

(2009) 12 AP CK 0020

Andhra Pradesh High Court

Case No: Writ Petition No. 18922 of 2008

M. Ashok Singh

APPELLANT

Vs

Director General of Police and
Another

RESPONDENT

Date of Decision: Dec. 15, 2009

Acts Referred:

- Andhra Pradesh Civil Services (Conduct) Rules, 1964 - Rule 3
- Criminal Procedure Code, 1973 (CrPC) - Section 313, 320(8)
- Fundamental Rules - Rule 54
- Legal Services Authorities Act, 1987 - Section 21
- Penal Code, 1860 (IPC) - Section 323, 452, 457, 506
- Prevention of Corruption Act, 1988 - Section 5(1)

Citation: (2010) 1 ALD 742 : (2010) 1 ALT 660 : (2010) 125 FLR 467

Hon'ble Judges: Vilas V. Afzulpurkar, J; V. Eswaraiah, J

Bench: Division Bench

Advocate: B. Vijaysen Reddy, for the Appellant; Government Pleader for Services I, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Eswaraiah, J.
Heard both sides.

2. The petitioner filed O.A. No. 1580 of 2007 seeking to set aside the order, dated 14-08-2006, passed by the Director General of Police, A.P., Hyderabad-1st respondent, confirming the order passed by the Commissioner of Police, Hyderabad-2nd respondent, dated 18-02-2006, wherein and whereby the petitioner was imposed punishment of postponement of increments for two years with effect on future increments and pension and treating the suspension period from

30-05-2003 to 31-03-2004 as "Not on duty". The Tribunal vide its order, dated 22-02-2008, while confirming the punishment of postponement of increments for two years with effect on future increments and pension, set aside the order with regard to treating the suspension period from 30-05-2003 to 31-03-2004 as "Not on duty" and remitted the matter to the disciplinary authority i.e., the Commissioner of Police, Hyderabad, to give an opportunity to the petitioner in accordance with Rule 54 (b) of Fundamental Rules and pass appropriate orders. Pursuant to the remand, the 2nd respondent issued a show cause notice to the petitioner and the petitioner, having received the show-cause notice, failed to submit his explanation, but, however, the 2nd respondent passed an order, dated 01-08-2008, in proceedings D.O. No. 2664/L&O/B3/587/2003, treating the period of suspension from 30-05-2003 to 31-03-2004 as "eligible leave".

3. The grievance of the petitioner is only with regard to imposition of punishment of postponement of increments for two years with effect on future increments and pension. Aggrieved thereby, the present writ petition is filed.

4. The undisputed facts are that while the petitioner was working at "B" coy, CAR head quarters, Hyderabad, he was placed under suspension vide proceedings, dated 26-05-2003, on the allegation that the petitioner trespassed into the house of one Sri Manguwala Ravi Singh and abused him in filthy language and beat him, which resulted in registration of Cr. No. 135 of 2003 under Sections 457, 323 and 506 IPC at Mangalhat Police Station and he was arrested on 16-05-2003 and was in custody upto 19-05-2003. Subsequently, the departmental proceedings have been initiated against the petitioner framing the following charge:

Sri Ashok Singh, PC 598, while working at "B" coy, CAR Head Quarters, Hyderabad, he exhibited gross misconduct/reprehensible conduct for his misconduct in Cr. No. 135/03 Under Sections 452, 323 and 506 IPC of P.S. Mangalhat. Sri Ashok Singh PC 598 of "B" coy. CAR head quarters by his above acts exhibited lack of integrity and conduct, unbecoming of Government servant, thereby violating Rule 3 of APCS (Conduct) Rule 1964.

5. The Enquiry Officer, after conducting enquiry, vide enquiry report, dated 08-10-2003, held that the said charge was proved. Basing on the enquiry report, the disciplinary authority/Commissioner of Police, Hyderabad, passed final order imposing punishment of postponement of increments for two years with effect on future increments and pension and also treating the suspension period from 30-05-2003 to 31-03-2004 as "Not on duty". Aggrieved by the same, the petitioner filed an appeal before the Director General of Police, A.P., Hyderabad, and the appellate authority vide its order, dated 14-08-2006 dismissed the appeal confirming the order of the disciplinary authority/Commissioner of Police, Hyderabad.

6. Meanwhile, charge-sheet was filed in Cr. No. 135 of 2003 and the same was taken on file as C.C. No. 219 of 2004 and subsequently, the same was compromised before

the Lok Adalat at Metropolitan Sessions Judge, Nampally, Hyderabad, which passed an award on 15-07-2004 u/s 21 of the Legal Services Authority Act, 1987 compounding the offences with which the petitioner was charged and accordingly, he was acquitted of the aforesaid offences.

7. It is the case of the petitioner that when the criminal case was ended in acquittal, the punishment imposed in the departmental proceedings requires to be reviewed and the petitioner is entitled to be exonerated from the punishment imposed in the departmental proceedings. He also relied upon the judgment of the Supreme Court in [G.M. Tank Vs. State of Gujarat and Another](#), .

