Chandrakant K. Patil Vs Union of India and Others

Court: Bombay High Court

Date of Decision: April 4, 1995

Acts Referred: Constitution of India, 1950 â€" Article 226

Hon'ble Judges: S.H. Kapadia, J

Bench: Single Bench

Judgement

S.H. Kapadia, J.
By this writ petition, petitioner seeks to challenge Order of dismissal dated 23rd July 1990 passed by Bombay Port

Trust after holding disciplinary proceedings.

2. The facts giving rise to this Writ Petition, briefly, are as follows :-

3. Petitioner joined Bombay Port Trust (BPT) as a watchman in 1982. During the night-duty commencing from 11.30 p.m. on 8th May 1987 upto

9.30 a.m. on the next day on 9th May 1987, incident of theft of nineteen pieces of machinery took place at Frere Basin Gate of B.P.T. In this

incident of theft, two other watchmen were involved. Their names were Worlikar and Tanwade. Petitioner was posted as a watchman at Frere

Basin Gate. Tanawade was also posted as a watchman at Frere Basin Gate. Worlikar was posted as a watchman at Wadi Bunder in the same

shift. Worlikar, Tanawade and the petitioner were seen by Police Constable viz. Shri Shelke who was on duty in the said area on 9th May 1987 at

7.45 a.m. The Police Constable Shri Shelke found the movements of the three watchmen referred to above to be suspicious. Therefore, he

enquired about the two hand-bags in their possession. On enquiry P. C. Shelke came to know that the bags contained machinery parts belonging

to B.P.T. At this stage petitioner entreated Police Constable Shelke to excuse and not to take further action against Worlikar and Tanawade.

However, since the property was stolen property, P. C. Shelke decided to inform Yellow Gate Police Station. Thereafter, P. C. Shelke asked a

private Security Watchman of B.P.T. to call P. C. Kolhekar who was on duty on that day at the Main Gate. After the arrival of P. C. Kolhekar,

Shri Shelke requested P. C. Kolhekar to keep watch on all the three persons viz. Worlikar, Tanawade and the petitioner and also keep a watch

on the hand-bags found by P. C. Shelke. At the stage, petitioner was present. Petitioner once again requested P. C. Shelke and P. C. Kolhekar to

free, both Worlikar and Tanawade and not to report the matter to the police. However, P. C. Shelke refused to oblige the petitioner and went

towards the Main Gate and narrated the incident to the Shed Superintendent Shri Amberkar. Thereafter P. C. Shelke reported the matter to the

Police on telephone. At at stage P. C. Kolhekar came running and told P. C. Shelke that Tanawade and Worlikar had fled on a Motorcycle.

Thereafter, P. C. Shelke, Shed Superintendent Amberkar and P. C. Kolhekar returned to the spot. Thereafter P. C. Shelke filed his complaint at

the Yellow Gate Police Station on the same day. On 11th May 1987, Criminal Case No. 422/P/1987 was filed against the accused. Petitioner

herein was accused No. 1 in the said Criminal Case. In the criminal case, Petitioner was charged for theft. He was also charged for abetment of

theft. Petitioner was also, in the criminal case, charged for the offence of obstructing the Police Officer in the matter of performance of duty. The

basic charge with regard to Criminal Offence against the petitioner was of theft and abetment of theft by Worlikar and Tanawade. On 19th May

1988, B.P.T. issued chargesheet. For the sake of clarity, charge No. I, II and IV are reproduced hereinbelow :

I. It is alleged that Shri R. S. Tanwade and Shri R. B. Worlikar had attempted to remove unauthorisedly, 19 pieces of machinery part out of Frere

Basin, when they were posted at Frere Basin and Wadi Bunder Warehouses respectively during the third shift of 9.5.87. The said attempt was

made in the presence of Shri C. K. Patil and Shri A. S. Shinde they failed to prevent individually or collectively, commission of the said

unauthorised removal.

II. Shri Chandrakant Kanhaiya Patil, Watchman No. 741, permitted watchman, Shri Tanwade and Shri Shinde, to enter the Frere Basin area at

about 01.00 a.m. on 9-5-87, when both were posted elsewhere, and thus abetted to facilitate the theft of machinery parts and thus violated

Regulation 3(1) of the Bombay Port Trust Employees (Conduct) Regulations, 1976.

