
(2005) 06 GAU CK 0065
In the Gauhati High Court
Case No : Writ Petition (C) No. 581 of 1995

Narayan Chandra Ghosh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 03-06-2005

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(18)
Constitution of India, 1950 — Article 1, 226
Criminal Procedure Code, 1973 (CrPC) — Section 107
Prevention of Corruption Act, 1988 — Section 5(2)
Tripura Civil Services (Conduct) Rules, 1988 — Rule 3

Citation : (2005) GLT 56 Supp

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : B. Das and P.S. Chakraborty, for the Appellant; U.B. Saha and A. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. B. Das, learned senior counsel assisted by Mr. P.S. Chakraborty, learned Counsel for the Petitioner and Mr. U.B. Saha, learned Senior Government Advocate assisted by Mr. A. Ghosh, learned Counsel for the State Respondents.

2. The question for consideration is whether departmental proceedings under the prevailing "norms" or "rules" applicable to the employee could be preceded with when for similar allegations and offences the employee has been exonerated in the criminal proceedings?

3. The Petitioner has challenged the order dated 10.07.1990 (Annexure-C) placing the Petitioner under suspension and the order dated 29.09.1992 of disciplinary authority, the Director of Land Records and Settlement, Government of Tripura, imposing penalty of upholding three increments of pay with cumulative effect and order dated 25.1.1993/5.2.1993 of Secretary, State

Government of Tripura, Department of Revenue, rejecting the appeal of the Petitioner against the order of penalty. The Petitioner, however, has not challenged anywhere the enquiry report dated 5.9.1992 (Annexure-E to the writ petition).

4. The facts necessary for adjudication of the writ petition is that the Petitioner while working as a Driver in the Department of Land Records and Settlement, Government of Tripura was absent from duty on 23rd to 28th February, 1990 for which he was shown absent by the competent authority, however, and at a subsequent stage he recorded his presence, by making over writing on the absent remarks and on 1.3.1990, he entered the chamber of Settlement Officer, i.e. superior authority and misbehaved with him and used filthy unbecoming language and created unpleasant situation for which the Settlement Officer even informed the matter to the Director Land Reforms and Settlement on 2nd March, 1990. This incident was witnessed by the officials of the establishment of Settlement Officer The Petitioner was placed under suspension and was served charge-sheet alongwith documents relied upon (from Annexure 1, 2, 3). After conducting the enquiry, preliminary report submitted by the Director proposing punishment of stopping of three increments with cumulative effect, was accepted by the disciplinary authority and in appeal the punishment was affirmed. Against which the Petitioner has filed this present writ petition.

5. The charges served to the Petitioner are comprised of two parts; e.g.

ARTICLE-I

That Sri Narayan Ch. Ghosh, Driver, (Under suspension), while functioning as such in the office of the Settlement Officer, South Tripura, Udaipur, misbehaved with the Settlement Officer, used unbecoming language and created unpleasant situation in the chamber of the officer on 1.3.1990 during office hours. Such behaviour of Shri Ghosh amounts to misconduct and is violative of provisions of Rule-3 of Tripura Civil Services Conduct Rules, 1988 and unbecoming of a Government servant.

ARTICLE - II

That Sri Narayan Ch. Ghosh, Driver, (Under suspension), while serving as such in the office of the Settlement Officer, South Tripura, Udaipur, absented himself unauthorizedly from duties on 23rd and 24th of February, 1990. Because of the absence, Sri Ghosh was marked absent in the Attendance Register by the Settlement Officer, South Tripura, who was the Head of Office of Sri Ghosh at that time. Sri. Ghosh thereafter put his signature on the Attendance Register for the aforesaid days without permission of the Settlement Officer though he was marked absent. Such behaviour of Sri Ghosh amounts to misconduct and is violative of provision of Rule 3 of Tripura Civil Services Conduct Rules, 1988 and unbecoming of a Government servant.

