

Divisional Controller, Ksrtc vs M.G.Vittal Rao on 18 November, 2011

Equivalent citations: AIR ONLINE 2011 SC 401

Author: B.S. Chauhan

Bench: T.S. Thakur, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9933 OF 2011

(Arising out of SLP(C) No.7083 of 2010)

The Divisional Controller, KSRTC

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Appel

Versus

M.G. Vittal Rao

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Respo

J U D G M E N T

Dr. B.S. CHAUHAN, J

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 27.10.2009 passed by the High Court of Karnataka at Bangalore in Writ Appeal No.702 of 2009, by which it has dismissed the appeal preferred by the appellant against the judgment and order dated 27.1.2009 passed by the learned Single Judge allowing the writ petition No. 14354 of 2007 of the respondent-workman against the Award of the Labour Court dated 17.2.2005.

3. Facts and circumstances giving rise to this appeal are:-

(A) The respondent employee while working as helper in the appellant-Corporation in 1986 was subjected to disciplinary proceedings vide charge-sheet dated 4.2.1987 which contained the article of charges mainly on the allegations that on 3.10.1986 the respondent stayed away beyond his duty hours at his place of employment i.e., Divisional Workshop and opened the door of the blacksmith Section with the aid of a duplicate key and pulled the gas cylinder trolley and equipment from blacksmith Section to the cash room alongwith four other employees of the appellant-Corporation and opened the inner door of the cash room by cutting the padlock and used the gas cylinder equipment for committing the theft from cash chest.

(B) The Divisional Traffic Officer was appointed as the enquiry officer by the Disciplinary Authority vide order dated 11.11.1993 to enquire into the charges leveled against the respondent in the disciplinary proceedings. During the course of enquiry, the management witnesses clearly stated that the respondent was present at the place of incident. On the basis of the material produced on behalf of the management, the enquiry officer found the charges leveled against the respondent proved and accordingly the enquiry report was filed.

(C) The Disciplinary Authority after considering the material on record concurred with the findings recorded by the Inquiry Officer and after completing the legal formalities imposed the punishment of dismissal of the respondent from service w.e.f.

14.2.1997.

(D) The respondent raised the industrial dispute. Thus, the State Government made a Reference to the Principal Labour Court for adjudication of the dispute and the same came to be registered as Reference No.6 of 1999. On the basis of pleadings, the Labour Court framed various issues for its consideration, inter-alia, as to whether the departmental enquiry conducted against the respondent was fair and proper.

(E) The Labour Court by its order dated 20.11.2004 arrived at the conclusion that the departmental enquiry conducted against the respondent was fair and proper. By its award dated 17.2.2005, the Court answered the reference in negative holding that there was sufficient evidence before the enquiry officer to hold that the respondent with his colluders had actively involved in breaking and opening the door of the cash room and drilling the cash chest to commit the theft. The respondent was caught red handed and hence the charges were rightly held to be proved.

(F) Being aggrieved by the said award of the Labour Court, the respondent filed W.P. No.14354 of 2007(LK) before the High Court which stood allowed by the learned Single Judge vide order dated 27.1.2009 to the extent that the order of the dismissal was modified into an order of termination. The management was directed to pay the terminal benefits since the respondent had retired from service. However, the learned Single Judge arrived at the conclusion that the respondent was not entitled to any wages or other monetary benefits till the date of his termination.

(G) Being aggrieved by the said order of the learned Single Judge, the respondent filed a Writ Appeal No.702 of 2009 (L-KSRTC) under Section 4 of the Karnataka High Court Act. The Division Bench vide impugned judgment and order dated 27.10.2009 allowed the appeal filed by the respondent quashing the award of the Labour Court and reversing the order of the learned Single Judge. The Division Bench proceeded to hold that the respondent was entitled to be reinstated into service with all consequential benefits. However, since the respondent had retired from service, he was entitled to 50% of the backwages for the periods from 14.2.1997 (i.e. the date of dismissal) till the date of his retirement (i.e. 31.7.2007). He was also entitled to consequential benefits of retirement.

Hence, this appeal.

4. Mr. S.N. Bhat, learned counsel appearing for the appellant has submitted that the Labour Court rejected the contention on behalf of the respondent-workman that he was entitled for re-instatement and all other consequential reliefs in view of the fact that he stood acquitted by the Criminal Court. However, the learned Single Judge as well as the Division Bench in appeal have accepted his contention and granted the reliefs. The standard of proof in domestic enquiry and criminal proceedings are different and mere acquittal by the Criminal Court does not entitle the delinquent for exonerating in the disciplinary proceedings.

Thus, the appeal deserves to be allowed.

5. On the contrary, Mr. V.N. Raghupathy, learned counsel appearing for the respondent-workman has made all attempts to defend the judgments of the learned Single Judge as well as the Division Bench contending that as the workman has been acquitted in the criminal proceedings, the order of dismissal as a consequence of domestic enquiry deserves to be set aside. In the facts and circumstances of the case, no interference is warranted.

