
(1997) 03 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 2298 of 1988

Dattu Balu Sargar

APPELLANT

Vs

The Docks Manager, Bombay Port Trust and another

RESPONDENT

Date of Decision : 20-03-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227
Evidence Act, 1872 — Section 3

Citation : (1998) 1 BomCR 99

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

Bench : Single Bench

Advocate : A.V. Bandivadekar, for the Appellant; P. Ramaswamy, instructed by Mulla and Mulla, for the Respondent

Judgement

S.H. Kapadia, J.—By this petition, petitioner seeks to challenge the order of dismissal passed by the Bombay Port Trust dismissing the petitioner from service after holding departmental inquiry under Rule 22(2)(b) of the Disciplinary Rules applicable to the non-scheduled staff of the B.P.T. inter alia on the ground of theft and/or fraud and dishonesty in connection with the property of B.P.T.

2. The facts giving rise to this writ petition, briefly, are as follows :-

3. Petitioner came to be appointed as Mazdoor with B.P.T. in 1957. On 19th/21st June 1971, he was chargesheeted. According to the imputations annexed to the chargesheet, the petitioner came to Yellow Gate turnstile on 17-04-1975 at 1.30 P.M. in order to go out of Yellow Gate when he was searched by Head Constable No. 6323/I when he found something concealed on the petitioner's abdomen under his dhoti. At that time Police Constable No. 604/I was also present along with Shri Pereira, Preventive Officer from the Customs Department. The said Officer felt that the petitioner was carrying an article on his person which was concealed under his dhoti. Accordingly, the Yellow Gate Police Station was also informed and the Sub Inspector Pandit along with another Police Constable No. 14128/I visited the place and the petitioner was searched in the presence of the

Panchas. On searching him, it was found that, under the dhoti, the petitioner had put on an underwear and beneath the underwear he had tied a towel type of cloth. On removing the said cloth, it was found that the petitioner had on his person one Gear hub (bearing). On further interrogation, the petitioner led the Panchas and the Police to the place from where the petitioner had removed a Gear hub. The petitioner led the Police and the Panchas to Shed No.3, Indira Dock and pointed out Carton box which was broken from the top. it was found that the bearing bore the marks which were identical to the other bearings found in the Carton box. On the basis of the above incident, the petitioner was chargesheeted for misconduct of theft of the property lying in the custody of B.P.T. and/or fraud and dishonesty in connection with the Port Trust work and the property of B.P.T. under Rule 22(2)(b) of the Rules which reads as under:-"

Rule 22(2) -- An employee may be suspended, demoted and or reduced in grade, removed or dismissed without notice or any compensation in lieu of notice, for any of the following acts or omissions:

(b) -- Abetting, conniving at or attempting or committing of theft, fraud or dishonesty in connection with Port Trust work or property."

In the meantime, the complaint of theft came to be filed with the Yellow Gate Police Station and the petitioner was arrested and later on he was tried for the criminal offence of theft. He was also placed under suspension. By the judgment and Order dated 12-01-1978, the Metropolitan Magistrate acquitted the petitioner in the said criminal case. On acquittal, petitioner came to be reinstated in service and, thereafter, B.P.T. issued the above chargesheet on 21-06-1979 as stated hereinabove. Thereafter, the matter proceeded by way of Domestic inquiry. On behalf of the B.P.T, PW. 1 Shantaram B. Chavan was examined, P.W. 1, in his evidence, has stated that he has been serving the B.R.T. for 36 years and he was a Gate Inspector. He has further stated that, during the relevant time, he was attached to B.P.T. as a Shed Superintendent. P.W. 1 has stated in his examination-in-chief that on 17-04-1975 he was in the day shift from 8.00 a.m. to 5.00 p.m. RW. 1 has stated that the petitioner had led the Pancha witnesses and the Police to the second floor and had pointed out a Carton which was broken from the top and which contained number of packets and each of the packets contained a bearing. He has further deposed that the bearing hubs contained in the packets in the Carton were identical with bearing hub which was found on the person of the petitioner. He has further deposed that the entire Carton box was, thereafter, brought to the ground floor. It was also weighed and number of packets were also counted and the number of bearing hubs found in the packets were 61. In cross-examination, P.W. 1 has further stated, once again, that it was the petitioner who had led the entire team to the second floor and had pointed out the pallet P.W. 2 Shri Krishnaji Vithal Patkar, the Head Constable No. 604 who had rendered 30 years service in the Police has deposed in his evidence that in 1975. he was attached to the Yellow Gate Police Station; that on 17-04-1975, he was posted at Yellow Gate turnstile from 9.00 a.m. to

