

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 9th September, 2010*
Judgment Delivered On: 23rd September, 2010

+ **WP(C) 9306/2009**

M.K.SHARMA ...Petitioner
Through : Mr.R.K.Handoo, Mr.Yoginder
Handoo and Mr.Aditya Chaudhary,
Advocates

Versus

UOI & ORS. ...Respondents
Through: Mr.Sachin Datta, Advocate with
Mr.Abhimanyu Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The petitioner was working as Sub-Postmaster Shamshabad, Sub-Post Office Agra. In May 2000, Babu Ram the Assistant Superintendent Post Offices (Central Sub Division) Agra lodged a complaint with Police Station Shamshabad alleging that the petitioner had misappropriated a sum of Rs.69,200/- using fake Kisan Vikas Patras (hereinafter referred to as "KVPs"). On the basis of said complaint an FIR No.208/2000 for offences under Sections 409 and 420, IPC was registered.

2. On 08.06.2001 the Senior Superintendent of Post Offices, Agra Division, Agra, the Disciplinary Authority of the petitioner issued a charge sheet to the petitioner under Rule 14 of the

Central Civil Services (Classification Control and Appeal) Rules, 1965 listing the following articles of charge:-:-

“Article – I

While working as SPM Shamshabad, SO Agra on 29-5-2000 Shri M.K. Sharma committed a grave misconduct inasmuch as he discharged KVP for Rs.85200/- and submitted paid voucher for Rs.16000/- only alongwith discharge journal to Agra HO. The said Shri M.K. Sharma discharged KVPs No. 15cc 950482 to 950485 Deno. Rs. 10000/- (40000 + 29200/- as Intt.) on the basis of RBT No.43 and failed to submit paid vouchers for Rs.69200/- and thus misappropriated the amount of Rs.69200/-. Thereby violating the provision of rule – 23 and 31 of PO SB Man. Vol. II. By acting in such a manner the said Shri. M.K. Sharma also failed to maintain absolute integrity, devotion to duty and acted in a manner which is an unbecoming of a Govt. servant as required under rule -3(i), (ii) & (iii) of CCS (Conduct) rules – 1964.

Article – II

Shri M.K. Sharma while working as SPM Shamshabad SO Agra committed a grave misconduct as he discharged KVP No.15CC 950482 to 950485 Deno. Rs.10000/- worth Rs.69200/- (40000 + 29200) but he failed to submit the paid voucher along with KVP discharge journal of the said denomination in lieu of such payment and also to note the Regn. No. in the said Journal and thus violated the provisions of rule-31 of PO SB Man. Vol. II. By doing so, the said Shri M.K. Sharma also failed to maintain absolute integrity, devotion to duty and acted in a manner which is an unbecoming of a Govt. servant as required under rule -3(i), (ii) & (iii) of CCS (Conduct) rules – 1964.

Article – III

While working as SPM Shamsabad S.O. Agra on 29-5-2000 Shri M.K. Sharma committed a grave misconduct by discharging duties of SB counter PA Shri Bhagwati Pd. As such he himself effected the payment of KVPs, prepared rough account of SB branch in Hand to Hand receipt book of counter PA with a malafide intention. He also prepared

discharge journal while these duties were related to counter PA as per memo of distribution of work of the Post Office Shamsabad Agra. To conceal the facts of his intention about alleged misappropriation of Govt. money, the said M.K. Sharma infringed the provisions of rule-4 of P&T Man. Vol VI Part-I and avoided his supervisory duties. By doing so, the said Shri M.K. Sharma also failed to maintain absolute integrity, devotion to duty and acted in a manner which is an unbecoming of a Govt. servant as required under rule -3(i), (ii) & (iii) of CCS (Conduct) rules – 1964.”

3. An Inquiry Officer was appointed to record evidence and submit a report. During inquiry the petitioner filed an application before the Inquiry Officer seeking production of 21 documents and gave justification pertaining to the relevance thereof for his defence. We may reproduce the document sought to be produced, its relevance to the case and the authority having custody thereof in a tabular form for a better understanding. The summary of the same is as under:-

S. No.	Identity of the document	Relevancy to the Case	Custodian Authority
1.	Attendance Register of Samsabad P.O. for the period 29-05.2000 to 31-05-2000	To confirm the attendance of myself and other staff	S.P.M. Samsabad or S.S.P.O.'s Agra
2.	Original daily a/c of Samsabad P.O. dated 29-05-2000 to 31-05-2000	Containing entry of disputed certificate	Sr.P.M. Agra H P.O.
3.	D.O.W. of Samsabad P.O. in force during may 2000	To confirm the duties relating to K.V.P. mention in the charge sheet	S.S.P.O's Agra or S.P.M. Samsabad
4.	D.O.W. of Agra H.O. of Sub a/c, mail and S.B. branch inforce during may 2000	To confirm the timings of receipt of mails with the KVP's in S.B. branch and Sub A/c branch	Sr. P.M. H.P.O. Agra

