

(1995) 03 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 1939 of 1992

Chandrakant Raoji Gaonkar

APPELLANT

Vs

Bombay Port Trust and Others

RESPONDENT

Date of Decision : 03-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 162, 167
Penal Code, 1860 (IPC) — Section 114, 280, 420

Citation : (1996) 3 LLJ 558

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

Bench : Single Bench

Judgement

S.H. Kapadia, J.—By this writ petition, petitioner seeks to challenge orders dated 4.2.1991 and 9.6.1992 passed by the Bombay Port Trust Authorities by which the services of the petitioner stood terminated. By this writ petition, petitioner is also seeking reinstatement with continuity of service and full back wages together with all consequential benefits.

2. The facts giving rise to this petition, briefly, are as follows. On 19.1.1974, the petitioner joined B. P. T. as a Mazdoor. On 20.9.1987, petitioner was suspended pending criminal prosecution. On 20.9.1987, he was a Labour Supervisor (Mukadam) in B. P. T. He was charged for theft in the prosecution. Three criminal prosecutions were, in fact, launched inter alia against the petitioner and others. The impugned charge in the criminal proceedings against the petitioner was the common intention to commit theft of Erythromycin Estolate Powder by dishonestly removing the same from the drums which were kept in Shed No. IV, Timber Pond, B. P. T. Sewree, Bombay; and in furtherance of common intention to deceive and cheat shipping agency and B. P. T. by dishonestly substituting chilly powder in the drums in place of Erythromycin Estolate Powder pursuant to criminal conspiracy between the petitioner and certain outsiders (hereinafter referred to for the sake of brevity as "Veer and Associates"). In all the three criminal cases, Petitioner was exonerated on merits. During the pendency of the

criminal prosecutions, Petitioner was also given a charge-sheet on 15.8.1988. Under the said charge-sheet 5 charges came to be levelled against the petitioner according to the statement of allegations. In the context of Charge No. 1 it was alleged in the statement of imputation that while posted at Sewree Timber Pond, petitioner was arrested by the Sewree Police Station in connection with C. R. No. 136/1987 and while in police custody petitioner had made a statement on 28.8.1987 before the Panch witnesses, namely, Police Inspector Kale, Police Sub-Inspector Shinde and other policemen that between 3.8.1987 and 8.8.1987, petitioner had asked an outsider by the name Pandurang Veer and his associates to commit theft of Erythromycin Powder belonging to M/s. Parag Pharmaceutical India Ltd., from Sewree Timber Pond. According to the charge-sheet, petitioner also agreed to point out the place where the fibre drums containing Erythromycin Powder was kept. According to the charge-sheet, petitioner had thereafter taken Panchas and the Policemen to Sewree Timber Pond and had, in fact, pointed out that place to the Police in Shed No. 3 B. P. T. between Bay No. 6 and Bay No. 7 as recorded in the Panchanama dated 18.8.1987 by the Police. According to the charge-sheet, Veer and Associates had also disclosed voluntarily before the Police Inspector Kale and Police Sub-Inspector Shinde on 19.8.1987 and on 21.8.1987 that Veer and Associates had replaced Erythromycin Powder contained in 20 drums out of 40 drums with chilly powder in Shed No. 3 at Sewree Timber Pond between 3.8.1987 and 8.8.1987 with the consent of the petitioner and had kept the said powder in plastic bags which in turn were kept in the gunny bags on the south side of Shed No. 3 with the intention of committing theft. That both of them had pointed out the place where 40 fibre drums containing Erythromycin Powder were kept and they had also pointed out the place where they had kept 10 gunny bags with the intention of committing theft. These facts have also been recorded in the Panchanama and reliance accordingly has been placed in the domestic inquiry on the said Panchanamas made by the Police. Accordingly, the petitioner was charged in the domestic enquiry on the basis of the said Panchanamas on the ground that they had failed to maintain absolute integrity and devotion to duty by unauthorisedly consenting to the unauthorised removal of Erythromycin Powder belonging to M/s. Parag Pharmaceutical India Ltd., from Sewree Timber Pond between 3.8.1987 and 8.8.1987 by Veer and his Associate and thereby the petitioner is charge-sheeted for violation of Regulation No. 3(1) of the Conduct Regulations, 1976. As regards Charge No. 2, it is stated in the imputation that while the petitioner was in Police custody, one Vithoba Mahadeshwar the friend of the petitioner and also the B. P. T. employee had produced Rs. 20,000/- before the police and had stated that he had taken loan of Rs. 15,000/- and 10,000/- respectively on 24.7.1987 and 25.7.1987 respectively. Panchanama dated 20.8.1987 drawn for Rs. 20,000/- disclosed that the amount was received by the petitioner as commission from the other accused, namely Shri Pandurang Veer. Here also heavy reliance is placed on Panchanama dated 20.8.1987. Accordingly it is alleged that the petitioner has failed to maintain absolute integrity and devotion to duty by unauthorisedly accepting Rs. 20,000/- as commission from Shri Veer in violation of Resolution 3(1) of B. P. T.

