

(2011) 12 CAL CK 0068
In the Calcutta High Court
Case No : Writ Petition No. 5790 (W) of 2010

Sri Manoranjan Rout

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 9(2)A
Criminal Procedure Code, 1973 (CrPC) — Section 248(1)
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471

Citation : (2011) 12 CAL CK 0068

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Debjani Sengupta and Mr. Sandipan Banerjee, for the Appellant; Partha Sarathi Bose and Mr. Ujjal Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—The Petitioner, Manoranjan Rout, states that he is a permanent resident of Vill. Jenapada Dal, P.O. Jenapada, P.S. Athagarh in the District of Cuttack in Orissa. According to him, he now resides at Quarter No. F-30B, New Colony, Durgapur Thermal Power Station, Damodar Valley Corporation, Durgapur-7 in the District of Burdwan, West Bengal. According to him, he, along with his other cosharers, have landed property pertaining to Khatian No. 483/505 in the Tahsildar of Athagarh in Orissa referred to above and from the entry in Column No. 2 of the "Patta", it would be evident that the Petitioner belongs to the "Paiko" caste.

2. The Petitioner states that on 5.3.2000, the Sarpanch of the Jenapada Desh Gram Panchayat issued Caste Certificate in favour of the Petitioner certifying that he belonged to the "Paiko" Caste. He has also stated that one R.P. Swain, the Minister of State (Independent), Youth Service, Science and Technology, Orissa, and Bhartnuhari Mahatab, Member of Parliament, issued Caste Certificates in favour of the Petitioner on 13.4.2000 and 14.4.2000, Certifying that the

Petitioner belonged to the "Paiko" caste. These Certificates are Annexure-P/1 to the Writ Petition.

3. According to the Petitioner, the Caste "Paiko" in the State of Orissa, has been designated as "Other Backward Class" (O.B.C.) and it has also been included in the State List as Entry No. 138 at Sl. No. 133 is notified in the Gazette Notification brought on record vide Annexure-P/2.

4. On 19.11.1997, the Petitioner applied for the post of a sub-Inspector (Fire) and sub-Inspector (Mechanical) in the Central Industrial Security Force (CISF for short). The Petitioner has stated that as far as back as in the year 1997, he had applied to the Tahsildar of Athagarh for a grant of a Certificate certifying that he was an OBC by Caste. He has stated that in or around January, 1997, a Certificate was issued to that effect and he had applied for the post in question along with the said Certificate.

5. By a memo dated 16.10.1998, the Office of the Assistant Inspector General, CISF, East Zone Headquarters, Patna, Bihar, informed the Petitioner that he had succeeded in the selection tests and therefore, had been provisionally selected for the post of SI (Fire) in the CISF. Thereafter, he was directed to report to the Durgapur Thermal Power Station and accordingly he joined in the CISF Unit at Durgapur Thermal Power Station, DVC on 1.12.1999.

6. On 22.12.1999, the Tahsildar of Athagarh alleged that the Petitioner was a "Khandayat" by Caste which was not included in the list of OBCs and that by producing a Caste Certificate for OBC, the Petitioner had avoided the age bar and had obtained service in CISF.

7. Thereafter, on 11.2.2000, the Commandant, CISF Unit at Durgapur lodged a Complaint with the Officer-in-charge, Durgapur Police Station alleging that the Petitioner had produced a false Certificate in relation to his Caste while applying for the post of SI (Fire) and that the said "OBC" Caste Certificate, was fake.

8. On the basis of the aforementioned Complaint, the Durgapur Police Station instituted Durgapur Police Station case No. 47/00 dated 11.2.2000 in Sections 467/468/471/419/420 of the IPC 1860 whereafter the Petitioner was arrested but subsequently released on bail. The FIR is Annexure-P/3.