IV. The machinery parts were being unauthorisedly removed in their respective presence, as admitted by Watchman Shri Patil, Worlikar and

Tanwade, and thus they failed to prevent the commission of such unauthorised removal at about 2.30 a.m. on 9.5.87 at Frere Basin and thus

violated Regulation 3(1) of the Bombay Port Trust Employees (Conduct) Regulations, 1976.

On reading the above articles of charges in the disciplinary enquiry, it may be noted that all the three watchmen were charged in the disciplinary

proceedings under the said articles of charges dated 19th May 1988. As regards the petitioner, there was a specific charge that when he was

posted at Frere Basin in the third shift on 9th May 1987, he failed to prevent commission of unauthorised removal of nineteen pieces of machinery.

Under the above charges, petitioner was also charged for abetment in the matter of facilitating theft of machinery. Under the above charges,

petitioner was also charged in the matter of failure to prevent commission of unauthorised removal of nineteen pieces of machinery by Worlikar and

Tanawade. Thereafter, the enquiry proceeded. At this stage it may be noted that the disciplinary enquiry, thirteen witnesses were examined by

B.P.T. On 29th January 1989, petitioner was found guilty of all the above charges. The Enquiry Officer came to be conclusion, after considering

the evidence on record, that the petitioner had failed to carry out his duties as a watchman. That the petitioner had not taken steps, particularly

when nineteen pieces of machinery were unauthorisedly removed by Worlikar and Tanawade. That the petitioner was fully aware of the theft being

committed by Worlikar and Tanawade and to that extent, he had abetted the two Watchmen in committing act of theft. This finding was given on

29th January 1989. On 27th March 1989, B.P.T. gave a second show cause notice pointing out to the petitioner as to why penal action should not

be taken in respect of the findings given by the enquiry officer. On 29th April 1989, the petitioner filed this reply to the second show cause notice.

In the meantime on 8th January 1990, petitioner alongwith Worlikar and Tanawade came to be acquitted by the Criminal Court on the ground that

there was no evidence in support of the case of the prosecution that petitioner Worlikar and Tanawade were guilty of theft or abetment of the

offence of theft and for lack of evidence, the petitioner came to be acquitted alongwith Shri Worlikar and Shri Tanawade. There is some

controversy as to whether petitioner had informed the disciplinary authority about his acquittal. According to the petitioner, this information was

given to the disciplinary authority and the disciplinary authority did not give weightage to the Honourable acquittal. However, there is no such plea

raised in the writ petition. It is only in the course of the argument that a letter of the Union is produced to show that B.P.T. was aware of the

acquittal. In any event, in view of my findings, that circumstances about non-communication of the acquittal is not of much relevance. In any event,

the Appellate Authority has considered the case even in the light of the acquittal by the Criminal Court. On 23rd July 1990, petitioner came to be

dismissed from service. Thereafter, the petitioner preferred an Appeal to the Central Government on 18th August 1990. On 14th January 1992,

the Appellate Authority dismissed the Appeal. The Appellate Authority considered all the facts and circumstances of the case, including acquittal

by the Criminal Court. The Appellate Authority came to the conclusion that in view of the evidence led before the Enquiry Officer including

statement before the Vigilance Officer of the B.P.T. by the petitioner herein petitioner was guilty of the charges levelled and notwithstanding the

acquittal by a Criminal Court, B.P.T. was entitled to dismiss the petitioner from service.

4. Mr. Cama, the learned counsel appearing on behalf of the petitioner submitted that in the present case, the charges in both the abovementioned

enquiries were common; that the evidence was common and the grounds were common and, therefore, with the acquittal of the petitioner in the

Criminal Case, the B.P.T. ought to have given due weightage to the findings of the Criminal court, and should have dropped the disciplinary

proceedings because the same was not expedient and in any event, the findings of the Enquiry Officer are, therefore, liable to be set aside. Mr.