5.00 p.m. and at about 1.30 p.m., petitioner wanted to go through the turnstile gate when the Havildar checked the petitioner at the gate and felt that something was concealed in his private parts of the body and, therefore, the Havildar drew the attention of P.W. 2 and others at the gate and the information was also recorded with the Yellow Gate Police Station from where the Sub Inspector Pandit came to the spot along with another Police Constable and in the presence of Panchas a search of the person of chargesheeted employee was taken when under his dhoti, there was an underwear and under the underwear there was one langot and inside the langot the petitioner had concealed the above machine part which was, thereafter, taken out. The weight of the part was about 2 kgs. A Dock Entry Permit and Wage Slip were also found with the petitioner. Thereafter, the Police Officer took charge of the material under Panchanama and recorded the statements of the witnesses. In reply to cross-examination on behalf of the petitioner, P.W. 2 stated that the search was taken at the turnstile Yellow Gate when the petitioner's dhoti was removed and he was asked to remove his langot and from there property was taken out. In the cross-examination, P.W. 2 has further deposed that the chargesheeted employee was detained by the Havildar. Thereafter, P.W. 3 Shripat Sawant, Police Constable No. 14128 deposed on behalf of the B.P.T. that he had served with the Bombay Police for last 11 years; that during 1975, he was attached to Yellow Gate Police Station and on 17-04-1975 when he was on duty at about 2.00 p.m., he received a message that a person has been caught red handed with some material. Thereafter, P.W. 3 and Shri Pandit (Duty Officer) went to the site and in the presence of Panchas search of the person of the chargesheeted employee was taken. In the search, it was found that in the langot, the petitioner had concealed machinery part weighing about 2 kgs. The Police Officer, thereafter, took charge of the material under a Panchanama and the petitioner himself volunteered to show the place from which he has collected the material. The petitioner led the entire team to the concerned Shed and pointed out a box from which he had removed the said material. The said box was found to be broken from the top and inside the box, there were red colour packets each containing the bearings. In reply to the cross-examination, the witnesses were not shaken. RW. 4 Shri Pereira, Preventive Officer from the Customs Department deposed that on 17-04-1975, when he was on duty at the turnstile gate, a Police Constable detained the petitioner on the ground that he suspected the petitioner of carrying an article on his person and, thereafter, a Sub Inspector came and took search of the person in the presence of Panchas when a small part of the machinery was discovered from the petitioner. The said part was wrapped in the piece of cloth and it was tied around the waist of the petitioner. The part was near the abdomen. The petitioner wore an underwear and above it he wore a dhoti. Shri Pereira was also not shaken as a witness by the cross-examination carried out on behalf of the petitioner and he maintained the stand which he had taken in his examination-in-chief. RW.5 Daulat Laxman, Head Constable No. 6323, thereafter, deposed on behalf of the B.R.T, Ducat deposed that on 17-04-1975, he was on duty at the turnstile gate from 9.00 a.m. to 5.00 p.m. and there was also a B.P.T