6. It appears that in reference to the information given by the Settlement Officer

to the Officer In-charge of police station, R.K. Pur, the cognizance of the same was taken by the Sub-Divisional Judicial Magistrate (SDJM) South Tripura and proceeded u/s 107, Code of Criminal Procedure where the Petitioner had to be executed a bond of Rs. 3,000/- each with two sureties for the period of one year and the case was kept alive in the file of the S.D.J.M for one year vide order dated 20th March, 1991. The charges served to the Petitioner were supported by nine documents almost documentary including the confidential letters of the Settlement Officer, attendance register etc sufficient to make enquiry under Rule 14(18) of CCS. (CCA) Rules, 1965. The Inquiry officer considered the documents and examined the prosecution as well as taken defence witnesses. The Inquiry officer noted in paragraph 5 of report as below:

5. The witnesses examined on behalf of the I.O. are Sri Ashis Kr. Bhowmik, Poshkar (P.W. 1), Sri Parimal Ch. Sarkar, U.D.C. (P.W. 2) and Sri S.B. Pal, Settlement Officer, Udaipur (P.W. 3). The documents produced on behalf of the D.A. are statement of Sri Ashis Kr. Bhowmik Ext. P-1, Statement of Sri Parimal Ch. Sarkar, Ext. P-2 report of Settlement Officer Ext. P-3, complain of Settlement Officer to the O/C, R.K. Pur, Police Station Ext. P-4, letter of Settlement Officer dated 2.6.1990 Ext. P-5, Zerox copy of attendance sheet of Settlement office, Udaipur for the month of Feb. '90 Ext. P-6, copy of order dated 9.3.1990 passed by SDM Udaipur marked as Ext. P-7, copy of order dt. 15.3.1990, 16.3.1990 marked as Ext. P-8 and the bond submitted by the A.O. marked as Ext. P-9.

The witnesses examined on behalf of the A.O. are Sri Kalipada Shil, Peshgikar (D-1), Sri Nripenda Ch. Roy, Process Server (D-2).

7. The Inquiry Officer had framed issues and point of decision and has found that the Petitioner was marked absent in the attendance register for the day and was also marked full absent from 24.2.1990 to 28.2.1990 but the Petitioner without obtaining the permission of the competent authority put his signature over the absent marked on 23.2.1990 and 24.2.90. Even the defence witnesses also supported the version of the prosecution that the Petitioner has entered into the chamber of the Settlement Officer on the said date. The Inquiry Officer after analyzing the prosecution witnesses as well as the defence witnesses and after taking into consideration the confidential letters has arrived at conclusion that the Petitioner was absent from 23.2.90 and 24.2.90 and had put his signature over the absent mark without proper permission. However, later on for those two days he was given salary which according to the State Government shall not mitigate the gravity of the punishment imposed upon him. By providing opportunity of hearing the Inquiry Officer had concluded the fact finding in respect of the allegations against the Petitioner and found him guilty for his misbehaviour, misconduct. Keeping in view the enquiry report of the disciplinary authority, the Director of Land Records and Settlement, State of Tripura on careful examination of the enquiry report and the entire materials has affirmed the findings of the enquiry Officer holding the Petitioner guilty of the charges and imposed the penalty upholding three increments with cumulative effect with a

direction that the Petitioner was to be treated as on duty and continuing in service during suspension period. Against that order dated 29.9.1992 of Disciplinary authority Petitioner preferred an appeal before the Secretary, Revenue Commissioner, State of Tripura as indicated above without challenging the enquiry report, which too was rejected.

8. According to the learned Counsel Mr. B. Das,

9.(i) There was no specific allegation (a) the Petitioner was absent for 2 days but he was given salary for that days, therefore the Petitioner shall be deemed to be present and shall not be said to have been involved in the alleged misconduct, (b) The disciplinary authority did not apply his mind and accepted the enquiry report and finding of the Inquiry Officer was accepted mechanically.

9.(ii) The appellate authority has not given its finding while dismissing the appeal against the order of cancellation in question in view of the decision of the Division Bench in (1989) 2 GLR 50 (G. Jaydass v. Union of India and Anr.)

9.(iii) The authorities of the State Government have not acted fairly and in a just manner, therefore, their entire decision is mitigating the majesty of rule of law in view of the A.K. Kraipak and Others Vs. Union of India (UOI) and Others, For this purpose learned Counsel for the Petitioner has placed reliance on the observation made by the Supreme Court in Para 13 which is quoted below:

The concept of role of law would lose its vitality if the instrumentalities of the state are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure just and fair decision. In recent years the consent of quasi-judicial change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

9.(iv) The Petitioner for same offence was dealt with by S.D.J.M. Court and was not awarded any punishment for the alleged offences therefore, or the same incident and cause, the disciplinary proceeding cannot be proceeded with in view of the decision of the Supreme Court in AIR 1999 SCW 1098 which was followed by Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, where Departmental proceeding and criminal case based on identical set of facts and evidence in both proceedings were common and employee once having been acquitted in criminal case, then the said order of acquittal could be said to conclude the departmental proceeding and the order of dismissal already passed before decision of criminal case is liable to be set aside.

