
(2007) 02 CAL CK 0016
In the Calcutta High Court
Case No : C.A.N. No. 9915 of 2005

Pradip Kumar Banerjee

APPELLANT

Vs

Airport Authority of India and Others

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003 — Regulation 4, 4, 5
Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
International Airport Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 1987 — Regulation 33
Penal Code, 1860 (IPC) — Section 34
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2007) 3 CALLT 101

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Arabinda Chatterjee, Biswajit Kohar and Nilay Sengupta, for the Appellant; D.K. Dhar and Anirban Dutta, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Assailing the decision of Appellate Authority as communicated by letter No. Pers./IR/1102/4/91/PB/Pt/657 dated 24th March, 2005 of Dr. T.S. Shaikh, General Manager (Pers.), whereby and whereunder said Appellate Authority under Airport Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 1987, hereinafter referred to as said Regulation, after acquittal of the writ petitioner on merit in the criminal appeal by the Judgment passed by P.K. Biswas, J. (as His Lordship then was) in C.R.A. No. 393 of 1999 of the High Court at Calcutta, directed initiation of departmental proceeding with reference to the alleged incident, which was the subject matter of the criminal prosecution ended in acquittal by the Judgment of the High Court, Calcutta along with order of suspension de novo with effect from 13th July, 2000, initially, the petitioner prayed the following reliefs in the writ application being prayers (a) to (e), which reads as follows:

a) A writ in the nature of Mandamus commanding the respondents their men agent and servants, agents and/or assigns to forthwith:

i) act in accordance with law.

ii) Set aside and/or quash the order of the respondent No. 2 as communicated vide letter of the respondent No. 4 dated 24.3.2005 being annexure P-10 herein.

b) Writ of and or in the nature of Certiorari do issue commanding the respondent their men agent and servant agents and assign to forthwith transmit to this Hon"ble Court all records relating to the present case of the petitioner, so that conscionable justice may be done.

c) Rule Nisi in terms of prayer (a) & (b) above.

d) an order of injunction be passed restraining the respondent authority their men agent and servant from initiating any departmental proceeding against the petitioner until disposal of the writ application.

e) Ad interim order in terms of prayer (d) above.

2. During pendency of the writ application writ petitioner filed an application praying interim order being CAN 9915 of 2005 praying for quashing the memorandum of charges of a departmental proceeding as initiated in terms of the impugned order of said Appellate Authority being memo No. Pers./IR/I 102/4/91/PB/Pt/3600 dated 7th September, 2005 on the ground that since on identical facts, which was the subject matter of a criminal proceeding in the appeal, the conviction passed by the competent Trial Court of criminal jurisdiction was set aside and petitioner was acquitted on merit, there was no scope of initiation of departmental proceeding on the identical facts, charges and to prove the same in a departmental proceeding with the identical witnesses, who were the witnesses in the criminal case culminated to the final acquittal.

3. The respondents, Airport Authority of India, has opposed this writ application by filing affidavit-in-opposition contending, inter alia, that as the acquittal in the criminal appeal by the High Court at Calcutta was passed with the finding of benefit of doubt and same was not hon"ble acquittal from the criminal proceeding, there is no embargo of initiation of departmental proceeding further and as such memorandum of charge is not liable to be quashed and at the same time order of suspension as effected from 13th July, 2000 could not be disturbed,

4. An affidavit-in-reply was filed by making a comparative analysis of the factual findings as reached by the P.K. Biswas, J. (as His Lordship then was) in adjudicating the criminal appeal as referred to, to contend that it was not at all a case of benefit of doubt as a ground for acquittal but it was a clear acquittal on merit from, the criminal charges as leveled against the writ petitioner on issue of alleged taking of bribe in discharge of his official duty. In the reply, the analysis of charges of departmental proceeding qua the charge framed in the criminal proceeding under the Criminal Procedure Code by the learned Trial Court of

competent criminal jurisdiction, the analysis of the names of the witnesses and the factual matrix have been made to conclude and identify the issue that memorandum of charge in departmental proceeding and the charge as framed in a criminal proceeding as culminated to a trial and thereafter acquittal of the writ petitioner in appeal on examining the prosecution witnesses thereof, are identical in all the minutes points.