watchman and also a Custom personnel. According to RW. 5. at about 1.30 p.m. chargesheeted employee tried to go through the turnstile gate when he dashed against an iron chakri at the gate which produced a sound which aroused a doubt in the mind of P.W. 5 and P.W. 5, therefore, detained the man (petitioner) and taking search. RW 5 found that the petitioner was carrying something under the cover of his cloth near the abdomen. The other Officers also suspected that the petitioner was carrying an article on his person and, therefore, they sent one Constable to Yellow Gate Police Station when Police Officer Pandit came along with the Constable. Thereafter, the petitioner was taken to the Customs Chowki and in the presence of the Panchas a search was taken when the above bearing was detected on the person of the petitioner beneath the underwear. There is no effective cross-examination of P.W. 5, P.W. 6 Y.K. Pandit has also deposed on behalf of the B.P.T. He has deposed that he is an Inspector; that during 1975, he was attached to Yellow Gate Police Station as Sub Inspector. On 17-04-1975, he was on station house duty, when at about 1.30 p.m. he received an information that a person has been caught on the turnstile gate and, therefore, he immediately rushed to the site along with another Police Constable when he saw the petitioner detained by the Police Constable. P.W. 6 has also deposed that the petitioner was searched in the presence of Panchas and the Custom Officer on duty and as a result of the search, it was found that the petitioner had kept concealed one Gear hub (bearing) wrapped in a cloth and tied on the abdomen with the help of a string around his waist and when the petitioner was questioned as to the place from which he had collected the material, the petitioner voluntarily pointed out the Shed No. 3 and when the petitioner stated that he got the material from the Shed. S.B. Chavan, Shed Superintendent, was also asked to accompany the Panchas and the Officers who all went to the Shed and found on the second floor a box which was broken on one side. The said box was brought on the ground floor of Shed No, 3 from the second floor and in the presence of Panchas search was carried out when six pieces of Gear hubs and Gear plates were (found in the pallet. The pallet was also weighed. The particulars were also taken down and, thereafter, the petitioner was arrested. The statements of the Police Officers and the Customs Officer were also recorded. At this stage, it may be mentioned that the petitioner applied for cross-examination of P.W. 6. Representative of the petitioner could not remain present on account of disruption of train services and the petitioner had asked for time but the Inquiry Officer refused the adjournment and in the circumstances, one of the grounds which the petitioner has alleged is violation of the rules of natural justice inasmuch as he was not given an opportunity to cross-examine P.W. 6. Thereafter, the case of the defence was put forth before the Inquiry Officer by the representative of the petitioner. According to the petitioner he did not possess the Gear hub; that he had gone on 17-04-1975 inside the Dock premises to take leave and when he came to the turnstile gate, there was exchange of words with the policemen who accused him of having a Gear hub in his possession. According to the petitioner, a Gear hub was lying near the turnstile gate and the policemen wrongly implicated him as policemen got annoyed on account of the

strong words exchanged by the petitioner with the policemen. In support of the petitioner's case two witnesses were examined. According to Sonoo Vithoba Gharage (Chorge) D.W. 1, on the material day at 1.30 p.m. when he was going out through the Yellow Gate, the petitioner was in front of him. D.W. 1 is also Mazdoor in B.P.T. According to D.W. 1 a Police Constable at the gate asked the petitioner to produce Dock Entry Permit when the petitioner replied that he was being harassed and at this stage the Police Constable gave him a slap and took him into custody. According to D.W. 1, at this stage, a Police Constable lifted an article which was lying near the gate and he shouted at the witness and other persons who had assembled there to see the entire episode. According to D.W. 1, the petitioner and the other persons went to the New Labour Office inside the Docks to see their leave record. According to D.W. 1, he had also gone inside the Docks to see the leave record and after seeing the leave record they all started towards the turnstile gate of the B.P.T. when the above incident took place. In his cross-examination, D.W. 1 however stated that he did not remember the exact time and he was not sure whether on the date of the incident he was on duty or he was not on duty. To his cross-examination, D.W. 1 has deposed that he does not even remember as to whether he was required to work in that shift on that day between 8.00 a.m. and 5.00 p.m. He has deposed in his cross-examination that he resides at Kalwa but he has deposed in his cross-examination that he did not remember as to whether he had ascertained the leave position from the Labour Officer as stated in examination-in-chief. The evidence of D.W. 1 has not been accepted by the Inquiry Officer. The Inquiry Officer found that the said evidence is not reliable. The Inquiry Officer has found that, in the present matter, D.W. 1 has not deposed as to whether he was working in the shift when the above incident took place. In the above circumstances, the Inquiry Officer rejected the evidence of D.W. 1 Vilas Shinde, D.W. 2, deposed that he was serving the B.P.T. for 12 years and he knew the petitioner and on the date of the incident at 1.00 p.m. he had gone to the Labour Office to check his leave position when he saw the D.W. 1 and the petitioner. According to D.W. 2, they all went to the Labour Office to check their leave position and after checking their leave position, when they were trying to go out of the Yellow Gate, Indira Dock, the Police Constable asked the petitioner about his Dock Entry Permit and when the petitioner replied to the Constable that he was harassing innocent persons, the Police Constable caught hold of the petitioner, gave him a slap and arrested him. In his cross-examination, D.W. 2 stated that he did not remember as to what was the date, time and place of the incident and he did not remember as to what was the shift in which he was required to work in that week. However, in his cross-examination, D.W. 2 has conceded that, on that date, when the Police Constable arrested the petitioner, there was B.R.T. Watchman, a Customs Officer and also a Police Constable at the gate and all these personnel had assembled at the site. In his cross-examination, D.W. 2 also states that he does not remember as to the particulars of the leave position which they had ascertained on that date from the Labour Office. After the evidence of D.W. 1 and D.W. 2, the Inquiry Officer examined the petitioner on certain points when the petitioner stated that

