishment afresh and pass appropriate orders.

6. We have heard Shri V.C. Mahajan, the learned Senior Counsel appearing for the appellants and Shri K.M.K. Nair, the learned Counsel appearing for the respondent. Shri Nair has submitted that since the respondent has been acquitted by the criminal court on the charge of withdrawal of Rs. 8000, the Tribunal was right in holding that the finding regarding the first charge could not be sustained. Shri Nair has placed reliance on the decision of this Court in *Nelson Motis v. Union of India*. The said decision does not lend support to the said submission of Shri Nair. In that case the Court has rejected the contention that disciplinary proceedings could not be continued in the face of the acquittal in the criminal case and has held that the nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. This is so because in a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities. The Tribunal was, therefore, in error in holding that in view of the acquittal of the respondent by the criminal court on the charge relating to withdrawal of Rs. 8000 the finding on the first charge in the departmental proceedings cannot be upheld and must be set aside. The Tribunal was also not right in taking the view that even though the second charge of misappropriation of the sums of Rs. 379 and Rs. 799 realised as customs duty was established, the punishment of compulsory retirement that was imposed on the respondent could not be sustained. Having regard to the fact that the second charge related to misappropriation of funds for which the punishment of compulsory retirement could be imposed by the Tribunal, in exercise of its jurisdiction, could not direct the appellate authority to review the penalty imposed on the respondent.

7. We are unable to uphold the impugned judgment of the Tribunal. The appeal is, therefore, allowed, the impugned judgment dated 15-6-1993 of the Tribunal in OA No. 1045 of 1991 is set aside and OA No. 1045 of 1991 filed by the respondent before the Tribunal is dismissed. But in the circumstances of the case there will be no order as to costs.