IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

R

DATED THIS THE 17TH DAY OF JANUARY, 2025

BEFORE
THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO.101714 OF 2024 (S-R)

BETWEEN:

HANUMANTH N KARKUN
S/O. NARASINGRAO KARKUN,
AGE: 73 YEARS, OCC: PENSIONER,
R/O: SHRI PAAVATEESHA,
SHREYAS COLONY,
HALIYAL ROAD, SAPTAPUR,
DHARWAD - 580 001.

...PETITIONER

(BY SRI GIRISH A. YADAWAD, ADVOCATE)

AND:

1. HON'BLE MINISTER OF FINANCE,
   GOVERNMENT OF INDIA ,
   DEPARTMENT OF REVENUE,
   NORTH BLOCK,
   NEW DELHI – 110 002.

2. THE MINISTRY OF FINANCE,
   DEPARTMENT OF REVENUE,
   CENTRAL BOARD OF INDIRECT TAXES
   AND CUSTOMS, 2ND FLOOR HUDCO
   VISHALA BUILDING, BHIKAJI,
   R.K PURAM, NEW DELHI – 66,
   REP. BY SECRETARY.

3. THE COMMISSIONER OF CENTRAL
EXCISE, CUSTOMS AND SERVICE TAX,
AND THE DISCIPLINARY AUTHORITY,
NO.71,CLUB ROAD,
BELAGAVI – 590 001.

...RESPONDENTS

(BY SRI M.B.KANAVI, CGSC FOR R1;
SRI GIRISH HULMANI, ADVOCATE FOR R2 AND R3;
SRI VENKATESH M. KHARVI, DSGI, ADVOCAT FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE WRIT OF CERTIORARI QUASH THE ORDER DATED 06.02.2023 PASSED BY THE RESPONDENT NO.2 IN ORDER NO. 5/2023 VIDE ANNEXURE-J, IN THE INTEREST OF JUSTICE AND EQUITY. CONSEQUENTLY, ISSUE A WRIT OF MANDAMUS DIRECTING THE RESPONDENTS 2 AND 3 TO PAY THE ARREARS OF PENSION AND GRATUITY ADMISSIBLE TO THE PETITIONER WITH INTEREST AT THE RATE OF 12% AND TO CONTINUE TO PAY THE PENSION AND OTHER BENEFITS ADMISSIBLE TO THE PETITIONER, IN THE INTEREST OF JUSTICE AND EQUITY. ALTERNATIVELY, ISSUE A WRIT OF MANDAMUS DIRECTING THE RESPONDENT NO.1 TO REGISTER THE APPEAL FILED BY THE PETITIONER FORTHWITH AND TO DISPOSE OF THE SAME IN ACCORDANCE WITH LAW, EXPEDITIOUSLY, IN THE INTEREST OF JUSTICE AND EQUITY. AND ETC.,

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THERIEN AS UNDER:

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE M.NAGAPRASANNA)

1. The petitioner is before this Court calling in question an order dated 06.02.2023, by which the Disciplinary Authority imposes a penalty of withholding of 100% monthly pension and 100% gratuity, admissible to the petitioner on permanent basis and has sought a consequential direction by issuance of a writ

in the nature of *mandamus*, to the second and third respondents to settle the entire pension arrears with 12% interest per annum and to pay the future pension every month.

2. Facts adumbrated, are as follows:

The petitioner is an employee of the third respondent – Commissioner of Central Excise, Customs and Service Tax, coming within the second respondent. At the relevant point in time, he was working as Superintendent, in-charge of Central Excise, Range 'A', Hubli Division, Hubli. It is at that point in time, a complaint comes to be registered by one Rohith B. Deshpande, on 22.09.2011, on the score that the petitioner had demanded Rs.2,000/- as bribe to issue a service tax registration certificate; the complainant is said to have expressed his inability to pay the said amount and the petitioner is said to have agreed to an amount of Rs.1,500/-. The complainant then complains to the Lokayuktha Police, Dharwad, on 23.09.2011. The Lokayuktha Police on the basis of the recorded conversation between the complainant and the petitioner, lay a trap. Based upon the said conversation between the complainant and the petitioner, a crime comes to be registered on 23.09.2011, for offences punishable under

Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The matter was then transferred to the Central Bureau of Investigation, since the petitioner was an employee of third respondent coming within the second respondent.

