

(2012) 01 MAD CK 0272

In the Madras High Court

Case No : Writ Petition No. 30503 of 2008 and M.P. No's. 2 of 2008 and 1 of 2010

P. Chinnadurai

APPELLANT

Vs

The Inspector General of Registration, Chennai-28

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Constitution of India, 1950 — Article 20, 21
Penal Code, 1860 (IPC) — Section 147, 329, 357
Prevention of Corruption Act, 1988 — Section 7(1)
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Government Servants Conduct Rule, 1973 — Rule 17, 20(1)

Citation : (2012) 2 CTC 145

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : K. Venkataramani and Mr. T. Ayngara Prabhu, for the Appellant; M. Dig Vijaya Pandian, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has filed this Writ Petition seeking for issuance of a Writ of Certiorari, to call for the records of the respondent-Inspector General of Registration, in connection with the impugned charge memo issued by the respondent in Memo No. 49429/B1/2001, dated 17.11.2008 and quash the same. The case of the petitioner as culled out from the affidavit filed in support of the Writ Petition, is as follows:

(a) The petitioner entered into service as Sub-Registrar, Grade-II in the Registration Department in 1986. He was promoted as Sub-Registrar, Grade-I in 1997. He rendered meritorious service throughout.

(b) While the petitioner was serving as Sub-Registrar, Grade-I, Guidelines, at Erode District Registrar Office during 1998, one Muthukumar, a native of Kodumudy executed a partition deed of the family property at Kodumudy Sub-

Registrar Office on 20.3.2001. The said document was referred to the petitioner for inspection to fix the value of the land only. The petitioner, after receiving the documents, inspected the land on 26.3.2001 and submitted his valuation report to the Sub-Registrar Office at Kodumudy. The Sub-Registrar at Kodumudy has to follow the guidelines given by the petitioner and also the guidelines for the building and thereafter only, he has to fix the value of the property for the purpose of registration. But in the Sub-Registrar's Office, there was a delay in making appropriate entries in the partition deed and handing over to Muthukumar.

(c) Aggrieved by the same, the said Muthukumar preferred a complaint to the Vigilance and Anti-Corruption Department, stating that the petitioner demanded a sum of Rs. 1,000/- for the guideline value to be fixed for the partition deed. But the fact remains that the petitioner already fixed the value and sent the papers to the Sub-Registrar Office on 28.3.2001. But in respect of the building, the guideline value has to be fixed by the Sub-Registrar at Kodumudy by another inspection and submit the documents. The complainant, without ascertaining on whose fault the document is yet to be registered, has submitted a false complaint, followed by which, a criminal case was registered against the petitioner in Crime No. 2/AC/01 on the file of V & AC, Erode for an offence u/s 7(1)(a) of the Prevention of Corruption Act.

(d) After registering the criminal case, a trap was laid and when the amount was paid to the petitioner, the petitioner refused to receive the amount, but the amount was paid to one Sureshbabu, who was trapped. Following the trap organised by Vigilance and Anti-Corruption Department, the petitioner was arrested and remanded to judicial custody on 19.10.2001 and he was ordered to be released on bail by the learned Chief Metropolitan Magistrate, Erode on 30.10.2011. The petitioner submits that at no point of time, he has demanded illegal gratification and accepted the same. It is further submitted that PW2, with whom the petitioner had heated exchanges when he came to the District Registrar Office and directed the petitioner to cause local inspection and fix the value of the property, got enraged and preferred a false complaint.

(e) After investigation in the criminal case, a charge sheet was filed before the learned Chief Judicial Magistrate, Erode on 1.8.2003, which was taken on file in Spl.C.C.No.16 of 2003. In the meanwhile, the petitioner was served with a charge memo dated 28.4.2004 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(f) The important witnesses cited in the charge memo are Thiru.Kotteeswaran, Thiru.Muthukumar, Thiru.Suresh Babu and Thiru.Mohan and they are also cited as witnesses in the criminal case. Hence, for the same set of allegations, a criminal case has been registered and departmental enquiry has also been initiated. Therefore, the petitioner approached this Court by filing a Writ Petition in W.P.No.31344 of 2004 challenging the charge memo issued to him. This Court, at the time of admission of the said W.P., in W.P.M.P.No.37988 of 2004, granted

stay of the charge memo proceedings pending disposal of the said Writ Petition, and the said stay order granted, was subsequently extended.

(g) The criminal case launched against the petitioner in Spl.C.C.No.16 of 2003 was proceeded before the learned Chief Judicial Magistrate, Erode, wherein, on the side of the prosecution, as many as 13 witnesses were examined. The important witnesses Muthukumar, Mohan and Kotteeswaran were also examined. The learned Magistrate, after an elaborate trial, held that there was a misunderstanding between P.Ws.2 and 4 with the petitioner and due to vengeance, they have preferred a criminal complaint against the petitioner alleging that the petitioner has demanded illegal gratification. P.W.2 in his cross examination, admitted that he preferred a false complaint against the petitioner as vengeance for having been insulted by him. In respect of the second charge, the learned Magistrate came to the conclusion that the second accused was not employed by the petitioner in the Sub-Registrar Office and there was no proof that there is any connection between the petitioner and the second accused and held that the criminal charges against the petitioner have not been proved and by order dated 26.12.2007, the learned Magistrate held that the petitioner was not guilty of the charges and acquitted him on merit.

(h) After the acquittal in the criminal case, the petitioner made a representation to the authority. The respondent issued the revised charge memo dated 17.11.2008 which is impugned in this Writ Petition, containing four charges. Out of the four charges, charge Nos.1 and 4 relate to the earlier charges issued by the respondent on 28.4.2004 and the charges 2 and 3 relate to the possession of unaccounted money of Rs.1,200/- kept in his shirt pocket at the time of raid and Rs. 53,000/- recovered at his residence on 19.10.2001 which the petitioner could not satisfactorily account for. The earlier charge memo is still in force and has not been cancelled. Hence, the impugned charge memo issued for the same set of allegations, cannot be sustained, and the same is liable to be quashed. In respect of charge Nos.2 and 3, the petitioner has not been served with a memo calling him to explain the possession of the amount mentioned therein. It is submitted that the learned Judicial Magistrate, while rendering the judgment, directed that the amount of Rs. 1,200/- and Rs. 53,000/- which was recovered from the petitioner, were ordered to be returned to him. There was also no observation with regard to the amount recovered from the petitioner at the time of trap and house search. In all cases, where the Department claims that a person is in possession of certain amount which he is unable to account for, initially, they will have to issue a memo calling for explanation and if they are not satisfied with the explanation, then only, a charge memo can be issued. No such memo has been issued till date.