Regulations, 1976. As regards charge No. 3 in the disciplinary inquiry, it is alleged that the petitioner, while he was in police custody, had voluntarily made a statement on 26.8.1987 before the Panch witnesses consisting of Police Sub-Inspector Karate and Police Sub-Inspector Shinde to the effect that during May, 1987 he had asked Shri Veer and his Associates to commit theft of Erythromycin Powder at the Sewree Timber Pond. Under this charge it is alleged that the said powders belonged to M/s. Shevantilal Kantilal Pvt. Ltd. In all other respects charge No. 3 is similar to Charge No. 1 in the disciplinary inquiry except that the ownership of the said powder in the first case was the of M/s. Parag Pharmaceutical India Ltd., whereas in Charge No. 3 the powder belonged to M/s. Shevantilal Kantilal Pvt. Ltd. As regards Charge No. 3 also, the facts recorded in the Panchanama drawn by the police are relied upon. Similar disclosures made in the presence of Police Inspector Karate and Sub-Inspector Shinde by Veer and Associates have been relied upon and accordingly the petitioner was charged with convene with Veer and Associates to commit theft of 150 Kg. of Erythromycin Powder by replacing the contents of the Fibre drums with seeds. It is also alleged that the property involved in this case was recovered at the instance of Veer on 31.8.1987 and the recovery Panchanama also indicates that Veer had again voluntarily stated before the Assistant Commissioner of Police that the theft was committed by them with the consent of the petitioner. The petitioner thus failed to maintain according to Charge No. 3 absolute integrity and devotion to duty by unauthorisedly consenting to the unauthorised removal of Erythromycin Powder belonging to M/s. Shevantilal Kantilal Pvt. Ltd. during May 1987 by Veer and Associates in connivance with the petitioner. As regards Charge No. IV of the disciplinary inquiry, the petitioner while in police custody on 24.8.1987 had voluntarily stated before the Panchas consisting of Police Inspector Shri Karate and Shri Shinde that between 30.6.1987 and 1.7.1987 he had asked Shri Pandurang Veer and Associates to commit theft of Erythromycin Powder belonging to Company by name M/s. Chemic Fine Pvt. Ltd., from Sewree Timber Pond and had further agreed also to point out the place where the drums containing the powder were kept. According to the charge-sheet, by placing reliance on the Panchanama, it was alleged that the petitioner led Panchas and the police to the Sewree Timber Pond and had specifically pointed out the place of recovery in Shed No. IV. According to the said Charge No. IV, similar disclosures were also made by Veer and Associates on 24.8.1987 and that the relevant facts also show that the accused had committed theft of 169 kgs. Powder of Erythromycin at Sewree Timber Pond by replacing the drums with the consent and connivance of the petitioner. According to the said Charge No. IV the entire property was recovered by the Police on 22.8.1987 and the recovery Panchanama showed that the accused Veer had stated before the Panchas consisting of A. C. P. Nakhwa, Senior Police Inspector Khan, Police Inspector Karate and Police sub-Inspector Shinde that the theft was committed with the consent of the petitioner. Therefore, it is alleged by way of Charge No. IV that the petitioner had failed to maintain the absolute integrity and devotion to duty by unauthorisedly consenting to the illegal removal of Erythromycin Powder