8. We have considered similar contentions in W.P. No. 8000 of 2009 and batch, dated 17-11-2009 ([State of A.P. and Others Vs. P. Rajasekhar and Others](#),) and held as follows:

22. So far as the other contentions of the learned Counsel for the respondents, particularly, with reference to the decision in G. M. Tank's case (supra) are concerned, the issue involved therein does not really arise in this batch of cases. Even otherwise, it has to be remembered that the said decision relates to a charge against an employee by the ACB regarding that he was having assets disproportionate to his known sources of income and a criminal case was initiated against the government servant. On the basis of aforesaid charge by the ACB, a charge was framed on the same lines in the departmental enquiry proposed against the said government servant. The Supreme Court noticed that in the criminal case the government servant was able to satisfactorily explain the said criminal charge and on the basis of the evidence adduced and the statement of accused/government servant u/s 313 Cr.P.C., the criminal Court had acquitted the accused/government servant of the said charge. The Supreme Court also noticed a marked distinction with regard to Section 5(1)(e) of the Prevention of Corruption Act in the following words:

The provision contained in Section 5(1)(e) is self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused as stated above. From the words used in Clause (e) of Section 5(1) of the PC Act it is implied that the burden is on the accused to account for the sources for the acquisition of disproportionate assets. As in all other criminal cases wherein the accused is charged with an offence, the prosecution is required to discharge the burden of establishing the charge beyond reasonable doubt.

Thus, the decision of the Supreme Court proceed by taking into consideration that burden of explaining or giving the account of such excessive property lies on the accused but once that burden is discharged it is again for the prosecution to prove that the explanation furnished by the accused is not satisfactory. It is in such circumstances that the Supreme Court held that the accused, who is acquitted of the charge of holding disproportionate assets, cannot be proceeded against in the

disciplinary enquiry on the self-same charges. The Supreme Court, therefore, made a very categorical distinction in the following words:

... The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case....

Thus, it is in those circumstances that the charge in the departmental proceedings could not be proceeded further in view of the acquittal of the government servant of the charges in criminal proceedings. Without keeping the aforesaid distinction in mind the ratio of the above decision cannot be applied to every case of acquittal of criminal charges, for seeking quashing of the departmental proceedings also.

9. In the aforesaid judgment, we have taken a view that *G.M. Tank v. State of Gujarat*'s case (1 supra) cannot be applied to every case of acquittal of criminal charges.

10. Learned Counsel for the petitioner submits that the petitioner was involved in the present case in a private dispute. It is further stated that on 01-05-2002 he and his family members were attacked by Sri Ravi Singh and Gopal Singh in relation to property dispute, in which the petitioner was beaten and hospitalised in Osmania General Hospital for three days due to serious injuries. Pursuant thereto, he lodged a complaint at Manghalhat police station, which was registered as Cr. No. 122 of 2003. But, however, as a counter blast, the opposite party gave a complaint against him and he was arrested in Cr. No. 135 of 2003 for the offences with which he was charged. It is stated that the petitioner has unblemished record and to his misfortune he was involved in Cr. No. 135 of 2003 and the same was ended by compounding the said offences. No doubt, compounding of offence amounts to acquittal.

11. We are of the opinion that the departmental proceedings are different and distinct from the criminal proceedings. Even, if the criminal case ends in acquittal, still it is open to the Department to proceed with the departmental proceedings.

12. The degree of proof and consideration for acquittal or conviction in criminal proceedings are different and distinct from that of the departmental proceedings. In the criminal case, if the prosecution fails to prove the guilt of the accused beyond all reasonable doubt, he is entitled for acquittal, whereas in the departmental proceedings, the nature of proof defers depending upon the probabilities of the case. Therefore, it cannot be said that the judgment of the criminal case is binding on the departmental proceedings. Similarly, the departmental proceedings are not binding on the criminal proceedings. No doubt, u/s 320(8) Cr.P.C. compounding of an offence has the effect of an acquittal of the accused with whom the offence has been compounded, but still it cannot be said that the said criminal case is binding on the disciplinary authority, as contended by the learned counsel for the petitioner. The departmental proceedings are under A.P. Civil Services (CC&A) Rules, 1991.

13. Insofar as the punishment is concerned, we are of the opinion that the criminal case, which was registered pursuant to family disputes regarding property, ended in acquittal, as the complainant himself compounded the offence, however, having regard to the facts and circumstances of the case, the ends of justice would be met if the said award of punishment of postponement of increments for two years "with cumulative effect" is modified to that of "without cumulative effect".

14. Accordingly, we allow the writ petition in-part modifying the punishment of postponement of increments for two years with effect on future increments and pension to that of punishment of postponement of increments for two years without having any effect on future increments and pension. There shall be no order as to costs.