

Tribunal Application  
Present : (Pranab Kumar Chattopadhyay, J.)  
With  
(Pranab Kumar Deb, J.)  
Judgement on 5. 3.2010  
W.P.S.T. 677 of 2009.

Points

**Disciplinary proceeding:** The employee acquitted by Criminal Court on merit upon conducting the trial - Identical facts, charges and almost identical witnesses adduced evidence- whether it would be just and proper to allow the disciplinary authority to punish the employee – Service Law

Facts:

Disciplinary proceeding was initiated and a criminal trial was also held against the respondent no.1 on identical facts and on the basis of identical witnesses. It is not in dispute that the Criminal Court passed an order of acquittal in respect of the respondent no.1 on merits. Unfortunately, in the disciplinary proceeding, order of dismissal was passed by the disciplinary authority in respect of the respondent no.1.

Held:

The competent Criminal Court already passed an order of acquittal in respect of the respondent no.1 on merit upon conducting the trial, it would be unjust and improper to allow the disciplinary authority to punish an employee on the basis of the disciplinary proceedings initiated on identical facts and the identical charges where almost identical witnesses adduced evidence. Para-6

Cases cited:

*G. M. Tank Vs. State of Gujarat & Ors*, reported in (2006) 5 SCC 446

*Managing Director, State of Bank of Hyderabad & Anr., Vs. P. Kata Rao*, reported in A.I.R. 2008 SC 2146.

Ms. Amrita Sinha.

...For the Petitioners.

Mr. Goutam Dey,

Mr. Gautam Pathak Banerjee.

...For the Respondent.

This Court

This writ petition has been filed assailing the judgment and order dated 28th July, 2009 passed by the learned West Bengal Administrative Tribunal in case number O.A.300 of 2004 whereby and whereunder the said learned Tribunal finally disposed of the application filed by the respondent no.1 herein upon setting aside the order of dismissal passed earlier by the disciplinary authority. The said learned Tribunal also directed the disciplinary authority to re-instate the petitioner without payment of any back wages.

2) Going through the records, we find that the disciplinary proceeding was initiated and a criminal trial was also held against the respondent no.1 on identical facts and on the basis of identical witnesses.

3) It is not in dispute that the Criminal Court passed an order of acquittal in respect of the respondent no.1 on merits. Unfortunately, in the disciplinary proceeding, order of dismissal was passed by the disciplinary authority in respect of the respondent no.1.

4) The learned Tribunal following the decision of the Hon'ble Supreme Court in the case of *G. M. Tank Vs. State of Gujarat & Ors*, reported in (2006) 5 SCC 446 specifically held that if a domestic enquiry and a criminal trial are held on almost identical facts and on the basis of identical witnesses and if the Criminal Court delivers a judgment of acquittal on merit, the disciplinary authority cannot punish on the basis of the findings of the domestic enquiry, because the same will be the abuse of process of law.

5) The aforesaid view of G. M. Tank was followed in the subsequent decision of the Hon'ble Supreme

Court in the case of *Managing Director, State of Bank of Hyderabad & Anr., Vs. P. Kata Rao*, reported in *A.I.R. 2008 SC 2146*.

6) Having heard the learned Counsel appearing for the parties and considering the fact that the competent Criminal Court already passed an order of acquittal in respect of the respondent no.1 on merit upon conducting the trial, we are of the opinion that it would be unjust and improper to allow the disciplinary authority to punish an employee on the basis of the disciplinary proceedings initiated on identical facts and the identical charges where almost identical witnesses adduced evidence.

7) The learned Tribunal, therefore, rightly set aside the order of dismissal issued by the disciplinary authority in the aforesaid circumstances.

8) We do not find any error and/or infirmity in the aforesaid decision of the learned Tribunal and, therefore, we find no scope to interfere with the impugned judgment and order passed by the learned Tribunal.

9) This writ petition, therefore, stands dismissed as we do not find any merit in the same.  
In the facts of the present case, there will be, however, no order as to costs.  
Urgent xerox certified copy of this order, if applied for, shall be given to the appearing parties, as early as possible.  
(Pranab Kumar Chattopadhyay, J.)  
(Pranab Kumar Deb, J.)