10. On the other hand, it has been argued by Mr. U.B. Saha, learned Senior Government Advocate as below:

(i) The appellate authority has agreed with that the fact finding of the Disciplinary authority and has considered and applied his mind as such is not

obliged to give record/reasons; when the appellate authority differs from the finding of the disciplinary authority then he has to record reasons.

(ii) The incidence took place on 1.3.90 was immediately reported to the R.K. Pur Police Station, Udaipur, South Tripura (Annexure-A to the writ petition) and on 2.3.90 vide his letter dated 2.3.90 (Annexure-"B"), the same was also communicated to the Director, Land Revenue and Land Records, Government of Tripura.

(iii) In reference to the complaint of the Settlement Officer, the (SDJM) passed order u/s 107, that cannot be said to be in a criminal proceeding as the order of S.D.J.M. was to maintain the discipline and good behaviour for that purpose the Petitioner had to execute a bond of Rs. 3000/- each with two sureties for a period of one year and the order of S.D.J.M. cannot be said to have been adjudicated upon based on same facts or for same cause or for same offence and cannot be said to be acquittal of the offences cognizable under Indian Penal Code, therefore, disciplinary proceeding was not barred. In the present case no criminal proceeding was ever started or concluded except the conditions imposed by the S.D.J.M.

11. The activity and behaviour of the petitioner on 1.3.90 was misconduct under Rule 3 of Tripura Civil Service (Conduct) Rules, 1988 (for short Rules, 1988) which provides as follows:

3. General:

(1) Every Government Employee shall at all times:

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government employee.

(2)(i) Every Government employee holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government employees for the time being under his control and authority;

(ii) No Government employee shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior;

(iii) The direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoided. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter;

(iv) A Government employee who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing and in absence thereof, confirmation shall be presumed.

12. Mr. U.B. Saha, the learned senior Government Advocate has argued that in view of Rule 3 of "Rules, 1988" the conduct of the Petitioner was characterized as misconduct and the enquiry officer has submitted report after taking into consideration the entire documentary evidences and after considering the prevalent Rules applicable in the case of the Petitioner and after appreciating and evaluating the evidences has passed an order in consonance to the principles of natural justice and after showing documents including additional documents necessary for finalization of the enquiry report to the Petitioner after proper analysis of the allegations against the Petitioner and in consideration of his oral and documentary response. After careful consideration the inquiry report was accepted by the disciplinary authority, and the appeal too was rejected.

13.(1) In AIR 2004 SCW 6725 (Ganesh Santa Ram Sirur v. State Bank of India and Anr.) similar view was taken. The Supreme Court has observed as follows:

Mr. Salve submitted that the Appellant, the Branch Manager of a Bank is required to exercise higher standards of honesty and integrity when he deals with the money of the depositors and the customers and, therefore, he is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of the Bank Officer. According to Mr. Salve, good conduct and discipline are inseparable for the functioning of every officer. Manager or employee of the Bank, who deals with public money and there is no defence available to say that there was no loss or profit resulted in the case, when the Manager acted without authority and contrary to the rules and the scheme which is formulated to help the Educated unemployed youth. Mr. Salve's above submissions is well merited acceptance and we see much force in the said submission.

(2) In AIR 2005 SCW 95 (Damoh Panna Sagar Rural Regional Bank and Anr. v. Munnal Lai Jain, the Supreme Court has observed that acting beyond one's authority or beyond minimum required courtesy is by itself a breach of discipline and is a misconduct.