5.	Original S.O. slip of Agra H.O. to Samsabad S.O. for 29—5-2000 to 01-6-2000	To confirm the date of information to Samsabad regarding alleged non-receipt of K.V.P.'s	do
6.	Sub A/c branch of Agra H.O. E.B. from 29-5-2000 to 31-5-2000	Do	do
7.	S.O. summary of Agra H.O. from 29-5-2000 to 31-5-2000	To confirm whether the disputed K.V.P.'s were accounted for at H.O.	do
8.	F.I.R. lodged by Sr.P.M. Agra H.O. regarding loss of daily A/c of Samsabad, P.O. dated 29-5-2000	Because this document has been replaced by listed documents No.8	do
9.	R.B.T.N.C.32 (Transfer Application) of Samsabad. S.O. Sr.No.43 of may 2000 along with advice of payment and Registry receipt	Relevant to the payment of disputed K.V.P.'s	S.S.P.O.'s Agra or S.P.M. Samsabad.
10.	Original paid vouchers of KVP's worth Rs.85200/- also charge on 29.5.2000 of Samsabad P.O.	Mentioned in the subject matter of charge sheet	Sr. P.M. H.O./SS.P.O's Agra/D.A.A. (P. Lucknow)
11.	E.B. of mail branch of Agra H.O. dated 29-5-2000 to 31-5-2000	To confirm the actual time of receipt of mail from Samsabad. On 29-5-2000	Sr.P.M. H.O.
12.	K.V.P. issue journal of Samsabad S.O. for the month of may 2000	Relevant to cross examination of Shri Bhagwati	Sr.P.M. H.O.S.S. P.O's Agra

		Prasad Sharma P.A. Samsabad. With his W.S. listed document No.11	
13.	Long book of one year T.D. of Samsabad S.O. dated 29-5-2000	Do	S.P.M. Samsabad
14.	Order book of Samsabad, S.O. dated 29-5-2000 to 31-5-2000	Relevant to my relief from Samsabad S.O. on 31-5-2000	Do
15.	Error Book of Samsabad S.O. for May 2000	Relevant to irregularity noted relating to subject matter of charge sheet	Do
16.	Preliminary enquiry report of the present case	To impeach the preliminary enquiry officer's Shri Babu Lal Shri R.S.Nigam Shri Abdul Sattar	S.S.P.O.'s Agra
17.	Charge report of S.P.M. Ship of Samsabad S.O. of 3105-2000	Relevant to transfer of charge Samsabad S.O. to Prem Singh P.A. Samsabad	do or C.O.
18.	Cord, Level Seal & bag of mail bag of Samsabad S.O. dated 29-5-2000 preserved at the time of opening the bag at Agra H.O.	Relevant to E.B. No.364 dated 30-5- 2000 listed document No.4	Sr.P.M. H.P.O Agra
19.	Cord, Level Seal & bag of mail bag of Samsabad S.O. dated 29-5-2000 opened at Agra H.O. on 30-5-2000	Do	Do
20.	Sub A/c branch Agra H.O. E.B. No.104	Mentioned in E.B. No.105 of	Do

	dated 30-5-2000	S.B. branch of Agra H.O. listed document No.7	
21.	Sub A/c branch Agra H.O.E.B. No.-362 dated 30-5-2000	Referred in W.S. of Shri Prem Singh P.A. Samsabad. Listed document No.9	Do

4. Vide order dated 20.10.2003, holding that the documents production whereof was sought were relevant except the document mentioned at serial No.16, the Inquiry Officer directed the Presenting Officer to produce all the aforesaid documents demanded by the petitioner, save and except document mentioned at serial No.16 i.e. preliminary enquiry report. On the next date, evidenced by the order dated 20.04.2004 passed by the Inquiry Officer only documents mentioned at serials Nos.1,3,4, 14 and 15 were produced and supplied to the petitioner and the remaining documents were stated to be not available as the same could not be located.

5. After recording evidence the Inquiry Officer submitted a report dated 31.03.2005 in which he indicted the petitioner. In a nutshell, it was opined by the Inquiry Officer:-

(i) a comparison of the handwriting and initials contained in the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 prepared in respect of the KVP's in question with the admitted handwriting and initials of the petitioner contained in the charge report dated 31.03.2000 evidenced that the discharge journals Exh.Ka-3, Ka-4 and Ka-5 were prepared by the petitioner and the circumstances that the petitioner accepted the said discharge journals as genuine and made entries in the accounts of Post Office Shamshabad fortifies the said suggestion; there is no evidence to show that payment in

respect of KVP's in question was made to one Ramesh Chander as recorded in the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5;

(ii) a perusal of discharge journal Ex.Ka-5 shows that the payment in respect of KVP's in question was made on the basis of transfer application received from another post office but no such application was found available in Post Office Shamshabad;

(iii) internal enquiry revealed that the KVP's in question were fake;