belonging to M/s. Chemic Fine Pvt. Ltd. from Sewree Timber Pond between 30.6.1987 and 1.7.1987 by Veer and Associates and thereby the petitioner had violated Regulation 3(1) of the Conduct Regulations, 1976. According to Charge No. V, the petitioner, while posted at Sewree Timber Pond during 1987, had also unauthorisedly communicated the information about the consignments of Erythromycin Powder belonging to M/s Parag Pharmaceutical India Ltd. and M/s Shevantilal Kantilal Pvt. Ltd. and M/s Chemic Fine Pvt. Ltd. which was in the course of export to Veer and Associates which ultimately resulted in theft of the said consignments. According to Charge No. V, the Petitioner had also made a voluntary statement in the presence of Police Officers on 18.8.1987, 26.8.1987 and 24.8.1987 that he had asked Veer and Associates to commit theft of Erythromycin Powder belonging to the abovementioned Companies from Service Timber Pond and that he had shown the places where the consignments were kept and this was corroborated by the disclosures made before the Panch witnesses and police officers by Veer Associates. Accordingly, the Petitioner was also charged with illegal communication of information about the consignments of Erythromycin Powder at Sewree Timber Pond belonging to the said three Companies and thereby charged under Regulation No. 8 of B. P. T. Conduct Regulations, 1976. As compared to the charges framed in the domestic inquiry, at this state, we may also usefully refer to the charges in the three criminal cases instituted during the relevant time against the Petitioner and the other accused, namely, Veer and Associates in criminal case no. 987/P/87 the charge against the accused No. 4. i.e. the Petitioner herein was that all the accused had between 12.5.1987 to 21.5.1987 in furtherance of common intention committed theft of Erythromycin Powder by dishonestly removing the drums which were kept and stored at B. P. T. and in furtherance of common intention deceived the shipping agency and B. P. T. fraudulently and dishonestly by substitution inferior material in the said drums in place of Erythromycin Powder and that all the 6 accused in that case including the petitioner had conspired and were parties to the criminal conspiracy and that in furtherance of common intention during the aforesaid period dishonestly received stolen property and had retained the stolen property, namely, Erythromycin Powder and that accused Nos. 5 and 6 had also voluntarily assisted in concealing and disposing of the same. Similarly in Criminal Case No. 988/P/87 the 4 accused including the petitioner were charged on the basis that during the period 30.6.1987 to 1.8.1987, accused Nos. 1 to 4 in furtherance of their common intention at Sewree committed theft of Erythromycin Powder by dishonestly removing the said drums from Shed No. IV Timber Pond, B. P. T. Sewree, Bombay and in furtherance of their common intention deceived and cheated the shipping agency and the B. P. T. So also, identical charges were levelled in Criminal Case No. 965/P/87 against the 4 accused including the petitioner on the basis that during the period from 3.8.1987 to 14.8.1987, accused Nos. 1 to 4 in furtherance of their common intention at Sewree Bombay, had committed theft of Erythromycin Powder by dishonestly removing the said property from the drums and all the accused thereby deceived and cheated B. P. T. and shipping agency fraudulently and

dishonestly by putting chilly powder in the drums in place of Erythromycin Powder and all the accused were parties to the criminal conspiracy and, therefore, they were charged under Sections 280, 420 read with Section 114 of the Indian Penal Code. At this stage, it may be clarified that on going through the 5 charges in the domestic inquiry vis-a-vis the charges in the three criminal cases, one finds that the subject matter is common, namely, common intention to commit theft of Erythromycin Powder by dishonestly removing the powder from the drums in the Timber Pond and thereby cheating B. P. T. and the shipping agency by putting chilly powder in the drums in place of Erythromycin Powder and accordingly by entering into conspiracy, B. P. T. and the shipping agency were sought to be cheated pursuant to the common intention. This is important because one of the main contention raised by the petitioner in this case is that if one compares charges in the three criminal cases with the five charges in the domestic inquiry, it is clear that the charges are common and in the circumstances, I have endeavoured to set out at great length the charges in the domestic inquiry and the charges in the three criminal cases. This is, of course, disputed by the B. P. T. To complete the chronology of events it may be mentioned that the petitioner was, in fact, suspended on 2-9-1987 specifically pending the said three criminal cases. The charges-sheet was given on 15.8.1988 as stated above. Inquiry commenced on 21.2.1989. Ultimately, the findings of the Inquiry Officer were against the petitioner and the petitioner came to be dismissed for the above five charges on 4.2.1991. The petitioner preferred an appeal to the Appellate Authority which was also dismissed on 9.6.1992. At this stage, it may be mentioned that during the period August 1989 upto 22.1.1991 all the three criminal cases came to be dismissed and the petitioner was honourably acquitted on merits and not on technical grounds. These are the basic facts required to be mentioned in this judgment.

3. Dr. Kulkarni, learned counsel appearing on behalf of the petitioner submitted that the subject matter of the disciplinary inquiry is the same as abovementioned three criminal cases. Dr. Kulkarni submitted that one has to see the substance of the charges levelled against the petitioner in the criminal cases vis-a-vis the charges in the disciplinary inquiry. Dr. Kulkarni submitted that one of the important circumstances required to be taken into account was that, in fact, the petitioner was suspended on 28.9.1987 pending criminal trial which is also indicative of the fact that even according to the Management, charges against the petitioner were involving common intention to commit theft of Erythromycin Powder which was worth huge amount. Dr. Kulkarni further submitted that the charges in the disciplinary inquiry are the same as the charges in the criminal case. Dr. Kulkarni submitted that if one analyses the charge-sheet in the criminal case, along with the findings and the judgment given by the Criminal Court in three cases referred to above vis-a-vis the charges/grounds/evidence relied upon by the Inquiry Officer in the findings, it is clear that the subject matter of both inquiries was the same. Dr. Kulkarni accordingly placed reliance on the judgments of the Supreme Court and submitted in such cases where Criminal