9. Thereafter on 28.3.2000, the Office of the Commandant CISF Unit at Durgapur Thermal Power Station, issued a Memorandum/Charge-sheet for conducting departmental proceedings against the Petitioner. The said Memorandum is Annexure-P/6. The Charges against the Petitioner was that in order to gain appointment as SI (Fire), the Petitioner, while applying for the said post at Jenapada Dal on 19.11.1997, knowingly misled the CISF Authorities and submitted a false Certificate of OBC bearing Misc. Case No. 1480/97 dated 6.1.1997 and thus, succeeded in securing appointment as SI (Fire) from the quota meant for OBC Candidates.

10. Subsequently, a Charge-sheet was also filed before the Criminal Court and by

an Order dated 7.4.2000 (Annexure-P/5), the Petitioner was put under suspension on the ground that he had been detained in custody on 12.2.2000 for a period exceeding 48 hours.

11. The Petitioner has stated that in the Criminal Case referred to above, the main allegation was that he had produced a false and fake OBC Case Certificate to gain employment for the post of SI (Fire) in the CISF, thereby misleading the Department.

12. It is stated by the Petitioner that prior to his suspension on 1.4.2000, he had filed an Application for supply of some documents including the Caste Certificate bearing Misc. Case No. 1480 of 1997 as well as the Enquiry Report conducted by one Sri V. Srinivas Kumar, Assistant Commandant CISF, unit at NALCO. In reply, the Commandant of the Durgapur Unit issued a letter dated 12.4.2000 supplying the said documents to the Petitioner along with a copy of the FIR dated 11.2.2000 referred to above.

13. The Petitioner has stated that since the Charge-sheet in the Criminal Case as well as the Charge-sheet in the departmental proceedings were based on the self-same set of facts, he therefore filed a Writ Petition before this Court being W.P. No. 16577 (W) of 2001 and prayed for stay of the departmental proceedings till disposal of the Criminal Case. It is stated that by Order dated 19.10.2001, an Order was passed by Alok Chakraborty, J. (as his Lordship then was) directing the authorities to file their Affidavits-in-opposition within two weeks after the vacation and gave liberty to the Petitioners to file reply within one week thereafter and the matter was directed to appear on the list one week after the vacations. The said Order is Annexure-P/8 at page 87.

An interim Order was also passed restraining the Respondents from proceeding with the disciplinary proceedings for a period of four months. The Petitioner was also given a liberty to pray for extension of the said interim Order upon notice to the Respondents. It appears that on 13.2.2002, the said interim Order was extended until further Orders or till disposal of the Criminal Case, whichever was earlier, subject to further Orders.

14. The Petitioner has stated that in the meantime, by a Judgment dated 31.8.2005, the learned Judicial Magistrate (3rd Court), Durgapur acquitted the Petitioner from the allegations levelled against him holding that he was not found guilty for the offence punishable u/s 467/468/471/419/420 of the IPC and therefore acquitted him u/s 248(1) of the Cr.P.C. A Typed copy of the said Judgment has also been brought on record between pages 113 to 126 of the Writ Petition.

15. It is stated that thereafter on 30.10.2005, the Commandant CISF, Unit Durgapur, issued an Order wherein, while referring to the Order dated 13.2.2002 passed by this Court in W.P. No. 16877 (W) of 2001 (by which the departmental proceedings were directed to be kept in abeyance till disposal of the Criminal proceedings or until further Orders, whichever was earlier), he directed that the

Criminal Case had been disposed of by the Judicial Magistrate, 3rd Court at Durgapur on 31.8.2005 and therefore, as per Administrative decision, the departmental enquiry which had been initiated against the Petitioner was to be finalised and therefore, a new Enquiry Officer was being appointed by the Disciplinary Authority vide Order dated 24.10.2005 to conduct the enquiry from the stage of the reply of the Petitioner. The said letter dated 30.10.2005 is Annexure-P/11.