5. A supplementary affidavit also was filed or analysis of the case records, which was directed to be inspected, by holding that the said Appellate Authority was the Disciplinary Authority at the initial stage who imposed the penalty of dismissal in view of the order of conviction of the petitioner passed by the learned Trial Court of criminal jurisdiction at the first stage and subsequently on acquittal from the High Court adjudicating the criminal appeal preferred, the impugned decision was taken by the said particular gentleman sitting as an Appellate Authority due to his promotion to that post, on deciding the representation filed by the petitioner praying his joining in service on withdrawing the order of suspension and for release of all salary allowances and service benefits.

6. In the interim order of application being C.A.N. No. 9915 of 2005, the prayers as made, have been considered by this Court as part and parcel of the writ application, which read such:

(a) Quash the impugned memorandum being No. PERS/IR/1102/ 4/91/PB/Pt/3600 dated 07.09.2005 issued by respondent No. 3.

(b) Respondent No. 3 be restrain by an order of injunction from giving any effect of the impugned memorandum being No. PERS/IR/ 1102/4/91/PB/Pt/3600 dated 07.09.2005 until disposal of the main writ petition.

(c) Ad interim order in terms of prayer (b) above.

(d) Any further order or orders, direction or directions, as this Hon''ble Court may deem fit and proper.

7. Having regard to the rival contentions of the parties, who argued at length by citing the different Judgments on their respective points as urged, the following points emerge for decision:

(1) Whether in view of the factual scenario of this case and the synoptic view of the documents and upon thread bare analysis of the different admitted facts, namely, the charge of departmental proceeding, names of witnesses being identical with the charge of criminal case and the prosecution witnesses, whether any departmental proceeding on the factual matrix, which became the subject matter of adjudication of criminal case for acquittal of the writ petitioner in appeal by the High Court at Calcutta, could be allowed to proceed.

(2) Whether the decision passed by the Appellate Authority directing departmental proceeding on the identical charges, which has a parity in all points

with the criminal proceeding culminated to the acquittal of the writ petitioner, could be considered as exercise of the power, which hits the doctrine of reasonableness, fairness and doctrine "nemo debet esse judex in propria sua causa", as the said Appellate Authority earlier acted as a Disciplinary Authority and imposed the punishment of dismissal from service, which stood cancelled due to the fact that order of conviction passed by the learned Trial Court of criminal jurisdiction, which was basis of such dismissal order was set aside and quashed in criminal appeal by the High Court at Calcutta.

(3) What relief could be granted on the substantial facts of this case?

8. The respective parties have referred several Judgments in the field of legal permissibility of holding a departmental proceeding on the identical facts as alleged in both the two proceedings, namely, departmental proceeding and criminal proceeding, after acquittal of the accused delinquent from such criminal proceeding. To answer the point No. (1) as already framed it requires an analysis and scanning of the factual matrix to identify the nature of acquittal in the criminal proceeding as to whether such acquittal is a result of contested hearing on merits or an acquittal on technical ground. The factual matrix of the departmental proceeding also requires to be scanned for applicability of the Judgments of the Apex Court in this issue, which laid down the permissibility of holding departmental proceeding under certain contingencies, namely, (i) when acquittal in a criminal case is on technical ground; (ii) when acquittal is not on merit of the case. Acquittal in a criminal proceeding may be due to lack of evidence, which may be under the different contingencies, namely, (i) disbelieving the evidence advanced by the prosecution in a criminal case by the competent Court of Criminal Jurisdiction, or (ii) inability of the prosecution to place the witnesses and/or declaration of a witness as hostile witness and thereby failure of the prosecution to prove the case. Under the criminal jurisprudence, there is no doubt that it mandates proof of the case strictly following the strict rule of the Evidence Act. As per the age-old legal conception under the penal law that unless a positive case is proved, nobody should be penalised and accused is entitled to be acquitted applying the principle of benefit of doubt. But where the acquittal is based on scanning of the evidence on merit by analysis of its evidentiary value, the question would remain for an answer that even if such acquittal is on applying the doctrine of "benefit of doubt", whether it could lead a conclusion to close a departmental proceeding on same self facts applying the principle "that once there is a hon"ble acquittal, the departmental proceeding should not be allowed to proceed". To answer all these points, naturally, the Judgments of the said criminal case, the witnesses as were examined and analysis of evidence, vis-a-vis, the witnesses of the departmental proceeding and the charge made out thereto are required to be considered in depth.