3. The CBI after investigation, file a charge sheet in Spl.CBI.C.C.No.26/2013. After the registration of the crime, the petitioner retires on attaining the age of superannuation on 31.01.2012. After the retirement, the Disciplinary Authority issues a charge sheet against the petitioner based on the very same set of facts, which formed the basis in Spl.CBI.C.C.No.26/2013. The Enquiry Officer who was appointed to conduct the Disciplinary Enquiry against the petitioner, initially holds that the petitioner is not guilty of the charges. The Disciplinary Authority disagrees with the findings of the Enquiry Officer and remits the matter back to the Enquiry Officer, to hold a *de novo* enquiry. Two years thereafter *i.e.,* 13.02.2017, the Enquiry Officer once again submits a report reiterating his stand that the charge against the petitioner is not proved. The Disciplinary Authority, again disagrees with the findings of the Enquiry Officer and refers the matter to the UPSC, in terms of the guidelines. The UPSC,

tenders its advise to withhold 100% of pension and forfeiture of 100% gratuity payable to the petitioner as a measure of penalty. Based upon the said advice of the UPSC, the second respondent imposes the said penalty following the advice. The penalty advise is rendered on 18.05.2022 and the impugned order is passed on 06.02.2023. Aggrieved by the same, an appeal is filed by the petitioner before the first respondent, which is pending consideration and the petitioner has communicated several reminders to dispose the appeal.

4. What happens in the interregnum *i.e.,* conclusion of the disciplinary proceedings and filing of the charge sheet by the CBI, the petitioner gets acquitted of the offences in Spl.CBI.C.C.No.26/2013. The petitioner is now at the doors of this Court owing to his advancing age and the fact that he has been acquitted in the criminal case. He seeks quashment of the aforesaid order of penalty.

5. Heard Sri.Girish A. Yadawad, learned counsel for the petitioner, Sri.M.B.Kanavi, learned Central Government Standing Counsel for respondent No.1, Sri.Girish Hulmani, learned counsel for respondent Nos.2 and 3 and Sri.Venkatesh

M. Kharvi, learned Deputy Solicitor General of India for respondent No.2.

6. The learned counsel appearing for the petitioner, Sri.Girish A. Yadawad would vehemently contend that the Enquiry Officer not once but twice, exonerates the petitioner, holding that the charges against him are not proved. On both the occasions, the Disciplinary Authority disagrees with the findings of the Enquiry Officer and imposes penalty upon the advise of the UPSC, without independent application of mind. He would submit that both the Disciplinary Enquiry and the criminal case, were on the same set of facts. All the evidence and the documents in both the proceedings were the same. The penalty that is now imposed is clearly impermissible even under CCS (Pension) Rules, 1972 or even under CCS (Conduct) Rules, 1964. He would seek quashment of the proceedings by further contending that the petitioner has no money today for his treatment as he is a cancer patient.

7. The learned counsel Sri.Girish Hulmani, appearing for respondent Nos.2 and 3, would refute the submissions to contend that merely because the petitioner is acquitted of the

crime, it would not mean that the department is precluded from imposing penalty pursuant to the disciplinary enquiry. He would submit that the concerned Court acquitted the petitioner on benefit of doubt and would not enure to the benefit of the petitioner seeking quashment of the proceedings. He would further contend that the Disciplinary Authority has power to disagree and has imposed penalty on the statutory advise of the UPSC. No fault can be found with the imposition of penalty by the second respondent.

8. I have given my anxious consideration to the submissions made by the learned counsel appearing for the respective parties and have perused the material on record.

9. The afore-narrated facts are not in dispute. The link in the chain of events and dates are all a matter of record. On 23.09.2011, a complaint comes to be registered based upon a telephonic conversation between the complainant and the petitioner. The content of the conversation is that, the petitioner has demanded bribe amount of Rs.1,500/- and the petitioner was caught of the amount of Rs.1,500/- not personally but finding it on the table of the petitioner.

10. Based upon the aforesaid facts, a crime comes to be registered by the Lokayuktha police. The case is later transferred to the CBI, who after investigation file a charge sheet in Spl.CBI.C.C.No.26/2013. Between the date of registration of the crime and filing of the charge sheet, the petitioner retires on attaining superannuation on 31.01.2012.