(i) The petitioner, under a partition deed between him and his father, was allotted 6.30 acres of coconut trees, out of which, he was getting a regular income of Rs. 50,000/- per year. On the date of the raid, the petitioner had the lease amount received from the lessee which he has explained to the vigilance officials. Hence,

charge Nos.2 and 3 are not sustainable and hence, they are liable to be quashed. The charge Nos.1 and 4 also cannot be proceeded with as of now, since on the same set of allegations, the criminal case ended in acquittal and the charges have become obsolete and cannot be proceeded with in view of the decisions of the Supreme Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and G.M. Tank Vs. State of Gujarat and Another, . The alleged occurrence is said to have taken place in 2001, for which, a charge memo was issued after a lapse of seven years and after the petitioner was acquitted in the criminal case. Hence, there is a long delay, which remains unexplained and the revised charge memo itself is motivated and has been issued with ulterior motive to deny promotion to the petitioner, besides after acquittal of the criminal case. Unless the earlier charge memo issued in 2004 is cancelled, another charge for the same set of allegations, cannot be issued. Hence, the petitioner has approached this Court to quash the impugned charge memo.

2. The petitioner challenges the impugned charge memo on the following grounds:

(i) The impugned charge memo is contrary to the rules and is in violation of the principles of natural justice.

(ii) The impugned charge memo is not maintainable either in law or on facts.

(iii) The impugned revised charge memo cannot be issued, when on the same set of allegations, another charge memo had been issued on 28.4.2004 and the same has not been cancelled till date. A revised charge memo cannot be issued, unless the earlier charge memo is cancelled. Hence, the present charge memo is not sustainable and the same is liable to be quashed.

(iv) With regard to charge Nos.1 and 4 in the revised charge memo dated 17.11.2008, the learned Magistrate has already recorded a finding that the petitioner is not guilty of charges after trial. The findings recorded in a judicial forum, cannot be watered down in the departmental enquiry, which has been instituted for the same set of allegations. The Supreme Court, in the said case reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,) held that if there is an acquittal in the criminal case, the charge memo on the same set of allegations, is not sustainable and if it is proceeded, it will lead to miscarriage of justice. The first charge against the petitioner is that he demanded and accepted illegal gratification from the complainant Muthukumar through the second accused Suresh Babu, who is alleged to have been employed by the petitioner for giving illegal gratification. The learned Magistrate in Spl.C.C.No.16 of 2003, recorded a finding on 26.12.2007 that the complainant Muthukumar due to vengeance, preferred a false complaint against the petitioner for obvious reasons and also further held that there was no connection between the petitioner and the second accused Suresh Babu. When there is a positive finding on the charges, proceeding against the petitioner again in the departmental enquiry on the same set of allegations, through a revised charge

memo, is not sustainable and the same is liable to be quashed.

(v) The revised charge memo dated 17.11.2008 is ill-advised and has been issued after acquittal in the criminal case. It is admitted fact that the earlier charge memo dated 28.4.2004 has not been cancelled. Hence, the revised charge memo containing same charges is not sustainable and the same is liable to be quashed. Moreover, the same charges have been issued after a lapse of seven years and the reason for the delay has not been explained.

(vi) In respect of charge Nos.2 and 3 relating to the possession of Rs. 1,200/- and Rs. 53,000/- which is unable to account for as per the charge memo, the petitioner has not been issued with any memo asking him to explain about the possession of the amount stated supra. In the absence of any memo calling for explanation for the possession of the amount, a charge memo under Rule 17(b) of the said Rules, for a mere possession, cannot be sustained. There is no preliminary enquiry conducted by the Department before issuance of the charge Nos.2 and 3 in the impugned charge memo. In all cases where a person is alleged to have been in possession of certain amount, he has to be issued with a memo calling for explanation and after receiving the reply, if the authorities are not satisfied with the reply, then only a charge memo can be issued. In respect of charge Nos.2 and 3, neither a memo nor a show cause notice, had been issued to the petitioner, before issuing a charge memo. Hence, charge Nos.2 and 3 are premature and liable to be quashed.

(vii) There is a long delay in issuance of the revised charge memo dated 17.11.2008 for an alleged occurrence which took place in the year 2001. There is no bar for proceeding against the petitioner simultaneously for the same set of allegations. In respect of charge Nos.2 and 3, a charge memo came to be issued after a lapse of seven years, which remains unexplained, besides after an acquittal is recorded by the criminal Court on merit. The learned Magistrate has ordered the return of the amount to the petitioner after recording a finding of innocence. There is a delay of more than seven years and the delay remains unexplained and on the ground of delay alone, the impugned charge memo is liable to be set aside.

(viii) The charge memo came to be issued only to harass the petitioner after acquittal in the criminal case. The petitioner's promotion had been denied on account of the criminal case as well as the charge memo. Hence, the impugned charge memo is ill-advised and the same is liable to be quashed. When on the same set of allegations, an earlier charge memo has been issued in respect of charge Nos.1 and 4 and the same has been challenged before this Court in W.P.No.31344 of 2004 and stayed by this Court, the revised charge memo is unsustainable and the same is liable to be quashed.

(ix) The respondent may proceed with the revised charge memo and record a finding contrary to the findings recorded in the criminal case. Unless it is quashed, the petitioner will be put to irreparable loss and great hardship.

3. In the counter affidavit filed by the respondent, it is averred as follows:

(a) The Writ Petition is not maintainable either in law or on facts.

(b) The petitioner entered into Government service as Sub-Registrar Grade-II on 22.8.1986 at the Office of the District Registrar, Coimbatore; thereafter, he was promoted as Grade-I Sub-Registrar with effect from 31.3.1997. As on date, the petitioner is working as Sub-Registrar (Administration) in the office of the Deputy Inspector General of Registration, Salem. While discharging duties as Sub-Registrar (Guideline), Erode District, on 15.6.1998, the petitioner committed misconduct. Hence, he was issued with a charge memo bearing No.49429/B1/2001, dated 28.4.2004 with the following charge:

While Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode has demanded bribe money of Rs. 3000/- to inspect the property and to assess the value of land and building of a partition deed which was presented by the complainant Tr.Muthukumar on 19.10.2001 and received Rs. 1000/- through a private individual Tr.Suresh Babu in the presence of Tr.Mohan and he was arrested by Vigilance and Anti-corruption Department and has thus failed to maintain absolute integrity and devotion to duty in contravention of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

(c) The petitioner submitted his explanation dated 22.9.2004. The Deputy Inspector General of Registration, Coimbatore, was appointed as the Enquiry Officer. The petitioner had not allowed to proceed with the enquiry citing pendency of Criminal Case by filing W.P.No.31344 of 2004 and by obtaining interim stay, vide order dated 29.10.2004 in W.P.M.P.No.37988 of 2004 in W.P.No.31344 of 2004.

(d) The respondent issued a revised charge memo bearing No. 49429/B1/2001, dated 17.11.2008 with the following charges:

Charge No. 1:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode caused the delay of six months for taking action and to finalize the valuation proposal in respect of file No. 507/2000 dt.26.12.2000 of Sub-Registrar Office, Kodumudi and therefore caused delay in registration of the documents relation to the complainant Tr.D.Muthukumar with the aim of extracting money from the complainant. On 19.10.2001 in pursuance of his earlier demand Tr.P.Chinnadurai instructed his unauthorized employee Tr.V.Suresh Babu, a private person to receive the bribe of Rs. 1000/- from the complainant Tr.D.Muthukumar and Tr.V.Suresh Babu with knowledge received the said bribe amount from the complainant for releasing the document.