(iv) evidence adduced by the prosecution establishes that paid vouchers in respect of discharge journal Ex.Ka-5 were not received at Head Office, Agra and that paid vouchers in respect of discharge journals Ex.Ka-3 and Ex.Ka-4 received at Head Office, Agra were not sealed, which facts when coupled with the circumstance that it is the duty of Sub-Post Master to submit vouchers to Head Office and the admission of the petitioner that he had closed the account bag of Post Office Shamshabad on 29.05.2000 is indicative of the guilt of the petitioner; the fact that office of registration or original registrations number(s) of KVP's in question was not recorded in the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 when coupled with the circumstance that it is the duty of the Sub-Post Master to maintain accounts is indicative of the guilt of the petitioner and the conduct of the petitioner in giving evasive replies to the inquiries pertaining to non-receipt of paid voucher in respect of discharge journal Ex.KA5 made by the staff of Head Office, Agra on 29.05.2000 and thereafter proceeding on leave with effect from 30.05.2000 points towards the guilt of the petitioner.

6. With respect to the contention advanced by the petitioner that the payment in respect of KVP's in question was made by one Bhagwati Prasad Sharma, the PA of Post Office Shamshabad at the relevant time, the Inquiry Officer opined as under:-

"The evidence on record shows that account bag was closed by the charged official on 29-05-2000 and all the paid vouchers of KVP's worth Rs.85200/- were stated to have been sent by him with SO daily account duly entered thereon. The payment of discharged KVP's as exhibited in Exh.Ka-3, Ka-4 and Ka-5 was affirmed by the charged official to have been made by Shri Bhagwati Prasad Sharma SW-18 but this fact is not confirmed from hand to hand receipt book, Exh. Ka-11. Shri Bhagwati Prasad Sharma has stated that Exh.Ka-3, Ka-4 and Ka-5 were prepared by the charged official and payment was also effected by him as nobody came to his SB counter on 29-05-2000 for encashment of KVPS while the charged official has categorically denied to have prepared the Exh.Ka-3, Ka-4 and Ka-5 on 29-05-2000. He also added that he cannot explain as to who prepared these documents but these unauthorized exhibits have been accepted by the charged official as genuine and amount represented in them as been incorporated into account of the day while preparing rough account Exh. Ka-9. SO account Ex. Ka-7 on 29-05-2000 and submission their of along with paid KVP vouchers worth Rs.85200/- with SO daily account duly entered into it. The initials of the charged official on Exh.Ka-3, Ka-4 and Ka-5 are also appearing on them and these resemble with those affixed on the charge report dated 31-05-2000 at left hand upper corner on the designation stamp of SPM (L.S.G.) Shamsabad. These charge report has been made an extra additional document with his defence statement dated 23-02-2005, now a part and parcel document of the enquiry. On comparison the handwriting of charge report dated 32-05-2000 with those appearing on KVP discharged journal Exh.Ka-3, Ka-4 and Ka-5, it is evident that handwriting exactly resemble on both the documents. Thus a man of ordinary prudence shall presume that Exh.Ka-3, Ka-4 and Ka-5 were prepared by a person who prepared the charge report. Hence there is a

clear presumption that Exh.Ka-3, Ka-4 and Ka-5 were prepared by the charged official on 29-05-2000....The evidence on record shows that Shri Bhagwati Prasad Sharma SW-18 was LRPA. As per his deposition he did only those work which were entrusted to him by the SPM. The memo of distribution of work Exh. Ka-2 was not shown to him by the charged official during the period he worked at Shamsabad PO from 19-04-2000 to 31-05-2000. On 29-05-2000 he did only SB/RD work as there was heavy work with him. The work relating to KVP/NSC as done by SPM himself. As regard Exh. Ka-11, he stated that work of KVP issue was done by him in hand to hand receipt book. He also stated that a page between 30-05-2000 and 31-05-2000 in Exh.Ka-11 was not torn by him. His signatures was not taken by SPM on SO daily account dated 29-05-2000 and SO account dated 29-05-2000 (Exh. Ka-7) as joint custodian. He denied any payment on account of discharge of KVP on 29-05-2000 as no one came at his counter for discharge of KVP nor he saw the charged official making payment of KVP for Rs.69200. he also stated before the under signed that Exh.Ka-9, Ka-3, Ka-4 and Ka-5 were prepared by the charged official on 29-05-2000 in his hand writing. As regard preparation of Exh.Ka-3, Ka-4 and Ka-5 the matter has been discussed in detail under the evaluation of article of charge-I. Thus arguments put forth by the charged official are not correct.....The charged official denied to have prepared Exh.Ka-3, Ka-4 and Ka-5 in opposition of deposition of Bhagwati Prasad Sharma the then SB Counter PA Shamsabad SW-18 but he could not explain as to the person who prepared these documents while he asserted the payment of discharged KVPs to have been made by the SW-18. However these unauthenticated exhibits Exh.Ka-3, Ka-4 and Ka-5 were accepted by the CO as genuine and amount represented in them has been incorporated in account vide Exh. Ka-9 and Ka-7 on 29-05-2000. On comparison the handwriting of charge report dated 31-05-2000 submitted by the CO with his defence statement dated 23-02-05 with that of discharged journals Exh.Ka-3, Ka-4 and Ka-5, it is evident that these documents have been prepared one and the same person. Hence there is clear presumption that Exh.Ka-3, Ka-4 and Ka-5 were prepared by the charged official on 29-05-