11. Long after the retirement, the third respondent issues a charge sheet against the petitioner on 23.09.2014. The charge sheet so issued against the petitioner reads as follows:

"C.No:II/10A/01/2011-CIU Date 23.09.2014

CHARGE MEMORANDUM
[UNDER BULE 14 OF CCS (CCA) RULES 1965]

In pursuance of the sanction accorded by the President under Rule 9 of Central Civil Services (Pension) Rules, 1972, it is proposed to hold an inquiry against the said Shri. H.N. Karkun, Superintendent of Central Excise (Retd.) in accordance with procedure under Rule 14 and 15 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputation of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-1). A statement of imputation of misconduct or misbehavior in support of each article of charge is enclosed (Annexure-ll). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV)

2. Shri. H.N. Karkun, Superintendent of Central Excise (Retd.) is directed to submit within 10 days of the receipt of

this Memorandum, a written statement of his defense and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge, which are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri H.N.Karkun, Superintendent of Central Excise (Retd.) is further informed that, if he does not submit his written statement of defense on or before the date specified in Para 2 above, or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of Rule 14 and 15 of CCS (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

Receipt of this Memorandum may be acknowledged.

सलग्नः यथोपरि
Encl: as above.

दि. हरेराम / B. MARERAM
आयुक्त /COMMISSIONER

To

Shri. H.N. Karkun,
Superintendent of Central Excise (Retd.)
Dharwad.

It is undoubtedly on the same set of facts that lead to registration of the crime. Charge sheet is issued invoking Rule 9 of the Central Civil Services (Pension) Rules, 1972 (for short 'CCS(P) Rules'), as the petitioner by then had retired. The Enquiry Officer conducts enquiry and exonerates the petitioner.

The findings of the Enquiry Officer, in terms of his report dated 02.12.2016, read as follows:

> **"f) Under the circumstances, I am of the opinion that there are no enough evidences to prove that the amount received by the Shri. H.N.Karkun is bribe money. Available evidences do not wholly justify charge of failing to maintain absolute integrity and proper devotion to duty and charge of acting in a manner unbecoming of a Government Servant and therefore does not warrant penal action under Rule 14 of Central Civil Services (CCA) Rules, 1965."**
>
> (Emphasis added)

The Disciplinary Authority disagrees with the findings of the Enquiry Officer and the matter is remitted back to the Enquiry Officer for *de novo* enquiry. The Enquiry Officer again conducts the enquiry and records the findings that the petitioner is not guilty of the offence, which are all, a matter of record. The Disciplinary Authority disagrees with the report of the Enquiry Officer and communicates to the UPSC to seek advice and based upon the advice of the UPSC, imposes the following penalty:

> "6. In the light of the Observations and Findings as discussed above, and after taking into account all other aspects relevant to the Case, the Commission consider that the ends of justice would be met in this case if the

Penalty of **"withholding of hundred per cent (100%) of the monthly pension otherwise admissible to CO, Shri H N Karkun, Supdt. (Retd.) on permanent basis and also forfeiture of 100% (hundred per cent) of gratuity admissible to the CO on permanent basis" is imposed upon the CO. They advise accordingly."**

(Emphasis added)

A development that takes place between the exoneration by the first report of the Enquiry Officer and the imposition of penalty is, acquittal of the petitioner in Spl.CBI.C.C.No.26/2013. It therefore becomes germane to notice the reasons and the order of acquittal. They read as follows:

"35. Xxxxx Though P.Ws.1 to 3 i.e. shadow witness, complainant and 10 appear to be supported the prosecution case but looking to the entire evidence of these witnesses and material admission given by them during the course of their cross-examination establishes that, the evidence of these material witnesses is not trustworthy. During the course of his cross examination the material shadow witness P.W.1 admits that, the pre-trap mahazar is prepared as per the say of IO by his staff under para No.21 of his cross-examination P.W. 1 has stated as under.

"It is true that, I have no dictated the contents of Ex.P.3 pre-trap panchanama. The complainant (P.W.2) has also not dictated the contents of Ex.P.3 pre-trap panchanama. C.W.4 Smt. Shedake has not dictated the contents of Ex.P.3 pre-trap

> *panchanama. One Mr. Basavaraj Karekennavar (C.W.12) has prepared Ex.P.3. Mr. Hulusgund (P.W.3) dictated the contents of Ex.P.3 to Basavaraj Karekannavar (C.W.12) and at that time we kept quite".*