16. It appears that thereafter, the Petitioner filed a Representation on 9.11.2005 before the Inspector General, CISF North- east Zone as well as before the Commandant CISF, Unit at Durgapur Thermal Power Station wherein he prayed for revocation of the Order of suspension and for dropping of the departmental proceedings as well as reinstatement, in the light of the Order of acquittal passed by the Criminal Court. According to the Petitioner, the said Representation was neither considered nor disposed of and the authorities proceeded with the departmental proceedings and therefore, the Petitioner again filed W.P. No. 21233 (W) of 2005. On 22.11.2005, the said Writ Petition was placed and another Hon'ble Single Judge of this Court directed filling of Affidavits and Ordered that the departmental proceedings may continue but no final Order would be passed without leave of the Court.

17. As a consequence the Respondents continued with the departmental proceedings and finally held that the Charges levelled against him had been proved. However, they could not pass any final Order because of the Order dated 22.11.2005 passed in the Writ Petition referred to above.

18. However, on 28.8.2009, a final Order was passed by another Hon'ble Single Judge disposing of the Writ Petition itself by granting an opportunity to the Respondents to give a copy of the Enquiry Report to the Petitioner. The Petitioner was also given liberty to file a representation both on facts and law and the Respondent authorities were directed to consider the same and take an appropriate decision. The said Order has been brought on record at Page 140 of the Writ Petition. While passing the said Order, the other Hon'ble Single Judge recorded the submissions of the Respondents to the effect that mere acquittal in criminal proceedings does not prevent the Disciplinary authority from proceeding with the matter, but he however also observed that "needless to mention that acquittal recorded by the concerned learned Criminal Court below is a matter which shall be taken into consideration by the authority."

19. Thereafter and in terms of the said Order dated 28.8.2009, the authorities supplied the Enquiry Report (Annexure-P/15) and the Petitioner also filed a Representation on 28.10.2009 (Annexure-P/16).

20. After receipt of the said Representation, the Commandant passed his final Order dated 18.11.2009 (Annexure-P/17) imposing the punishment of removal from service upon the Petitioner. This Order is at page 159 of the Writ Petition.

21. The Petitioner filed an Appeal against the said Order on 10.12.2009 Vide

Annexure-P/18 but by an Order dated 23.2.2010 (Annexure-P/19), the Appellate Authority rejected the Appeal thereby confirming the final Order dated 18.11.2009.

It is against the aforementioned final Order dated 18.11.2009 as well as the Appellate Order 23.2.2010 that the Petitioner has filed this 3rd Writ Petition praying for quashing of the two Orders referred to above and for a direction that they be Commanded to reinstate him in service together with all arrears and consequential benefits along with Bank Interest w.e.f. the date he was put under suspension i.e. 7.4.2000 after deducting the suspension allowance which he has already received.

22. An Affidavit-in-opposition has been filed by the Respondents on 22nd June, 2010 wherein it has been stated that the Petitioner had filed an Application in the prescribed form on 19.11.1997 and in the said Application, he had mentioned his Caste as OBC on the basis of the OBC Certificate being Misc. case No. 1480 of 1997 dated 6.1.1997 issued by the Tahsildar, Athagarh. Thereby, he had succeeded in getting appointment as SI (Fire) in the CISF.

It was further stated that subsequently, the said Caste Certificate was enquired into by the Department by one V. Srinivas Kumar, the then Assistant Commandant CISF unit NALCO and he had submitted an Enquiry Report to the Department stating that the Caste Certificate bearing Misc. Case No. 1480 of 1997 dated 6.1.1997 was false and fake. Details of facts of this Case have been narrated up to the stage of the final Order and the Appellate Order. They have stated that there is a provision u/s 9(2A) of the CISF Act 1968 to file a Revision against the Appellate Order passed on 23.2.2010 as well as against the Order of the Disciplinary authority and therefore, the Writ Petition is premature and liable to be dismissed.