2000. More the initial of the charged official on these documents also resembles with that appearing in red ink in the leftside upper corner of charge report dated 31-05-2000 on the designation stamp of Sub Postmaster LSG Shamsabad and below the word attested.”

7. With respect to non-supply of the documents demanded by the petitioner, the Inquiry Officer opined as under:-

“As regard counter allegation of the charged official on the prosecution as to causing disappear the sub office daily account of Shamsabad SO dated 29-05-2000 to implicate him is also not convincing because Exh. Ka-24 regarding noting EB no.8 dated 01-06-2000 noted by Shri K.K. Sharma SW-12 indicates that the SO daily account dated 29-05-2000 was not found available on 01-06-2000 at Agra HPO prior to commencement of fact finding preliminary enquiry. In this connection it is also worth mention that SO daily account of all sub offices as per deposition of Shri Deokinandan SW-11 vide Exh. Ka-22 used to be kept at Agra HPO in a almirah in which no lock was provided for safe custody. This reflects that there was sufficient possibility to remove the SO daily account by any miscreant having vested interest in it.... The contention of the charged official alleging the prosecution as to removal of SO daily account of Shamsabad SO dated 29-05-2000 from scene to implicate him is also not convincing in the light of EB no.8 dated 01-06-2000 Exh. Ka-24 noted by Shri K.K. Sharma SW-12 before the commencement of the fact finding enquiry by the prosecution as it is evident from the statement recorded by Shri R.S. Nigam SW-6 and Shri Babulal SW-2. On the contrary it reflects that the SO daily account dated 29-05-2000 of Shamsabad SO was removed from scene by any miscreant having vested interest in it.”

8. After considering the aforesaid report dated 31.03.2005 submitted by the Inquiry Officer and the representation filed by the petitioner against the said report, vide order dated 10.08.2005, the Disciplinary Authority held that the charges

leveled against the petitioner have been proved and inflicted the punishment of dismissal of service upon the petitioner.

9. Aggrieved by the order dated 10.08.2005 passed by the Disciplinary Authority, the petitioner filed an appeal before the Appellate Authority, which appeal was dismissed vide order dated 03.04.2006.

10. Aggrieved by the orders dated 10.08.2005 and 03.04.2006 passed by the Disciplinary Authority and Appellate Authority respectively, the petitioner filed an application under Section 19, Administrative Tribunals Act, 1985 before Central Administrative Tribunal (hereinafter referred to as the "CAT"), Principal Bench, New Delhi.

11. During pendency of the aforesaid application before the CAT, vide judgment dated 29.03.2007, learned Judicial Magistrate, Agra acquitted the petitioner of the charges framed against him of cheating and criminal breach of trust. The relevant portion of the judgment of the Trial Court reads as under:-

"On analysis of arguments of both sides and the witnesses presented by the prosecution as well as the paper available on file and the judgments, I am of the view that the case of the accused is based on the issue that the numbers of the Kisan Vikas Patra payment of which is stated to have been made those number do not exist. It is worth mentioning here that every type of Kisan Vikas Patra are issued by the Postal Deptt. The department's officers could not produce any certificate during the departmental enquiry when the incidence came to their knowledge, and also before the investigator by which it was ascertained that Kisan Vikas Patra with the said numbers do not exist at all. This was the primary duty of all those senior officers of the department who got the enquiry conducted in this regard or those who got the First Information Report lodged against the accused persons because the proof of non-existence of those numbers could

have been given by the postal department alone. The statement of PW-9 M.R. Maurya that he did not see the original record nor did he try to ascertain as to from which post office the Kisan Vikas Patras were issued or verification from the Govt. Press Nasik where Kisan Vikas Patras are printed whether these number were fake, becomes more important because completion of the crime cannot simply be done on the basis of probabilities. The prosecution had to prove clearly that the Kisan Vikas Patras with the said numbers were not available in the Postal Department till then. Analysis of the crime is not to be based only on the statement of witnesses but it can be done on the basis of clinching evidence.....