he did not know as to why P.W. 1, P.W. 2 and P.W. 3 were required to give a false evidence against the petitioner to which the petitioner replied that he did not know why Shri Pereira had given false evidence as alleged. After the closure of the evidence, the Inquiry Officer took on record the Written Arguments of the chargesheeted employee. Thereafter, the Inquiry Officer recorded his findings and came to the conclusion on the basis of the evidence on record that the metal piece was kept tied and concealed to the body of the petitioner with a string on the waist of the petitioner. The Inquiry Officer also found that there was no reason to disbelieve the Customs Officer and the Police Officers with regard to a clinching tell-tell circumstances, namely, detection of the material on the person of the petitioner, the petitioner taking the entire team to Shed No. 3 and pointing out to the Carton box whose lid was found to be broken and the material markings on the bearings inside the box resembling the marking on the bearing found on the person of the petitioner. The Inquiry Officer further found that there was no evidence to show that the said metal piece was lying near the gate and that the petitioner was falsely implicated by the Constable because of hot exchange of words as alleged. The Inquiry Officer also found that the evidence of D.W. 1 and D.W. 2 was not reliable particularly in view of the fact that they have not been able to prove as to what they were doing near the site on the date of the incident, The Inquiry Officer also found that D.W. 1 and D.W. 2 have not deposed as to whether they were on duty on that date or whether they were not on duty on that date and in the circumstances, their evidence came to be disbelieved. On the question as to whether rules of natural justice have been violated inasmuch as no opportunity was given to the petitioner to cross-examine P.W. 6, the Inquiry Officer has held that an opportunity was given but, in any event, assuming that that opportunity was not given even then he has categorically ruled out the evidence of P.W. 6 on the ground that it was not being taken into consideration because of the violation of the rules of natural justice as alleged by the workman. In the above circumstances, the Inquiry Officer found the petitioner guilty of misconduct of theft, and dishonesty in connection with the property of B.P.T. under Rule 22(2)(b) of the B.P.T. Rules and Regulations applicable to non-scheduled staff. On the second charge against the petitioner, namely, the petitioner remaining absent on 17-04-1975 and on the ground that he did not report for duty on that day, the petitioner has been exonerated and it is not necessary for me, therefore, to go into that aspect of the matter. In view of the above serious misconduct, a show cause notice was given by the Disciplinary Authority to the petitioner calling upon him to show cause why the order of dismissal ought not to be passed against him. A reply was also given by the petitioner inter alia contending violation of rule of natural justice, lack of opportunity being given to the petitioner to prove his innocence, an acquittal by the Criminal Court and subsequent thereto the petitioner being heard on the same count and on the above ground the petitioner represented to the Disciplinary Authority that the punishment of dismissal was not warranted. By an order dated 17-01-1981, the Disciplinary Authority rejected the representation/reply to the show cause notice. A Disciplinary Authority concurred with the