Courts give honourable acquittal, normally, it is expedient to drop the same charges or not to proceed with the domestic inquiry and if the domestic inquiry has proceeded on the same subject matter then in view of the honourable acquittal by the Criminal Courts, the Management also should have acquitted the petitioner from the charges of misconduct particularly because the subject matter of both the inquiries was the same. Dr. Kulkarni further contended that, in the present case, the exclusive evidence on which the Inquiry Officer has placed reliance is the evidence of the Panch witnesses and the Panchanamas. Dr. Kulkarni submitted that the only factor on which the reliance is placed by the Inquiry Officer to link the petitioner with the illegally divulging information regarding the contents of the container is Panchanama and the statements made to the Police. Otherwise, in all other respects, the charges are the same. Dr. Kulkarni further submitted that in view of the said acquittal by the Criminal Courts, therefore, the petitioner was entitled to be acquitted and that the petitioner cannot be found guilty of misconduct. On the other hand, Mr. R. S. Pai, learned counsel appearing for B. P. T. contended that in the present case the subject matter of the two inquiries is different. It was contended by Mr. Pai that the object of a criminal inquiry is different from the object of a domestic inquiry. He submitted that the standard of proof in the criminal cases was different from the standard of proof required in domestic inquiry. He further submitted that the standard of proof in a domestic inquiry was preponderance or probabilities which was not the case in the matter of criminal case/trial where the charges are required to be proved beyond the reasonable doubts. Mr. Pai contended that, in the present case, the subject matter of the two inquiries is, therefore different. Mr. Pai further contended that the evidence is required to be looked at in the context of the preponderance of probabilities in a domestic inquiry and, if so, examined in the present case, it is clear that the statements were made before the police and the panchas (mainly consisting of Police Officers) during the investigation proceedings in the criminal cases, that it was the petitioner who had divulged the information regarding the contents of the drums to Veer and Associates who were the outsiders and pursuant to that information theft was committed by Veer and Associates. Mr. Pai further contended that Shri Mahadeshwar voluntarily brought Rs. 20,000/- before the police. The Panchanama with regard to Charge No. 2 clearly disclosed that the amount was received by the petitioner and that the said amount was revived as commission from Veer and Associates and that the said amount was handed over by the petitioner to Mahadeshwar. Mr. Pai contended that in the above circumstances the essence of the charges before the disciplinary enquiry and the subject matter of the disciplinary inquiry and/or charges therein was different and distinct from the charges levelled in the criminal cases. Mr. Pai further contended that the charges in the criminal cases referred to, the intention to commit theft. That was not so in the case of domestic inquiry and, therefore, it cannot be said that the subject matter of the two inquiries was the same. Mr. Pai further contended that even the evidence was different in both the inquiries. Mr. Pai further contended that even assuming that the evidence was common in both inquiries, namely,

statements before the police or the statements in the Panchanamas, nothing prevented the Inquiry Officer from placing reliance on the said evidence particularly when the standard of proof in criminal trial on the basis of which acquittal was granted in the criminal cases was different from the standard of proof based on the preponderance of probabilities in domestic inquiry. Mr. Pai contended that, in the present case each of the witnesses was examined by the Inquiry Officer and merely because the said witnesses were police officers who were also examined in the criminal case or merely because the said witnesses were common in both the inquiries does not mean that their statements before the Inquiry Officer should not be treated as evidence for the purpose of disciplinary inquiry. Mr. Pai also placed reliance on the judgment of the Supreme Court in the case of *Bharat Coking Coal Ltd. v. B. K. Singh*, reported in 1994 II CLR 1083 *State of Andhra Pradesh Vs. Sree Rama Rao*, and *J. K. Cotton Spinning and Weaving Company Ltd. v. Its Workman* reported in 1965 II LLJ 153 in support of his above contentions. Mr. Pai also placed reliance on the judgment of the Division Bench of this Court in the case of *Municipal Corporation of Greater Bombay v. S. E. Phadtare & Ors.* reported in 1994 I CLR 301. He also placed reliance on the judgment of the Supreme Court in the case of *Nelson Motia v. Union of India & Anr.* reported in 1992 I CLR 825 in support of his contentions that even if acquittal is given by the Criminal Court, it is open to the Management to hold domestic/disciplinary inquiry particularly because the standard of proof and the objects of the two inquiries are not common but they are different. As regards legal submission Dr. Kulkarni has placed heavy reliance on the judgment of the Supreme Court in the case of *Sulekh Chand and Salek Chand v. Commissioner of Police & Ors.* reported in 1990 I CLR 225. In the light of the above arguments, it may be mentioned that firstly this Court has examined in great detail as stated hereinabove the scope of the charges in the three criminal cases vis-a-vis the 6 charges in the domestic inquiry. I have also analysed notes of evidence submitted by Dr. Kulkarni in support of his contention that if one looks at the proceedings in the domestic inquiry, it is clear that not only charges are same vis-a-vis the criminal cases but even the grounds and the evidence on which the Inquiry Officer has placed reliance is common. In the circumstances, Dr. Kulkarni has relied upon the abovementioned judgment of the Supreme Court in the case of *Sulekh Chand and Salek Chand*, (supra) and submitted that acquittal on merits and not on technical ground as in the present case would warrant as a necessary consequence of reinstatement of the delinquent and quashing of the proceedings by way of disciplinary inquiry. I find considerable merit in the contention of Dr. Kulkarni. The charges of the two inquiries are common. The grounds are common. The evidence to link the petitioner with the charge of connivance to commit theft of the Powder is also common and in the circumstances the judgment of the Supreme Court in the case *Sulekh Chand and Salek Chand*, (supra) would squarely apply to the facts of the present case. Apart from the above judgments, it may also be mentioned that now it is well settled by various decisions of the Supreme Court that where the accused is acquitted honourably or completely exonerated of the charges in