Cama relied upon large number of judgments of this Court and he submitted that now it is well settled by series of decision of this court that where

the grounds or the evidence or the charges are the same, Disciplinary Enquiry is not warranted. It is contended that in the present case on facts,

since the charges, the grounds and the evidence are identical, acquittal by the Criminal Court warrants setting aside of the Order of dismissal

passed by the Disciplinary Authority. Mr. Cama contended that due weightage to the acquittal has not been given either by the Enquiry Officer or

by the Disciplinary Authority or by the Appellate Authority. As far as the legal position is concerned, there is no dispute or quarrel with the

proposition of law. In the case of Anoop Jaiswal Vs. Government of India and Another, it has been held by the Supreme Court vide paragraph 6

that where the accused is acquitted honourable and completely exonerated of the charges, it would not be expedient to continue a Departmental

enquiry on the same charges or grounds or evidence, but the fact remains that merely because the accused is acquitted, the power of the authority

concerned to continue the Departmental enquiry is not taken away. It is further held in the said case of Corporation of the City of Nagpur (supra)

that if the authority feels that there is sufficient evidence and good grounds to proceed with the enquiry it can certainly do so. In the case of

Chandrakant Raoji Gaonkar v. Bombay Port Trust 1995 I CLR 860 decided by this Court (Kapadia, J.) on 3rd March 1995 in Writ Petition No.

1939 of 1992, relying on the judgment of the Supreme Court in the case of Corporation of the City of Nagpur (supra), this Court has held that if

there is evidence to link the petitioner with the charge of connivance of theft apart from the evidence on which the prosecution has placed reliance,

then the domestic enquiry can certainly proceed. Even if the charges may not be identical, but if the foundation of both the enquiries is similar, then

the acquittal in the Criminal case may warrant dropping of disciplinary enquiry or setting aside the Order of dismissal. Ultimately, it will depend on

the facts of each case. Keeping the above criteria in mind, we have to consider the facts of this case. In the present case I find that the charges in

both the above enquiries are dis-similar. In the Criminal case, the charges was that the petitioner was guilty of theft and that he had abetted in the

said offence committed by Worlikar and Tanawada. In the present case, I have reproduced the chargesheet in the disciplinary enquiry which

commenced much before the judgment of the Criminal Court in January 1990. In the present case, the chargesheet was given well in time i.e. on

19th May 1988 whereas the criminal case was filed on 11th May 1987. In the present case, both the Criminal as well as the domestic enquiry

proceeded in the parallel order of time. In any event, a bare reading of the charges in the disciplinary enquiry indicate that the petitioner was

charged mainly for failing to prevent unauthorised removal of machinery by Shri Worlikar and Shri Tanawade. Petitioner was a Watchman at the

relevant time at Frere Basin Gate. So also, Tanawade was a Watchman at Frere Basin Gate whereas Worlikar was posted at a different place at

Wadi Bunder Gate. It is true that the Enquiry Officer has come to the conclusion that petitioner was not guilty of permitting Worlikar to enter Frere

Basin Gate, but the basic charge proved against the petitioner was that as a Watchman, he failed to prevent unauthorised removal of machinery by

Worlikar and Tanawade. It is also proved against the petitioner that as a Watchman it was his duty to see that theft is not committed and since he

has failed to carry out his duty as a Watchman on that basic charge, the petitioner came to be dismissed from service. Petitioner is also found guilty

much prior to his acquittal by the Criminal Court, of conniving with Worlikar and Tanawade and facilitating theft of machinery by Worlikar and

Tanawade (Watchmen). If these charges are properly analysed, it is clear that charges in the domestic enquiry are quite different from the charges

in the criminal case, as stated above. Even with regard to the nature of evidence in the two enquiries, Mr. Pai, learned counsel appearing on behalf

of the B.P.T. is right in his contention that the nature of evidence in the two enquiries is also quite different. Here also, it is important to note that

domestic enquiry concluded prior to acquittal by the Criminal Court. In the domestic enquiry, thirteen witnesses were examined by B.P.T. In the

disciplinary enquiry, the Enquiry Officer was right in placing reliance on the statement before the Vigilance Officer which has not been retracted by

the petitioner (Page 138 of the Writ Petition) as found by the Enquiry Officer. That statement before the Vigilance Officer clearly shows that