findings of the Inquiry Officer and accordingly directed that the petitioner be dismissed from service with immediate effect. Being aggrieved by the order of dismissal, the petitioner preferred an appeal. In the present matter, appeal was initially dismissed on the ground of delay. The Appeal was preferred after a lapse of 18 months. Against the order of rejection of the Appeal, the workman had filed writ petition, not once but twice. On both the occasions, this Court directed the Appellate Authority to give reasons for not condoning the delay in filing the Appeal and ultimately the Appellate Authority has, by a reasoned order, come to the conclusion that no sufficient cause has been shown for not filing the Appeal for a period of 18 months. The Appellate Authority also found that the Medical Certificate produced by the workman indicated that he was only suffering from Benign hypertension and in the circumstances it was not a complicated disease which could have prevented the petitioner from filing the Appeal in time and in the circumstances, the Appeal came to be rejected by the Appellate Authority once again on the ground that it was not filed within the prescribed period and also that no sufficient cause was shown for not filing the Appeal for 18 months.

4. Before considering the contentions advanced on behalf of the petitioner, by way of introductory remark, I may mention that generally this Court does not appreciate or reappraise the evidence and the findings given by the Domestic Tribunal under Article 226 of the Constitution. However, in the present matter, since the Appellate Authority has rejected the Memo of Appeal filed by the petitioner on the ground of delay, in the interest of justice and as discussed hereinabove, I have considered the entire evidence which was recorded by the Inquiry Officer once again and it is in the light of my reappraising of the entire evidence, as a special case, that now I am required to consider the various contentions advanced on behalf of the petitioner.

5. The main contention advanced by Shri Bandivadekar the learned Counsel appearing for the petitioner in the present case is: that the petitioner was prosecuted for theft pursuant to the complaint lodged by B.R.T. and the Police. He was acquitted by the Criminal Court and if one looks at the entire Judgment, the acquittal was on merits and since the acquittal was an honourable acquittal, it was not open to B.P.T. to once again institute a Domestic Inquiry and dismiss the employee on the same charge of theft. Mr. Bandivadekar contends that although in the order of the Criminal Court, it has been mentioned that the case is being dismissed on the ground of benefit of doubt, this Court must look at the entire order of the Criminal Court and if one looks at the entire order of the Criminal Court, it was an honourable acquittal and such an acquittal cannot be treated as an acquittal on the technical ground or an acquittal on the ground of benefit of doubt being given to the petitioner. Mr. Bandivadekar further contends that, in any event, since the charge in the criminal case and the Domestic inquiry is a common charge of theft, B.P.T. was required to prove the charge under Rule 22(2) (b) by an independent evidence in the sense that B.P.T. is not entitled to prove the same charge by relying upon the evidence of the same witnesses who appeared before the Criminal Court and whose evidence has not been accepted

by the Criminal Court. Mr. Bandivadekar, therefore, contends that since no independent evidence has been led by the B.P.T., the petitioner ought not to have been dismissed by the Management.

6. I do not find any merit in the above contentions advanced on behalf of the petitioner. The above argument has two aspects. Firstly, whether on the facts of this case can it be said that the charge levelled by B.P.T, in the Domestic inquiry was the same as the charge of theft before the Criminal Court? The answer is in the negative. If one examines the chargesheet and the findings of the Inquiry Officer as well as Rule 22(2)(b), it is clear that, in the present case, the petitioner has been chargesheeted for theft and/or (underline supplied by me) fraud, dishonesty in respect of the property of B.P.T. These words "and/or" are very important which clearly indicate that the petitioner has been charged for theft, fraud and dishonesty in respect of the property belonging to B.P.T, I! that be the case then, in the present case, it cannot be argued that the charge before the Criminal Court and the charge in the Domestic inquiry was identical .Fraud and dishonesty in respect o! the property of B.P.T. was not the charge before the Criminal Court. In the above circumstances, there is no merit in the first contention advanced by Shri Bandivadekar. The evidence on record clearly indicates that on the date of the incident the petitioner was found to be in possession of the above article. The article was tied to his body. On being searched, the article was detected. Not only it was detected but the petitioner guided the entire team to Shed No. 3 where a Carton was found. The lid of the Carton was found to be broken and inside the Carton, there were 61 bearings and the marks on the bearings resembled the marks on the article which was found on the person of the petitioner. This evidence clearly indicates that the petitioner had dishonestly tried to remove the article from the Port of B.P.T. when he was caught red handed. It may not be strictly a theft as understood under I.P.C. but it could certainly constitute a fraud and dishonesty in respect of the property of B.P.T. In a Domestic inquiry degree of proof is different from that of a Criminal Trial. In a Domestic inquiry, an employer is not required to prove beyond the reasonable doubt as in the case of Criminal Trial. In any event I have examined the evidence once again and by no stretch of imagination it can be said that the findings of the Domestic Inquiry Officer were perverse or not based on evidence. One more aspect needs to be highlighted. Neither the reply to the chargesheet nor is there any evidence of the petitioner himself denying the above two material circumstances, namely, detection of the material on his person and taking the entire team to the Shed where a Carton was found in damaged condition which clearly indicated that the article was removed from that Carton particularly when the marks on the article found on the person resembled the marks on the article inside the Carton. Further the evidence of D.W. 1 and D.W. 2 cannot be relied upon. In large number of cases of fraud and dishonesty in respect of B.P.T. properties, one finds that large number of people are roaming around in the B.P.T. area. Judicial notice can be taken of that fact because in the present case, in cross-examination, D.W. 1 and D.W. 2 were specifically asked as