Charge No. 2:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode at the time of trap between 13.30 hours and 17.35 hours on 19.10.2001 at his seat at

the office of the District Registrar, Erode was found with unaccounted money of Rs. 1200/- kept in his pocket, for which he could not satisfactorily account for.

Charge No. 3:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode has kept an unaccounted money of Rs. 53,000/- at his residence at No. 26, Bharathi Park, Street-2, Coimbatore-43 which was detected and seized during the house search conducted on 19.11.2001 between 4.15 p.m. for which he could not satisfactorily account for.

Charge No. 4:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode employed a private individual Tr.V.Suresh Babu unauthorisedly to perform official work at his seat and allowed him to make entries in the office records.

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode while discharging his official duties failed to maintain absolute integrity and devotion to duty in contravention of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

(e) Against this charge memo, the petitioner has filed the present Writ Petition and obtained interim order, by order dated 23.12.2008 in M.P.No.2 of 2008 in W.P.No.30503 of 2008.

(f) The petitioner caused delay by six months to take action and to finalise the valuation proposal in respect of File No. 507/2000, dated 26.12.2000 of Sub-Registrar Office, Kodumudi, with the aim to extract money from the executant of the document (partition deed, dated 19.5.2000) bearing Pending Document No. P.30/2000 (Document No. 1194/2000). The petitioner demanded and extracted Rs. 1,000/- from the said executant. The petitioner employed one V.Suresh Babu, a private person to do official work. Pursuant to the trap laid, the petitioner was caught red-handed while accepting the bribe amount. The amounts were recovered from him and from his house. The petitioner was arrested on 19.10.2001 and remanded to judicial custody till 2.11.2001. The petitioner was released on bail on 2.11.2001. A criminal case was registered against the petitioner in C.C.No.16 of 2003 and the same ended in acquittal, vide order dated 26.12.2007.

(g) The issuance of revised charge memo dated 17.11.2008 is valid, legal and different from the earlier charge memo dated 28.4.2004. The alleged procedure stated by the petitioner in paragraph 8 of his affidavit, is not usual procedure followed. It is well settled proposition of law that Departmental Disciplinary Proceedings are different from the criminal case. The charges in the revised charge memo dated 17.11.2008 are different and are liable to be upheld. The delay, if any, in issuing the revised charge memo is due to the conduct of the petitioner in stalling the conducting of the enquiry. The petitioner cannot shift the entire blame on the Department. The revised charge memo is not motivated and

is not identical to the earlier charge memo. The necessity to issue fresh charge memo arose in view of the fact that the other charges were not included in the earlier charge memo and it was framed in accordance with the Govt.Lr(2D).No.91, Commercial Taxes and Registration Department, dated 11.6.2008.

(h) The revised charge memo is not contrary to Rules and not in violation of the principles of natural justice. It is always open to the petitioner to submit his explanation to the revised charge memo and participate in the enquiry and prove his innocence. The revised charge memo is valid, legally sustainable, maintainable both in law and on facts and has to be upheld.

(i) The revised charge memo is in supersession of the earlier charge memo dated 28.4.2004. The very words "Revised charge memo" indicate the same. The revised charge memo is not the same as that of the earlier charge memo and contains different charges. Hence, the revised charge memo is liable to be upheld.

(j) The charges in the revised charge memo are different. The Departmental Disciplinary Proceedings that have been initiated, are different from the criminal case that had been concluded. The petitioner attempted to mislead this Court by inter-connecting the Departmental Disciplinary Proceedings with the concluded criminal case, when in fact, both are entirely different. The charge memo is not based on the criminal case, but for the misconduct committed by the petitioner based on the Government Service Rules. By conducting enquiry, there will be no miscarriage of justice. The charges in the revised charge memo relate to dereliction of duty by not discharging his duty in time, for possession of unaccounted amounts of money and for employing an outsider to do official as well as his personal works without having power to do so. Hence, the revised charge memo can be sustained and is liable to be upheld.

(k) The acquittal of the petitioner from the criminal case, cannot be a bar for initiation of Departmental Disciplinary Proceedings. The revised charge memo dated 17.11.2008 is in supersession of the earlier charge memo dated 28.4.2004 and contains different charges. There is no delay in issuing the revised charge memo, and the delay, if any, was due to the conduct of the petitioner. Hence, the revised charge memo is not ill-advised and is to be sustained and liable to be upheld.

(l) No show cause notice or prior memo is necessary to charge a person of misconduct. Possession of unaccounted money is a serious misconduct as per Government Service Rules and no prior memo is necessary for issuing a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The preliminary enquiry is not necessary. The procedure alleged by the petitioner is imaginary and according to his own whims and fancies and the allegations to quash the charges based on such misconceived norms, have to be rejected "in limine". The charges are liable to be upheld.

(m) There is no delay and there is no bar in conducting the departmental disciplinary proceedings simultaneously during the pendency of the criminal case. In the case on hand, it is the petitioner who had not allowed to proceed with the departmental disciplinary proceedings, citing pendency of criminal case. Hence, the revised charge memo is liable to be upheld.

(n) The charge memo has been issued for the misconduct committed by the petitioner and not to harass him. The petitioner has not reached the zone of consideration for promotion. The charge memo is not ill-advised and liable to be upheld. The revised charge memo has been issued in supersession of the earlier charge memo and the same is sustainable and liable to be upheld.

(o) The departmental disciplinary proceedings are different from the criminal case. The allegations of the petitioner are imaginary and unfounded.

(p) The petitioner has not made out any case to sustain this Writ Petition. The allegations of the petitioner, are baseless and unfounded. The petitioner has been charged for his misconduct and can prove his innocence in the enquiry. This Writ Petition is premature and misconceived. The Writ Petition has to be dismissed as not maintainable with costs. The petitioner has not substantiated his case with acceptable evidence. The petitioner mislead this Court and obtained the interim order of stay. By the continuance of interim stay, the Department is put to untold hardship, since they could not proceed with the enquiry. Hence, it is just, necessary and imperative to vacate the interim order of stay in the interest of justice and dismiss the Writ Petition.

4. In the additional counter affidavit filed by the respondent, it is stated as follows:

(i) The petitioner Tr.P.Chinnadurai, District Registrar, while working as Sub-Registrar (Guidelines) at District Registrar's Office, Erode, was trapped and arrested by the Director of Vigilance and Anti-Corruption officials on 19.10.2011 and he was issued charge Memo No.49429/B1/2001, dated 28.4.2004 regarding two allegations. A case (No.16 of 2003) was filed against the petitioner in the Chief Judicial Magistrate's Court and the Court has ordered that the petitioner is acquitted of the case. Therefore, the petitioner was relieved from the Court proceedings.

(ii) The Government instructed to initiate departmental disciplinary action against the petitioner for the lapses stated below:

(a) received bribe amount of Rs. 1,000/- from Tr.Muthukumar.

(b) Rs. 1,200/- of unaccounted money possessed.

(c) Rs. 53,000/- of unaccounted money found in his residence.

(d) To have allowed private individual Tr.V.Suresh Babu to handle the office records.

Hence, the charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for the abovesaid revised charges.

(iii) The petitioner filed this Writ Petition against the abovesaid charge memo and obtained stay order in respect of charge Nos.1 and 4 of the charge memo.