criminal cases, it would be inexpedient to hold departmental inquiry on the same charges or the grounds or evidence but merely because the accused is acquitted the power of the Authority concerned to continue the inquiry is not taken away and if there is an independent material to show that the delinquent can still be prosecuted under the disciplinary inquiry then the inquiry can still proceed. But if it is found that the disciplinary inquiry has proceeded on the basis of the same charges or same grounds or same evidence then acquittal in the Criminal Court would certainly result in quashing the disciplinary inquiry on the same charges. There is a normal rule which applies in the present case. In the case of *Corporation of Nagpur v. Ramchandra G. Modak*, reported in AIR 1984 626, a similar question arose before the Supreme Court. In the case reported in AIR 1984 page 636, *Anoop Jaiswal v. Government of India*, it has been held by the Supreme Court categorically that not only the charge in the two inquiries may be the same but even if the grounds or evidence is common then normally the acquittal in criminal cases would warrant as a matter of expediency setting aside of the disciplinary proceedings. Similarly in the case of *Abdul Hakim Ahmad v. Dist. Superintendent of Police & Ors.* reported in GLR 1978 (Vol. XIX), a similar question arose. It has been held by the Gujarat High Court with which I respectfully, agree, that in such cases the heart of the problem is not in the matter of standard of proof by nature of evidence. The Gujarat High Court, has held that on the basis of the same material and on the basis of reappraisal of the same evidence which was there before the Criminal Court, without anything more, it is not open to the Disciplinary Authority to take a contrary view and if that is permitted then it would render the judicial system nugatory. The proposition that on the same material and reappraisal of the same evidence it is open to the Disciplinary Authority to take contrary view would affect the power of judicial review being taken by the Competent Court of Law and if this was accepted as a true proposition of law, it would undermine the respect for the judicial administration by the Competent Court. The true proposition of law, according to the Gujarat High Court in the above judgment is that, where the departmental proceedings cannot be entertained as a matter of course without anything more and where the Competent Court of law has acquitted the delinquent then it is not open to the Inquiry Officer to reappraise the same evidence and the same material and the same grounds and take a contrary view but if in the domestic inquiry an independent evidence can be established and if an independent proof be shown then certainly it is open to the Management to proceed with the Disciplinary Inquiry. In the said Judgment it has been further held that the question of standard of proof or degree of proof in departmental inquiry as distinguished from the criminal proceedings is totally irrelevant in the context of appreciation of oral evidence and in the context of credibility of a witness. These will not depend on the entire of inquiry. These will not depend on the form of inquiry. If the evidence is uninspiring and that evidence is found to be uninspiring by the Criminal Court, the same cannot be once again reappraised by the Inquiry Officer in the domestic inquiry. In my view, this judgment of the Gujarat High Court is in consonance with the judgment of the

Supreme Court in the case of Corporation of Nagpur v. Ramchandra G. Modak, (supra) which, as stated hereinabove, has squarely held that if the subject matter of the two inquiries is the same and if the grounds and evidence is the same then certainly the domestic inquiry cannot proceed. This is by way of expediency. One more judgment may also be relied upon in the case of J. K. Cotton Spinning and Weaving Company Ltd. (supra). The workman was charged with the theft of Company's property. The workman was also convicted of theft in the Criminal Court. Pending appeal of the concerned workman against his conviction, domestic inquiry came to be conducted by the employer. The workman refused to participate in the domestic inquiry. The workman requested that the domestic inquiry be proceeded with after appeal against conviction is decided. That application was rejected. The Inquiry Officer proceeded with the inquiry. Subsequently in the appeal against conviction, the workman succeeded. The question which arose in the said case of J. K. Cotton Spinning and Weaving Company Ltd. (Supra) as to whether the domestic inquiry and the proceedings therein were fair and proper. Whether the said proceedings were influenced by the conviction of the workman by the trial Court in the criminal proceedings. In that case the Supreme Court found on facts that the Inquiry Officer had considered the evidence on record before him and he was not influenced by the conviction of the workman in the Criminal Court. The Supreme Court also came to the conclusion on facts that there was nothing in the findings of the Inquiry officer to show that he was influenced by the conviction of the workman by the Criminal Court and that he was influenced by the evidence before the Criminal Court. Now applying the test of that judgment of the Supreme Court in the case of J. K. Cotton Spinning and Weaving Company Ltd. (supra) it is clear that in the present case as stated hereinabove, right from the charge-sheet in the domestic inquiry, grounds in the charges as well as the evidence, I find that the Inquiry Officer has been influenced by the evidence before the Criminal Court and in the circumstances taking into account the above judgments of the Supreme Court as well as the Gujarat High Court, it is clear that, in the present case, the only ground on which the workman has been punished in the disciplinary inquiry is the evidence before the Criminal Court in the form of statements before the Police Officers and the statements in the Panchanamas. In the above circumstances, I am satisfied that the termination effected by the Management was on the basis of the same grounds, same evidence and the same charges and, therefore, with the acquittal of the petitioner in three criminal cases the disciplinary proceedings should have been dropped and the petitioner should not have been punished for the charges in the domestic inquiry. In the circumstances, I find merit in the first contention advanced by Dr. Kulkarni on behalf of the petitioner.