to whether they were on duty on the date of incident or whether they were not on duty and if they were not on duty, what was the reason for their remaining in that area. The reply given was that they had come to the Labour Office to find out the status of their leave and when they were asked as to what was that status, they were not able to even answer as to what was the status of their leave, whether they were on leave on that day, whether they had come to apply for leave on that day and whether they had seen any particular Officer in the Labour Department of B.P.T. Therefore, the Inquiry Officer was right in disbelieving D.W. 1 and D.W. 2. Further, in the present matter, even assuming that one Police Constable had tried to implicate the petitioner as alleged because of hot exchange of words between the two even then high ranking Officer like Shri Pereira not from B.P.T. but from Customs has also deposed against the petitioner and there is no reason why each and every Officer who was present at the site should be disbelieved particularly when each of these Officers have deposed that a search was carried out and the article was found on the person of the petitioner. In the above circumstances, therefore, there is no merit in the contention advanced on behalf of the petitioner that the charge in both the inquiries was common.

7. Even assuming for the sake of arguments that theft was the charge both in the Criminal Trial and also before the Inquiry Officer even then I am not inclined to accept the contention advanced on behalf of the petitioner because, in the present matter, the competent Criminal Court has come to the conclusion that it was required to give benefit of doubt to the workman because of conflicting evidence with regard to theft. It is well settled that the degree of proof in the two inquiries is different. In any event, in the present case, the acquittal was not an honourable as is sought to be argued on behalf of the petitioner. Even in the Judgment cited by Shri Bandivadekar in the case of Jeevanprakash Pandurang Mokashe v. State Bank of India and another, reported in 1983 Mh. L.J.508, the Division Bench of this Court has held that where an acquittal is based upon a finding of fact then, to that extent, such a finding of fact becomes a conclusive fact in all the proceedings against a delinquent and only in that event it will acquire the status of an issue estoppel which would not be capable of being further investigated or inquired into for coming to the conclusion differently or contradictorily and the same can never form the basis of dismissal or unfit ability of an employee to continue in service. However, the Division Bench has further laid down that if an acquittal is on account of a technical defect in trial or in the case of prosecution or where the accused has been given a benefit of doubt (as in our case) or where no fact is found to have been established or proved then on the basis of the same fact and evidence a departmental inquiry can always be held. In the present matter, therefore, on reading the entire judgment of the Criminal Court, I am satisfied that the acquittal was only on the basis of benefit of doubt. In the above circumstances, there is no merit in the first contention advanced on behalf of the petitioner.

8. Mr. Bandivadekar next contended that, in the present matter, the word

dishonesty in respect of the property of B.P.T. follows the word theft in the chargesheet and in the circumstances if theft was not proved inference of dishonesty in respect of the property of B.P.T. cannot follow. According to Mr. Bandivadekar, therefore fraud, dishonesty in respect of the property of B.P.T. are the words which follow the expression "theft" in the chargesheet and also under Rule 22(2)(b) and if theft is not proved, as in the present case, then it is not open to B.P.T. to fall back on fraud or dishonesty with regard to its property. This argument is a different shade of the first argument which I have already rejected. In any event if one examines Rule 22(2)(b) in the context of the chargesheet and the findings given by the inquiry Officer, the B.P.T. has made very clear that petitioner is being charged for theft and/or fraud and dishonesty. As stated hereinabove, the expression "and/or" is of a vital importance and I have to give weightage to the said expression. Therefore, the petitioner was charged for theft, fraud and dishonesty and it is not possible to create a dichotomy as is sought to be argued by Mr. Bandivadekar.