(iv) Meanwhile, W.P.No.1277 of 2009, filed by the petitioner, was disposed of by this Court on 15.9.2009, directing as follows, by favouring the delinquent:

The writ petition stands allowed with direction to the respondents to include the name of petitioner in the panel for District Registrar for the year 1999-2000 and confer the benefit of promotion as District Registrar to the petitioner on the date of promotion of his junior as per G.O.Ms.No.35, Commercial Taxes (H1) Department, dated 3.4.2003, viz., 30.4.2003, if there are no other legal impediments and also grant all benefits thereon and such order shall be passed within a period of 16 weeks from the date of receipt of a copy of this order.

(v) On compliance with the said order, the petitioner was promoted as District Registrar as per G.O.(2D).No.113, Commercial Taxes and Registration Department, dated 9.8.2010 without prejudice to the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in Inspector General of Registration Charge Memo No. 49429/B1/2001, dated 28.4.2004 pending against the petitioner.

(vi) At this juncture, enquiry report from the Enquiry Officer (Deputy Inspector General of Registration), Coimbatore, has been received in respect of charge Nos.2 and 3, stating that the charges were not proved. Since the petitioner is a State level officer, the enquiry report was forwarded to the Government with its original file for further course of action.

(vii) There is no bar in conducting the departmental disciplinary proceedings simultaneously during the pendency of the criminal case. It is the petitioner who had not allowed to proceed with the departmental disciplinary proceedings, citing pendency of the criminal case. Hence, the revised charge memo is liable to be upheld.

(viii) Departmental disciplinary proceedings are different from the criminal case. The allegations of the petitioner are imaginary and unfounded. The petitioner has not made out any case so as to sustain this Writ Petition. The petitioner has been charged for his misconduct and can prove his innocence in the enquiry. Hence, the respondent pray for dismissal of the Writ Petition.

5. Mr. K. Venkataramani, learned Senior Counsel appearing for the petitioner in his first limb of submissions, contended that the impugned revised charge memo is vitiated in law, as there is an inordinate delay in initiation and conclusion of the departmental proceedings. For the occurrence which took place in 2000, the first charge memo was issued in 2004, and then the present impugned revised charge memo had been issued on 17.11.2008. Secondly, the petitioner assails the charge memo on the ground that for the same set of allegations, earlier, a

charge memo was issued on 28.4.2004 which has not been ratified/cancelled till date and therefore, the present revised impugned charge memo is not sustainable, unless the earlier charge memo is cancelled/ratified. Thirdly, according to the learned Senior Counsel appearing for the petitioner, the charges in respect of Charge Nos.1 and 4 are the subject matter of criminal case, which ended in acquittal and with regard to the charges in Charge Nos.2 and 3, the respondents-Department proceeded and concluded the trial/enquiry and when the respondent take a stand that the charges have not been proved, it is not proper on the part of the respondent to keep the petitioner without any conclusion of the departmental proceedings and continue with the enquiry/charges and keep the same in cold storage. In support of his contentions, learned Senior Counsel appearing for the petitioner relied on the following decisions:

(a) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

19. The entire case-law was reviewed once again by this Court in State of Rajasthan Vs. B.K. Meena and others, wherein it was laid down as under: (SCC pp. 422-23, para 14)

14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be "desirable", "advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, "advisability", "desirability" or "propriety", as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Tata Oil Mills Co. Ltd. Vs. Its Workmen, is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be--and should not be--delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a

good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

20. This decision has gone two steps further than the earlier decisions by providing:

1. The "advisability", "desirability" or "propriety" of staying the departmental proceedings "go into the scales while judging the advisability or desirability of staying the disciplinary proceedings" merely as one of the factors which cannot be considered in isolation of other circumstances of the case. But the charges in the criminal case must, in any case, be of a grave and serious nature involving complicated questions of fact and law.

2. One of the contending considerations would be that the disciplinary enquiry cannot--and should not be--delayed unduly. If the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry even though the disciplinary proceedings were held over at an earlier stage. It would not be in the interests of administration that persons accused of serious misdemeanour should be continued in office indefinitely awaiting the result of criminal proceedings.

21. In another case, namely, Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., again it was held that there is no bar to proceed simultaneously with the departmental enquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of fact and law.

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

(b) G.M. Tank Vs. State of Gujarat and Another,

24. In Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, the same question arose before this Court. This Court, in para 6, held as under: (SCC p. 718)

6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction [discretion] in any way fettered.

25. The rulings cited by the learned counsel appearing for the respondent are:

In Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another, it was argued before this Court on behalf of the respondent Sangh that the Labour Court ought not to have brushed aside the finding of the criminal court which according to the learned Single Judge "honourably" acquitted the accused workmen of the offence before it. The learned Judges were taken through the judgment of the criminal court. The Bench was of the opinion that the acquittal by the criminal court was "honourable" as it was based on the fact that the prosecution did not produce sufficient material to establish its charge which was clear from the following observations found in the judgment of the criminal court: (SCC p. 211, para 25)

Absolutely in the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC.

(c) Union of India (UOI) and Others Vs. Naman Singh Sekhawat,

19. Initiation of the departmental proceeding must be viewed in the background of his total exoneration by the Customs Authorities and the criminal court.

22. If the charges levelled against the respondent in the departmental proceeding only related to administrative lapses on his part, it could have been initiated long back. Why was it initiated after a period of nine years has not been explained. On a query made by us, the learned Additional Solicitor General,

submitted that the Department must have been waiting for the outcome of the criminal case. If that is so, it was expected that the evidence would have been adduced in the criminal proceeding to establish that the misuse of the jeep and the official revolver as also visiting the border area by the respondent formed part of conspiracy. The identity and the activity of the private person, who was found in the company of the respondent, should have been investigated by the competent authority, particularly when the respondent was working in the Intelligence Department.

28. It has been suggested before us that the charges against the respondent in the criminal case and the departmental proceeding were different. However, we fail to understand what sort of public duty the respondent was expected to perform when he was intercepted by the police in a jeep which was driven by Bhoor Singh, a notorious smuggler who had been detained under the Maintenance of Internal Security Act. If the conduct of the respondent did not cause any embarrassment to the Department in the year 1983, how, after exoneration by the Customs Authorities and acquittal by the criminal court, his acts embarrassed the Department, so as to form the basis of imputation of misconduct, is again beyond anybody's comprehension. The inquiry officer and consequently the disciplinary authority misdirected themselves in law as they posed unto themselves a wrong question. The appellate authority's findings are noticed in para 13 (supra) had not been considered at all. The disciplinary authority, therefore, for all intent and purport, differed with the findings of the Customs Department as well as the criminal court, but no basis therefor was disclosed. No such evidence was brought on record. No witness was examined to prove the said fact. Even no documentary evidence was produced. The entire basis of the said finding is the ipse dixit of the disciplinary authority and the appellate authority. It again goes to show that despite the findings of the Customs Authorities and the criminal court, what was uppermost in the mind of the disciplinary authority and the appellate authority was his alleged involvement in the smuggling activity.

29. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the Department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair.