Factual matrix:

9. On 6th May, 1991, the writ petitioner was suspended in view of his implication

in a criminal case lodged by the respondent, International Airport Authority of India, hereinafter referred to as Airport Authority for brevity. The case was registered as special case No. 8 of 1993 u/s 7 and 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 and Section 34 of the Indian Penal Code. Learned Special Court at Alipore convicted the writ petitioner by its Judgment dated 10th December, 2000 imposing a sentence of rigorous imprisonment of one year and to pay fine of Rs. 2000/- in default rigorous imprisonment for three months more on directing that the sentences should run concurrently. Said Judgment led the Airport Authorities to pass an order on 13th July, 2000, dismissing the service of the writ petitioner on applying the Regulation 33 of the said Regulation. Departmental appeal was preferred under the said Service Regulation against the order of dismissal, which was rejected by the decision dated 8/20th November, 2000 of the Appellate Authority. Assailing the decision of the Appellate Authority, writ application being No. 22034(W) of 2000 was moved by the writ petitioner. This application was disposed of by M.H.S. Ansari, J. (as His Lordship then was) by directing that in the event of acquittal by the criminal appeal Court setting aside the conviction, it would be open to the petitioner to make appropriate representation before the Respondent Authority for their consideration of reinstatement of the petitioner in service following the Judgment as relied upon by His Lordship, Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, . The criminal appeal as filed u/s 374(2) of the Code of Criminal Procedure, 1973, registered as criminal appeal No. 393 of 1999 assailing the said Judgment and order of conviction dated 10th December, 2000, passed by learned Judge, Special Court at Alipore convicting and sentencing the writ petitioner u/s 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Said Criminal Appeal being C.R.A. 393 of 1999 was finally decided by the Judgment dated 16th July, 2004 passed by P.K. Biswas, J. (as His Lordship then was). The appeal was allowed and the Judgment and order of conviction and sentence passed by the learned Trial Judge Were set aside and the accused appellant that is the present writ petitioner was acquitted from the case.

10. After acquittal, the petitioner filed a representation praying for his reinstatement in service on recalling the order of dismissal from service as earlier passed by the Disciplinary Authority and confirmed by Appellate Authority under said Service Regulation. As nothing was done, the petitioner moved another writ application being No. W.P. 21324(W) of 2004. By the Judgment dated 22nd December, 2004, said writ application was disposed of directing the Chairman of the said Airport Authority, who is the Appellate Authority, to dispose of the representation filed by the petitioner. In response to such, ultimately, decision was reached by the Appellate Authority, the Chairman of the said Airport Authority of India directing the initiation of departmental proceeding on same self fact, on quashing and setting aside the order of dismissal passed earlier and placing the writ petitioner under suspension with effect from 13th July, 2000. This decision of Appellate Authority was communicated by the letter dated 24th

March, 2005 of General Manager (Pers.). This present writ application was moved assailing the said communication dated 24th March, 2005 whereby the Appellate Authority directed initiation of departmental proceeding by suspending the writ petitioner with effect from 13th July, 2000. During pendency of this writ application, departmental proceeding was initiated and charge sheet was served by the charge memo dated 7th September, 2005, framing a charge under Article 1. By an interim order, this Court directed stay of the departmental proceeding till the hearing of the writ application.