From the admission given by P.W.1 during the course of cross-examination as reproduced above, one can easily come to the conclusion that, none of the material witnesses like complainant, shadow panch witness, remaining two independent panch witnesses did not take any active participation in preparation of mahazar Ex.P.3 and all of them had kept silent. From the evidence of P.W.1 it also can be easily gathered that it is the IO who has dictated the contents of mahazar and hence, such evidence cannot be made use against the accused. This fact clearly indicates the active role played by the IO in preparing mahazar etc. Though no hand wash of panch witness Mr.Rodagi was collected by IO till the complainant states in his evidence that the IO has collected the sample of hand wash of panch witness Giriraj Rodagi. If really the IO had collected the sample hand wash of this Rodagi definitely it could have thrown much light on the prosecution case. But the prosecution has failed to send the sample of hand wash of Rodagi to chemical examination and collect the report. On the contrary the prosecution has suppressed this material fact and non-production of the sample of hand wash of Rodagi before the court also creates a serious doubt on prosecution case. The evidence of P.W.1 shadow witness indicates that, the IO has secured him even prior to lodging of the complaint itself. During the course of his cross - examination the complainant clearly admits that, the reverser page of Ex.P.5 deals with the illustration provided to the accused. Admittedly Ex.P.5 is the copy of the application for issuance of service tax certificate submitted by the complainant to the office of accused. Why this application contains the illustration that too an insurance illustration provided to the accused has not been made clear by the prosecution. This admission given by P.W.2 complainant makes the story set up by the defence side as probable. As per the evidence of P.W.3 IO the complainant has prepared the complaint with a carbon copy. It is also admitted by the IO P.W.3 that, the carbon copy of the complaint is available in the police station. But the IO has not produced the copy of *the complaint for the reasons best known to him. On the contrary it has been brought on record by the defence side from the mouth of complainant that later on he has inserted the date of his visit to the office of accused as 22.9.2011. Therefore, one thing is clear from the evidence of complainant and IO that, they have attempted to make out some case and in that process they have added or inserted the date in the complaint. On the basis of such admission given by complainant and IO the complaint looses its credibility and hence, it is not worthy to be relied upon. Besides this during the course of his cross-examination IO P.W.3 admits that, he was having an idea that the complainant was not at all having any work pending before the accused. He also admits that the work of the complainant if any is pending before the "C" range ie. before Sri. Koppad Supdt., Central Excise, Hubli Therefore, it is clear from the evidence of complainant and IO that, though the complainant was not having any work pending before the accused they tried to make out some case against the accused for the reasons best known to them. The prosecution has failed to prove the alleged scripts produced in the form of Ex.P.12 and 13 in accordance with Sec.65B of Evidence Act. That apart nothing like demanding of bribe as a motive or reward in connection of showing any official favour by accused under these documents. Nothing can be made out from these two documents Ex.P.12 and 13 regarding the alleged demand of bribe by the accused.* ***Repeatedly it has been brought on record by the defence side that, no work of the complainant was pending before the accused and the work of the complainant regarding issuance of service tax certificate was completed by Sri. Koppad, a Supdt., Central Excise, Hubli, at "C" range much earlier to filing of the complaint. Therefore, the entire case put forth by the prosecution is not free from doubt and such benefit of doubt shall go in favour of the accused. Therefore, the prosecution has failed to bring home the guilt of the accused beyond all reasonable doubt as alleged, Hence I answer Points No.1 and 2 in the Negative."***

Xxxxx

ORDER

> **"Acting U/Sec.235(1) of Cr.P.C. by extending principle of benefit of doubt the accused is acquitted for the offences punishable U/Secs. 7, 13(1)(d) R/w.Sec.13(2) of P.C.Act, 1988.**
>
> Bail bonds of accused stand cancelled.
>
> MOs.No.1 to 9 and 11 and 12 being worthless properties shall be destroyed after the appeal period is over. MO.No.10 is cash of Rs.1500/- shall be confiscated to the state after the appeal period is over."
>
> (Emphasis added)

The language deployed by the concerned Court though in the first blush would mean that the petitioner is acquitted on benefit of doubt, a deeper delving into the findings recorded by the concerned Court what would emerge is, that the prosecution has miserably failed to prove the guilt of the petitioner beyond all reasonable doubt. Therefore, it can safely said that it is not an order of acquittal on benefit of doubt, but an acquittal due to lack of evidence, which is acquitted on merits.

12. The other circumstance is, the documents that were marked as exhibits in the criminal trial and the witnesses examined in the criminal trial, as also the documents marked in

the disciplinary enquiry and the witnesses examined thereof, are all verbatim similar. The documents that are marked in the disciplinary enquiry are little less than that of criminal trial. Therefore, in the aforesaid circumstances, whether the acquittal of the petitioner can be taken note of, for the purpose of the quashment of the impugned penalty imposed in the disciplinary enquiry.