4. There is no merit in the contention of Mr. Pai that in, the present case, the acquittal is not an honourable acquittal. I have gone through the judgment in all the three criminal cases. It is clear that the acquittal is an honourable acquittal on merits. It is not an acquittal only on technical grounds and in the

circumstances, there is no merit in the contention advanced on behalf of the B. P. T. that the inquiry could be proceeded with in the disciplinary proceedings. Now coming to the next contention, on merits also, it is contended by Dr. Kulkarni that if one goes through the facts of the present case even without reference to the criminal cases, one finds that there is nothing to link the petitioner with the outsider in the matter of the petitions divulging the information about the contents of the containers lying in the shed of B. P. T. to Veer and Associates who were admittedly outsiders. Dr. Kulkarni submitted in this regard that the petitioner was a Labour Supervisor (Mukadam). His duties were to provide labour. He was not the watchman of B. P. T. Dr. Kulkarni submitted that, in the present case, the charges proceeded on the basis of series of alleged thefts being committed in the B. P. T. over a period of 3 to 4 months. What was detected on 11.8.1987 was an existence of gunny bag containing Erythromycin Powder and what was detected in the container was 20 drums/bags of chilly powder in addition to 20 drums/bags of Erythromycin Powder. Dr. Kulkarni submitted that, in the present case, he is not disputing the fact that the gunny bags containing Erythromycin Powder was detected on 11.8.1987. However, Dr. Kulkarni submitted that there was nothing to link the petitioner with Veer and Associates except the statements before the Police in the criminal cases in which the petitioner has been acquitted. Dr. Kulkarni further pointed out that, in the evidence before the Inquiry Officer, the petitioner has categorically deposed in terms that over a period of 3 to 4 months during which thefts have taken place in B. P. T., apart from the Labour Supervisor (Mukadam), there was a Shed Superintendent, Tally Clerk, various gangs which operate and in the circumstances, there is no linking factor established by the Management to indicate that the thefts took place on account of the information divulged by the petitioner to Veer and Associates. Dr. Kulkarni submits that if the statements in the Panchanama and of the Police Officer is kept aside, then it is clear that there is no evidence whatsoever to link the petitioner with theft or with conspiracy to commit theft. Dr. Kulkarni further submitted that even when the petitioner deposed that there were other officers including shed Superintendent who was supervising Cargo and whose duty was to supervise Cargo, no evidence has been led by the B. P. T. to indicate as to how the petitioner could be linked with the theft. No evidence of Tally Clerk was led by the B. P. T. No evidence of the Shed Superintendent was led by B. P. T. and the only evidence is of the Police Officers and the witnesses who gave given evidence before the Criminal Courts. Dr. Kulkarni further contended that even that evidence is only a reproduction of Panchanamas before the Criminal Courts and there is nothing to indicate that it is the petitioner who was responsible for the theft in question. In the above circumstances. Dr. Kulkarni repeated that with the acquittal by the Criminal Courts, it is not open to the Inquiry Officer to reappraise the same evidence and come to the different conclusion and even on merits, it is not conclusively proved that the theft had taken place at the instance of the petitioner and in the circumstances, Dr. Kulkarni contended that the petitioner cannot be attributed with the misconduct as alleged. Dr. Kulkarni specifically referred to the judgment