38. In *Jasbir Singh Vs. Punjab and Sind Bank and Others*, Scale 204) it was held: (SCC p.569, para 9):

9[7]. The learned counsel for the respondent contended that the decision of this Court has no application. He may be right. But, it is not necessary for us to delve

deep into the matter as we are of the opinion that the judgment in civil matter having attained finality, the same was binding on the respondent Bank.

39. In *M.V. Bijlani Vs. Union of India (UOI) and Others*, this Court stated the law in the following terms: (SCC p.95, para 25):

25.... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

(d) *W.A.No.1061 of 2009, dated 9.10.2009 (Division Bench of Madras High Court) (The State of Tamil Nadu, rep. by its Secretary to Government, Industries Department (E1), Fort St.George, Chennai-600 009 and another Vs. T.Ganapathy):*

13. It had also been submitted that since the criminal case registered against the respondent and the departmental proceedings are relating to the same set of facts and based on the same evidence, it would not be open to the appellants to initiate separate departmental proceedings after a long delay. Even though the respondent had been honourably acquitted in the criminal case, such proceedings would be hit by the doctrine of double jeopardy and it would be contrary to the principles enshrined in Articles 20 and 21 of the Constitution of India. The learned counsel for the respondent had relied on the following decisions in support of his contentions:

1) In *G.M. Tank Vs. State of Gujarat and Another*, , the Supreme Court had held as follows:

24..... 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 launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as 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 therefrom. 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 his judicial pronouncement with the finding that the charge has not been proved.

25. 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. In our opinion, such facts and evidence in the department, 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 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 same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply....."

2) In Union of India V. N.S.Shekhawat 2008(2) L.LN 783 the Supreme Court had held as follows:

There cannot be any doubt that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal Court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the Department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair. It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal Court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods. His visit to the border for discharging his duties did not tantamount to misuse of the post or the authority. No evidence has been presented that he did not have the authority to go to the border side on official duties and even the department had not forbidden him from going to that place. It was held that as misappropriation of the property has not been proved, the question of any criminal conspiracy did not arise. No evidence had been adduced to bring home the charge of criminal conspiracy, which is an independent crime.

3) In The The Secretary, Vallalar Gurukulam Higher Secondary School Vs. District Educational Officer and G. Anbarasan, a Division Bench of this Court had held as follows:

When a misconduct is committed by an employee, the authorities have the option to take two kinds of proceedings against him. Firstly a criminal proceeding if he is alleged to have committed a criminal offence, and in addition they can also take a departmental proceeding against him by issuing a departmental charge memo. Even if the employee is acquitted in the criminal case, he can yet be found guilty in the departmental proceedings. This is because the standard of proof in the two proceedings is different. In criminal proceedings, "the standard of proof" is proof beyond reasonable doubt, whereas in departmental proceedings, standard of proof is like in a civil case i.e., balance of probabilities.

4) In *State of Tamil Nadu and Commissioner of Municipal Administration Vs. M. Jayapal, The Registrar, Tamil Nadu Administrative Tribunal and Commissioner, Virudhunagar Municipality*, a Division Bench of this Court had held as follows:

The only point on which turned the success or failure of this petition was whether an acquittal of the respondent in criminal case upon a set of facts same as those on which a charge memo served on him were based would justify or not quashing of the charge memo. The High Court observed a judgment of acquittal giving benefit of doubt to the accused could not be equated to such judgment on technical grounds. In this case the acquittal was not on technical grounds. Hence the order of the Administrative Tribunal quashing the charge memo was upheld as proper. Further, on facts, the High Court found the charge memo had been issued fourteen long years after the incident and four years after the acquittal. It observed if the respondent had to face departmental enquiry after the lapse of so many years, considerable prejudice would be caused to him.

16. It is well settled in law that if a person is honourably acquitted based on the merits of the case, it cannot be put against him to deny the service benefits that would have accrued to him in the usual course of the service. However, if a person had been acquitted by a criminal Court, based on the benefit of doubt going in his favour, the same result may not accrue.

17. In an earlier decision in *W.A.No.1287 of 2008, (THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI Vs. D.MAHADEVAN)*, the First Bench of this Court had held that the acquittal of a person by a criminal Court, if it is based on the benefit of doubt being given in his favour, would not entitle him to be considered for being selected in service. However, if a person has been acquitted, based on no evidence, it would amount to an honourable acquittal and therefore, he would be entitled to be considered for such selection.

(e) *W.P.(MD).No.2779 of 2009, dated 24.3.2010 (Madurai Bench of Madras High Court) (Panneerselvam Vs. State of Tamil Nadu and another)*:

5. It is astonishing to note that when the charge is levelled against the officer that he has failed to maintain decorum or integrity or acted against the general public, there is absolutely no record which has been relied upon by the respondents either in the form of complaint from any of the public or in the form of any material evidence to show that the petitioner has acted dishonestly and

without integrity. There is no complaint from any of the officials working along with the petitioner to show that the petitioner has failed to maintain decorum and in the absence of such material to proceed further against the petitioner by the respondents under the impugned charge memo in respect of those charges cannot serve any fruitful purpose. It shall be taken note of that admittedly the petitioner has during the pendency of the impugned charge memo attained the age of superannuation. Of-course, he was not allowed to retire since the disciplinary proceedings is kept pending against him. As far as the first major charge as stated above and analysis of the Judgment of the criminal Court clearly state, that it is on the same set of fact, the major charge is only levelled against the petitioner. In the hierarchy of the Judgment commencing from the Judgment in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, followed by the subsequent Judgments in Union of India (UOI) and Others Vs. Jaipal Singh, and the Constitution Bench of the Supreme Court Judgment in R.P. Kapur Vs. Union of India (UOI) and Another, and the Corporation of the City of Nagpur v. Ramachandra, a three Judges Judgment of the Supreme Court reported in Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, , it has been the categoric stand of the Hon'ble Apex Court that while it is well settled law that even in cases of acquittal, the disciplinary proceedings may follow, but in cases where the criminal Court honourably acquits the delinquent on the same set of facts and on the same ground and evidence, it would not be expedient to continue the departmental proceedings on the very same charges, grounds and evidence. That was the view expressed by the Hon'ble Apex Court in Corporation of the City of Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, of the said decision is as follows:

The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered.

6. The Supreme Court has clarified the difference between the honourable acquittal and granting the benefit of doubt in the decision of Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another, that when the criminal Court based on the fact and evidence produced by the prosecution has held that the prosecution has not produced sufficient materials to establish the charge, it should be construed as honourable acquittal. A similar situation where on identical and similar set of facts in the criminal case as well as the charge in the departmental case against a delinquent officer, it was held that

even if the charge in the criminal case is grave in nature and after examination of the some witnesses, who are arrayed as in the departmental proceedings, the criminal Court holding that the charge against the accused was not proved beyond reasonable doubt and acquitted the delinquent officer after regular trial, it would be unjust and unfair rather abrasive for the department to allow its proceedings to continue. That was the view expressed by the Hon''ble Apex Court in G.M. Tank Vs. State of Gujarat and Another, and paragraphs 30 and 31 are as follows:

30. The judgments relied on by the learned counsel appearing for the respondents 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 launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as 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 therefrom. 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 same requires to be taken note of and the decision in Paul Anthony case¹ will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

(f) 2011 (3) LLN 318 (Mad) (Madurai Bench of Madras High Court)

(S.Natchathram Vs. The Superintendent of Police, Madurai District, Madurai):

27. Of course, the learned Special Government Pleader is right in contending that the Department cannot be restrained from proceeding against the Petitioner both departmentally and in the Criminal Court and that the standard of proof and the purpose for which both the proceedings are initiated, are different but, in the case on hand, since the Court of competent jurisdiction, has already categorically held that it is not safe to rely on the First Information Report, departmental action taken against the Writ Petitioner solely on the basis of involvement of the Petitioner on the basis of such First Information Report, cannot be allowed to continue, as it would amount to travesty of justice.