(3) According to the learned Counsel for the Respondents in reference to para 17 of Munna Lai Jain, (supra) good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank and no defence available to say employee to that there was no loss or profit resulted in case, when the officer/employee acted without authority. The relevant paragraph is quoted below:

17. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-

cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

(4) The Supreme Court has considered its earlier decisions of other important decisions e.g. (i) Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, (ii) Kailash Nath Gupta v. Enquiry Officer (R.K. Rai) Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, , (iii) Om Kumar v. Union of India AIR 2000 SCW 4361 : AIR 2000 SC 3689, (iv) R. v. Lord Saville Ex. P. (1999) 4 All ER 860 , (v) Union of India and another Vs. G. Ganayutham (Dead) by LRs., (vi) Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, (vii) R.V. Ministry of Defence Ex. P. Smith (1996) 1 All ER 257 , (viii) B.C. Chaturvedi Vs. Union of India and others, ; (ix) Tata Cellular Vs. Union of India, (x) UP Financial Corpn. v. Gem Cap (India) Pvt. Ltd. AIR 1993 SC 1189 : AIR 1993 SC 1435; (xi) Derbyshire County Council v. Times Newspapers Ltd. (1993) AC 534 (xii) G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, (xiii) R.V. Secy. of State for the Home Deptt. Ex. P. Brind (1991) 1 AC 696 ; (xiv) Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, (xv) Spycatcher Case Attorney General v. Guardian Newspapers Ltd. (No. 2) (1990) 1 AC 109 ; (xvi) Ranjit Thakur Vs. Union of India (UOI) and Others, (xvii) R.V. Secretary of State Ex. P. Bugdaycay (1987) 1 AC 514 : (1987)2 WLR 606 ; (xviii) Sudhir and Another Vs. State of Madhya Pradesh, (xix) CCSU v. Minister for Civil Services (1985) 1 AC 374 : (1984) 3 WLR 1174; (xx) Council for Civil Services Union v. Minister of Civil Service (1983) 1 AC 768 ; (xxi) E.P. Royappa Vs. State of Tamil Nadu and Another, (xxii) Alexander Machinery (Dudley) Ltd. v. Crabtree (1974) 1 All ER 182; (xxiii) Breen v. Amalgamated Engineering Union (1971) 1 All ER 1148; (xxiv) Associated Provincial Picture Houses Ltd., Wednesbury Corpn. (1948) 1 KB 223 : (1947) 2 All ER 680 and has arrived at a conclusion that in disciplinary proceeding and in respect of punishment awarded to an employee in reference to exercise of judicial review in the administrative decision, no interference should be made that punishment awarded was shockingly disproportionate unless termination of services of bank employee for reasons to be recorded was found by the High Court as shockingly disproportionate.

(5) In State of Punjab and Others Vs. Ram Singh Ex. Constable, it was held that even a single act of misconduct, if found to be gravest nature having regard to its quality, insidious effect and gravity of situation in the attending circumstances, may justify dismissal impinging upon pensionary rights after putting long length of service. According to the learned Counsel for the Respondents allegations made in Article 1 are so serious and are sufficient for

constituting the offence of misconduct whereupon the Petitioner has rightly been terminated.

(6) In 1997 (2) SLR 433 (Rae Bareilly Kshetriya Gramin Bank v. Bhola Nath Singh and Ors.) the Supreme Court has observed that after following rules when the dismissal order has become final, the High Court was not entitled in writ jurisdiction to re-appreciate evidence and reverse finding and is not supposed to act as appellate authority under Article 226 of the Constitution as the power under Article 226 could be invoked within the limit of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. With these observations the order of the High Court quashing the punishment of dismissal from service was set aside by the Supreme Court.

(7) In B.C. Chaturvedi Vs. Union of India and others, the Supreme Court has observed that in departmental enquiry Court/Tribunal cannot interfere with findings of fact based on evidence and substitute its own independent findings. The Supreme Court in Tara Chand Vyas (supra) has laid down the scope of judicial review in the disciplinary proceeding and in the decision making process and after considering the following decisions (i) Union of India (UOI) Vs. H.C. Goel, (ii) Union of India and Others Vs. S.L. Abbas, (iii), The Administrator of Dadra and Nagar Haveli, Silvassa Vs. H.P. Vora, (iv) State Bank of India and Others Vs. Samarendra Kishore Endow and Another, has observed as below:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of

statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

(8) The Supreme Court has observed that Court is not to sit over the finding of disciplinary authority in reference to the verdict of Union of India and another Vs. G. Ganayutham (Dead) by LR's., State of Punjab and others Vs. Bakhshish Singh, as well as in view of the observations made in 1988 (9) SCC 220 (U.P.S.R.T.C. v. Hari Narain Singh) by specific denial of not furnishing the relied documents and material in the charge-sheet shall not vitiate the inquiry report, more so, when the record/documents were open for inspection therefore the Petitioner could not be said to have been deprived of opportunity of hearing.