6. We have considered the rival submissions advanced on behalf of the parties and perused the record.

7. It is evident from the record that when the respondent-workman was facing disciplinary proceedings at the same time he had also faced the criminal trial for the offences punishable under Sections 457, 381 read with Section 34 of the Indian Penal Code, 1860 (hereinafter called as 'IPC'). The Metropolitan Magistrate convicted the delinquent employee holding him guilty of the said charges and sentenced him with a simple imprisonment for a period of six months and a fine of Rs. 500/-. The respondent-workman filed appeal against the said order of conviction.

However, the appeal was also dismissed by the Appellate Court vide judgment and order dated 5.4.1994. The delinquent employee along with other co-accused preferred Criminal Revision No. 299 of 1994 before the High Court which was allowed vide judgment and order dated 9.7.1997.

Thus, the High Court acquitted the said delinquent employee of all the charges leveled against him.

Thus, the question does arise as to whether in this backdrop the respondent-employee is entitled for the relief granted by the High Court.

DEPARTMENTAL ENQUIRY AND ACQUITTAL
CRIMINAL CASE

8. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of Article 311 (2) (b) of the Constitution of India, 1950, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. In *Nelson Motis v.*

Union of India & Anr., AIR 1992 SC 1981, this Court held :

"The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

9. In *State of Karnataka & Anr. v. T. Venkataramanappa*, (1996) 6 SCC 455, this Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceeding, such a strict proof of misconduct is not required.

10. In *State of Andhra Pradesh v. K. Allabaksh*, (2000) 10 SCC 177, while dismissing the appeal against acquittal by the High Court, this Court observed as under:-

"That acquittal of the respondent shall not be construed as a clear exoneration of the respondent, for the allegations call for departmental proceedings, if not already initiated, against him."

11. While dealing with a similar issue, a three-Judges Bench of this Court in *Ajit Kumar Nag v. General Manager (PJ) Indian Oil Corporation Ltd.*, (2005) 7 SCC 764, held as under:-

"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 a 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."

12. The issue as to whether disciplinary proceedings can be held at the time when the delinquent employee is facing the criminal trial, has also been considered from time to time. In *State of Rajasthan v. B.K. Meena & Ors.*, AIR 1997 SC 13, this Court while dealing with the issue observed as under:-

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges.....The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.....One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion.....If a criminal case is unduly delayed that may itself be a good

ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest....." (Emphasis added)

13. In Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., AIR 1999 SC 1416, this Court held that there can be no bar for continuing both the proceedings simultaneously. The Court placed reliance upon a large number of its earlier judgments, including Delhi Cloth and General Mills Ltd. v. Kushal Bhan, AIR 1960 SC 806; Tata Oil Mills Co. Ltd.

v. The Workmen, AIR 1965 SC 155; Jang Bahadur Singh v. Baij Nath Tiwari, AIR 1969 SC 30; Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd. & Ors., AIR 1988 SC 2118; Nelson Motis (Supra); and B.K. Meena (Supra), and held that proceedings in a criminal case and departmental proceedings can go on simultaneously 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 prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that 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 for ever 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.

However, while deciding the case, taking into consideration the facts involved therein, the Court held:

"Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental

proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

14. In *State Bank of India & Ors. v. R.B. Sharma*, AIR 2004 SC 4144, same view has been reiterated observing that both proceedings can be held simultaneously, except where departmental proceedings in criminal case are based on same set of facts and evidence in both the proceedings is common. The Court observed as under:-

"The purpose of departmental inquiry and of prosecution are to put a distinct aspect. Criminal prosecution is launched for an offence for violation of duty. The offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service."

15. While deciding the said case a very heavy reliance has been placed upon the earlier judgment of this Court in *Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd Yousuf Miya & Ors.*, AIR 1997 SC 2232, wherein it has been held that both proceedings can be held simultaneously unless the gravity of the charges demand staying the disciplinary proceedings till the trial is concluded as complicated questions of fact and law are involved in that case.

16. A similar view has been reiterated by this Court in *Senior Superintendent of Post Offices v. A. Gopalan*, AIR 1999 SC 1514;

Kendriya Vidyalaya Sangathan & Ors. v. T. Srinivas, AIR 2004 SC 4127; *Krishnakali Tea Estate v. Akhil Bhartiya Chah Mazdoor Sangh & Anr.*, (2004) 8 SCC 200; *Commissioner of Police Delhi v. Narendra Singh*, AIR 2006 SC 1800; *South Bengal State Transport Corporation v. Span Kumar Mitra & Ors.*, (2006) 2 SCC 584; and *Punjab Water Supply & Sewerage Board v. Ram Sajivan*, (2007) 9 SCC 86.

17. In *Union of India & Ors. v. Naman Singh Shekhawat*, (2008) 4 SCC 1, this Court held that departmental proceeding can be initiated after acquittal by the Criminal Court. However, the departmental proceeding should be initiated provided the department intended to adduce any evidence which could prove the charges against the delinquent officer.

Therefore, initiation of proceeding should be bona fide and must be reasonable and fair.

