

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2833 of 1996

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DISTRICT PANCHAYAT

Versus

H.B.PAREKH  
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Appearance:

Shri Mukesh R Shah for the Petitioner

Shri Nagin N Gandhi for the respondent  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 12/5/99

C.A.V. JUDGMENT

1. Heard learned counsel for the parties.

2. The petitioner by this petition under Articles 226 and 227 of the Constitution of India challenges the order of the Gujarat Civil Services Tribunal, Ahmedabad dated 26.7.1995 passed in Appeal No.440/94 where under the appeal of the respondent has been allowed and the order dated 24.5.1994 under which the respondent was ordered to be removed from service passed by the petitioner has been quashed and set aside.

3. Facts of the case in brief are that, while the respondent was working as Talati-cum-mantri at village Sadakpur had misappropriated an amount of Rs.2700/-. On the complaint of the petitioner crime register 15/85 was registered at Kothamba Police Station against the respondent on 1.1.1985. Police after making investigation in matter submitted the chargesheet in the criminal court on 3.10.1986 which was came to be registered as Criminal Case No.530/95 under sections 409 and 477-A of the IPC.

4. The petitioner called upon the respondent to show cause as to why departmental inquiry against him for the alleged misconduct of misappropriation of money should not be initiated. The respondent replied to the show

cause notice on 21.5.1987. The petitioner was not satisfied with the reply of the respondent to show cause notice and the chargesheet dated 31.7.1987 was served upon the respondent. The respondent submitted his reply to the chargesheet on 15.10.1987. The departmental inquiry was proceeded and it has been found that the respondent has misappropriated an amount of Rs.2050/-. Misappropriation of an amount of Rs.600/- was partly accepted. On this inquiry report second show cause notice dated 7.8.1990 was given to the respondent to show cause as to why he should not be dismissed from the service. Opinion from the Gujarat Panchayat Services Selection Board was also sought. Deputy District Development Officer under its order dated 24.4.1991 dismissed the respondent from the service.

5. The respondent on 3.5.1991 filed an appeal before the District Development Officer against this order which was partly allowed and the order of dismissal passed by the Deputy District Development Officer was set aside and the penalty of stoppage of five annual increments with future effect was substituted for penalty of the dismissal. The respondent filed second appeal on 10.7.1992 against this order before the Gujarat Civil Services Tribunal, Gandhinagar which was came to be allowed. The Tribunal vide its order dated 6.4.1993 dispose of the appeal and order dated 10.7.1992 of the District Development Officer was set aside and the matter was remanded back to the appellate authority with the direction to revive the appeal and decide it afresh.

6. On remand the appellate authority maintained its earlier order. The respondent challenged this order before the Tribunal by filing an appeal No.440/94 which came to be allowed on 26.7.1995 under the impugned order. Hence, this Special Civil Application before this Court.

7. Learned counsel for the petitioner contended that the Tribunal has committed serious error of jurisdiction in allowing the appeal only on the ground that after acquittal of the respondent in criminal case, disciplinary authority could not sit in the departmental proceedings in order to negativate the findings of acquittal recorded by the court. Next it is contended that on the self same charge, it is open to the department to hold departmental inquiry against the delinquent employee for which he has been also prosecuted. Merely because in the criminal case, criminal court has recorded his acquittal, in the departmental inquiry he cannot be exonerated of the charges. In support of this contention, learned counsel

for the petitioner placed reliance on two decisions of the Apex Court in the cases of Kusheshwar Dubey Vs. Ms. Bharat Coking Coal Ltd., AIR 1988 SC 2118 and State of Rajasthan Vs. B.K.Meena, AIR 1997 SC 14.

8. Learned counsel for the respondent on the other hand contended that the order of the Tribunal is perfect legal and justified. This court may not interfere with the same under Articles 226 and 227 of the Constitution.

9. On merits learned counsel for the respondent contended that on the self same charge the petitioner could not have initiated the departmental inquiry against the respondent and more so in the case where on the self same charge he has been acquitted in the criminal case by the competent court. In such matter if an inquiry is permitted to be initiated then it will amount to sitting of the disciplinary authority over the decision of the criminal court.

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

11. It is no more res integra that there is no legal bar to proceed against the employee on the self same charge by drawing disciplinary proceedings as well as by filing criminal complaint. This legal position is clearly come out from these two decisions of the Honourable Supreme Court on which reliance has been placed by the learned counsel for the petitioner. However, in the appropriate case stay of the departmental inquiry may be ordered till the conclusion of the criminal trial.

12. In the case in hand, I find that at no point of time the respondent has prayed for staying of the departmental inquiry. Learned counsel for the petitioner has failed to cite any decision of the Supreme Court where it is held that on the self same charge, if the delinquent employee is acquitted in the criminal case, the competent authority has no jurisdiction to initiate departmental inquiry and where the departmental inquiry is already initiated the delinquent employee cannot be punished.

13. It is not gainsay that in these two proceedings, standard of proof varies. It is also not correct to contend that in case where after acquittal of the delinquent employee in criminal case, the competent authority if proceeds against delinquent employee for self same charge departmentally, it will amount to

sitting over the judgment of the criminal court. These two proceedings have their own scope, object and purpose and both can also simultaneously be proceeded. Here, reference may have to the decision of the Apex Court in the case of State of Rajasthan Vs. B.K.Meena (Supra) and in para 17 of the judgment, Their Lordships of the Supreme Court has observed :

"There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

Reference may have to another decision of the Supreme Court in the case of State of Karnataka and another Vs. T.Venkataramanappa, (1996)6 SCC 455.

14. The Tribunal in this case has decided the matter solely on the ground that after acquittal of the respondent in criminal case on the self same charge, he cannot be punished in disciplinary proceedings. The competent authority has all powers to initiate departmental inquiry against the delinquent employee respondent in the matter on self same charge and this approach of the Tribunal is wholly perverse as well as contrary to the well settled position of law as laid down by the Honourable Supreme Court in catena of the decisions. When this power is there with the disciplinary authority, certainly on proof of the charges against the delinquent employee it has all the powers to appropriately punished him, though on the self same charges he would have been acquitted by the criminal court.

15. Thus the impugned order of the Tribunal cannot be allowed to stand. In this case during the course of arguments, learned counsel for the respondent did not raise any other contention to satisfy this Court to maintain the order of the Tribunal on the other grounds. In view of these facts, no remand of the matter is otherwise necessary.

16. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 26.7.1995 of the Gujarat Civil Services Tribunal, Gandhinagar in Appeal No.440/94 is quashed and set aside. Rule is made absolute. No order as to costs.

(S.K.Keshote,J.)

(pathan)