23. The Respondents have repeated their stand in Para-8 of their Affidavit-in-opposition saying that the Petitioner, in support of his Claim of being an OBC, had submitted a Caste Certificate issued by the Tahsildar vide Misc. case No. 1480 of 1997 dated 6.1.1997. This was enquired into from the Tahsildar, Athagarh. By letter dated 22.12.1999, the said Tahsildar informed that the Caste Certificate was fake and even the signature of the Tahsildar on the said Certificate was forged. The Tahsildar further reported that Misc. Case No. 1480 of 1997 was a resident Certificate in relation to one Bijaya Kumar Muduli which was issued on 27.8.1997 and it was not a Caste Certificate issued in favour of the Petitioner and therefore the production of Khatian No. 483/505 in support of his "Paiko" caste had no relevancy with the Caste Certificate of OBC being Misc. case No. 1480 of 1997.

These Respondents have further stated that as per Rules, neither the Sarpanch of a Gram Panchayat nor the Hon"ble Minister of the State nor the Member of Parliament can be said to be empowered to issue Caste Certificate to a person. They have stated that the Petitioner was appointed in the CISF on 6.11.1997 in

the OBC quota on the basis of the OBC Certificate which was produced by him and this Certificate was found to be forged and fake. They have further stated that in the Application form itself and which was filed by the Petitioner while applying for the job on 19.9.1997, the Petitioner had himself declared that he was an OBC category candidate.

They have further stated that his date of birth, as per the Matriculation Certificate, was 8.1.1971 and therefore, he completed the maximum age limit of 25 years on 7.1.1996. Therefore, he was not eligible for appointment as a sub-Inspector (Fire) in the CISF due to being overage but by producing a fake OBC certificate, he got a relaxation of three additional years and in that way, he succeeded in securing the appointment. Therefore the Petitioner had misled the court as well as the authorities.

24. The Respondents have also submitted that departmental proceedings and criminal proceedings operate in two different areas. While criminal proceedings in a court of law, are decided under penal statutes, departmental proceedings against a Government servant, on the other hand, are decided in accordance with the Service Rules and therefore, a departmental enquiry has no connection with a Criminal Case. They have stated that while in departmental proceedings, the level of proof and standard is preponderance of probabilities, the charge, in a Criminal case has to be proved beyond reasonable doubt.

These, then are the gist of what the Respondents have attempted to highlight in their Affidavit-in-opposition.

25. An Affidavit-in-reply has also been filed which is in the nature of repeating and reiterating the statements made in the Writ Petition with a further emphasis on the fact that since the Petitioner was honourably acquitted by the Criminal Court and since no Appeal was filed by the authorities against the said Order of the Criminal Court, therefore, the departmental proceedings should be set aside being based on the same set of facts. It is further stated that the Petitioner is a "Paiko" by caste and that Government of India has already declared it to be so on 10.9.1993 and the said Tahsildar who reported against the Petitioner, was never called in the departmental proceedings. Therefore, no cognizance should be given to his Report.

26. In the instant case, there are a host of factors which goes in favour of the Petitioner. Firstly, if we look into the Memorandum of Charges at page 72, we find that the Caste Certificate was enquired into by the Department by appointing one V. Srinivas Kumar, Assistant Commandant CISF, unit NALCO, Angul. Obviously, this Enquiry was conducted without giving any opportunity of hearing to the Petitioner. However, in the Criminal case, the Tahsildar of Athagarh appeared as PW 5 and while in the Examination-in-chief he stated that the OBC Certificate being Misc. Case No. 1480 of 1997 was never issued from the Office of the Tahsildar in favour of Manoranjan Rout, in his Cross-examination, he however said that he had sent one OBC Certificate verification Report of Mr. Manoranjan

Rout as genuine sub-caste "Paiko" and which was under the OBC list as per the Government Schedule. His statements made before the criminal Court are quoted below:-

P.W. 5 is the Tahasildar of Attagarh at present, who advice that "In 1997 I am posted at Attagarh, he the then Tahasildar was Mr. Pradhan, I have not seen his signature. I can't say where he is. One OBC Certificate Misc. Case No. 1480/97 was never issued from our office (without seeing any Registrar and orally) against Monoranj Routh. This is the Xerox copy of OBC Certificate (Annexure B), Ext. B (with obj.) This is the xerox copy of verification of Certificate of O.B.C. by our office No. 4356 dt. 22/12/99. Ext. 4 (with obj.) This is typed letter information sent to I/O from our office Memo No. 287 dt. 2/2/2001 about Verification of O.B.C. Certificate Ext. 5 (with obj.)."

