

Of Simultaneity Of Criminal And Departmental Proceedings

The Judgement of the Apex court in the case of GM Tank vs. State of Gujarat & another 2006 (3) RLW 2480 seeks to narrow down the controversy whether the two proceedings viz. Departmental and Criminal Proceedings touching the same subject matter could go side by side, concurrently or simultaneously. The pre-requisites as spelled out are that the charges in both the cases should be grounded upon the same set of facts and evidence. However, there are several verdicts of various high courts and even of the Apex court which are practically at variance and bristle with ambiguities. This article analyses this problem.

In matters of major Industrial misconducts, it very often happens that a criminal case is also filed touching such a misconduct and in such situations the criminal case as also the departmental proceedings get based on identical set of facts and in that way both the charges are grounded on the same set of facts. It has, therefore, been engaging the attention of the judiciary as to what would be the fate of departmental proceedings after the conclusion of criminal proceedings. There would not arise any difficulty for punishing a wrongdoer as a result of departmental proceeding, if he has been convicted by the criminal court but the Disciplinary Authority in the domestic proceedings would have his own dilemmas if he were to sack such a workman who gets acquitted by the court in the criminal case. There is no conceptual clarity on this issue in the court verdicts nor is there any straitjacket formula so far evolved. So we shall have to survey the catena of important verdicts in this regard and I am afraid to say that every judicial exposition leads to more confusion. However, pertinently and relevantly it might be of some help to know about the standard of proof required in the two types of cases. Preponderance of probabilities is sufficient to have a misconduct proved in

departmental proceedings whereas it is not so in criminal matter. In criminal cases the offence is to be proved by the prosecution against the accused beyond all reasonable doubts and full proof evidence is a sine-qua-non-for basing the conviction of an accused person but this standard or proof is not necessary in cases of domestic enquiries. If there is reliable evidence of probative value; the Enquiry Officer can base his findings on such evidence even if it may not be sufficient for proving an offence in criminal case. This has been held in state of Haryana & another Vs. Ratan Singh 1977 (34) FLR 264 and in Nad Kishore Prasad Vs. State of Bihar 1978 (II) LLJ 84(SC). Similarly it has been held in Navnath Siddhappa Koll Vs. Shri Sidhewashwar Shakar Karkhana Ltd & Ors 1981 (II) LLJ 656 that when two views are possible and domestic Enquiry Officer takes one particular view, the order passed pursuant to that view cannot be said to be "for patently false reasons". This position would not hold well in cases where the accused is acquitted on technical grounds. In that case the Enquiry Officer or Disciplinary Authority would be free to take action in their sole discretion. There won't be any embargo or any snag in taking such a course of action. For correctly determining the simultaneity or otherwise of the two proceedings we should carefully X-ray the terms and conditions of acquittal or conviction in the criminal proceedings. If the accused is acquitted honourably things would be easy but when an



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accused is acquitted on benefit of doubt and on technical grounds i.e. lack of jurisdiction in the court trying the offence, lack of sanction of prosecution and the like, then the matter would need a close scrutiny as regards the element of prejudice and so on.

However, before referring to the two sets of verdict of the Supreme Court touching this point I shall refer to certain High Court cases which have their own reasoning and which have not been technically overruled and which are little bit at variance with what has been ruled by the Supreme Court in this regard. The Delhi High Court in the case of Narender Kumar Vs. North Delhi Power Ltd. & Ors. 2005 (105) FLR 484 ruled that disciplinary proceedings and criminal proceedings under anti-corruption law could go simultaneously. The Karnataka High Court in the case Chikkanna Vs. Joint Director, Forest Survey of India – Bangalore & Ors. 2005 (2) LLN 760 held that acquittal in simultaneous criminal proceedings would not in any way come to the rescue of the workman in the disciplinary proceedings. In the case of Ch. Laxmikantham Vs. Chairman, State Bank of India and others 2006 (108) FLR 1144 the Orissa High Court observed that departmental proceedings and criminal proceedings against a bank employee could be initiated concurrently.