Scanning of the materials of departmental proceeding and criminal proceeding:

11. Charge in the criminal proceeding as framed by the learned Special Court, Alipore in the Special Case No. 8/93 reads such:

Spl. Case No. 8/93 Charge with two Heads. I, Shri N.C. Sil, Judge, 24-Parganas 1st Special Court, Alipore, hereby charge your P.K. Banerjee, as follows:

Firstly - that you being a public servant, employed as Asstt. Engineer (Civil), Civil Maintenance Division of International Airport Authority of India, Calcutta in collusion with your colleague Shri Gautam Das, Junior Engineer in the same unit of the International Airport Authority of India, Calcutta on 30.4.91 demanded and accepted in office chamber an amount of Rs. 3000/- out of total demand of Rs. 6000/- from Shri Shib Nath Pramanik for yourself illegal gratification other than legal remuneration as motives of reward towards helping Sri Pramanick to pass the pending bills and thereby committed an offence u/s 7 of Prevention of Corruption Act, 1988 r/s. Section 34 of the Indian Penal Code and within my cognizance.

Secondly - that being a public servant employed as such on the aforesaid date by corrupt and illegal means or by abusing your official position as such public servant obtained for yourself pecuniary advantage to the extent of Rs. 3000/- from Shri Shib Nath Pramanick and thereby committed offence specified in Section 13(1)(d) of P.C. Act, 1988 punishable u/s 13(2) of the said act and within my cognizance.

And I hereby direct that you be tried on the said charges.

Charges are read over and explained to the accd. when he pleads not guilty and claims to be tried.

Sd/- Illegible Judge, 24-Parganas 1st Spl. Court, Alipore.

Dated Alipore, the 15th day of March, 1995.

12. The charge of departmental proceeding under Article 1 read such:

ARTICLE 1.

Shri PK Banerjee while functioning as Asstt. Engineer (Civil), now designated as Asst. Manager (Engg-Civil) in Civil Maintenance Division at Kolkata Airport in addition to other duties was responsible for supervising the work of, M.O. IAAI

Residential Colony during 1988-89 SH: Modification and enlargement of Children's Park near Type "A" quarters in IAAI residential colony, Kolkata.

Vide contract No. 10/E.E-AMD/89-90 dated 01.06.1989 an agreement was executed between the erstwhile IAAI and M/s. Tarashankar Construction Company whereby M/s. Tarashankar Construction Company was authorized to carry out the work of, M.O. IAAI Residential Colony during 1988-89 SH: Modification and enlargement of Children's Park near Type A quarters in IAAI residential colony, Kolkata. It is reported that on 30.04.1991, Shri P.K. Banerjee demanded and accepted illegal gratification of Rs. 3000/- from Shri Shibnath Pramanik, an authorized representative of M/s. Tarashankar Construction Company, for the purpose of preparing and passing the final bill in favour of M/s. Tarashankar Construction Company for having executed the above job. He was caught red handed by the CBI while accepting the bribe. Thus, by his above act Shri P.K. Banerjee has shown negligence in performance of duty, exhibited lack of integrity and acted in a manner unbecoming of an employee of the Authority thereby violating Regulation 4(i)(a), 4(i)(d) and 5(ix) of AAI Employees (Conduct, Discipline and Appeal) Regulations, 2003. Further, by taking illegal gratification to which he was not entitled, Shri P.K. Banerjee has committed misconduct under Regulation 5(ii) of AAI Employees (Conduct, Discipline and Appeal) Regulations, 2003.

Sd/- (A.K. MISRA) Member (P&E), Disciplinary Authority.

13. It is an admitted position that the factual allegation of the criminal proceeding and the allegation of the departmental proceeding are identical, the witnesses of both the proceedings are identical and the documents relied upon also are identical.

