

Before Permod Kohli, J.

SUBHASH CHANDER GROVER & OTHERS,—Petitioners

versus

STATE OF PUNJAB & OTHERS,—Respondents

C.W.P. No. 9864 of 1992

25th April, 2011

Constitution of India, 1950 - Art. 226/227 - Petitioner found guilty of embezzlement - Show cause notice issued and subsequently services terminated - FIR also lodged - Petitioner acquitted in criminal case - Application made for reinstatement with consequential service benefits - Application rejected despite opinion of DA that since no appeal had been filed by the State against acquittal, Petitioner should be reinstated and the relevant period be treated as leave of the kind due - Addl Deputy Commissioner sent the case back to DA and it is alleged that he changed his opinion at instance of Addl Deputy Commissioner - Opinion was changed on the ground that acquittal was on flimsy grounds as witnesses have resiled - Further opined that as enquiry was still in force and employee cannot be reinstated unless his dismissal in departmental enquiry is quashed by competent authority - On the basis of fresh report of DA application of Petitioner rejected - Representation/ appeal before Commissioner also rejected/dismitted - Revision petition also dismissed by Financial Commissioner - Held, acquittal of a delinquent ipso facto may not absolve him from undergoing disciplinary inquiry - Petition dismissed.

Held, that contention that acquittal in criminal proceedings leads to setting aside of disciplinary proceedings cannot be accepted in the present case. Acquittal of a delinquent ipso facto may not absolve him from undergoing disciplinary inquiry.

(Para 6)

Further held, That proposition of law enunciated in case of Capt M Paul Authority v/s Bharat Gold Mines Ltd., 1999 (2) SLR 338 that it

is not an absolute rule that in all cases where an employee is subjected to criminal and departmental proceedings, departmental proceedings are not valid.

(Para 10)

Further held, That it is an established proposition that parameters for holding an accused guilty in a criminal trial are different than the standard of proof in departmental proceedings. A separate departmental proceedings and criminal trial cannot be said to be impermissible in law. In the present case, termination of Petitioner having already been ordered by completion of departmental proceedings and later on registration of criminal case acquittal therein, cannot be pressed into service as a ground for nullifying departmental proceedings. Petition dismissed.

(Para 12)

ND Kalra, Advocate, *for the petitioner.*

Charu Tuli, Sr.DAG, Punjab for respondents.

PERMOD KOHLI, J.

(1) The petitioner, a delinquent official was serving as a Clerk in Tacavi Branch, Tehsil Office, Fazilka during the period from July 1975 to June, 1979. The Audit Inspecting Officer visited the Tehsil Office, Fazilka and submitted a report on 03.08.1979 pertaining to alleged embezzlement of amount of Rs.7200/- by the petitioner. Thereafter, the then SDO(C) posted at Fazilka made a report against the petitioner vide memo dated 04.08.1979. The petitioner was served with charge sheet. After seeking his reply and consideration thereof, Dy. Commissioner, Ferozpur appointed Inquiry Officer finding reply of the petitioner unsatisfactory for conducting inquiry into the charge of embezzlement. It is alleged that the Inquiry Officer did not submit any memo of charges along with annexures of documents and list of witnesses nor did summon the petitioner and made an exparte inquiry report on 06.03.1981. The petitioner was found guilty of charges. Based upon the findings of the inquiry report, a show cause notice was served upon the petitioner through publication in the newspapers dated 18.09.1981. It is contended that Sub Divisional Officer (Civil) was biased and prejudiced and wanted to involve the petitioner in a criminal case. He, accordingly, lodged a report with SSP, Ferozpur on 13.10.1980 when inquiry was still pending against the petitioner. The Dy. Commissioner,

Ferozpur vide order dated 28.04.1982 terminated the services of the petitioner. In the meantime, on the basis of the report lodged by Sub Divisional Officer (C), an FIR was registered against the petitioner on 09.11.1982. The proceedings in a criminal case were terminated on 28.02.1989 with acquittal of the petitioner. On his acquittal, he made an application on 18.08.1989 to the Deputy Commissioner, Ferozpur for his reinstatement with all consequential service benefits including back wages etc. by setting aside the termination order. The Dy. Commissioner, Ferozpur rejected the application of the petitioner vide order dated 10.11.1989. It is stated on behalf of the petitioner that before rejection of the application opinion was sought from the District Attorney, Ferozpur who opined that the petitioner be reinstated as the State has not filed any appeal against the acquittal and the period from 28.02.1989 to 12.08.1989 be also treated as leave of the kind due. It is further averred in the writ petition that Additional Deputy Commissioner again sent the case back to the District Attorney so as to get adverse report against the petitioner. District Attorney, Ferozpur at the instance of Additional Deputy Commissioner changed his opinion and gave a fresh report dated 06.11.1989 stating therein that acquittal of the petitioner is on flimsy grounds as the witnesses have resiled. He further opined that the inquiry was still in force and an employee cannot be reinstated unless his dismissal in a departmental enquiry is quashed by some competent authority. On this report of the District Attorney, application of the petitioner had been rejected.