28. Though Courts have consistently held that quashing or setting aside the charge, at the threshold is generally not permissible, there is no hard rule that in every case, where Disciplinary action is initiated, the charged official should undergo the ordeal of facing the enquiry and ultimately, if any punishment is imposed, he should challenge the same in the manner known to law. It is well known that the purpose of initiation of the departmental action is to award a suitable punishment for the alleged misconduct. In the case on hand, the alleged misconduct is involvement of the Petitioner in a Criminal case in Crime No. 50 of 1990, on the file of the learned Judicial Magistrate No. IV, Madurai. When the First Information Report registered against the Petitioner itself has been found to be unsafe to proceed further and when the criminal Court has categorically found that there was no evidence for demand of dowry, no useful purpose would be served in conducting an enquiry against the Petitioner. On the other hand, as rightly contended by learned counsel for the Petitioner, it would be unnecessary harassment for the Petitioner to undergo the ordeal. On the facts of this case, this Court is of the considered view that mere involvement of the Petitioner in the First Information Report, which has been found to be unreliable and unsafe, cannot be a subject matter of Departmental proceedings and therefore, the second count of charge also falls to the ground.

The Charge Memorandum can be quashed in exceptional cases as held in Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, , wherein at paragraph No. 16, the Hon"ble Supreme Court has held as follows:

16. No doubt, in some very rare and exceptional cases, the High Court can quash a charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

6. Per contra, Mr.M.Dig Vijaya Pandian, learned Additional Government Pleader appearing for the respondent, contended that there was no delay on the part of the respondent, both in initiation and conclusion of the departmental proceedings, and as the petitioner challenged the impugned revised charge memo, in this Writ Petition and as there was an interim order of stay passed by this Court in M.P.No.2 of 2008 in W.P.No.30503 of 2008, by order dated

23.12.2008, the departmental proceedings could not be concluded at once. Learned Addl.G.P. further contended that issuance of the revised charge memo, dated 17.11.2008 is valid and legal, as it was different from the earlier charge memo issued to the petitioner, dated 28.4.2004. Lastly, he contended that it is well settled proposition of law that the departmental proceedings are different from the criminal case, and there is no legal impediment to proceed with the same simultaneously, even though the petitioner had been acquitted by the criminal Court in respect of some of the charges. In support of his contentions, the learned Addl.G.P. relied on the following decisions:

(a) 2007 AIR SCW 1639 = 2007 (14) SCC 49 : Government of A.P. Vs. Appala Swamy:

11. It may be true that there was some delay on the part of the appellants to conclude the departmental proceedings. The Tribunal did not accept the contention raised on behalf of the respondent that only by reason thereof the entire departmental proceedings became vitiated. The High Court thus, in our opinion, was required to consider the question as to whether, in the facts and circumstances of this case, particularly in view of the nature of the charges levelled against the respondent as also the explanation offered by the appellants in this behalf, it was a case where the entire proceedings should have been quashed. The High Court in its impugned judgment did not address itself the said question. It, as noticed hereinbefore, from the very beginning proceeded on the premise that the pension was payable to the respondent on his retirement. The High Court furthermore did not determine the question as to whether a proceeding could have been initiated against the respondent in terms of Rule 9 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963. If it is held that the second proceeding was maintainable in terms of the extant rules, ordinarily, the Tribunal or the High Court should not have interfered therewith. This aspect of the matter is concluded by the decisions of this Court in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, and State of U.P. and Others Vs. Harihar Bhole Nath,

12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee. Such a case of prejudice, however, is to be made out by the employee before the inquiry officer.

13. This aspect of the matter is now squarely covered by the decisions of this Court in Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, P.D. Agrawal Vs. State Bank of India and Others, Deputy Registrar,

Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others, .

(b) W.P.(MD).No.6855 of 2005, dated 8.10.2007 (Madurai Bench of Madras High Court) (R.Raju Vs. The Superintendent of Police):

4. The Supreme Court in its decision reported in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, dealt with the power of the Court in dealing with a charge memo at the show cause stage and the following passage found in paragraph 9 will make the position clear.

Para 9: "The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice.

7. A circumspection of facts reveals that the petitioner entered into Government service as Sub-Registrar Grade-II on 22.8.1986 at the Office of the District Registrar, Coimbatore; thereafter, he was promoted as Grade-I Sub-Registrar with effect from 31.3.1997. As on date, the petitioner is working as Sub-Registrar (Administration) in the office of the Deputy Inspector General of Registration, Salem. While discharging duties as Sub-Registrar (Guideline), Erode District, on 15.6.1998, the petitioner committed misconduct. Hence, he was issued with a charge memo bearing No. 49429/B1/2001, dated 28.4.2004 with the following charge:

While Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode has demanded bribe money of Rs. 3000/- to inspect the property and to assess the value of land and building of a partition deed which was presented by the complainant Tr.Muthukumar on 19.10.2001 and received Rs. 1000/- through a private individual Tr.Suresh Babu in the presence of Tr.Mohan and he was arrested by Vigilance and Anti-corruption Department and has thus failed to maintain absolute integrity and devotion to duty in contravention of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

8. The petitioner submitted his explanation dated 22.9.2004. The Deputy Inspector General of Registration, Coimbatore, was appointed as the Enquiry Officer. The petitioner had not allowed to proceed with the enquiry citing pendency of Criminal Case and he also filed W.P.No.31344 of 2004 before this Court. On verification of the records of this Court, it is seen that the said W.P.No.31344 of 2004 is still pending.

9. The respondent issued a revised charge memo bearing No. 49429/B1/2001, dated 17.11.2008 with the following charges:

Charge No. 1:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode caused the delay of six months for taking action and to finalize the valuation proposal in respect of file No. 507/2000 dt.26.12.2000 of Sub-Registrar Office, Kodumudi and therefore caused delay in registration of the documents relation to the complainant Tr.D.Muthukumar with the aim of extracting money from the complainant. On 19.10.2001 in pursuance of his earlier demand Tr.P.Chinnadurai instructed his unauthorized employee Tr.V.Suresh Babu, a private person to receive the bribe of Rs. 1000/- from the complainant Tr.D.Muthukumar and Tr.V.Suresh Babu with knowledge received the said bribe amount from the complainant for releasing the document.