13. As observed hereinabove, both the proceedings sprang from a solitary incident of recovery of an amount of Rs.1,500/-, from the table of the petitioner, which is the alleged bribe amount. One has resulted in acquittal and the other, in imposition of penalty. If the order of acquittal is taken as having a bearing upon the penalty that is imposed in the disciplinary enquiry, the resultant inference would be obliteration of the findings in the disciplinary enquiry. The issue need not detain this Court for long or delve deep into the matter as a division bench of this Court in the case of ***Aejaz Hussain Vs. State of Karnataka*** reported in ***ILR 2020 Kar 4251***, while considering an identical circumstance has held as follows:

“25. Insofar as the judgment of the larger Bench of the Hon'ble Supreme Court relied by the 2nd respondent in the case of SHASHI BHUSAN PRASAD VS. INSPECTOR GENERAL, CISF reported in (2019) 7 SCC 797, at paragraph Nos.16 to 22, which read thus:

> "16. The facts noticed by us which have been inquired in a disciplinary inquiry and in the judicial proceedings undisputedly are based on different allegations and the set of evidence not based on the same facts and circumstances and in the given situation, the very submission made by the appellant of taking the benefit of acquittal in a judicial proceedings instituted against him on the plea of having nexus with the disciplinary inquiry loses its foundation.
>
> 17. The scope of departmental enquiry and judicial proceedings and the effect of acquittal by a criminal court has been examined by a three-Judge Bench of this Court in A.P. SRTC v. Mohd. Yousuf Miya [A.P. SRTC v. Mohd. Yousuf Miya, (1997) 2 SCC 699 : 1997 SCC (L&S) 548] . The relevant paragraph is as under: (SCC pp. 704-05, para 8)
>
>> "8. ... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental

enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

(emphasis supplied)

18. The exposition has been further affirmed by a three-Judge Bench of this Court in Ajit Kumar Nag v. Indian Oil Corpn. Ltd. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] This Court held as under: (SCC p. 776, para 11)

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., 2004 SCC OnLine Cal 59 : (2004) 4 LLN 512] dismissing him from service deserves to be quashed and set aside."

(emphasis supplied)

19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment [Shashi Bhusan Prasad v. CISF, 2008 SCC OnLine Ori 544 : 2008 Lab IC 3733] in detail and needs no interference by this Court.

20. The judgment in M. Paul Anthony case [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679

: 1999 SCC (L&S) 810] on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under: (SCC p. 691)

> "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."

> 21. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and evidence having no nexus/co-relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the enquiry officer had held him guilty, he was punished with the penalty of dismissal from service.

> 22. The judgment in G.M. Tank case [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] on which the learned counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the charge in the criminal case and departmental enquiry were different having no nexus/co-relationship based on different sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service.

" If the above extracted paragraphs of the judgment in the case of SHASHI BHUSHAN (supra) are noticed, it becomes clear that the Hon'ble Supreme Court was considering a case were the charges levelled against the appellant therein in the criminal case and the department proceedings were based on different set of facts having no nexus / co- relationship and the other circumstance before the Hon'ble Supreme Court was that the penalty in the Departmental Enquiry has been imposed upon the appellant therein, which was before the judgment of the criminal case could be pronounced. Both these factors would render the judgment in the case of SHASHI BHUSHAN (supra) inapplicable with the facts of the case on hand. **As observed hereinabove, in the instant case, both the criminal case and the Departmental Enquiry were based upon same set of facts, same witnesses and documents. Thus, it was on the basis of the same evidence. The other factor that is distinguishable is that, the order of acquittal in the instant case was in the year 2010 and the order of penalty in the Departmental Enquiry was imposed in the year 2019 long after the order of acquittal and its affirmation by this Court. Thus, the judgment in the case of SHASHI BHUSHAN (supra) would not be applicable to the facts of the case but the judgments in the cases of M. PAUL ANTHONY, G.M.TANK and BHASKAR REDDY would be applicable to the case on hand.**

26. We are acutely aware of the fact that there would be no bar to continue the disciplinary proceedings even after acquittal but the facts and circumstances of the each case will have to be taken into consideration. **In the instant case, though there was no bar to continue the Departmental Enquiry, the fact remains that both the criminal case and the Departmental Enquiry were based upon same circumstances, same set of facts and same witnesses and documents. There was not an iota of difference between the facts and evidence in the criminal case and the Departmental Enquiry.** Thus, the law laid down in the cases of M. PAUL ANTHONY, G.M.TANK and BHASKAR REDDY, covers the instant case on all fours and as a result of which the petitioner is entitled to succeed in the Departmental Enquiry. Hence, we hold point No.2 in favour of the petitioner.