(2) Being aggrieved of order of rejection, the petitioner approached the Commissioner, Ferozpur with another representation. This representation also did not find favour with the Commissioner and came to be rejected vide letter dated 20.09.1990. It seems that the petitioner had also preferred some appeal before the Commissioner. This appeal also resulted in dismissal on 31.08.1990. Aggrieved of the order, a revision petition came to be filed before the Financial Commissioner, which also came to be dismissed vide order dated 16.04.1992.

(3) The petitioner has challenged order of his termination and order of revisional authority in this writ petition. The impugned orders are challenged primarily on the following grounds:-

- (i) That the charges in departmental enquiry and criminal case being identical based upon same set of allegations, are not sustainable

on account of acquittal of the petitioner by the criminal court, particularly, when judgment of the criminal court has attained finality;

- (ii) That the Inquiry Officer proceeded *ex parte* against the petitioner and never summoned him. The petitioner was also not granted any opportunity of cross examination nor allowed to lead his own evidence resulting in violation of principles of natural justice.

(4) In so far as 2nd ground is concerned, I have perused the inquiry report and the record produced by the respondents. Even in the reply filed in this case, it is specifically averred that the petitioner was duly served with the notice before the Inquiry Officer. He appeared before the Inquiry Officer on 27.03.1980, 21.04.1980, 20.05.1980, 11.06.1980 and 27.06.1980 and thereafter he deliberately absented from the inquiry proceedings on 16.07.1980 and inquiry was proceeded *ex parte*. The petitioner never made an attempt for setting aside *ex parte* proceedings till final report dated 06.03.1981 was submitted by the Inquiry Officer. Apart from the fact that the petitioner appeared before the Inquiry Officer for number of hearing and thereafter absented, the contention of the petitioner is liable to be rejected for the simple reasons that the inquiry is not under challenge in this writ petition. What has been assailed is the order of termination and final order passed by the revisional authority on the representation of the petitioner after his acquittal. This writ petition was filed on 23.02.1992 whereas inquiry report was submitted by the Inquiry Officer on 06.03.1981, i.e. 11 years after the inquiry was concluded. The grievance of the petitioner in respect to nonobservation of the principles of natural justice during the course of inquiry have to be evaluated and looked into independent of the acquittal in the criminal proceedings. Even after the submission of the inquiry report, the petitioner never bothered to challenge the inquiry report in any manner whatsoever. The averments made in the writ petition that he was never summoned by the Inquiry Officer are falsified, rather absolutely incorrect and thus amount to misrepresentation of facts that he was not duly served in the inquiry. In fact, he appeared before the Inquiry Officer and participated in the proceedings for few hearings and thereafter conveniently absented himself paving way for *ex parte* proceedings. When the petitioner himself chose not to participate in the inquiry proceedings despite notice, he cannot be permitted to argue on the question of violation of principles of natural

justice. This grievance of the petitioner in this regard is without any substance and is liable to be rejected.

(5) It is vehemently argued on behalf of the petitioner that acquittal in the criminal proceedings leads to setting aside of the disciplinary proceedings is sufficient to set aside disciplinary proceedings, both being based upon identical facts and set of allegations.

(6) Learned counsel for the petitioner has relied upon various judgments of this court and Hon 'ble Supreme Court. In 2008(3) RSJ 120, Union of India and others v. Naman Singh Shekhawat, the departmental proceedings were set aside by the Hon'ble Supreme Court on two counts, viz., (1) non-supply of the documents, and denial of effective assistance of the departmental representative during the course of inquiry and (2) acquittal in criminal case with absolutely identical charges. However, it has been observed that an acquittal of a delinquent ipso facto may not absolve him from undergoing disciplinary inquiry.

(7) In **Mohar Singh versus State of Punjab and others (1)**, liability imposed on the basis of an audit note was held not to be sufficient to impose any liability upon the delinquent official when there is no evidence on record except the audit report.