9. Mr. Bandivadekar next contended that the witnesses who deposed in favour of B.P.T. before the Inquiry Officer were the same witnesses who deposed in favour of the prosecution in the Criminal Court and in the circumstances the Inquiry Officer should not have believed the evidence of the said witnesses as in the Domestic inquiry as the said evidence was not admissible particularly when the workman was acquitted in the Criminal Court. Mr. Bandivadekar relied upon the Judgment of the Division Bench of this Court in the case of Dattatraya Vasudeo Kulkarni v. Director of Agriculture and others, reported in 1984 Mh. L.J. 406 and he submitted that there was a difference between an honourable acquittal and an acquittal on the ground of benefit of doubt being given. These are well settled principles of law and it is not necessary to go into that aspect of the matter because, as stated hereinabove, on the reading of the entire Judgment of the Criminal Court, it is clear that, in the present case, the Criminal Court granted an acquittal only on the basis of benefit of doubt and it was not an honourable acquittal. The question still remains as to whether the testimony of the witnesses in the present Domestic inquiry was admissible or not particularly when the testimony of the same witnesses was rejected by the Criminal Court. Mr. Bandivadekar also vehemently urged that before the Criminal Court the statements of the witnesses are made on oath whereas before the Inquiry Officer there is no such procedure which is required to be followed and in the circumstances the question of admissibility of evidence is very important. I do not find any merit in the above contention. Strict rules of evidence do not apply to Domestic inquiry. Further, ultimately, the basic question which is required to be gone into by this Court under Article 226 of the Constitution is : whether the findings of the Domestic Tribunal were based on evidence and whether rules of natural justice have been complied with and whether there is fairplay in action? In the present case, rules of natural justice have been complied with. Full opportunity has been given to the petitioner/workman and in the circumstances the employer has acted in a bona fide manner. Even with regard to cross-

examination of PW. 6 the Inquiry Officer has ruled out the evidence of P.W. 6 and has only relied upon the evidence of other witnesses which clearly indicate that the Inquiry Officer acted in a fair and just manner. Further, as stated above, if the scope of the two inquiries and the charges in the two inquiries were materially different, it is not open to the petitioner to contend that the witnesses who have deposed in support of the charge of dishonesty and fraud should be disbelieved because they were disbelieved on the charge of theft by the Criminal Court. In the circumstances, there is no merit in the contention advanced on behalf of the petitioner.

10. Mr. Bandivadekar contended that, in the present matter, the impugned order of punishment passed by the Disciplinary Authority is a non-speaking order and although the petitioner gave a detailed reply to the show cause notice the Disciplinary Authority has not considered the reply filed by the workman. He has relied upon the Judgment of the Supreme Court in the case of A.L Kalra v. The Project and Equipment Corporation of India Ltd., reported in Supreme Court Services Law Reporter, Vol. 3, page 127.1 have gone through the order passed by the Disciplinary Authority. The Disciplinary Authority has given reasons for rejecting the reply of the workman. It is not necessary that in every matter the Disciplinary Authority should reply to each and every statement made in the reply of the workman to the show cause notice. In the present matter, the Disciplinary Authority has stated that he has examined the evidence on record and he agrees with the findings recorded by the Inquiry Officer. In the above circumstances, it cannot be said that the order of the Disciplinary Authority was a non-speaking order. In the present case, I am required to consider the facts of this case. The Judgment of the Supreme Court in Kalra's case arose with regard to the provisions under Article 309 to 311 of the Constitution. In the present case, I find that in any event no prejudice has been caused to the case of the workman. That the workman has been given full opportunity and in the circumstances, there is no reason for coming to the conclusion that the order of punishment is vitiated because it is a non-speaking order. In the present matter, the order passed by the Disciplinary Authority cannot be said to be a non-speaking order because reasons are given and in the circumstances, therefore, there is no merit in the last contention advanced by Mr. Bandivadekar on behalf of the petitioner.