petitioner was fully aware of the unauthorised removal of machinery by Tanawade and Worlikar. Apart from retraction of the statement, the

evidence clearly points out that petitioner, who was a Watchman at the relevant time and who had known both Worlikar and Tanawade, was fully

aware of the machinery being put in one of the bags. In fact, the statement before the Vigilance Officer also indicates that one of the bags belonged

to the petitioner. On the other hand, in the Criminal Case which concerns with the offence of theft the evidence was of a different nature. In the

disciplinary enquiry evidence of Shed Superintendent Shri Amberkar as also the evidence of Police Constable Shelke and Kolhekar is also fully

corroborated by the evidence of the Shed Superintendent. In other words, the nature of the evidence of the Criminal Case was different from the

nature of the evidence in the disciplinary enquiry before the Enquiry Officer. It is for this reason that the enquiry officer has given his finding to the

effect, after considering the evidence on record, that this was a case of circumstantial evidence; that admittedly Tanawade and the petitioner were

posted in the night shift at Frere Basin Gate whereas Worlikar was posted at a different Gate at Wadi Bunder; that they had not theft their

respective posts and that the evidence on record of the witnesses on behalf of B.P.T. clearly indicated that Tanawade and Worlikar had committed

the actual offence of unauthorised removal of nineteen pieces of machinery in the presence and to the knowledge of the petitioner who did not take

steps to prevent unauthorised removal of nineteen pieces of machinery. I have gone through the entire evidence. I have also gone through the

findings on that basis. These findings were given prior to the acquittal by the Criminal Court. This timing is very important. The said timing

distinguish the present case materially from the judgment of this Court in the case of Chandrakant Raoji Gaonkar (supra). In that case, after

honourable acquittal, the disciplinary enquiry proceeded and the petitioner was found guilty in the said enquiry despite acquittal by the Criminal

Court. In the present case, it is a converse matter. The Enquiry Officer decided the matter before honourable acquittal by the Criminal Court for

lack of evidence. Further, it may be mentioned that the entire evidence including statement before the Vigilance Officer indicates that petitioner

himself was fully aware of unauthorised removal by Worlikar and Tanawade. The Enquiry Officer is right in coming to the conclusion that the

evidence of the Police Constable was fully corroborated. The enquiry officer was right in coming to the conclusion that notwithstanding retraction

of the statement before the Vigilance Officer in view of the coronation of the statements of the Police Constables by the various witnesses including

the Shed Superintendent, the charges in the disciplinary enquiry to the extent of unauthorised removal of machinery and failure to prevent

unauthorised removal, by the petitioners, have been duly proved. Similarly, the grounds in both the enquiries are also different. In the case of

Bharat Cooking Coal Ltd. v. B. K. Singh (reported in 1994 II CLR 1083 the Vigilance Officer submitted a report stating that there was no

evidence against the accused. On the basis of the said statement, the accused was acquitted in the Criminal Case. The question arose whether in

view of the said acquittal by the Criminal Court, disciplinary enquiries were warranted. The Supreme Court came to be conclusion that lack of

evidence in criminal case, particularly in the context of the report made by the Vigilance Officer on the basis of much acquittal was granted does

not mean that disciplinary enquiries cannot proceed. If there is independent evidence on that basis, being uninfluenced by the acquittal by the

Criminal Court, the employer can proceed. This is also because the standard of proof in a domestic enquiry is different from the standard of proof

in a criminal enquiry. In the present case, there is ample evidence even dehors the evidence before the Criminal Court to show that the petitioner,

as a watchman, failed to take steps in the matter of unauthorised removal of nineteen pieces of machinery which were unauthorisedly removed and

in the circumstances, the nature of charges, the nature of evidence as also the grounds of the two enquiries are quite separate and distinct. This is

apart from the timing of the two parallel enquiries which have taken place in the present case. In the circumstances, the judgments on which Mr.

Cama has placed reliance have no application to the facts of the present case. In the present case, the charges are dis-similar, the evidence is

totally different and the grounds of the two enquiries are also separate and distinct and in the circumstances, acquittal of the petitioner by the

Criminal Court will not warrant or justify setting aside Order of dismissal.