The overwhelming view till the case of M. Paul Anthony Vs. Bharat Gold Mines Ltd (1999) 3 SCC 679 was that the scope of two proceedings i.e. departmental and criminal was altogether different and they could be continued independently. This case also affirmed this position but then there was a perceptible deviation when in this case the court felt that when both the proceedings were based on the same set of facts, which were sought to be proved by the same witnesses i.e. Police and Panchas and when the court had already acquitted the appellant by rejecting the prosecution story, then in such situation disciplinary action against the appellant could not be sustained. In this Captain M. Paul Anthony's case the consensus of judicial opinion on a basic principle that proceedings in

a criminal case and departmental proceedings could go simultaneously was reiterated with certain exceptions. It was further held that both the proceedings operate in distinct and different jurisdictional areas. In this case special reference was made of the cases of Delhi Cloth & General Mills Ltd Vs. Kaushal Bhan AIR 1960 SC 806, Tata Oil Mills Ltd. Vs. Workmen AIR 1965 SC 155 and Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd. (1988) 4 SCC 319. Broadly speaking the departure from the usual principle that the two types of proceedings could go side by side was perceived in the Supreme Court cases of Union of India Vs. Jaipal Singh (2004) 1 SCC 121; Commissioner of Police – New Delhi Vs. Narender Singh (2006) 4 Scale 161; R P Kapur Vs. Union of India & Ors. AIR 1964 SC 787 and Corporation of the City of Nagpur, Civil Lines Nagpur & Ors Vs. Ramchandra G Modak & Ors AIR/984 SC 626.

Very lately the Apex Court in the case of G.M. Tank Vs. State of Gujarat (2006) 3 RLW 2480 altered the trend of case law in this regard and held that when facts and evidence in the departmental as well as criminal proceedings were the same and when the witnesses were the same and when the Criminal Court acquitted the employee then in that case contrary recording of the findings in departmental proceedings, would be unfair and oppressive and the dismissal order based on the same set of facts and evidence would be set aside. In this case the court repelled the argument that unlike in criminal trial, the degree of proof in domestic enquiry is restricted to preponderance of probability and not beyond reasonable doubt and that the acquittal in a criminal trial on the charges of corruption under the PC Act ipso-facto could not be projected as a weapon to undo the result of a validly held departmental enquiry. In the case of G.M. Tank the court did not agree with the ratio decidendi of the cases of Anil Kumar Nag Vs. General Manager (P) Indian Oil Corporation Ltd. Haldia & Ors, (2005) 7 SCC 764; Depot Manager AP State Road Transport Corporation Vs. Mohd. Yousuf Miya & Ors. and Shri Rama Rao AIR 1963 SC 1723 Vs. Krishna Kali Tea Estate (2004) 89 CC 200.

In spite of the Akhil Bhartiya Chah Mazdoor Sangh & Anrs, enough cases and laws on both the sides the basic position is unaltered inasmuch as that departmental proceedings and a proceedings in a criminal case can proceed simultaneously as there is no legal bar in their being conducted side by side although separately. However, when the case is based on identical and similar set of facts and the charge against the employee in a criminal case are of a grave nature then it is desirable to await the result and conclusion of criminal trial but the holding of departmental enquiry cannot be kept in abeyance indefinitely. Now a deviation from this settled position has been resorted to and restricted to the outcome of the criminal case if the employee has been acquitted honourably in the criminal case based on identical set of facts then in that event it would not be desirable to punish him in departmental proceedings and

doing so has been termed by the Apex Court as oppressive and unfair but this case also does not disturb the earlier position that ordinarily both the proceedings can go concurrently. Even in acquittals in criminal case the same should be on merit and on honourable terms. If the employee is given benefit of doubt then such an acquittal would not stand in the way of awarding punishment to such an employee in the disciplinary proceedings. Again if the employee were acquitted because of lack of sanction or jurisdictional deficiencies, then also such acquittal would not save the employee in departmental proceedings. I, therefore, personally feel that basics in this regard have not been altered and things are to be determined having regard to specific fact situations. So also if there is anything, which gives the conception of infinity, it is the extent of variety of verdicts on a vexed proposition of labour laws. □