11. Mr. Bandivadekar next contended that, in the present matter, the Appellate Authority has not given an opportunity to the petitioner particularly because the petitioner's Memo of Appeal has been rejected only on the ground of delay in not filing the Appeal for 18 months. As stated hereinabove, since the Appellate Authority has not given detailed reasons on merits, this Court has examined the evidence once again and in the circumstances no injustice is caused to the petitioner. Secondly, I cannot find fault with the order of the Appellate Authority. The petitioner filed an Appeal on 7th September 1982. After excluding the two months, the delay was of 18 months. It is surprising that in the application for condonation of delay the petitioner has not given the date on which he left for his

native place. In any event, the Medical Certificate produced by the petitioner has been examined by the Appellate Authority. The Appellate Authority forwarded the said certificate to the Doctors of B.P.T. and the Medical Certificate itself indicates that the alleged hypertension was a Benign hypertension and in the circumstances the Appellate Authority was right in coming to the conclusion that no sufficient cause was made out for explaining the delay of 18 months for filing the Appeal. In any event, I have considered the entire gamut of the matter from all angles and I am satisfied that the order of the Inquiry Officer and the punishment imposed was in accordance with the law and in the circumstances there is no merit in the contention advanced by Mr. Bandivadekar.

12. Mr. Bandivadekar contended that, in the present case, the incident took place on 7th April 1975 whereas the Domestic inquiry came to be initiated on 21-06-1979 and, therefore, on the ground of delay it was contended that the inquiry stood vitiated. He relied upon the Judgment of the learned Single Judge of this Court (Kantharia, J. as he then was) in the case of Abdulla A. Latifshah Vs. Bombay Port Trust and Others, in which on one of the points of delay the learned Single Judge took the view that the inquiry stood vitiated. However, that Judgment has been subsequently overruled by the Division Bench of this Court. In any event, this point is not the subject matter of the writ petition. This point has not been taken by the petitioner in the writ petition and in the circumstances, I cannot expect the B.P.T. to give reply to the said challenge. In any event, on account of increasing frauds and thefts in the premises of B.P.T. large number of inquiries are required to be held. Judicial notice of that fact can be taken. Number of Judgments cited by both the learned advocates before me in this writ petition itself indicates that large number of cases at the relevant time came before this Court which clearly show that the Officers of B.P.T. were required to conduct large number of inquiries and taking into account all these facts it cannot be said that the inquiry stood vitiated because of delay. In any event, on the facts of the present case, the matter was pending before the Criminal Court and in the circumstances that fact is also required to be borne in mind.

13. Mr. Bandivadekar next contended that, in the present matter, the punishment of dismissal was unjustified. He contended that the petitioner has worked for 17 years in B.P.T. He has contended that his past service record was untainted and in the circumstance, in any event, dismissal was not warranted and the punishment of dismissal was unjustified. In large number of cases this Court has taken a view that if the misconduct is of a serious nature then the consequence of the misconduct is not important and what is important is the misconduct per se. We have to see the gravity of the misconduct. In the present case the charge against the workman is of theft and/or fraud, dishonesty in respect of the property of the B.P.T. These charges have been proved and looking to the serious nature of the misconduct it is not for this Court to substitute its own view and impose a different punishment. It is ultimately for the Management to impose appropriate punishment. It cannot be said that the misconduct, in the present

case, is not of a serious nature. The petitioner tried to take away from the premises of B.P.T. machine parts which belong to B.P.T. or to a party who has kept the goods in the custody of B.P.T. No mitigating circumstances have been shown for imposition of a lesser punishment. Even the material facts have not been disputed by the workman and in the above circumstances, I do not find any merit in the contention of Mr. Bandivadekar that the punishment was unjust and unfair.

14. Taking into account all the above facts and circumstances of the case, this writ petition fails. Rule is discharged. However, in the facts and circumstances of the case, there will be no order as to costs.

15. Petition dismissed.