(9) In AIR 1999 SC 1514 (Senior Supdt. of Post Offices Pathanathitta and Ors. v. A. Gopalan, in para 6 where it was held that nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. This is so because in a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof or proving the charge is preponderance of probabilities. Similar view was taken by the Supreme Court in High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others,

(10) In Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others, where the writ Petitioner charged for criminal offences u/s 5(2) of Prevention of Corruption Act was acquitted on merits in prosecution case, it was observed by the Supreme Court that "It is not in dispute that the proposed departmental enquiry, also is related to the selfsame offence u/s 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge u/s 5(2) became final clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated.

14.(1) In order to analyse whether departmental action would be initiated after acquittal of any employee in the criminal proceedings, it is necessary to make a survey of decisions given by the different Courts from time to time. Acquittal of an employee from criminal charges does not automatically give a right to reinstatement. The department can still hold enquiry into his conduct or in the case of temporary employee, terminate under Temporary Service Rules, in view of the observations of Supreme Court in Union of India v. Bihari Lal Sidhana 1997 Lab. IC 2077.

(2) Concept of the honorable acquittal or "full exoneration" maybe inappropriate qua the result of a criminal prosecution." In view of Dattatraya v. Director of

Agriculture 1984 Lab. IC 1676.

(3) Indeed, in criminal law an acquittal on benefit of doubt is a complete acquittal on merits in view of Mohan Lai v. Union of India 1982 Lab IC 594.

(4) "If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow where the acquittal is other than honorable" in view of R.P. Kapur Vs. Union of India (UOI) and Another,

(5) Unless accused is acquitted honorably and completely exonerated of charges, departmental action can follow on the same ground of conduct in view of Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others,

(6) In cases of acquittal other than on merits departmental action may be taken to decide whether the specific conduct disentitles the person to hold public office in view of Shaik Kasim Vs. The Superintendent of Post Offices, Chingleput Dn. and Another,

(7) The nature and scope of a criminal case are very different from those of departmental proceedings and an order of acquittal therefore, cannot conclude the departmental proceedings in view of Nelson Motis Vs. Union of India and another,

(8) The objective and scope of criminal trial is distinct/different from that of the departmental inquires in view of Bhauro v. State of Maharashtra 1972 SLR 699. Facts established in a criminal case need not to be proved again in departmental proceeding even though criminals resulted in acquittal in view of P.M. Alias v. State of Kerala 1988 Lab IC 514.

(9) Acquittal in criminal case of disproportionate assets does not mean that the departmental proceedings cannot be held in respect of transactions done without intimation to or permission of the Government as required by the Conduct Rules in view of Government of Andhra Pradesh v. C. Muralidhar 1997 Lab IC 284.

15. It is also necessary to analyse whether departmental action vis-a-vis criminal proceedings:

(1) A misconduct may be Criminal Offence also, even then Departmental proceedings remain distinct from the Criminal Trial in view of A.R.R. Deshpande v. Union of India 1972 Lab IC 526.

(2) Where Misconduct is also a criminal offence, it is not binding on the Government to defer departmental action until the completion of the criminal trial.

(a) Disciplinary proceedings may be taken first i.e. before the criminal prosecution is launched.

(S.A. Venkataraman Vs. The Union of India (UOI) and Another, or

(b) Disciplinary proceedings may be held simultaneous with the criminal prosecution.

Departmental action is not vitiated for the only reason that a criminal case on the same ground of conduct is pending in a criminal Court. The Principles of Natural Justice do not require that the employer must wait for the outcome of the criminal case. The conduct of disciplinary proceedings in good faith are not calculated to obstruct and interfere with the course of justice, and hence the employee is not guilty of the contempt of Court. The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, ; Tata Oil Mills Co. Ltd. Vs. Its Workmen, ; J.K. Cotton Spg and Wvg. Co. v. Workmen (1965) 2 LU (SC) 152 ; Tukaram G. Gaokar Vs. R.N. Shukla and Others, ; Jang Bahadur v. Baij Nath Tiwari (1969) 1 SCR 1224 : AIR 1965 SC 30.