5. Mr. Cama next contended that in the present case even the disciplinary authority as well as the Appellate Authority have not give due weightage

to the acquittal by the Criminal Court. There is no merit in the said contention. Firstly, as stated hereinafter, if this court has come to the conclusion

that the nature of the charges, the grounds and the nature of the evidence in the two enquiries are separate and distinct, then the further question of

due weightage will not arise. The question of due weightage is important if atleast one of the three parameters are common in the two enquiries. In

the present case, I find that all the three variables are distinct and separate and, therefore, the question of weightage in that context does not arise.

Be that as it may, even assuming that due weightage is required to be given as laid down by the judgment of the learned single Judge (Dhanuka, J.)

in the case of Jaywant Bhaskar Savant v. Board of Trustees of The Port of Bombay & Ors. (reported in 1994(2) C. L. R. 737, I find that the

Appellate Authority has given due weightage to the acquittal by the Criminal Court. The Appellate Authority has rightly come to the conclusion that

looking to the nature of evidence and grounds of the two enquiries as also the charges, acquittal by the Criminal Court will not warrant dropping of

the disciplinary proceedings. The Appellate Authority has found that the petitioner was holding the post of a watchman. That, in the nature of the

enquiry and particularly in view of the fact that as a watchman, the petitioner was duty bound to stop Worlikar and Tanawade from unauthorisedly

removing the machinery and since the petitioner has failed to carry out his duty, it was a serious lapse on his part for which the petitioner ought to

be dismissed because it was a serious misconduct. In the above circumstances, it cannot be said that the Appellate Authority did not consider the

case of honourable acquittal by the Criminal Court. As stated hereinabove, before the Disciplinary Authority petitioner did not argue that he was

honourably acquitted. The Disciplinary Authority, therefore, decided the matter in the light of the findings of the Enquiry Officer which, in the

present case, were given prior to the acquittal by the Criminal Court. In any event, since the Appellate Authority has considered the case in its

proper perspective including the factum of honourable acquittal by the Criminal Court, it cannot be said that the Order of dismissal was bad in law.

6. Mr. Cama next contended that in the present case, past service record of the petitioner has not been considered. Mr. Cama relied upon the

judgment of the learned single Judge (Dhanuka, J.) in the case of J. B. Savant v. B.P.T. (supra) and submitted that even if the Rules do not provide

for consideration of the past record, the Disciplinary Authority as well as the Appellate Authority were duty bound to consider the said record and

since in the present case, record has not be considered the Order of dismissal is liable to be set aside. I do not see any merit in the said contention.

Firstly, in the present case, there is no Rule which makes it incumbent on the Disciplinary Authority to consider the past record. Secondly, even if

the said requirements is implied in the present case all the authorities below have found that the petitioner was guilty of serious misconduct. Past

service record is required to be considered as a mitigating circumstances, but it is well settled that where the delinquent is guilty of serious

misconduct then even one single misconduct like theft or connivance therein may warrant dismissal. In this case, all the authorities below have come

to the conclusion that petitioner was guilty of serious misconduct. Petitioner was a Watchman. He not only failed to detect authorised removal of

machinery from B.P.T. premises, but he also knowing fully well that the machinery was being removed in the bag, did not take steps to stop the

unauthorised removal. In the above circumstances, the authorities below were right in coming to the conclusion that dismissal was warranted in law

and it was fully justified in the facts of the case. Ultimately, it depends on facts of each case. It also depends on the nature of the misconduct

proved against the workmen. It is well settled that normally this Court, under Article 226 should not interfere with the punishment imposed by the

Disciplinary Authority as well as the Appellate Authority. In the above circumstances, I do not see any reason to interfere with the Order of

dismissal passed by the authority below.

7. In the above circumstances, I do not see any reason to interfere with the Order of dismissal passed by the authority below.