on which the reliance has been placed heavily by Shri Pai appearing on behalf of the B. P. T. In the case of *Municipal Corporation of Greater Bombay v. Phadtare & Ors.* (supra) this Court was concerned with the statements of Sub-Inspector Kamble which was recorded before the Inquiry Officer. In that case one of the points which arose for consideration was whether the Labour Court has misdirected itself in considering the testimony of Sub-Inspector Kamble. The Division Bench of this Court came to the conclusion that the testimony of the Police Inspector Kamble should have been accepted and that there was no rule of evidence which requires that the testimony of the Police Officers cannot be accepted without corroboration. One of the points which arose in that case was interpretation of Section 162 of the Criminal Procedure Code. The argument was that the statement of Sub-Inspector Kamble was not admissible in view of Section 167 of the Criminal Procedure Code before the Inquiry Officer. This argument was rightly turned down by the Division Bench of this Court on the ground that the provision of Criminal Procedure Code do not apply to the departmental proceedings. However, ratio of the said judgment in the case of *Municipal Corporation of Greater Bombay v. S. E. Phadtare & Ors.* (supra) do not apply particularly in view of the fact that sub-Inspector Kamble was eye witness to the incident of rioting of the workers of BEST and it was in this light that this Court taken a view that the statements was admissible even on facts and on law. In the present case, we are concerned with the evidence which was led before the Criminal Court which was dealing with the similar charge and the same evidence is being sought to be reappreciated by the domestic Inquiry Officer after acquittal by the Criminal Court. If one keeps aside the evidence before the Criminal Court, Dr. Kulkarni is right in his contention that there is no evidence on which reliance could be placed to link the petitioner with the charges levelled in the domestic inquiry. As stated hereinabove, the standard of proof in the two inquiries is different. It is not in dispute. What is important is the nature of evidence and if the evidence is uninspiring and not worthy of credence as so found by the Criminal Court in identical inquiry then the Domestic Inquiry Officer once against cannot reappreciate the same evidence and come to a different conclusion. According to Mr. Pai, in the present case, if one goes through the evidence before the Inquiry Officer, it is clear that information was given by the petitions to Veer and Associate regarding the place where the material was stored and Veer and Associate opened the container, kept the Erythromycin Powder in a separate bag and in the container 20 drums/bags were put containing chilly powder by Veer and Associate and in the circumstances it is contended by Mr. Pai that evidence conclusively proves that the information was divulged by the petitioner to Veer and Associate. As stated hereinabove, the entire edifice of the argument of Mr. Pai proceeded only on the basis of Panchanama and statements made before the Police in the criminal case in which the petitioner has been acquitted. There is no independent evidence apart from the Police Officers. There is no independent evidence of the B. P. T. employees to indicates the nature of work carried out by the Tally Clerk, by the Shed Superintendent particular when the offence is alleged to have taken place over a

period of 3 to 4 months and on the basis of the evidence on record, it is not possible to come to the conclusion that the petitioner was guilty of the charges levelled in the domestic inquiry. On the contrary, the Inquiry Officer has found that, in the present case, there is no eyewitness. The entire case is on circumstantial evidence and in the absence of any evidence whatsoever. I find that the petitioner is not guilty of the charges levelled in the domestic inquiry. I am fully conscious of the fact that under Article 226 of the Constitution, it is not open for this Court to reappreciate the evidence. However, in the present case, I find that there is no evidence whatsoever so as to inspire confidence and in the circumstances the Inquiry Officer erred by holding that the petitioner was guilty of the charges levelled against him as indicated hereinabove only on the basis of the statements made by the Police Officer which statements are nothing but reproduction of their statements before the criminal cases in which the petitioner was honourably acquitted. As regard the charge that Mahadeshwar, had brought voluntarily Rs. 20,000/- to the Police and had made a statement that he had received the said amount from the petitioner, the evidence cannot be relied upon because firstly it is the same evidence on which the prosecution sought to lay its foundation in the criminal cases. Secondly, as pointed by Dr. Kulkarni, V. P. Shekdar, Circle Police Inspector and Vigilance Officer of B. P. T. (P. W. 4) has categorically stated in his evidence that he had inquired with Shri Mahadeshwar as to who had given him loan. P. W. 4 has also categorically recorded a statement in that regard of Shri Mahadeshwar on 10.8.1988 when it is deposed by Shri Mahadeshwar that the loan was taken from Vishal Junnar Sahakari Path Pedhi for house repairs and in the circumstances Dr. Kulkarni has stated that, in fact, the entire evidence before the Inquiry Officer has not at all been considered by the Inquiry Officer. Dr. Kulkarni pointed out that although P. W. 4 has categorically indicated that the loan was taken from Vishal Junnar Sahakari Path Pedhi, there is no discussion whatsoever in the inquiry proceedings. Dr. Kulkarni further pointed out that even if one does not look at the criminal proceedings and one looks at the evidence before the Inquiry Officer, it is clear that even Veer has stated in his evidence that he was not knowing the petitioner. Large number of discrepancies are there in the findings of the Inquiry Officer. The Inquiry Officer had not even considered the evidence of defence witnesses and he has only proceeded on the basis of the statements made before the Police Officers and the Panchanamas which evidence was the part of the criminal cases. I find merit in the contention of Dr. Kulkarni that there is a total non-application of mind on the part of the Inquiry Officer, that there is no evidence whatsoever to link the petitioner with the theft and that in taking into account the overall view of the matter, it is clear that there is no evidence whatsoever to link the petitioner with the charges levelled in the domestic inquiry. In order to prove the petitioner guilty independent evidence was required to be led by the B. P. T. particularly when it is alleged that over a period of three months there were other officers like Shed Superintendent, Tally Clerk and the other gangs who were also supposed to look after the containers in the yard. It is the case of the B. P. T. that Veer and Associate were brought in at the behest of the petitioner. There is