Charge No. 2:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode at the time of trap between 13.30 hours and 17.35 hours on 19.10.2001 at his seat at the office of the District Registrar, Erode was found with unaccounted money of Rs. 1200/- kept in his pocket, for which he could not satisfactorily account for.

Charge No. 3:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode has kept an unaccounted money of Rs. 53,000/- at his residence at No. 26, Bharathi Park, Street-2, Coimbatore-43 which was detected and seized during the house search conducted on 19.11.2001 between 4.15 p.m. for which he could not satisfactorily account for.

Charge No. 4:

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode employed a private individual Tr.V.Suresh Babu unauthorisedly to perform official work at his seat and allowed him to make entries in the office records.

Tr.P.Chinnadurai, Sub Registrar, Guideline, O/o the District Registrar, Erode while discharging his official duties failed to maintain absolute integrity and devotion to duty in contravention of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

10. Pursuant to the above charges, the petitioner was arrested by the DVAC department on 19.10.2011 and remanded to judicial custody till 2.11.2011 and released on bail on 2.11.2011 and a criminal case was registered against the petitioner in Spl.C.C.No.16 of 2003 on the file of Chief Judicial Magistrate-cum-Special Court, Erode and the same ended in acquittal, vide order of Court, dated 26.12.2007.

11. Initially, as the petitioner failed to discharge his official duties and maintain

absolute integrity and devotion to duty in contravention of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973, he was issued with the charge memo dated 28.4.2004 u/s 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Challenging the said charge memo dated 28.4.2004, the petitioner filed W.P.No.31344 of 2004, and on verification of the records, it is seen that W.P.No.31344 of 2004 is still pending and only notice was ordered at the time of admission of W.P.No.31344 of 2004 and there was no stay granted by this Court in that Writ Petition.

12. In the meantime, the impugned revised charge memo dated 17.11.2008 was issued against the petitioner under Rule 17(b) of the said Rules, for the imputation of misconduct alleged against the petitioner in respect of the four charges already extracted above. Challenging this charge memo dated 17.11.2008, the present Writ Petition has been filed and this Court, while admitting this Writ Petition on 23.12.2008, granted the interim order of stay, in M.P.No.1 of 2008, observing as follows:

There will be an order of interim stay of the revised charge memo in respect of charges 1 and 4 alone.

Learned Senior Counsel appearing for the petitioner submits that in respect of the earlier charge memo, it is mentioned in the affidavit filed in support of the petition there is stay, however as such there is no stay in respect of the charge memo and there is a mistake in the affidavit. The present charge memo is also in the similar manner. The above statement is recorded.

13. The charge Nos.1 and 4 in the revised charge memo are the subject matter of criminal case, in Spl.C.C.No.16 of 2003, which ended in acquittal, as stated above. The respondent-Department proceeded with the trial in respect of the charge Nos.2 and 3 alone and the departmental proceedings have been concluded.

14. In the additional counter affidavit filed by the respondent, in paragraph 5, it is stated as follows:

5. The petitioner had filed a Writ Petition No. 30503/2008 against the above said charge memo and obtained stay order in respect of charges 1 and 4 of the charge memo. Vacate stay petition has been filed by the respondent in this Hon"ble Court to vacate the stay order.

Meanwhile, in W.P.No.1277 of 2009, order dated 15.9.2009, the above said writ petition filed by the petitioner, it has been directed as follows:

Para 20: The writ petition stands allowed with direction to the respondents to include the name of petitioner in the panel for District Registrar for the year 1999-2000 and confer the benefit of promotion as District Registrar to the petitioner on the date of promotion of his junior as per G.O.Ms.No.35, Commercial Taxes (H1) Department, dated 3.4.2003, viz., 30.4.2003, if there are no other legal impediments and also grant all benefits thereon and such order

shall be passed within a period of 16 weeks from the date of receipt of a copy of this order....

thus favouring the delinquent.

On compliance with the judgment, the petitioner was promoted as District Registrar as per G.O.(2D).No.113, Commercial Taxes and Registration Department, dated 9.8.2010 without prejudice to the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in Inspector General of Registration Charge Memo No. 49429/B1/2001, dated 28.4.2004 pending against the petitioner.

At this juncture, enquiry report from the Enquiry Officer (Deputy Inspector General of Registration, Coimbatore), has been received in respect of charge Nos.2 and 3, stating that the charges were not proved.

Since the petitioner is a State Level Officer, the enquiry report was forwarded to the Government with its original file for further course of action.

The application of the petitioner are contrary to each other. The department reiterates the fact that there is no bar in conducting the departmental disciplinary proceedings simultaneously during the pendency of the criminal case. In the case on hand, it was the petitioner who had not allowed to proceed with the departmental disciplinary proceedings, citing pendency of criminal case. Hence, the revised charge memo is liable to be upheld.

It is again reiterated departmental disciplinary proceedings are different from the criminal case. The allegations of the petitioner are imaginary and unfounded.

15. While analysing the above position and the questions raised by the petitioner, as there was an inordinate delay in initiation and conclusion of the departmental disciplinary proceedings, it is to be seen that the occurrence took place on 22.12.2000 and the criminal case charge sheet was issued on 2.8.2002, and thereafter, the respondent-Department issued the first charge memo on 28.4.2004 and immediately, the petitioner moved this Court in W.P.No.31344 of 2004, which is still pending as stated above. Thereafter, the respondent issued the present impugned revised charge memo, dated 17.11.2008 with imputation of four charges, which is challenged in this Writ Petition (W.P.No.30503 of 2008) and this Court, while admitting this Writ Petition on 23.12.2008, granted interim order of interim stay in respect of charge Nos.1 and 4 alone, as extracted above and the other charges in Charge Nos.2 and 3 are tried by the respondent departmentally and concluded.

16. To examine the question as to whether there was any delay on the part of the respondent-Department in issuing the impugned charge memo, it is crystal clear that for the occurrence which took place on 22.12.2000, the departmental disciplinary proceedings have been initiated by issuance of the first charge memo, dated 28.4.2004, thus, at this stage, there was a delay of about 3-1/2 years. However, there was no legal impediment for the respondent to proceed

further, as there was no stay order of this Court in W.P.No.31344 of 2004, in which, only notice was ordered by this Court and that Writ Petition is still pending. In spite of the same, the respondent-Department moved in snail's pace and issued the impugned revised charge memo only on 28.4.2008, at this stage, there was a delay of about four years from the date of issuance of first charge memo. Ultimately, in the present Writ Petition being W.P.No.30503 of 2008, while admitting the same on 23.12.2008, this Court granted interim order of stay in respect of charge Nos.1 and 4 alone, and thus, it is conspicuously clear that there was no order of stay in respect of charge Nos.2 and 3 and the respondent-Department ought to have proceeded with the enquiry/trial of departmental disciplinary proceedings, and concluded, which was also concluded, as is evident from the report of the enquiry officer (Deputy Inspector General of Registration, Coimbatore), that the charge Nos.2 and 3 have not been proved, as averred by the respondent in his counter affidavit, and since the petitioner is a State level Officer, the enquiry report was forwarded to the Government with its original file for further course of action. Thus, it is seen that there is no final conclusion of the departmental disciplinary proceedings till date, as no orders have yet been passed by the Government/appellate authority/disciplinary authority. Therefore, as regards charge Nos.2 and 3, there was an inordinate delay in initiation and conclusion of the departmental disciplinary proceedings.