(8) Further reliance is placed on **G.M. Tank versus State of Gujrat and another(2)**. In this case Hon'ble Supreme Court set aside the departmental proceedings on acquittal of the delinquent official in a criminal case. It was observed that Inquiry Officer and other departmental witnesses were common both in criminal case as also in departmental proceedings. On the same set of facts, a delinquent official was acquitted in a criminal case and thus it was held that it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

(9) Another judgment relied upon by the petitioner is **Capt. M. Paul Authority versus Bharat Gold Mines Ltd (3)**. In this case, Hon'ble Supreme Court analyzed number of judgments of the apex

(1) 2001 (1) PLJ 179

(2) 2006 (3) RSJ 554

(3) 1999 (2)SLR 338

court where simultaneous proceedings are initiated against the government servant both under criminal jurisdiction as also in departmental proceedings for same charges. On consideration and examination on various judgments on the subject till then, Hon'ble supreme court concluded as under :-

“22. The conclusions which are deducible from various decisions of this Court referred to above are :-

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee if of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.”

(10) I have carefully gone through all the judgments. From the perusal of the aforesaid judgments, particularly, in case of Capt. M Paul (supra), the proposition of law that emerges is that it is not an absolute rule that in all cases where an employee is subjected to criminal and departmental proceedings, departmental proceedings are not valid. It is only where the allegations are common and same set of evidence is recorded both in criminal and departmental proceedings, it is not prudent to allow the departmental proceedings to continue, particularly, when the petitioner has earned acquittal from the criminal court. Principle of law enunciated in Capt. M. Paul's case by the Hon'ble Supreme Court firstly does not bar simultaneous proceedings in both the forums; secondly where departmental proceedings and criminal case are based upon identical and similar set of evidence and charge in criminal case is of a grave nature, departmental proceedings are to be stayed. However, it has been observed that above principles are not to be considered in isolation and due regard has to be given to the fact that departmental proceedings cannot be unduly delayed. It has further been concluded that where criminal case does not proceed or its disposal is unduly delayed, the departmental proceedings should be resumed.

(11) In order to apply the above principles, the facts of the present case are required to be examined in depth. It is petitioner's own case that departmental proceedings were initiated earlier in time, i.e. on 04.08.1979. These departmental proceedings were concluded with the submission of the inquiry report on 03.03.1981. The order of dismissal came to be passed on 24.04.1982 whereas FIR was registered on 09.11.1982, i.e. much after conclusion of the departmental proceedings. Under such circumstances, plea of petitioner regarding simultaneous proceedings in both the forums, will not be attracted at all, though this is not an absolute rule. The petitioner suffered penalty of termination even before the criminal proceedings could be registered against him. His later acquittal in criminal proceedings by no way can nullify the order of termination, particularly, when it was never challenged. The proposition of law laid down by the Hon'ble Supreme Court, cannot be disputed but keeping in view the facts and circumstances of this case, the petitioner is not entitled to the benefit of judgments of the Hon'ble Supreme Court and this Court. It may also be seen that no details are given regarding the evidence led in the departmental proceedings and

the criminal case. It may not be possible for this court to examine this aspect.

(12) Apart from the above, it is equally established proposition that parameters for holding an accused guilty in a criminal trial are different than the standard of proof in departmental proceedings. Thus under the given circumstances, a separate departmental proceedings and criminal trial cannot be said to be impermissible in law. In the present case, I find that the termination of the petitioner having already been ordered by completion of the departmental proceedings, lateron registration of criminal case and acquittal of the petitioner therein, cannot be pressed into service as a ground for nullifying the departmental proceedings.

(13) In view of the above, I find no force in this writ petition. The same is, accordingly, dismissed.

M. Jain

Before Permod Kohli, J.

SUBHASH CHAND HIRA & OTHERS,—Petitioners

versus

**PUNJAB AND HARYANA HIGH COURT,
CHANDIGARH,—Respondent**

CWP No. 9806 of 1994

20th April, 2011

Constitution of Inda, 1950 -Art. 309 - High Court Establishment (Appointment & Condition of Service) Rules, 1973 - Rl. 19 - Petitioners working as Restorers - Appointment as Clerk is by either direct recruitment (90 %) and promotion from amongst Supervisors/Restorers (10%) - Petitioners appeared for type test and were placed at Sr. nos 5 to 8 - Petitioners made representation to keep their names in the panel for promotion as and when a vacancy occurs - No such panel contemplated at that time - Rule 19 amended subsequently - Petitioners claimed promotion retrospectively when the vacancies for promotional quota became available - Held, mere qualification does not create a vested right in empanelled candidate