In his cross examination he deposed that "I send one O.B.C. Certificate Verification Report of Mr. Monoranj Routh as genuine as Sub-caste "Paiko" is under O.B.C. list as per Govt. Schedule. All the Ext. 3 to 5 (obj.) not done in my tenure & presence. It may be did by my predecessors. Since 1996-4-5 persons were transfer. During their leaving, Caste/OBC Certificate who issued and offices authorised issued Certificate. I can't say who typed Ext. 3 under whose direction. Ext. 3. Preparation & under whose direction & observation, these were issued can't say anything."

(Quoted but underlining given for emphasis)

27. The Criminal Court, while dealing with the case has observed, between running pages 124 to 125 of the Writ Petition, that the statements made by the PW 5 (Tahsildar) were made orally without any primary or secondary documentary evidence (the statement made in chief and cross examination) and that both were opposite and contradictory to each other. He also observed, while dealing with the evidence of PW 6. (the sub-Inspector of Police who was the first Investigating Officer) that he never went to Athagarh to examine the Tahsildar and that no staff of that office have seized any documents from that office or had taken any specimen signature of any person for verification of the forged document. The observations of the criminal court at pages 124-125 are reproduced below:-

P.W. 5 without any Registrar or document of the office of Tahasildar stated that OBC Certificate of Misc. Case no. 1480/97 was never issued from office to accused but in cross he stated that I send one OBC Certificate Verification Report of Mr. Monoranj Routh as genuine as Sub-caste "Paika" is under OBC list as per Govt. Schedule. There two statements orally made without any Primary or Secondary documentary evidence and both statements are opposite and contradictory to each other and not beyond reasonable doubt.

P.W. 5 again stated that before my tenure 4-5 Tahasildar were posted and on leave of their office work duly conducted by officer authorised and they also issued OBC Certificate, who signed and typed he unable to identified.

P.W. 6 & 1st I/O never went to Attagarh or examine the Tahasildar of Attagarh or any staff of that office neither seized any document from that office or nor took any specimen signature of any person for verification of forged document.

P.W. 7 is the 2nd I/O who used to do investigation only through table work, wrote the requisition letter Tahasildar Attagarh and received letter and report and completed the investigation. He did not examine that officer nor endorsed named in witness, nor asked to send any Register or office document to verify the report and filed chargesheet He has no knowledge about the contents of the Ext. 5 and fully depend upon the Ext. 6 without taking any signature verification even not mentioned in CD about the manner to collect or received the Ext. 5.

There is over writing in Memo No. in Ext. 5 and there is no Office seal or signing Authority Seal but PW 7 not verified all these irregularities in Ext. 5 before filing Chargesheet.

The Commutative effect of my foregoing discussion and the materials on record clearly leads me to believe that on the date, time and place, accused not cheated & joined the service not by fraudulent way.

So this point is decided in the negative and against the Prosecution."

(Quoted)

28. The aforementioned Order quoted above shows acquittal NOT on technical grounds but it is an acquittal on the merits of the case. In the Order dated 28.8.2009 passed in W.P. 21233 (W) of 2005, the Hon"ble Single Judge had clearly stated that "needless to mention that acquittal recorded by the concerned learned Criminal Court below is a matter which shall be taken into consideration by the authority." (Quoted but emphasis by underlining is by this Court)

29. Thus, the acquittal of the Petitioner being based on merits, cannot be said to be an acquittal on technicalities. The Respondents, while passing the final Order on 18.11.2009 ought to have given due weightage to the findings recorded by the Criminal Court but all that they have to say are general principles of law relating to preponderance of probabilities etc.