8. Mr. Cama next contended that in the present case the Appellate Authority has failed to consider provisions of Regulation 26(2) of Part VII of

B.P.T. Employees (Classification, Control and Appeal) Regulations 1976. Mr. Cama contended that Regulation 26(2) provides that the Appellate

Authority while disposing of the Appeal shall consider whether the procedure laid down in the Regulations have been complied with and whether

non compliance has resulted in failure of justice. Similarly, the Appellate Authority is also required to consider whether findings of the Disciplinary

authority were warranted by the evidence on record and lastly whether penalty imposed was adequate or disproportionate. Mr. Cama contends

that in view of the judgment of the learned single Judge (Dhanuka, J.) in the case of J. V. Savant v. B.P.T. (supra), the Appellate Authority''s

decision is also liable to be set aside. In that judgment, the Appellate Authority was required to consider all the three conditions stipulated in

Regulation No. 26(2) of the above Regulations, 1976. Mr. Cama also placed reliance on the judgment of the Supreme Court in the case of R.P.

Bhatt Vs. Union of India and Ors (UOI) ., . It is true that normally when the Appellate Authority agrees with the findings given by the disciplinary

Authority, it is not required to give in detail all the reasons for recording such agreement, but where the Rules stipulate certain pre-conditions to be

followed then the Appellate Authority must comply with those conditions. In the present case, Regulation No. 26(2) refers to three

abovementioned conditions to be complied with. Mr. Pai, learned counsel appearing on behalf of B.P.T. contends rightly that in the present case,

the Appellate Authority has concurred with the findings of the Enquiry Officer and the Order of the Disciplinary Authority. He further contends that

in any event, all the above conditions stipulated in the Regulation have been duly complied with by the Appellate Authority. In the present case, the

Appellate Authority has found that the enquiry was fair and proper; that rules of natural justice have been fully complied with; that there has been

no non-compliance of the procedure laid down under the Regulations. A proper chargesheet was given stipulating the statement of imputations.

Regulations were properly quoted. Rules of natural justice were complied with; full opportunity was given to the delinquent to prove his case. In

the above circumstances, the first conditions stipulated in Regulation 26(2) (a) has been fully complied with. Similarly, Regulation 26(2) (b) is also

fulfilled in the present case. In the present case, the findings of the Enquiry Officer are based on the evidence on record. Thirteen witnesses were

examined on behalf of B.P.T. Police Constables were also examined. In the above circumstances, it cannot be said that Regulation 26(2) (b) is not

fulfilled. Even the evidence of the Police Constable have been fully corroborated. Opportunity has also been given to the petitioner. Petitioners''

statement was also recorded by the Vigilance Officer. The entire evidence of the Police Constables as well as the Statement before the vigilance

Officer stand corroborated. The Inquiry Officer is also right in coming to the conclusion that once the statement made before the Vigilance Officer

is corroborated by evidence on record, merely because a bald statement of retraction is contended, it does not mean that the Enquiry Officer

cannot reply upon that evidence. Ultimately, the totality of the evidence has to be examined. Under Article 226 of the Constitution, it is not possible

for this Court to sit in judgment over the findings of the Enquiry Officer unless the said findings are not based on evidence. In the present case,

therefore, conditions 26(2) (b) is also fulfilled. As regards Regulation 26(2) (c) it may be mentioned that the petitioner has been punished by an

Order of dismissal because according to the authorities below petitioner was guilty of serious misconduct. As stated hereinabove, petitioner was

fully aware of the unauthorised removal of the machinery from the B.P.T. premises and that he did not take any action to stop the said removal. In

the present case, we must remember that the petitioner was a watchman of the B.P.T. and in the circumstances, looking to the nature of his duties

since he connived in the matter of unauthorised removal of the material from the B.P.T. premises the punishment was fully justified and supported

by evidence on record. In the above circumstances, all the three conditions have been duly satisfied by the Appellate Authority''s decision which is

in conformity with the Regulation 26(2) of the said Service Regulations, 1976. The Appellate Authority has given due weightage to the acquittal

granted by the Criminal Court. The Criminal Court has only acquitted the petitioner of the charge of theft on the ground of lack of evidence. On the

other hand, the Appellate Authority has decided the matter without being influenced by the judgment of the Criminal Court. In the circumstances,

all the conditions mentioned in Regulation 26(2) have been duly fulfilled.

9. For the foregoing reasons, there is no merit in the Writ Petition. Writ Petition fails and the same is dismissed. Accordingly, Rule is discharged.

However, in the facts and circumstances of the case, there shall be no order as to costs.