(3) Reasons why simultaneous proceedings are valid and lawful are:

(i) The first and the most important reason is that if departmental inquiry is kept pending till the disposal of the criminal trial, which normally takes a long time, by the time the criminal trial comes to a close, the matter would have become stale and persons who are required to give oral evidence in support of the charge might become unavailable to give evidence and even if available on account of lapse of time their memory might fail and as a result they would not be in a position to give the correct evidence, and further in all such cases the employee concerned himself would raise an objection that holding of an inquiry after such delay itself cause prejudice to him and therefore violative of rules of natural justice;

(ii) The same act or omission constitutes that basis for framing a charge in disciplinary proceedings, which is different from the one in the criminal trial. To illustrate, an incident which constitutes the basis for the charge of theft or criminal breach of trust or misappropriation could be the basis for framing a charge of gross negligence either independently or in the alternative;

(iii) There is clear difference between misconduct and an offence though they arise out of the same incident or conduct. In the case of the former, he is answerable to the master as a servant and in the case of the latter as an individual he is answerable to the society as a whole under the Penal Law of land. The liability which ensues to an employee on the proof of the charge is different in the criminal trial as compared to disciplinary proceedings, in that in the case former he suffers sentence of fine or imprisonment, whereas, in the case of latter he has to suffer only a departmental punishment which could be imposed under the relevant rules S.A. Venkataraman Vs. The Union of India (UOI) and Another,

(iv) There is difference in the rules of evidence applicable. The provisions of Evidence Act, prescribing strict rules of evidence are applicable to criminal trial, whereas, strict rules of evidences are not applicable to disciplinary proceedings in view of State of Haryana and Another Vs. Rattan Singh,

(v) It is settled law vide (iii) and (iv) that even after acquittal by the criminal Court, departmental inquiry is not barred.

(vi) When disciplinary proceedings are instituted and the employee is placed under suspension the employer has to pay subsistence allowance. The employer cannot be expected to wait till termination of proceedings in the trial Court and continue to pay the substance allowance for indefinite period as the employer has no control over the time occupied by the Court in deciding the matter, and further the employer cannot be compelled to the necessity of appointing other person in the place of the suspended employee and pay his salary also "(Para 10) (R.N. Kalyani v. Superintending Engineer ALT (1990) 1 (Kar) 114).

(4) In absence of stay order the disciplinary authority is free to exercise its lawful powers of taking disciplinary action simultaneously with criminal proceedings in view of Jang Bahadur Singh Vs. Baij Nath Tiwari,

(5) A parallel inquiry by the department in the matter pending before a Court does not necessarily amount to contempt of Court in view of the decision of Supreme Court in Jang Bahadur (supra) para 7.

16. In Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , it was held by the Supreme Court that "Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application.

17. In Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas, it was observed by the Supreme Court that stay of departmented proceedings in such a case cannot be a matter of course advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined taking into consideration all facts and circumstances of the case. Distinction between disciplinary proceedings and criminal proceedings, was noted of - when the Courts below were not taking into consideration the seriousness of charges relating to acceptance of illegal gratification by employee and the desirability of continuing the employee in service in spite of such charges against him in such case it was held that the impugned order staying disciplinary proceedings against the employee till the conclusion of criminal trial was not legally sustainable as such stay was set aside in reference to the proceedings under Prevention of Corruption Act, 1988 and CCS (Conduct) Rules, 1964.

18. I have heard the learned Counsel for the parties and I find that the Petitioner has not challenged the report of the Inquiry Officer which was arrived at after observing the principles of natural justice and in terms of effective finding arrived at after taking into consideration the prosecution as well as the defence

witnesses and on available documents on the record, therefore, this Court cannot sit over the finding of the disciplinary authority as well as the appellate authority which has affirmed the facts finding. The criminal proceedings were never initiated against the Petitioner for the incidence dated 1.3.90 and the S.D.J.M. had only imposed conditions required u/s 107, Code of Criminal Procedure to maintain discipline and good behaviour and same cannot be said to be termed as acquittal for same cause or same offences, otherwise, also the criminal proceeding could have been proceeded separately. No material has been shown by the Petitioner where the order made by the appellate authority affirming the decision of the disciplinary authority could be interfered. In the present case in hand, the Petitioner was not even proceeded with for a criminal proceeding, therefore, there is no question that he was ever acquitted or exonerated from the criminal charges. Therefore, disciplinary proceeding against the employee was justified and the punishment needs no interference. There is no bar to proceed departmentally for same offence in a disciplinary proceedings against the employee even if an employee has been acquitted for same offence in criminal proceedings. Accordingly, the question of law is dealt with in view of the aforesaid referred judgments and observations. Therefore, the writ petition is dismissed.