Scanning of the Judgment of P.K. Biswas, J. acquitting the present writ petitioner from the criminal proceeding by allowing the appeal C.R.A. 393 of 1999:

14. To identify as to whether the acquittal of the writ petitioner from the said criminal charge, which culminated to a conviction initially by the learned Trial Court and thereafter in appeal was set aside and quashed by the Hon"ble Appeal Court, was on merit or on technical ground, the findings and observation of P.K. Biswas, J. (as His Lordship then was) is scanned hereinbelow. The prosecution in the criminal case on the basis of the FIR as lodged intended to establish that a trap was framed by the CBI to catch the writ petitioner red handed while taking the bribe alleged from a construction agency for the purpose of allowing the bill of the construction company. It is the case of the CBI that due to such trap, the writ petitioner was caught red handed by the CBI and on that fact the charges were framed by the learned Trial Court of criminal jurisdiction. The conviction order was tested by the Appeal Court on scanning the findings and observations to reach to pass an order of setting aside the conviction and sentence passed by the learned Trial Judge and for declaration of acquittal of the accused appellant from the said case. The relevant findings read such:

As pointed out from the side of the appellant, it has come out that the alleged payment of gratification was made on 30-04-1991 in the chamber of the appellant, which was having only one flash door fitted with automatic door closure and the sitting position of the chamber was as such hardly one could see anything from outside that what was happening inside the chamber until and unless some arrangement is made for keeping the flash door partly open. But, due to the non-mentioning of the aforesaid important fact by P.W. 12 (Sri Biswas) in his pre-trap memorandum hardly it could be accepted that he had made some arrangement for keeping the door partly open giving his witnesses a scope to see and/or to hear out the conversation that was going on inside the aforesaid chamber. The nature of the evidence that has been adduced by P.W.4 (P.K. Ghata) is also very doubtful and it is very hard to believe that the person concerned involved in such shady transaction would dare to carry out such transaction in presence of some unknown persons and so taking together the wholesome evidence that has been adduced by those witnesses named above, hardly I find any material to place my reliance on such evidence so as to hold that really some sort of shady transaction as has been alleged from the side of the prosecution was going on in between the appellant on one side and P.W. 1 on the other.

My aforesaid finding also gets its ample support from the fact that when P.W. 2 (Ashok Dingal) was candid enough to admit that the money was kept on the table and he counted those as per the instruction of P.W. 12 (D.N. Biswas). The said facts taken together with the alibi taken from the side of the accused by examining D.Ws., specially the D.W.I (Mantu Sk.) that it was that money which was required to be paid to the labour contractor in presence of the appellant cast a heavy shadow on the sub-stratum of the prosecution case that such money was paid as a gratification to the appellant for passing the alleged bill.

Furthermore, the allegations in the R.C. Case No. 26/91 by Sri Goutam Chatterjee taken together with the allegation in R.C. Case No. 27/91 i.e. the present case cast a serious doubt on the prosecution allegation that really even after receipt of the measurement etc., the bills were not recommended rather withheld by the present appellant with an ulterior motive to accept the illegal gratification.

It is quite well settled that the prosecution in securing the conviction against any accused person is required to prove charges leveled against such accused persons beyond all reasonable shadow of doubt but the degree and the standard of proof in establishing a defence case an alibi, set up by the defence are somewhat different from that of the prosecution case and for establishing the defence case, an alibi taken by the defence, on assessing the evidence adduced by the defence, the Court has to come to a finding depending upon the preponderance of probabilities and the defence is not at all required to prove their case beyond all reasonable shadow of doubt.

Examining the defence evidence in the concerned case in the light of the

aforesaid parameters and in the context of the evidence tendered from the side of the prosecution, I am rather prompted to hold that the prosecution in the instant case has not able to bring home the guilt of the appellant u/s 7 of the Prevention of Corruption Act, 1988 together with Section 13(2) of the Prevention of Corruption Act, 1988 beyond all reasonable shadow of doubt and therefore, the present accused appellant is entitled to get an order of acquittal from this case upon benefit of doubt. The Trial Judge therefore, was not justified in awarding conviction and punishment to the accused appellant as has been done in the instant case.