In the instant case, the Petitioner has been found not guilty on merits and has got an honourable acquittal. The Order of the High Court on 28.8.2009 (quoted above) was that the judgment/acquittal recorded by the Criminal Court shall be taken into consideration. From the impugned Order, it does not appear that it has been taken into consideration at all. All that has been stated is that the same does not help the Charged Officer since the proceedings in the criminal trial and departmental proceedings are different.

30. This Court however hastens to add that it is true that the yardstick in a Criminal case and the yardstick in a departmental proceeding operate in two different areas but here, in the instant case, we have to see as to what extent the principles of preponderance of probabilities can be stretched. Had it been a

case of acquittal in a Criminal court on technical considerations, then perhaps, the principles of preponderance of probabilities could have been applied but where the very basis of the Charge did not stand the test of judicial scrutiny before a Criminal court, the principles of preponderance of probabilities, in such cases, cannot be stretched to apply and that too, when the very persons who are mentioned in the Charge-sheet were either never called for during the departmental proceedings and those, who did appear, made contradictory statements. Some made statements in such a manner that forced the Criminal court to come to a conclusion that the Caste of the Petitioner could not have been disbelieved at all. Moreover, V. Srinivas Kumar, who was named in the Charge sheet, conducted the enquiry behind the back of the Petitioner and therefore, there was violation of the principles of natural justice also.

31. Apart from the aforesaid, what is important to take note of, is that the caste "Paiko" was already declared by a Gazette Notification to be an OBC in Orissa vide Gazette Notification published on 19.10.1994 (as would appear between pages 54 to 62 of the Writ Petition). The Caste "Paiko" finds mention at Sl. No. 133 vide Entry No. 138 of the State List. That being the position, the findings of V. Srinivas Kumar who is said to have submitted an enquiry report and who conducted the enquiry behind the back of the Petitioner, should not have been given weightage at all because it was in the face of and in the teeth of the Government of India Gazette Notification referred to above.

32. Under such circumstances, the Report of V. Srinivas Kumar who made the so called discreet enquiry (see page 78 of the Writ Petition) stating that most of the villagers had stated that the Petitioner's family belonged to the "Khardag" community and not to the "Paiko" community, cannot be accepted because these statements were made without giving any opportunity to the Petitioner or to his family members to disprove the allegations. In that view of the matter, the Certificates given by the Minister of State and by a Member of Parliament cannot be overlooked unless opportunity of hearing was given to the Petitioner and his family members before coming to a conclusion that merely because what the villagers had said, it was proved that the Petitioner was not a "Paiko" by Caste.

33. Under such circumstances and adopting the views of the Hon'ble Supreme Court passed in the case of G.M. Tank Vs. State of Gujarat and Another, this Court holds that when the judicial pronouncement was made by the Criminal Court 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. Paras 31 and 32 of the aforementioned Judgment reads as follows:-

31. 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 his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed 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.

32. 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. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

(Quoted)

34. Last, but not the least, PW1 is the Complainant Commandant, who lodged the Complaint. He has clearly stated that he did not conduct any enquiry about the genuineness of the OBC certificate but he lodged the FIR as per directions of the Headquarters.

35. Considering the aforementioned facts and circumstances, the submissions of the Respondents to the effect that the instant departmental proceedings must proceed on the basis of "preponderance of probabilities" alone, cannot be accepted in this case. It is also true that the scope of judicial review is limited, but, in this case, when this Court has seen and perused the findings of the Criminal Court which are based on findings on merits, it is strange that the same were not even properly appreciated nor considered by the Disciplinary authorities and therefore, such findings on merits by a judicial authority cannot be allowed to be eroded by disciplinary authorities in the manner that has been sought to be done. Mere repetition of views to the effect that CISF is a disciplined force does

not justify the action of the Respondents in completely ignoring the findings of a competent court of law.

