

Before G.S. Sandhawalía & Jagmohan Bansal, JJ.

STATE OF PUNJAB AND ANOTHER — Appellant

versus

MOHINDER PAL — Respondent

LPA No. 1303 of 2019 (O&M)

August 23, 2022

Constitution of India, Art.51, Punjab Civil Service Rules, 1970—CWP was allowed by the learned single judge—Dismissal of a peon was set aside—Present LPA allowed and the orders of a single judge set aside—Charge sheet issued and an inquiry conducted. It was found that the petitioner had withdrawn amount by misusing ATM cards—The same was captured in CCTV cameras. Criminal proceedings were also instituted against him—Held an employee can be proceeded against on both accounts of criminal liability and misconduct—Though the peon was acquitted in the criminal prosecution against him, he was dismissed from service after the departmental inquiry against him—The order of the single judge unwarranted for Appeal allowed.

Held, that in such circumstances, we are of the considered opinion that the learned Single Judge as such transgressed the jurisdiction which was not to be gone into keeping in view the parameters as such of the departmental inquiries which are based on preponderance of probabilities since it is settled principle that the employee can be proceeded against on both accounts for the criminal liability and for the misconduct as such. The details of the charges were that he had withdrawn the Government amount illegally from the bank with an intention to commit theft and misused his post and made himself liable for the misconduct as such.

(Para 6)

Further held, that in such circumstances, once the said aspect was proved in departmental proceedings, the order allowing the writ petition and setting aside the finding of the departmental proceedings by exercising the writ jurisdiction was unwarranted for.

(Para 7)

Abhay Pal Singh Gill, DAG, Punjab.

Vishal Sharma, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

(1) Present Letters Patent Appeal arises out of order dated 06.12.2018 of the learned Single Judge, who has allowed the writ petition bearing CWP No.12808 of 2014 and set aside the order dated 26.11.2008 (Annexure P-4) whereby the writ petitioner, who was working as a Peon was dismissed from service by the Deputy Commissioner, Shaheed Bhagat Singh Nagar. The subsequent order dated 19.08.2013 (Annexure P-8) whereby the representation moved by the writ petitioner after acquittal of trial had been rejected was also set aside and directions were given to reinstate the petitioner with continuity of service and release all consequential benefits.

(2) Counsel for the State has argued that the learned Single Judge dealt with the merit as such regarding the findings of the departmental enquiry though the same had never been challenged and the order of reinstatement was only on the basis of the acquittal in the criminal Court. He submitted that appeal was never filed against the dismissal order and only on account of the acquittal, a fresh cause of action had been raised and it was decided to file the writ petition. It was accordingly submitted that the right of department to proceed with the departmental side and the criminal prosecution were to operate in two different arenas. In criminal proceedings, the benefit of doubt would go to the accused, if the case could not be proved to and taken to its logical extent whereas in departmental inquiry, the principle of preponderance of probability as such would prevail. The strict rules of evidence and procedure do not apply in department proceedings whereas the degree of proof in criminal proceedings have to be beyond a shadow of doubt. This aspect was never considered by the learned Single Judge.

(3) A perusal of the paper-book would go to show that on the basis of a charge-sheet issued, an inquiry was conducted and it was found that the writ petitioner has withdrawn the amount by misusing the ATM card and some amount was spent by him. It was found that he deposited a sum of Rs.31,000/- which was the embezzled amount. Resultantly, on the basis of said departmental inquiry dated 23.09.2008, notice was issued to him for major punishment under the Punjab Civil Service (Punishments & Appeal) Rules, 1970 on 17.10.2008 and he gave reply on 07.11.2008.