In today's pretext if it may be decided that the Kisan Vikas Patra with the said numbers are fake and the accused be punished and later on if it comes to the knowledge at some stage that Kisan Vikas Patra were actually issued by India Post, it would tantamount not only misuse of judicial system but also be a condefect of judicial analysis. So far as the issue of ascertaining the information whether the Kisan Vikas Patra were never issued by Indian Postal Department is concerned, there was ample opportunity available to the complainant, the person who got the FIR lodged and other higher officers. But without taking any action in that regard efforts were made by oral statements in repeatedly term the Kisan Vikas Patra as fake so that the court may believe it whereas there was no necessity of producing so many witnesses. Instead the Department could have produced in a very short span of time that Vikas Patra with the given number were never in existence and such Vikas Patra were never issued by the Postal Department. But all the witnesses by trying to prove the whole incident wanted to show that Kisan Vikas Patra with the said numbers do not exist. During the course of arguments, the prosecution made an application under section 311 requesting to permit Babu Lal complainant to present the report relating to existence of the said number which was accepted by the court. Thereafter an report was presented during examination-in-chief in which there is indication of sending the Kisan Vikas Patra of disputed numbers to Head Post Office Fatehpur. These bear the same numbers which the Prosecution is stating as fake. These are in

denomination of Rs.10,000/-. So far as these Kisan Vikas Patra with the said numbers are either in the name of purchaser or nominee and have one address. This has changed the course of entire exercise of the Prosecution. Though the above report is certified by the department's Senior Inspector Post Office yet to take it evidence, the issuing personnel should have definitely been put to examination to lead the evidence under the Evidence Act. Despite existence of these papers on file, this court puts a full stop on the relentless exercise producing oral evidence. The court does not want to leixity to arrive at the conclusion that the accused has not committed any crime of embezzlement....

It is important that the accused is a Govt. official and it was necessary to have prosecution sanction issued by the competent officer because the alleged charges against the accused pertained to his official duties. The prosecution sanction can only be issued by the authority competent to appoint or dismiss the Govt. servant whereas neither such mention has been made nor the witnesses have proved fully that prosecution sanction has been given by the competent officer.....

Merely on the basis of probability and without ascertaining as to in what manner and against whom the crime has been committed, it is (not permissible) to bring the accused under section 409 and 420 IPC.....Nowhere it is proved clearly by any witness that the numbers shown in payment voucher are fictitious..." (Emphasis Supplied)

12. Vide judgment dated 20.03.2008, CAT dismissed the original application filed by the petitioner. To put it pithily, it was held by the Tribunal that it is settled legal position that the Courts/Tribunals should not interfere with the decision of the Disciplinary/Appellate Authority unless said decision is illogical or suffers from procedural impropriety or shocks the conscience of the Court in the sense that it is passed in defiance of logic or moral standards; that scope of judicial review of the decision taken by Disciplinary/Appellate Authority is limited to the deficiency in decision-making

process and not the decision and that no such infirmity was pointed out by the petitioner in the order(s) passed by the Disciplinary/Appellate Authority in the instant case.

13. Thereafter on 21.04.2008 the petitioner filed an application before the Tribunal seeking review of the judgment dated 20.03.2008 on the ground that an error apparent on the face of the record has crept up in the said judgment for while passing the same the factum of passing of judgment dated 29.03.2007 by learned Judicial Magistrate, Agra acquitting the appellant of the charges under Sections 409 and 420, IPC framed against him for having misappropriated the amount of KVP's in question has escaped the attention of the Tribunal. Dealing with the contention urged in Review, holding that it is settled legal position that the acquittal of a delinquent employee in criminal proceedings is no ground to quash the punishment imposed upon him by the competent authorities in the disciplinary proceedings initiated against him, vide judgment and order dated 01.07.2008, the Tribunal dismissed the review application filed by the petitioner.

14. Aggrieved by the judgments and orders dated 20.03.2008 and 01.07.2008 passed by the Tribunal, the petitioner has filed the present petition.

15. During hearing of the present petition, following submissions were advanced by the learned counsel for the petitioner:-

A. That for the same set of facts which constituted the gravamen of the departmental proceedings against the petitioner FIR No.208/2000 was registered under Sections 409 and 420 IPC. Counsel argued that when the criminal case predicated upon same set of facts as disciplinary enquiry, the petitioner stood acquitted on merits, it was incumbent upon

the Tribunal to attach due weightage to the finding of innocence arrived at by the criminal court.

B. That the documents demanded by the petitioner during the disciplinary enquiry were deliberately removed by the department and that non-supply of said documents has caused serious prejudice to the defence of the petitioner for the reason said documents were most germane to the charges leveled against the petitioner in the disciplinary enquiry.

C. That a perusal of the report of the Inquiry Officer and the orders passed by the Disciplinary/Appellate Authority shows that the edifice of the report of the Inquiry Officer and the orders passed by the Disciplinary/Appellate Authority was the circumstance that discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 were prepared by the petitioner. Counsel argued that the course taken by the Inquiry Officer of himself comparing the handwriting contained in the discharge journals and charge report and thereby coming to the conclusion that the discharge journals were prepared by the petitioner is most unreasonable. Counsel argued that the Inquiry Officer ought to have shown the aforesaid the discharge journals and charge report to a handwriting expert for his opinion with regard to handwriting contained in the said documents. Counsel further argued that in view of the fact that Inquiry Officer was not skilled to do the job of a handwriting expert, no reliance can be placed upon his opinion that the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 were prepared by the petitioner.