36. Let it be recorded that while admitting this Writ Petition for hearing, one of us had restrained the authorities from evicting the Petitioner from his Quarter. That Order needs to be recorded because even on that day, his Lordship was of the view that the impugned Orders did not reflect consideration of the Petitioner's acquittal in the Criminal case. The Order dated 1.4.2010 reads as follows:-

W.P. No. 5790 (W) of 2010

01.04.10

In Re. : Monoranjana Rout. ... Petitioner

-vs-

Union of India & Ors. ... Respondents

Ms. Debjani Sengupta Mr. Sandipan Bsanerj

... for the petitioner

Mr. Ujjal Kumar Bhattacharjee.

... for Union of India

The Petitioner, Sub-Inspector of Central Industrial Security Force (CISF) has been charged with the offence of using a fake O.B.C. certificate for getting his job and in the disciplinary proceeding he has been found guilty and has been imposed the punishment of removal from service.

It appears that the CISF authorities had also filed a First Information Report, on the basis of which a criminal case was initiated against the petitioner. The learned Judicial Magistrate, 3rd Court, Durgapur by a judgment delivered on 31st August, 2005 has acquitted the petitioner, finding him not guilty of the offence with which he was charged in the criminal case.

Under those circumstances, the petitioner had approached this Court by filing a writ petition being W.P. No. 21233 (W) of 2005 seeking quashing of the memo of charges. An Hon'ble Single Judge of this Court by an order passed on 28th August, 2009 was pleased to dispose of the writ petition with certain direction and it was observed in this order:

Needless to mention that acquittal recorded by the concerned learned Criminal Court below is a matter which shall be taken into consideration by the authority. All points are kept open.

I have been taken through the orders of the disciplinary authority and the appellate authority and I do not find, prima facie, the said orders reflect proper consideration of the fact of the petitioner's acquittal in the criminal case. The

charge against the petitioner in the criminal case and in the departmental proceeding is near-identical.

In view of these facts, at this stage, I am of the view that a strong prima facie case has been made out by the petitioner at this stage.

Learned Advocate appearing for the respondents, however, prays for time to file affidavit.

Let affidavit in opposition be filed within three weeks as prayed for by the learned Advocate appearing for the respondents. Reply thereto, if any, be filed within two weeks thereafter.

Since the petitioner has already been removed from service, I am not staying the order of removal at this stage but on the prayer of Ms. Sengupta, learned Advocate for the petitioner I restrain the respondents from taking any step for evicting the petitioner from his official residence. As an interim measure, the petitioner shall be entitled to medical facilities and educational facilities of his children as may be permissible under the Service Rules of existing members of the force for a period of twelve weeks.

The matter shall be listed after six weeks.

Urgent photostat certified copies of this order if applied for, be supplied to the parties as expeditiously as possible.

(Aniruddha Bose, J.)

(Quoted but emphasis by bold fonts and underlining is by this Court)

37. For the foregoing reasons, the Writ Petition must succeed and it is accordingly allowed to do so. The impugned final Order of punishment as well as the main Appellate Order (final Order dated 18.11.2009) as contained in Annexure-P/17 and the Appellate Order dated 23.2.2010 as contained in Annexure-P/19 are both set aside and the Respondents are directed to reinstate the Petitioner in service together with arrears as admissible to him w.e.f. the date of having been put under suspension after deducting the subsistence allowance already paid to him.

38. As a consequence of this Order, the Petitioner will be entitled to continue to retain his official Quarter being Quarter No. F-30B, New Colony, Durgapur Thermal Power Station, Damodar Valley Corporation, Durgapur-7 in the District of Burdwan, West Bengal.

39. There shall however be no Order as to costs.

40. No Order however is passed in favour of the Petitioner in relation to his prayer that all admissible payments should be given to him with bank interest. This Court does not pass any Order in relation to interest.

41. Upon appropriate Application(s) being made, urgent Photostat Certified copy

of this Judgment, be given/issued expeditiously subject to usual terms and conditions.