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**(2008) 02 JH CK 0011**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 6391 of 2007**

Dhirendra Prasad Mandal

APPELLANT

Vs

State of Jharkhand and Deputy Commissioner

RESPONDENT

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**Date of Decision : 13-02-2008**

**Acts Referred:**

**Citation : (2008) 56 BLJR 1495 : (2008) 2 JCR 1**

**Hon'ble Judges : M.Y. Eqbal, J**

**Bench : Single Bench**

**Advocate : Rajesh Kumar and Abhijeet Kr Singh, for the Appellant; Manjul Prasad, S.C. (L and C), for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

M.Y. Eqbal, J.—The short question that falls for consideration in the instant case is as to whether in the facts and circumstances of the case, the petitioner is entitled to be reinstated in service after the judgment of acquittal passed in his favour.

2. The facts of the case lie in a narrow compass:

While the petitioner was posted in Senha Block as Villager Level Worker, an F.I.R. was lodged in 1997 on complaints made by some of the persons of the said Block regarding taking some amount by the petitioner from the beneficiaries at the time of distribution of money under the scheme known as "Indira Awas Nirman Scheme". The petitioner was served with a memo of charge and a departmental proceeding was initiated. On the basis of the complaint, a criminal case also proceeded against the petitioner. In the departmental proceeding, after holding inquiry and on the basis of inquiry report, the Disciplinary Authority inflicted punishment of withholding of 5 increments with cumulative effect. The said order of punishment was confirmed by the Commissioner in appeal vide order dated 28.2.2001. However, in the criminal case initiated against the petitioner, he has been acquitted from the Court of Sub Divisional Judicial Magistrate, Lohardaga

terms of judgment dated 20.7.2005 in Tr. No. 239 of 2005. After acquittal, petitioner made representation before the respondent-Deputy Commissioner for reconsideration of the order of punishment passed in the departmental proceeding. When the representation was not considered, petitioner filed W.P. (S) No. 5807 of 2006 which was disposed of on 2.11.2006 with a direction to the Deputy Commissioner to consider the representation and pass appropriate order in accordance with law. In compliance of the aforesaid order, the Deputy Commissioner, Lohardaga considered the representation and rejected the same holding that the order of punishment is just and proper.

3. Mr. Rajesh Kumar, learned Counsel appearing on behalf of the petitioner, assailed the impugned order of the Deputy Commissioner on the ground, inter alia, that the order of punishment passed in the departmental proceeding cannot be sustained in law when on the same set of facts and evidences, petitioner has been acquitted in the criminal case. Learned Counsel for the petitioner placed reliance on a decision of the Supreme Court in the case of G.M. Tank Vs. State of Gujarat and Another, .

4. Mr. Manjul Prasad, learned Counsel appearing for the State, on the other hand, submitted that merely because the judgment of acquittal has been passed in the criminal case, the respondent is not bound to reconsider the order of punishment passed in a departmental proceeding. Learned Counsel relied upon the decision of the Supreme Court in the case reported in (2006) 1 SC 697.

5. As noticed above, Deputy Commissioner rejected the representation filed by the petitioner mainly on two grounds; firstly against the order of punishment passed in the departmental proceeding, the petitioner moved this Court by filing C.W.J.C No. 1678 of 2001 and the High Court dismissed the writ petition holding that the order of punishment needs no interference. Hence, the impugned order attained finality and the judgment could not be reviewed on the basis of judgment of acquittal passed by the Criminal Court. Secondly, the order of punishment passed against the petitioner and affirmed by the High Court, he is not competent to review the order of punishment.

6. A copy of the order of punishment passed by Deputy Commissioner, Lohardaga, being Disciplinary Authority, has been annexed as annexure-3 to the writ petition. It transpires from the order that the persons who lodged complaint against the petitioner on the basis of which F.I.R. was lodged, have totally denied to have made any such complaint against the petitioner. The Deputy Commissioner came to the conclusion that the petitioner cannot be exonerated from the charge only because persons who lodged complaint have not supported the allegations made in the complaint. After having unsuccessful in the departmental appeal, petitioner filed C.W.J.C. No. 1678 of 2001 against the order of punishment, but the said writ petition was dismissed by the learned Single Judge holding that from perusal of the order of punishment, there appears that the finding was recorded on correct appreciation of evidence and, therefore, the order of punishment needs no interference.

7. At this stage, it is worth to reiterate here that the order of punishment passed by the Disciplinary Authority was not on the basis of finding recorded by the Enquiry Officer after considering the evidence of the witnesses who lodged complaint against the petitioner, nor was there any evidence which was to be appreciated while affirming the order of punishment.

8. On the contrary, in the criminal case although 5 witnesses were examined by the prosecution, but the Court held that so far the first 3 witnesses are concerned, there are no evidence in the eyes of law. So far PW.4 is concerned, he supported the case of the prosecution, but the Court found that the witness has categorically stated that the alleged offence was not committed before him and he did not inquire into the matter. PW.5 also did not support the prosecution case. The Court after considering the entire evidence came to the conclusion that no document was substantiated either by the victims of the case or by the informant, rather the victims have said that they have got entire money which is totally against the prosecution case. The Court, therefore, held that the prosecution has utterly failed to prove the case beyond all reasonable doubts. On the one hand, therefore, the disciplinary authority held that the petitioner cannot be exonerated from the charges merely because the beneficiaries, who allegedly lodged complaint, have turned down and have not supported the allegation on the basis of charge framed and departmental proceeding was initiated; on the other hand, the Criminal Court after appreciating the entire evidence has recorded a finding that the prosecution utterly failed to prove the charges against the petitioner and acquitted him. On these facts and circumstances of the case, in my considered opinion, the ratio decided by the Supreme Court in the case of G.M. Tank's case (supra) will apply.

9. In G.M. Tank's case (supra), the appellant was charged for the offence of acquisition of moveable and immovable property disproportionate to his known source of income. After holding departmental proceeding, he was dismissed from service. Against the dismissal order, appellant filed a writ petition before the High Court which was dismissed. The said order was also affirmed by the Division Bench in Letters Patent Appeal. The appellant then moved the Supreme Court. A Criminal complaint was also lodged against the appellant under the Prevention of Corruption Act which was based on the same set of facts, charges, evidences and witnesses. The Criminal Court honourably acquitted the appellant of the said offence holding that prosecution failed to prove the charges leveled against the appellant. The said order of the trial Court was not further challenged by the State and it became final. The main contention of the appellant before the Supreme Court was that there was no evidence against him to hold him guilty and his acquittal by the trial Court during pendency of challenge to his dismissal order was brought to the notice of the Division Bench but it was not considered by it. Allowing the appeal, the Supreme Court after considering its judgments including Capt. M. Paul Anthony's case observed:

30. The judgments relied on by the learned Counsel appearing for the

respondent are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case lunched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and is reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles there from. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the urine requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellants deserves to be allowed.

Having regard to the entire facts and circumstances of the case and following the decision of the Supreme Court quoted herein above, I am of the definite opinion that the order of punishment passed in the departmental proceeding cannot be sustained in law.

10. For the reasons above, this writ petition is allowed and the impugned order of punishment passed in the departmental proceeding as well as the order passed by the Deputy Commissioner rejecting the representation of the petitioner are quashed. However, it is made clear that since the petitioner has already retired on 31.3.2001, he shall get only the benefit of increment which was withdrawn pursuant to the order of punishment.