16. What is the effect of acquittal of the petitioner in the criminal proceedings on the punishment of dismissal of service imposed upon the petitioner in the disciplinary proceedings initiated against him?

17. The legal position with respect to the effect of an acquittal of a delinquent employee at a criminal trial vis-à-vis the disciplinary proceedings initiated against him has been succinctly stated by Supreme Court in the decision reported as Management, Pandiyan Roadways Corporation Ltd v N. Balakrishnan (2007) 9 SCC 755 in the following terms:-

“21. However, there is another aspect of the matter which cannot be lost sight of. Respondent, in the meanwhile, has been acquitted. The factum of his acquittal has been taken into consideration by the Division Bench, which was considered to be an additional factor. Ordinarily, the question as to whether acquittal in a criminal case will be conclusive in regard to the order of punishment imposed upon the delinquent officer in a departmental proceeding is a matter which will again depend upon the fact situation involved in a given case.

22. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. (1999) ILLJ1094SC and G.M. Tank v. State of Gujarat and Ors. (2006) IILLJ1075SC. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of fact or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered. [See Commissioner of Police, New Delhi v. Narender Singh AIR2006SC1800], or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the Civil Court. [See G.M. Tank (supra), Jasbir Singh v. Punjab & Sind Bank and Ors. (2007) 1SCC566 and Noida Enterprises Assn. v. Noida and Ors.] (Emphasis Supplied)

18. The difference between criminal and disciplinary proceedings was explained in great detail by Kerela High Court

in the decision reported as Spadigam (J.) v State of Kerela (1970) 1 LLJ 7118 in following terms:-

“A criminal Court require a high standard of proof for convicting an accused. The case must be proved beyond reasonable doubt. The acquittal of an accused by a criminal Court only means that the case has not been proved against him beyond reasonable doubt. Such a standard of proof is not required for finding a person guilty in a disciplinary proceeding. It would be enough if there is a preponderance of probability of his guilt.....

The object of criminal law and its enforcement through criminal proceeding is different from that of disciplinary proceeding. A criminal proceeding is mainly Intended to punish persons who have broken "the King's peace," and thus to show the indignation of the community to criminals whereas disciplinary proceeding is intended to maintain the purity and efficiency of public service. Then again, in a criminal trial, the only evidence admissible is that which is made admissible under the provisions of the Evidence Act. A tribunal conducting an enquiry in a disciplinary proceeding is not bound by the adroit, rules of evidence. Any material which has a logically probative value to prove or disprove the facts in issue is relevant and admissible.

The principles governing criminal Justice that the State would allow a score of real offenders to escape rather than see a single innocent man convicted, can hardly find an inch in disciplinary proceeding.....”

19. To summarize the legal position, criminal and departmental proceedings operate in their own distinct and mutually exclusive jurisdictional areas. In a disciplinary proceeding, the area of investigation covers the field of (a) enforcement of discipline, (b) level of integrity, and (c) misconduct pertaining to devotion of duty. In criminal proceedings, the area of investigation covers the culpability from the point of view of criminal law. Standard of proof in the two proceedings is entirely different. In the former it is

‘preponderance of probabilities’, in the latter, it is ‘proof beyond reasonable doubt’.

20. Keeping the aforesaid judicial parameters in mind, we proceed to examine the present case.

21. The scope of criminal proceedings initiated against the petitioner is revealed from the following portion of the judgment dated 29.03.2007 of the criminal court:-

“2. The prosecution case in brief is that state witness PW-2 lodged a written report Ex.K-8 in P.S. Shamshabad Agra that Shri Mahendra Kumar Sharma S/o Sh. Chiranji Lal, R/o 3/11 GPO Compound Agra was posted as Sub Postmaster, Shamshabad from 21-08-98 (A/N). On 29-05-2000 he prepared account bag of Shamshabad Sub Post Office and sent it to Head Post Office, Agra which was received in Head Post Office on 30-05-2000 by Shri Vedariya Ram, Cashier. While handing over daily account dated 29-05-2000 and vouchers, to Shri Dharendra Kumar, Sub Accounts Assistant, Head Post Office, Agra it was found that KVP payment vouchers for Rs.16,000/- against payment of KVP amount of Rs.85,000/- as per daily account, were received. For the remaining Rs.69,2000/-, payment journal was received but paid KVP vouchers Nos.15CC-95042 to 950485 each in the denomination of Rs.10,000/- were not received. Report about it was made on the same day vide EB No.364 dated 30-05-2000 by Shri Dharendra Kumar Sub Account Assistant and Shri H.N. Gupta, Assistant Post Master, Sub Account Head Post Office, Agra to all concerned. Due to non-receipt of paid KVP vouchers despite the report, it was found in departmental inquiry that on 29-05-2000 the said Shri Mahender Kumar Sharma, showing the said KVP in his own hand writing as RBT-43, a discharge journal of Rs.69,200/-, KVPs were prepared and KVPs of total amount of Rs.85,200/- were charged in payment including Rs.69,200/- whereas no transfer letter (NC-32) under RBT-43 was found about the Kisan Vikas Patras in Sub Post Office, Shamshabad. The duty for preparing discharge journal of payment of Kisan Vikas Patra and sending its vouchers to Head Post Office was that of Shri