15. With the aforesaid finding and observation the order passed to this effect:

In the result, the appeal succeeds accordingly.

The appeal be and the same is hereby allowed and Judgment and order of conviction and sentence passed by the learned Trial Judge are hereby set aside. The accused appellant is, hereby, acquitted from this case.

He be set at liberty at once if not wanted in any other case.

16. On a careful reading of the said findings, the following findings by using the language by the Criminal Appeal Court are very vital for adjudication of the questions No. (1), which reads such:

hardly I find any material to place my reliance of such evidence as to hold that really some sort of shady transaction as has been alleged from the side of the prosecution was going on in between the appellant on one side and P.W.I on the other"... "It cast a heavy shadow on the sub-stratum of the prosecution case that such money was paid as a gratification to the appellant for passing the alleged bill"... "the present case cast a serious doubt on the prosecution allegation that really even after receipt of the measurement etc., the bills were not recommended rather withheld by the present appellant with an ulterior motive to accept the illegal gratification"... "I am rather prompted to hold that the prosecution in the instant case has not able to bring home the guilt of the appellant u/s 7 of the Prevention of Corruption Act, 1988 together with Section 13(2) of the Prevention of Corruption Act, 1988 beyond all reasonable shadow of doubt...."The Trial Judge was not therefore justified in awarding conviction and punishment to the accused appellant.

17. From the ultimate ordering portion of the said Judgment after quashing the conviction and sentence, the learned Appeal Court in the criminal appeal held "the accused appellant is, hereby, acquitted from the case".

18. On a bare reading of the finding and observation of the said Judgment of the Hon"ble Appeal Court, this Court is of the view that the acquittal of the present writ petitioner from the said criminal case on the allegation as made in the FIR that accused took bribe to pass the bill was disbelieved by the Hon"ble Appeal Court by using the language "that there was no such event of said shady transaction as alleged". The finding and observation in the criminal appeal clearly

lead this Court to conclude that the acquittal was on merit on assessing the evidence and materials due to the findings, namely, "that there was no materials to believe about the shady transaction as alleged and further on holding that there was a heavy shadow on the sub-stratum of the prosecution case that, money was paid as a gratification to the accused".

19. Having regard to such clear finding of the Criminal Appeal Court as was passed by the High Court at Calcutta, the highest Court of the State, this Court is of the view that the Departmental Authority should not be allowed to proceed with the departmental proceeding on the identical facts with identical witnesses of the criminal prosecution. It appears from the impugned order of the Appellate Authority communicated by General Manager (Pers.) dated 24th March, 2005 that the Appellate Authority for taking a decision of initiation of a departmental proceeding held "the incident in which Sri Banerjee was involved i.e. demanding and accepting bribe from the contractor in which he was caught red handed in a CBI trap case on 30th April, 1991, is a serious misconduct".

20. But there is a clear finding of the Appeal Court while allowing the criminal appeal to this effect "hardly I find any material to place my reliance on such evidence so as to hold that really some sort of shady transaction as has been alleged from the side of the prosecution was going on in between the appellant on one side and P.W. 1 on the other". The Hon"ble Appeal Court further held that "due to non mentioning of the important fact in the pre-trap memo that some arrangement was made for keeping the flash door partly open giving the witnesses a scope to see and hear out the conversation as was going on inside the aforesaid chamber, it is very hard to believe that the person concerned involved in such shady transaction would dare to carry out such transaction in presence of some unknown persons".

21. Hence, on a bare reading of the findings of the Hon"ble Appeal Court it appears that the alleged charge that the writ petitioner was caught red handed by the CBI trap on 30th April, 1991 while taking the bribe was wholly disbelieved by the Criminal Court. Though the language used "benefit of doubt" for passing a Judgment of acquittal, this Court is of the view due to aforesaid clear findings that the Judgment of acquittal as on merit and it was a case of "Hon"ble Acquittal". Due to such, the recent Judgment of the Apex Court is squarely applicable as passed in the case G.M. Tank Vs. State of Gujarat and Another, . In the said Judgment of the Apex Court, the factual matrix also was identical with the present one as it appears from paragraph 30, which reads such:

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 and 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.