(Emphasis supplied)

The Apex Court in the case of ***Ram Lal Vs.State of Rajasthan*** reported in ***(2024) 1 SCC 175*** has held as follows:

> "25. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable.
>
> 26. Though the Trial Court convicted the appellant under Section 420 of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:
>
> > "….Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974. Exh. P-3 is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or Marksheets. Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence. In these circumstances, this fact becomes

doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed."

[Emphasis supplied]

27. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 – original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S. Samuthiram (Supra).]

28. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. **The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.**

29. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190].

30. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).

31. Apart from the above, one other aspect is to be noted. The Enquiry Officer's report makes a reference to the appellant passing 10th standard, and to a 10th standard marksheet exhibited as Exh. P-4 referring to the date of birth as 24.07.1974. Jagdish Chandra-PW1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10th standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10th class certificate of Ram Lal produced before the Enquiry Officer, is of some other Ram Lal.

32. This issue need not detain us any further because it is not the case of department that the appellant sought employment based on 10th standard marksheet. It is their positive case that the appellant

> sought employment on the basis of his 8th standard marksheet. Shravan Lal-PW-4 in the departmental enquiry had also furnished the 10th standard marksheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8th standard marksheet, and he admitted that there was no alteration in the 8th standard marksheet.
>
> 33. In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.
>
> 34. Accordingly, we set aside the judgment of the D.B. Special Appeal (Writ) No.484/2011 dated 05.09.2018. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits. As far as backwages are concerned, we are inclined to award the appellant 50% of the backwages. The directions be complied with within a period of four weeks from today."

(Emphasis supplied)

The unmistakable inference that can be drawn from the afore-quoted judgments is that, if both the proceedings are springing out of a solitary action, the acquittal in the criminal trial, would undoubtedly enure to the benefit of the petitioner and lead to obliteration of the penalty in the disciplinary enquiry.

14. The other issue is, the imposition of penalty itself. As observed hereinabove, penalty is imposed on the petitioner on the advice of the UPSC. The imposition of withholding of 100% of pension and 100% of gratuity, is un-understandable as to under which provision of law, the Disciplinary Authority could impose such penalty of withholding 100% of the pension that too, permanently, that goes with gratuity as well. What is envisaged under the Rules, 1972 *qua* imposition of penalty against an employee coming within those Rules, 1972 is, 50% of the pension to the maximum, for a limited period or permanently and there is no provision to impose 100% of withholding of pension. Gratuity as well cannot be withheld completely or even part of it, as it can be only on a finding that the services of the petitioner has been terminated on account of him involving in an offence of moral turpitude. That is not the issue in the *lis*, as the service of the petitioner was never terminated. The petitioner had superannuated and the proceedings are continued post retirement. Therefore, withholding of gratuity and pension both to the tune of 100% has no sanction in law.

15. The submission of the learned counsel for the second and third respondents that the appeal filed by the petitioner is pending and he should await the outcome of the decision of the Appellate Authority is noted only to be rejected. The petitioner is now 73 years old. He has not seen the light of his terminal benefits, despite his retirement 13 years ago. He is left **bleeding** by the impugned penalty, which is worse than dismissal. If what the learned counsel for the petitioner submitted is considered, the **'cup of sorrow'** of the petitioner has come to the brim. Therefore, there is no question of sending the petitioner back to the doors of the Appellate Authority.

16. For all the aforesaid reasons, the following:

ORDER

i. The petition is allowed.

ii. The order 06.02.2023 passed by the second respondent in Order No. 5/2023 vide Annexure-J, stands quashed.

iii. The petitioner is entitled to all consequential benefits that would flow from this order.

iv. The consequential benefits would mean, the entire pension that is withheld and the gratuity that is forfeited to its full, to be paid to the petitioner, within 4 weeks from the date of receipt of a copy of the order.

v. In the event, the respondent Nos.2 and 3 would not disburse the aforesaid terminal benefits, the petitioner becomes entitled to an interest at 6% per annum, from the date it fell due *i.e.,* the date of superannuation, till the date of its payment.

vi. It is needless to observe that the pension of the petitioner would be paid as afore-directed and not drive a septuagenarian, to this Court, yet again.

________SD/-_____________
JUSTICE M.NAGAPRASANNA

KGK/CT-ASC
List No.: 1 Sl No.: 5