Bhagwati Prasad Sharma. Shri Mahender Kumar Sharma has been absent from duty on the excuse of illness continuously since 31-05-2000. During the course of departmental inquiry no record about Kisan Vikas Patra of Rs.69,200/- was found and it appears that Shri Mahender Kumar Sharma after preparing discharge Journal of Rs.69,200/- of fake Kisan Vikas Patra, himself embezzled the Govt. money. Appropriate action is therefore requested after registering a F.I.R.

3. On the basis of above report Criminal Case No.208/2000 u/s 409, 420 IPC, P.S. Shamshabad, district Agra, was made out and the inquiry officer conducting an inquiry, found the charge under section 409, 420 IPC and filed charge sheet in the court.”

22. From the aforesaid, it is apparent that the petitioner was facing only one charge in the criminal proceedings, of having misappropriating the sum of Rs.69,200/- by means of fake KVPs. Charges framed in the disciplinary enquiry as noted in para 2 above show that in the departmental proceedings, a much wider area was being covered. Fields of service pertaining to devotion to duty and misconduct were there in the departmental proceedings, apart from field of integrity (based on misappropriation). Embezzlement was only one of the charges in the domestic enquiry. Not submitting paid vouchers in respect of sum of Rs.69,200/-; not recording relevant entries in discharge journal; discharging duties assigned to Bhagwati Prasad Sharma and improperly preparing rough account and discharge journal were the other areas of the domestic enquiry. It, therefore, cannot be said that the criminal case and departmental proceedings were grounded on identical set of facts.

23. The matter can also be looked at from another angle.

24. A perusal of the relevant extract of the judgment of criminal court noted by us in para 11 above makes it clearly

apparent that while returning the finding of innocence in favour of the petitioner, the criminal court has been greatly influenced by the fact that standard of proof required to prove a charge in criminal case is 'proof beyond reasonable doubt' and not 'preponderance of probabilities'. The Criminal Court has noted deficiency in the evidence led in the form of non-production of the original KVPs on which the charge was founded. In fact, the ethos of judgment of the criminal court is that the petitioner cannot be convicted on the basis of preponderance of probabilities as evident from the expression 'Merely on the basis of probability it is not permissible to bring the accused under section 409 and 420 IPC'. As already noted hereinabove, it is settled legal position that the standard of proof in disciplinary proceedings is proof beyond reasonable doubt. In that view of the matter, the judgment of criminal court acquitting the petitioner can have no affect whatsoever on the punishment of dismissal from service imposed upon the petitioner in the disciplinary proceedings.

25. There is yet another aspect of the matter.

26. As per judgment of Supreme Court in Pandiyan's case (supra), it is only an honorable acquittal which can affect disciplinary proceedings in a given case.

27. What is meant by honorable acquittal?

28. The answer to the aforesaid question lies in the decision of Allahabad High Court reported as Kailash Chandra v. State of U.P. MANU/UP/0109/2005. In the said case, the Court was considering the effect of acquittal in the criminal proceedings on the departmental/disciplinary enquiry pending against a delinquent employee. In the said context, an issue arose as to

the nature of the acquittal in the criminal proceedings. After considering various judgments, the Court observed as under:

27. Thus in view of law laid down by apex court and other High Court there can be no hesitation to hold that if the Government employee/public servant has been punished departmentally on his misconduct earlier which is a foundation of criminal prosecution and later on criminal case ended in acquittal and if the acquittal is clean and honourable based on merit wherein accused has been completely exonerated from the offence alleged against him and the prosecution case found totally false with positive finding that the accused did not commit the offence in question and acquitted not on account of benefit of doubt or appreciation of evidence including lack of sufficient evidence or lack of sanction for prosecution or on any other technical grounds he may be reinstated back in service with other consequential benefit including arrears of salary or other pensionary benefit admissible to him if retired earlier by treating him in service but in other situation where the acquittal is based on benefit of doubt or appreciation of evidence including lack of sufficient evidence or lack of sanction for prosecution or any other technical ground, disciplinary enquiry pending against such Government or public servant cannot be concluded, rather it would be appropriate that the departmental authority may continue with the disciplinary inquiry or hold fresh enquiry in respect of the mis-conduct, which was foundation of criminal case ended in acquittal against such Government servant. If disciplinary inquiry has already been concluded and major punishment, as envisaged under Article 311 of the Constitution of India or under the relevant service rules, has already been awarded to such Government servant, it would not be necessary and appropriate to re-open the same on account of his such acquittal from criminal charges.