22. In the instant case also though there is a benefit of doubt but the same witnesses who are the witnesses of the departmental proceeding were examined by the Criminal Court and the Appeal Court in the criminal appeal disbelieved the entire story.

23. This Court is not unmindful of the fact that acquittal simplicitor and/or acquittal ipso facto will not cause any restraint of initiation of a departmental proceeding on the identical facts with identical witnesses. There is no doubt that departmental proceeding and criminal proceeding both are not identical in nature, when one proceeding, namely, criminal proceeding is for the purpose of identification of the commission of an offence under the penal law, whereas another proceeding, departmental proceeding, is for the identification of the conduct in terms of the misconduct of the Service Regulation. This Court further is not unmindful of the fact that the depth of consideration of evidentiary value and its amplitude thereof, as to be considered, also has a wide variance in between the two proceedings, namely, in criminal proceeding strict proof is the rule of law following the Evidence Act, whereas, in departmental proceeding only the "preponderance of probability" would suffice to identify the misconduct. Despite all such, very often, a question is cropped up as to whether in a criminal proceeding where on the identical facts and witnesses there is an acquittal on merit disbelieving the prosecution story, whether it, would be just, proper and reasonable to allow the departmental proceeding on the identical facts and witnesses to have an otherwise conclusion on giving a chance to reach a different finding than the findings reached by the competent Criminal Court. The answer came out in the G.M. Tank (supra) in paragraph 31, which reads such:

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 case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

24. The underlying object and the jurisprudential concept of such finding is that when in a criminal proceeding with identical facts and witnesses produced and examined, on merit any adjudication is made holding that the prosecution case could not be believed and thereby there is an acquittal, no departmental proceeding on identical facts and with identical witnesses could be initiated as the same would allow the Enquiring Authority and also the Disciplinary Authority a scope to reach a different finding than the findings reached by the competent Criminal Court of law on the basis of the evidence on records, namely, deposition

of the witnesses who are identical in both the proceedings and the same would cause a severe jolt in the justice delivery system itself as a Disciplinary Authority is being allowed to sit as an Appellate Authority over the Judgment and findings of a competent Criminal Court by scanning the evidence and materials adduced by the prosecution witnesses who are the witnesses of the disciplinary proceeding. It may cause a serious consequence on the jurisprudential concept of superior position of the judiciary and its power, dignity and majesty thereof. In the instant case from the very nature of the article of charge in the departmental proceeding under challenge it is explicit that the same fact of putting a trap by CBI and thereafter delinquent was caught red handed; is the nucleus of factual matrix and dimension of the foundational basis of the article of charge to identify the misconduct, whereas, such factual allegation of CBI trap and the fact that the accused was caught red handed while taking gratification, was the basic fundamental fact of the criminal prosecution as launched, which has been disbelieved categorically by the Criminal Appeal Court by its proper findings on scanning the evidence threadbare.

25. Hence, if the present departmental proceeding, which is the subject matter of this writ is allowed to be continued on the article of charge and with the witnesses whose names are mentioned, it will be nothing but to allow the Disciplinary Authority to reach a different conclusion about the CBI trap and the implication of the writ petitioner for taking gratification and such situation will cause injury to the justice delivery system itself as rendered by the judiciary and more so by the superior judiciary as the Judgment delivered in the appeal was by the High Court at Calcutta sitting in the criminal appeal division. The findings, observations and conclusion reached by the P.K. Biswas, J. (as His Lordship then was) in the criminal appeal exercising the criminal appellate jurisdiction of the High Court at Calcutta cannot be allowed to be interpreted, scrutinized or analysed through the mouth of witnesses of Departmental Proceeding for an otherwise conclusion by a Disciplinary Authority. If this is allowed, same would cause a serious injury to the justice delivery system by the judiciary. Having regard to such, the Constitution Bench in the case R.P. Kapur v. Union of India and Anr. reported in AIR 1964 SC 787 by necessary implication held that when there was Hon''ble Acquittal, departmental proceeding should not be allowed to continue on identical facts with identical witnesses, which has been relied upon in the case G.M. Tank (supra), where the Apex Court distinguished the cases as earlier delivered by the Apex Court on facts and law, namely, the cases Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, , Judgment of three Judges Bench; Depot Manager, Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., , a Judgment of three Judges Bench; State of Andhra Pradesh Vs. Sree Rama Rao, , a Judgment the three Judges Bench and Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another, , a Judgment of three Judges Bench.