18. In *Pandiyan Roadways Corpn. Ltd. v. N. Balakrishnan*, (2007) 9 SCC 755, this Court re-considered the issue taking into account all earlier judgments and observed as under:

"There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd (supra)*, and *G.M. Tank v. State of Gujarat*, (2006) 5 SCC C446. However, the second line of decisions show that an honourable acquittal in the

criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (See: *Commr. of Police v. Narender Singh*, (supra) or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (See: *G.M. Tank*, (supra), *Jasbir Singh v. Punjab & Sind Bank*, (2007) 1 SCC 566; and *Noida Entrepreneurs' Assn. v. Noida*, (2007) 10 SCC 385, para

18).....We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. (See: e.g. *Krishnakali Tea Estate* (supra); and *Manager, Reserve Bank of India v. S. Mani*, (2005) 5 SCC 100). . Each case is, therefore, required to be considered on its own facts."

(See also: *Ram Tawekya Sharma v. State of Bihar & Ors.*, (2008) 8 SCC 261; and *Roop Singh Negi v. Punjab National Bank & Ors.*, (2009) 2 SCC 570).

19. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in *Capt. M. Paul Anthony* (supra) does not lay down the law of universal application. Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.

LOSS OF CONFIDENCE

20. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. (Vide: *Air India Corporation Bombay v. V.A. Ravellow*, AIR 1972 SC 1343; *Francis Kalein & Co. Pvt. Ltd. v. Their Workmen*, AIR 1971 SC 2414; and *Bharat Heavy Electricals Ltd. v. M. Chandrashekhara Reddy & Ors.*, AIR 2005 SC 2769).

In *Kanhaiyalal Agrawal & Ors. v. Factory Manager, Gwalior Sugar Co. Ltd.*, AIR 2001 SC 3645, this Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of

confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved.

(See also: *Sudhir Vishnu Panvalkar v. Bank of India*, AIR 1997 SC 2249).

21. In *State Bank of India & Anr. v. Bela Bagchi & Ors.*, AIR 2005 SC 3272, this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

While deciding the said case, reliance has been placed upon its earlier judgment in *Disciplinary Authority-cum-Regional Manager v.*

Nikunja Bihari Patnaik, (1996) 9 SCC 69.

22. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. (Vide: *Binny Ltd. v. Their Workmen & Anr.*, AIR 1972 SC 1975; *The Binny Ltd. v. Their Workmen*, AIR 1973 SC 1403; *Anil Kumar Chakraborty & Anr. v. M/s.*

Saraswatipur Tea Company Ltd. & Ors., AIR 1982 SC 1062;

Chandu Lal v. The Management of M/s. Pan American World Airways Inc., AIR 1985 SC 1128; *Kamal Kishore Lakshman v.*

Management of M/s. Pan American World Airways Inc. & Ors., AIR 1987 SC 229; and *M/s. Pearlite Liners Pvt. Ltd. v. Manorama Sirsi*, AIR 2004 SC 1373).

In *Indian Airlines Ltd. v. Prabha D. Kanan*, AIR 2007 SC 548, while dealing with the similar issue this Court held that "loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved."

In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee. (Vide:

A.P. SRTC v. Raghuda Shiva Sankar Prasad, AIR 2007 SC 152).

23. The instant case requires to be examined in the light of the aforesaid settled legal proposition and keeping in view that judicial review is concerned primarily with the decision making process and not the decision itself. More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption, theft, no punishment other than the dismissal may be appropriate. (Vide: *Pandiyan Roadways Corpn. Ltd. (supra)*; and *U.P. State Road Transport Corporation v.*

Suresh Chand Sharma, (2010) 6 SCC 555).

24. The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry report was accepted by the Disciplinary Authority and there is no grievance on behalf of the respondent-workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The Disciplinary Authority imposed the punishment of dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in a fair manner and charges have rightly been proved against the delinquent employee. However, considering the difference in the standard of proof required in domestic enquiry, vis-à-vis that applicable to a criminal case, the Labour Court repelled the argument of respondent-workman that once he stood acquitted he was entitled for all reliefs including re-instatement and back wages. The learned Single Judge as well as the Division Bench had simply decided the case taking into consideration the acquittal of delinquent employee and nothing else.

25. In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges leveled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same; there were no additional or extra witnesses; and without considering the gravity of the charge, we are of the view that the award of the Labour Court did not warrant any interference.

Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not challenged by the present appellant by filing writ appeal. Therefore, the delinquent employee is entitled for the said relief.

26. In view of the above, we dispose of the appeal holding that the delinquent employee shall be entitled only to the relief granted by the writ court and the judgment and order of the court in writ appeal is set aside. The benefit of the judgment of the learned Single Judge may be made available to the delinquent employee within a period of 4 months from the date of production of the certified copy of the order before the appellant. There shall be no order as to costs.

.....J. (Dr. B.S. CHAUHAN)

.....J. (T.S. THAKUR) New Delhi, November 18, 2011