17. In respect of charge Nos.1 and 4, it is seen that there was an order of interim stay granted by this Court in M.P.No.2 of 2008 (in the present W.P.No.30503 of 2008) on 23.12.2008. The subject matter of charge Nos.1 and 4 have been simultaneously proceeded in the criminal case, culminating in the acquittal of the petitioner/accused/delinquent, by judgment dated 26.12.2007 in Spl.C.C.No.16 of 2003 on the file of the Chief Judicial Magistrate-cum-Special Court, Erode. Since this Court granted interim order of stay in respect of charge Nos.1 and 4, the respondent-Department was not in a position to proceed and conclude the proceedings.

18. Furthermore, for the same set of charges, both the departmental disciplinary proceedings and criminal proceedings have been initiated against the petitioner-delinquent. Though this attracts double jeopardy and lead to travesty of justice, yet, as per the authoritative pronouncement of the Apex Court, both can go simultaneously. The charge Nos.2 and 4, the crux of which is the charge in the criminal charge sheet, having been ended in acquittal, against which, no appeal is stated to have been preferred, the same shall not be allowed to stand or proceeded departmentally, as the prosecution has not proved the guilt of the petitioner/accused/delinquent beyond reasonable doubt by the launch of criminal prosecution. Thus, it is to be concluded that as far as the charge Nos.1 and 4, the petitioner has been acquitted by the criminal Court and charge Nos.2 and 3 have not been proved, as evidenced by the report of the enquiry officer.

19. It is well settled legal principle, as has been exhaustively laid down by the Supreme Court in the decision reported in Capt. M. Paul Anthony Vs. Bharat Gold

Mines Ltd. and Another, that if the criminal case and the departmental proceedings are based on identical set of facts, and the findings recorded by the enquiry officer indicate that the charges framed against the delinquent was not proved, and the delinquent (accused) having been acquitted in the criminal case by Court, by a judicial pronouncement, it would be unjust, unfair and rather oppressive to allow the findings recorded at the departmental proceedings to stand. Since the facts and the evidence in both the departmental and criminal proceedings, are the same, without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case, on the basis of approach and burden of proof, would not be applicable in the case on hand. This decision of the Apex Court Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , had been applied by the Supreme Court in the later decision reported in G.M. Tank Vs. State of Gujarat and Another, .

20. On the question of power of the authorities to issue the revised charge memo, it is to be seen that the earlier charge memo is dated 28.4.2004 and the present impugned revised charge memo is dated 17.11.2008, which according to the petitioner, is one and the same. But the respondent took a consistent stand that it is different from the earlier one. The power to issue the revised charge memo is not precluded by any Rules, but the respondent-authority is competent to issue such a revised charge memo only when there are new facts and circumstances, and in the absence of the same, it is not proper on the part of the respondent-authority to issue the revised charge memo. There is no new fact or circumstance revealed from any material document, and nothing has been produced before this Court to substantiate the same. The respondent has not stated as to under what circumstances or was there any fresh material available before them, warranting issuance of the revised charge memo. It is admitted position that the power to issue the revised charge memo is within the exclusive domain of the respondent-authority, but it can be done only in the manner as contemplated under law, that too, it should have been supported by fresh facts and circumstances, coupled with oral and documentary evidence. Thus, on this score, the revised charge memo is not supported by any convincing reasons so as to uphold the same by this Court.

21. Next, on the question of acquittal of the petitioner/accused in the criminal case, it is a factor to be taken note of by the respondent-Department, and now it is the stand of the respondent in the additional counter affidavit that the charge Nos.2 and 3 have not been proved, as stated by the enquiry officer in the enquiry report. The petitioner being a State level Officer, the disciplinary authority is stated to have forwarded the entire file to the Government for further course of action. It appears that there is no conclusion of the departmental proceedings, either culminating in the confirmation of the report of the enquiry officer, thereby, exonerating the petitioner from the charges, or taking any action against the petitioner. The respondent-authority/Government are dragging on the matter under one pretext or the other. It is not shown before

this Court as to whether the Government has taken a final decision on the report of the enquiry officer, who stated that the charge Nos.2 and 3 have not been proved. Such being the lethargic approach of the respondent-authority/Government, though the petitioner has involved himself in the trap case, resulting in the criminal case proceedings, which ended in acquittal, and he also being proceeded departmentally, and thus, there has been delayed proceedings, which is vitiated in law, as the respondent/Department has not satisfactorily explained to the Court for with-holding of the final result of the departmental proceedings, which gives a clear impression to this Court that there has been inordinate delay in initiation/conclusion of the departmental proceedings, which renders the revised charge memo invalid.

22. In the decision of the Apex Court reported in Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, relied on by the Supreme Court in the decision reported in G.M. Tank Vs. State of Gujarat and Another, , the Apex Court observed as follows:

6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction [discretion] in any way fettered.

23. It is to be worth mentioning that if the same witnesses of the departmental proceedings, were examined in the criminal case and the criminal Court on the examination, comes to the conclusion that the prosecution has not proved the guilt alleged against the accused beyond any reasonable doubt and acquitted him by its judicial pronouncement with the finding that the charge has not been proved, which was made after a regular trial and on hot contest, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

24. Further, such facts and evidence in the departmental as well as the criminal proceedings being one and the same, without there being any iota of difference, the petitioner/delinquent/accused 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 case on hand. Though the findings recorded in the domestic enquiry was found to be valid by the Court, and when there was an honourable acquittal of the employee during the pendency of the departmental proceedings, the same requires to be taken note of and the decision is the case of the Apex Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, .

25. The respondent-Department ought to have proceeded departmentally in respect of charge Nos.2 and 3, when the petitioner had been acquitted in the criminal case in respect of charge Nos.1 and 4.

26. In view of the ordained principles laid down by the Apex Court in the various decisions relied on by the learned counsel appearing for both parties, and for the foregoing reasonings and upon consideration of the entire facts and circumstances of the case, and also on an analysis of the various factors in the case on hand, the impugned revised charge memo, dated 17.11.2008 issued by the respondent, in respect of charge Nos.1 and 4, alone does not stand to legal acumen, and hence, the same is liable to be set aside.

27. At the same time, it is the duty of this Court that when the departmental proceedings are concluded resulting in non-proving of charges 2 and 3 after a domestic enquiry and the enquiry report along with the entire file having been sent to Government/appellate authority, it is now for the Government/appellate authority to take a decision one way or the other and pass appropriate orders, in accordance with law. Hence, this Court is not interfering with the impugned revised charge memo, dated 17.11.2008, in respect of charge Nos.2 and 3.

28. Accordingly, the impugned revised charge memo, dated 17.11.2008, in respect of charge Nos.1 and 4, alone, are quashed, and it is left open for the appropriate authority/Government to pass orders in respect of non-proven charge Nos.2 50 and 3 and communicate the decision to the petitioner-delinquent expeditiously. For the reasons stated above, the Writ Petition is partly allowed. No costs. The Miscellaneous petitions are closed.