also a watchman who is required to look after the entry and exit of the outsiders into the Shed. There is no evidence whatsoever to show that over the period of time when theft took place, B. P. T. had taken steps to stop the pilferage or theft. There is no evidence of watchman. There is no evidence to show as to how the outsiders entered the property. Also, there is no evidence of Security Officer to indicate as to how Veer and Associate stayed inside the Shed over night as alleged by the B. P. T. There is no evidence to show how the Tally Clerk maintains the record of the container. There is no evidence of the Shed Superintendent to show as to how he supervises the Cargo lying in the shed and the only evidence before the Inquiry Officer on the basis of which findings were given was the same evidence which was there before the Criminal Courts, namely, confession and statements made to the Police. In the present case, statements made to the Police have not been corroborated by the independent evidence. B. P. T. could have corroborated the said evidence which they have failed to do. In the above circumstances both on the question of law and on the question of facts, the petitioner is right in submitting that the disciplinary inquiry proceedings ought to have been dropped; that Management failed to prove their case against the petitioner qua the said charges in the domestic inquiry.

5. By way of alternative argument, it was contended by Mr. Pai on behalf of the B. P. T. that even assuming that the subject matter of the two charges is the same and even assuming that the witnesses examined by the Inquiry Officer were the same as the witnesses before the Criminal Court, the Inquiry Officer was entitled to come to a different conclusion viz-a-vis the findings in the three criminal cases. It is not in dispute as a proposition of law that the departmental proceedings can be held when the persons are acquitted by the Criminal Courts. Ultimately, it will depend on the facts of each case. As stated hereinabove the catena of decisions indicate that normally when the subject matter of the two inquiries is the same and the charges are common and so are the grounds then it is not expedient to hold the domestic inquiry when the Criminal Court has honourably acquitted the delinquent. It does not prevent the domestic Inquiry Officer from going into the independent evidence. It does not prevent the Management from holding inquiry independently. However, as stated hereinabove, in the present case, the subject matter of the two inquiries is common, the evidence is common, the grounds are common and even assuming the evidence on which the B. P. T. was entitled to place the reliance was there, the said evidence is not sufficient so as to link the petitioner with the charges levelled against him in the inquiry. It is indeed surprising that even when the petitioner put forth his case before the Inquiry Officer that there were other persons who were in charge and supervising and controlling all the material inside the shed, even in cross-examination, there is no suggestion to show that other Officer like Shed Superintendent or the Tally Clerk or the gang men were not aware of the contents of the Cargo and that the Labour Supervisor (Mukadam) was the only person who was aware of the said contents and that he had divulged the information to Veer and Associate. The evidence on which the

reliance is placed does not inspire confidence and only on the grounds of confession made before the Police, it is not possible to come to the conclusion conclusively that the petitioner was guilty of the charges levelled by the B. P. T. Before concluding, it may be mentioned that it is now well settled that conclusions on the question of fact by a Competent Authority or the Tribunal should not be interfered with under Article 226 of the Constitution but that general rule does not apply whenever important principles of service jurisprudence are discarded by the Inquiry Officer or Tribunal in reaching such findings and since the fundamental rule that the person should be punished only after entire evidence in the case is properly brought on record and in cases where the rules of natural justice are not complied with or where there is no evidence on record if finding is given erroneously then certainly under Article 226 of the Constitution this Court can interfere with the conclusion reached by the Inquiry Officer. As stated hereinabove, it has been held by a catena of decisions that in such matters the proposition that acquittal in Criminal Court does not operate as an absolute bar in departmental proceedings is well entrenched law and needs no reiteration but the difficulty arises when the departmental proceedings are led on the basis of the same material and on the basis of reappraisal of the same evidence. Without anything more in such cases, it is not open to the Inquiry Officer to take a contrary view because if that is done or allowed to be done then in that event an astounding proposition would arise, namely, that despite that judgment of the Competent Court the Inquiry Officer on the basis of the same material takes a different view and holds the person guilty when in the earlier proceedings the Criminal Court has honourably acquitted the employee. This is the case where the acquittal is on all counts by the Criminal Courts. It is an acquittal on merits. It is not an acquittal on technicalities and in the circumstances the disciplinary inquiry proceedings are hereby quashed and the petitioner is directed to be reinstated by B. P. T. with back wages and consequential benefits thereto including the continuity of service. Accordingly writ petition is allowed with no order as to costs.

Mr. Pai, learned Advocate appearing on behalf of the B. P. T. applies for stay of the operation of my judgment for 4 weeks. Dr. Kulkarni opposes the said application. In view of the facts and circumstances of the case, the above judgment is stayed for a period of four weeks.