

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2470 OF 2005

LT. GOVERNOR & ORS.

.....APPELLANTS

VERSUS

ARUN KARMAKAR

.....RESPONDENT

O R D E R

Aggrieved by the order dt.29.09.2003 passed by the Division Bench of the High Court at Calcutta, Circuit Bench at Port Blair in WPCT No.160 of 2003, the appellants (Lt.Governor, Andaman and Nicobar Islands and others) preferred this appeal by special leave.

Briefly stated the facts are as follows :-

The respondent was serving as a Police Constable in Andaman and Nicobar Police Force in the year 1991. He along with four other police personnel was served with a charge sheet on 05.12.1991 on a specific charge of misconduct for allegedly intending to outrage the modesty of an unmarried lady in drunken condition while travelling in a bus from Rutland to Guptapara on 02.11.1991. An FIR was lodged against all the accused under Sections 147/ 149/ 509/ 323 and 426 IPC on the same day.

It appears that a separate departmental proceeding was also initiated against A.K.Karmakar

- respondent herein - along with his associates police personnel. In a departmental enquiry, the

following charges were levelled against the delinquents :-

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"That on 2.11.91 PC 1704 A.K.Karmakar who was reportedly in an intoxicated condition intended to insult the modesty of Kumari Roop Mala Haldar (21) R/O. Manjeri and when Shri Subbaraj, R/o.Lina Dera, objected to such an act of misconduct/misbehaviour committed by PC/1704 A.K.Karmakar, all the Police personnel attached to L.O.P. Rutland namely LHC/439 Venugopal, PC/1704 A.K.Karmakar, PC/1722 Nisdor Kerketta, PC/307 Bhanu Issac and PC/493 Gokulanand who were reportedly in drunken condition joined him and manhandled Shri Subba Raj, thereby causing bleeding injury on his person.

That such action of the said police personnel amount to grave misconduct and misbehaviour in contravention of Rule 8.44 and Rule 8.47 of A.&N. Police Manual, 1963, besides violation of the norms of discipline, thus rendering them liable for punishment under rule 9.3 of Andaman and Nicobar Police Manual, 1963."

Thereafter, an Enquiry Officer was appointed. The respondent participated in the enquiry proceedings. The Enquiry Officer after completion of enquiry, submitted a report on 22.12.1992 which held the respondent guilty of the charges. The disciplinary authority accepted the enquiry report and by an order dt.22.12.1992, the respondent was dismissed from service. He preferred an appeal before the appellate authority which was dismissed by an order dt.18.02.1993.

Aggrieved thereby, he filed O.A.No.32/93 before the Central Administrative Tribunal. The Tribunal after hearing the parties, dismissed the application by an order dt.09.02.1996. Thereafter, the respondent did not file any appeal against the order dt.09.02.1996 passed by the Central Administrative Tribunal dismissing his application. Thus, the order dt.09.02.1996 has attained finality. Consequently, the order of dismissal passed by the disciplinary authority dt.22.12.1992 has become final and binding upon the respondent.

The present controversy arose because of the fact that subsequently the respondent was acquitted by the trial court for the offence under Sections 509/323 and 426 IPC by its order dt.20.02.2001. It appears that pursuant to the order of acquittal passed by the criminal court, the respondent represented to the Inspector General of Police for reinstatement and his request was rejected by an order dt.26.09.2001.

Aggrieved thereby, the respondent preferred second O.A.No.13/2003 before the Central Administrative Tribunal which was also dismissed on 31.01.2002. Aggrieved thereby, the respondent preferred Writ Petition No.28 of 2002 in the High Court, which was disposed of with the direction to

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the appellants to reconsider the representation of the respondent. Again, the representation as ordered was considered in detail and it was rejected. Thereafter, the respondent preferred WPC No.160 of 2003 before the High Court. By the impugned judgment, the High Court relying upon the decision of this Court in Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. and Another, (1999) 3 SCC

679, set aside the order of the appellate authority. The High Court also directed the appellate authority to hold disciplinary proceeding against the respondent by appointing another Enquiry Officer after giving full opportunity to the respondent to defend himself.

We have gone through the ratio of the decision of Capt.M.Paul Anthony's case. In Capt.M.Paul Anthony's case (supra), this Court in paragraph 22 of the Judgment held as under :  
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"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 is 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 charge-sheet.
- (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, the administration may get rid of him at the earliest."

Taking view from Clause (ii) of the above directions of this Court, the High Court was of

the view that if the departmental proceedings and the criminal case based on identical and similar

set of facts and the charge in the criminal case against the delinquent employee is of a grave nature

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which involves complicated questions of law and fact, it would be desirable to stay the departmental

proceedings till the conclusion of the criminal case. This view of the High court, in our opinion, is

clearly erroneous. In the case on hand, we have in earlier part of this Order noticed that the Central

Administrative Tribunal, dismissed OA No.32/93 filed by the respondent on 09.02.1996 against the

order of dismissal from service. No appeal was preferred by the respondent thereafter and the order

of dismissal passed on 22.11.1992 by the competent authority had attained finality.

One more reason as to why the ratio of decision rendered in Capt.M.Paul Anthony's case (supra) is not applicable in the facts of the present case, is that the respondent did not raise any objection regarding disciplinary proceeding being held while the criminal case was pending. He has not raised any objection before the Enquiry Officer nor before any other authority that since the criminal trial is pending, the departmental proceeding should be suspended.

In a recent decision, this Court in Uttaranchal Road Transport Corpn. and Others vs. Mansaram Nainwal, (2006) 6 SCC 366, has considered the case of Capt.M.Paul Anthony and observed that a decision is an authority for what is actually decided. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The view of the High Court was erroneous in nature taking of the present case into account the observations made by this Court in Capt.M.Paul Anthony's case (supra).

It is now well-settled principle of law that a criminal trial and the disciplinary proceeding are independent to each other. In a criminal case, the yardstick of proof is different from the disciplinary proceeding. In a criminal trial, the proof is beyond all reasonable doubt whereas in a disciplinary proceeding it is the preponderance of probabilities which is accepted in principle. (See : T.N.C.S. Corpn.Ltd. & Ors. vs. K.Meerabai, (2006) 2 SCC 255; Ajit Kumar Nag vs. General Mgr. (PJ) Indian Oil Corpn.Ltd., Haldia & Ors., (2005) 7 SCC 764).

In the light of the above discussion, we are of the view that the impugned order dt.29.09.2003 passed by the Division Bench of the High Court at Calcutta, Circuit Bench at Port Blair in WPCT No.160 of 2003 is not sustainable and the same is set aside. The appeal is accordingly allowed. Resultantly, WPCT No.160 of 2003 filed by the respondent shall stand dismissed. No costs.

.....J.  
( H.K.SEMA )

NEW DELHI;  
AUGUST 1, 2007.

ITEM NO.106

COURT NO.5

SECTION XVI

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 2470 OF 2005

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LT. GOVERNOR & ORS.

Appellant (s)

VERSUS

ARUN KARMAKAR

Respondent(s)

(With prayer for interim relief and office report )

Date: 01/08/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA  
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr.Vikas Singh,ASG  
Mrs.K.Amareswari, Sr.Adv.  
Ms.Madhurima Tatia, Adv.  
Mr.Ashok Bhan, Adv.

Mr. D.S. Mahra,Adv.

For Respondent(s)

Mrs.K. Sarada Devi,Adv.

UPON hearing counsel the Court made the following  
ORDER

The appeal is allowed in terms of the signed order.

No costs.

( Satish K.Yadav )  
Court Master

( Anand Singh )  
Court Master

( Signed order is placed on the file )