(4) Keeping in view the seriousness of allegation that he had withdrawn the amount which has also been captured in CCTV Camera, the Deputy Commissioner had dismissed him from service on

26.11.2008 under Rule 5 (ix). He was also criminally prosecuted in FIR No.91 dated 24.05.2007 under Sections 380 and 409 IPC, registered at Police Station City Nawanshahr along with one Jasvir Lal. The Additional Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar on 01.11.2012 acquitted both the accused on the ground that the ATM card was not recovered from them and the CDs, which were given to the Investigating Officer, have not been amply proved on the record. Therefore, it was held that the prosecution had been unable to connect the accused with the crime in question. Faced with the benefit of acquittal, the representation dated 06.12.2013 (Annexure P-6) was filed before the Deputy Commissioner that he be reinstated in service. On account of no action being taken, civil writ petition No.12543 of 2013 was filed in this Court where direction was issued on 31.05.2013 to decide the representation. Resultantly, the representation of the writ petitioner was rejected on 19.08.2013 (Annexure P-8) by the Deputy Commissioner on the ground that dismissal was on the basis of the inquiry report dated 26.11.2008 and these orders have not been cancelled by any Court till date. Those orders having been passed as per the rules it was therefore held, it is not proper to reinstate him. It is not disputed that under Rule 15, an appeal would also lie which had never been preferred by the employee and who had accepted the order of the departmental proceedings. The dismissal was never based on any conviction and therefore, it operated in different parameters as such, this aspect was missed by the learned Single Judge while allowing the writ petition.

(5) In our considered opinion, it was not within the ambit of the learned Single Judge as such and neither it was the case of the writ petitioner also that the departmental proceedings were as such without any jurisdiction or had been conducted in a manner which had adversely effected the writ petitioner and that he had not been given any opportunity of hearing or the report of the inquiry officer as such was one such report the conclusion which could not have been arrived at. Reliance can be placed upon the judgment of the Co-ordinate Bench in this regard ***Krishan Chander versus Union of India and others***¹ wherein it was observed as under:-

“In our opinion, this order did not preclude the respondents from taking departmental action. The rules governing a criminal trial are so stringent that a delinquent official as an accused may get benefit of doubt and

¹ 2008(2) SLR 663

resultant acquittal, but that necessarily may not entitle him clearance in the departmental inquiry. It is well-settled that departmental proceedings can be continued even after acquittal of the delinquent in the criminal case and the disciplinary authority can pass appropriate order on the basis of evidence produced during the inquiry. The object of criminal trial is to inflict appropriate punishment on the offender/delinquent, while the purpose of departmental proceedings is to deal with the delinquent official in such a manner as to serve as a deterrent to other employees. In criminal trial, confession made by the accused before someone or before the superior officers is inadmissible in evidence against him, which is not the case in the departmental inquiry. The strict rules of evidence and procedure do not apply in departmental proceedings. The degree of proof which is necessarily required in order to record a conviction against the accused is also different as compared to the punishment in departmental proceedings. However, the fact remains that merely because the delinquent has been acquitted, the power of the department to continue with the departmental proceedings is not taken away or in any way fettered to proceed against the accused departmentally. In the case of *State of Andhra Pradesh and others v. Sree Rama Rao, AIR 1963 SC 1723*, it has been held by the Apex Court that the report of the Inquiry Officer that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental inquiry against that public servant was not suffering from any error. It was further held that the conclusions of the departmental officers were borne out from the evidence before them and the High Court has no jurisdiction to set aside the order either on the ground that the approach to the evidence was not consistent with the approach in a criminal case nor on the ground that the High Court would have on that evidence come to a different conclusion.”

(6) In such circumstances, we are of the considered opinion that the learned Single Judge as such transgressed the jurisdiction which was not to be gone into keeping in view the parameters as such of the departmental inquiries which are based on preponderance of probabilities since it is settled principle that the employee can be

proceeded against on both accounts for the criminal liability and for the misconduct as such. The details of the charges were that he had withdrawn the Government amount illegally from the bank with an intention to commit theft and misused his post and made himself liable for the misconduct as such.

(7) In such circumstances, once the said aspect was proved in departmental proceedings, the order allowing the writ petition and setting aside the finding of the departmental proceedings by exercising the writ jurisdiction was unwarranted for.

(8) Accordingly, the appeal is allowed and the order dated 06.12.2018 of the learned Single Judge is set aside by dismissing the writ petition.

Dr. Payel Mehta