

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

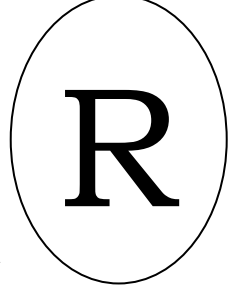
DATED THIS THE 11TH DAY OF JANUARY 2017

PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA



WRIT PETITION NO.36761/2014 (GM-KLA)

BETWEEN:

D.G. MANJUNATH
S/O LATE GANDEPPA
AGED ABOUT 62 YEARS
TDO (RETIRED)
DR. B.R.AMBEDKAR DEVELOPMENT
CORPORATION, DAVANGERE
RESIDING AT NO.144
ANNAPOORNA NILAYA
5TH CROSS, J.C.R. LAYOUT
CHITRADURGA-577 501

...PETITIONER

(BY SRI RAVI H.K., ADVOCATE)

AND:

1. KARNATAKA LOKAYUKTA
M.S. BUILDING
DR. B.R.AMBEDKAR ROAD
BANGALORE-560 001
REPRESENTED BY ITS REGISTRAR
2. ADDITIONAL REGISTRAR OF ENQUIRIES-6
THE OFFICE OF KARNATAKA LOKAYUKTA
BANGALORE-560 001
3. DR. AMBEDKAR DEVELOPMENT CORPORATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR
DAVANAGERE-577 002

4. T.H.VASANTH
AGED ABOUT 45 YEARS
S/O HANUMANTHAPPA
HADADI VILLAGE
DAVANAGERE TALUK
DAVANAGERE DISTRICT - 577 002 ...RESPONDENTS

(BY SRI G. MALLIKARJUNAPPA, ADVOCATE FOR R1 & R2;
SRI C. JAGADISH, ADVOCATE FOR R3; R4 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 17.05.2012 (ANNEXURE-D) PASSED BY RESPONDENT NO.1 AND THE ENQUIRY PROCEEDINGS INITIATED PURSUANT THERETO.

THIS WRIT PETITION COMING ON FOR HEARING, THIS DAY, **H.G.RAMESH J.**, MADE THE FOLLOWING:

ORDER

H.G.RAMESH, J. (ORAL):

1. *Whether acquittal of an employee in the criminal case precludes a Disciplinary Authority from holding a Disciplinary Inquiry against him as per service rules on the same charge made against him in the criminal case?*

This is the question that requires to be considered in this case. The question is answered in the negative by following the law laid down by a three Judge Bench of the Supreme Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd.* [(2005)7 SCC 764].

2. In this writ petition, petitioner is challenging the order dated 17.05.2012 (Annexure-D) passed by Upalokayukta-1, State of Karnataka, nominating an Inquiry Officer to conduct departmental inquiry against the petitioner. The order reads as follows:

"Whereas in exercise of the powers conferred on me under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 and in pursuance of the Orders read above, I, Justice S.B. Majage, Upalokayukta-1, State of Karnataka hereby nominate Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bangalore, as the Inquiry Officer to frame charges and to conduct departmental inquiry against the aforesaid official/s."

Pursuant to the aforesaid order, the following charge is framed against the petitioner by Additional Registrar of Enquiries-4, Karnataka Lokayukta, as per Articles of Charge dated 28.05.2012 (Annexure-E):

"That, you Sri D.G.Manjunath the DCO, while working as the Taluk Development Officer at SC & ST Development Corporation Office at Davanagere District, the complainant namely G.H.Vasantha S/o Hanumanthappa applied on 19.11.2005 for loan to purchase two cows under self-employment scheme and his application came to you for report after verification, but you did not visit the spot or did not make any report till 29-12-2005 and on 29-12-2005 took bribe of Rs.500/- from the complainant to show official favour, failing to maintain absolute integrity and devotion to duty, the act of which was un-becoming of a Government Servant and thereby committed mis-conduct as enumerated U/R 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966."

3. The sole contention urged by learned counsel for the petitioner is that the petitioner has been acquitted of the very charge now framed in the departmental inquiry, by the Criminal Court in Spl.Case(Lokayuktha) No.4/2006 by judgment dated 07.12.2010 as per Annexure-C, and hence, the impugned order dated 17.05.2012 directing conduct of Departmental Inquiry against the petitioner on the same charge is unsustainable in law. In support of the contention, learned counsel for the petitioner has relied on the following three decisions:

1. G.M.Tank v. State of Gujarat [(2006)5 SCC 446]
2. Nanjunda & Ors vs Sri Chamarajendra Zoological Garden & Ors [ILR 2009 KAR 2008]
3. H. I. Kazi v. J.C. Agarwal [1981(2) L.L.J. 410]

4. We have examined the matter in the light of the above three decisions relied on by learned counsel for the petitioner and also a three Judge Bench decision of the Supreme Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd.* [(2005)7 SCC 764]. In our opinion, the question of law raised by the petitioner is clearly

answered against him by the Supreme Court in *Ajit Kumar*

Nag as per the following observations made therein:

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". **Acquittal of the appellant by a Judicial Magistrate, therefore, does not *ipso facto* absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."**

(Emphasis supplied)

5. As stated by the three Judge Bench of the Supreme Court in *Ajit Kumar Nag* extracted above, termination of

criminal proceedings against an employee does not *ipso facto* absolve him from the liability arising under the disciplinary jurisdiction as per service rules. The reason stated therein is that strict rules of evidence and procedure would not apply to departmental inquiries. The rule relating to appreciation of evidence in the two proceedings is also not similar. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. It is also stated that the two proceedings, criminal and departmental, are entirely different and they operate in different fields and have different objectives.

6. In view of the decision of the Supreme Court in *Ajit Kumar Nag* extracted above, we reject the contention urged by learned counsel for the petitioner that acquittal of the petitioner in the criminal case will *ipso facto* absolve him from the liability arising under the disciplinary jurisdiction as per service rules. In our opinion, the petitioner's acquittal in the criminal case does not preclude the Disciplinary Authority from holding a Disciplinary Inquiry against him,

on the same charge made against him in the criminal case.
The writ petition is accordingly dismissed.

Petition dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*mn/-