26. In that view of the matter, on having an analytical view of the present facts

of the case, this Court is of the view that the departmental proceeding should not be allowed to continue. Point No. (1) is answered in favour of the writ petitioner.

27. Point No. (2) is taken up for consideration. It appears from the records that the Appellate Authority took decision for initiation of a departmental proceeding with the finding that the writ petitioner was caught red handed in CBI trap while taking gratification and this decision was communicated by the letter dated 24th March, 2005 issued by General Manager (pers.) as already referred to, which is impugned in this writ application. The Appellate Authority who is the Chairman of the said Airport Authority, namely, Sri K. Ramalingam, was the Disciplinary Authority who took decision on 13th July, 2000 imposing penalty of dismissal from service of the writ petitioner exercising his power under Regulation 33 of the said Regulation due to the reason that the writ petitioner suffered a Judgment of conviction by the learned Trial Court. It is a basic principle of Administrative Law that nobody should be judge of his own cause applying the maxim "nemo debet esse judex in propria sua causa". It is a settled legal position with a deep-rooted foundation in the Administrative Law. The Apex Court considered this aspect and applied in the case *The Financial Commissioner (Taxation) Punjab and others Vs. Harbhajan Singh*, wherein, a Settlement Officer, who passed a decision in a departmental proceeding as Disciplinary Authority sat as an Appellate Authority over the said decision. Same view reiterated by the Apex Court following the aforesaid Judgment in the case *Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others*. It was further echoed in the case *Suman Bede v. Union of India* reported in (2005)12 SCC 388. The ratio-decidenti of the aforesaid cases are squarely applicable in the instant case as the earlier Disciplinary Authority, Sri K. Ramalingam, sat as an Appellate Authority to take a decision on the representation of the petitioner, whereby the order of Disciplinary Authority dismissing the writ petitioner was the subject matter passed by the said gentleman, for consideration due to acquittal of the writ petitioner in criminal appeal. Hence, applying the doctrine of fairness and reasonableness as well as the aforesaid maxim as referred to, the impugned decision of Appellate Authority is not legally sustainable. The point No. (2), accordingly, is answered in favour of the writ petitioner.

28. Having regard to the aforesaid findings and observation, point No. (3) is, accordingly, answered by quashing and setting aside the impugned decision of the Appellate Authority communicated by the order dated 24th March, 2005 by General Manager (Pers.) as well as the departmental proceeding as initiated by memo dated 7th September, 2005 issued by one Sri A.K. Misra, Disciplinary Authority and the article of charge thereof. The impugned order of suspension by the Appellate Authority is also set aside and quashed. The writ petitioner is entitled to be reinstated in service along with all allowances and service benefits. Respondents are directed to allow the joining of the writ petitioner forthwith and to release all arrear salary and service benefits within a month from this date and to continue his salary allowances and service benefits in accordance with law.

The application being C.A.N. No. 9915 of 2005 has been considered along with the writ application and the same is accordingly allowed on the aforesaid terms.

Later:

29. Since the learned Advocate-on-Record, Mr. Anirban Dutta on behalf of the Airport Authority of India is present, the learned Advocate for the petitioner need not to communicate this order. Said learned advocate will take steps for communication of the order to his client for implementation of the order by the said respondents.

Stay as prayed for is rejected.

Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.