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Thus in view of the discussions made herein before, the respondent Government of Uttar Pradesh is hereby restrained and directed not to apply G.O.

No. 6/10/79-Karmic-1 Lucknow dated 12.10.1979, indiscriminately in whole-sale manner, irrespective of merit of individual case of acquittal of Government servant in criminal prosecution forthwith. The aforesaid G.O.is to be applied only in cases of clean and honorable acquittal based on merits, where competent court trying the offences (including higher court hearing the appeal or revision) has completely exonerated the accused from the offence by recording positive finding to the effect that the accused did not commit the offence and whole prosecution story against him thrown out and found false. The acquittal should not be based on extension of benefits of reasonable doubts including appreciation of evidence, lack of sufficient evidence or want of sanction for prosecution or other technical grounds.

X X X X

From the aforesaid finding recorded by this Court in criminal appeal filed by the petitioner, it is clear that petitioner has not been exonerated of the charges by recording any positive finding in criminal case to the effect that he did not commit the offence in question rather he has been acquitted by entertaining the benefit of doubt about the prosecution case as the prosecution has failed to establish the guilt beyond reasonable doubt as required under law. thereforee, it cannot be treated to be a honourable and clean acquittal on merits from the aforesaid criminal case and as such he cannot be held to be entitled for reinstatement in service with all consequential benefits of service....”

29. Thus, an “honorable acquittal” is an acquittal after trial on a consideration of the facts duly proved as per rules of evidence as distinguished from the acquittals occurring due to technical defects such as want of sanction, fact not proved as rule of evidence not followed, want of evidence, benefit of doubt etc. To put it differently, an acquittal is said to be honorable when it is based on a positive finding of innocence of the accused.

30. In the backdrop of afore-noted legal position, it has to be seen in the instant case whether the acquittal of the petitioner by the criminal court is an “honorable acquittal”.

31. A perusal of the portion of the judgment of the criminal court noted by us in foregoing paras reveals that three major reasons which led the criminal court to acquit the petitioner were that: - (i) sufficient evidence was not adduced by the prosecution to establish that Kisan Vikas Patras in question were fake; (ii) the report produced by the prosecution evidencing that Kisan Vikas Patras in question were fake was not proved in accordance with Indian Evidence Act and (iii) prosecution did not lead any evidence to show that sanction for prosecution the petitioner was taken from a competent authority.

32. In such circumstances, it cannot be said that the acquittal of the petitioner by the criminal court was an “honorable acquittal”. As a necessary corollary thereof, acquittal of the petitioner by the criminal court can have no effect on the punishment of dismissal of service imposed upon the petitioner in the disciplinary proceedings.

33. With respect to the contention pertaining to non-supply of the documents demanded by the petitioner, relevant would it be to note that after considering evidence adduced by the department and the petitioner and other facts and circumstances of the case, the Inquiry Officer came to a definite finding that the documents demanded by the petitioner were not available with the department and that the disappearance of the said documents was caused by a miscreant having vested interest in disappearance of the said documents and that the department had no role to play in the

same, which finding was affirmed by the Disciplinary/Appellate Authority.

34. It is settled legal position that finding of fact recorded in disciplinary enquiry cannot be interfered by the Courts/Tribunals unless such finding is based on no evidence or is perverse or is such that no reasonable man in the circumstances of the case would have reached such finding. (See the decision of Supreme Court reported as Coimbatore District Central Coop. Bank v Employees Association (2007) 4 SCC 669)

35. No such flaw has been shown to us in the finding arrived at by the Inquiry Officer and affirmed by the Disciplinary/Appellate Authority that the documents in question were got disappeared by a miscreant having vested interest in the disappearance of the said documents and that the department had no role to play in the same. We thus find no merit in the contention of the learned counsel for the petitioner that the department had deliberately removed the documents demanded by the petitioner in order to falsely implicate him.

36. The matter can be looked at from another angle. Now, it is obviously a case of somebody removing the documents and that somebody has to be the person whose guilt would have surfaced if the documents saw the light of the day. De-hors the said documents if there is material to infer the guilt of the petitioner the said inference can be extended to infer that being the miscreant the petitioner removed or got removed the documents and then very boldly sought production thereof knowing fully well that the documents would never be

produced as they could not be produced and in the process armed himself with a technical defence of prejudice.

37. We need to speak a little more on the subject of prejudice. If there is positive evidence to nail the guilt of an accused unless it could be shown that a document production whereof was sought would rebut a fact or a presumption drawn from the evidence on record, only then can it be said that the defence has been prejudiced on account of non-production of the document. Mere concern of a document with the subject matter of inquiry may not itself lead to proof of defence being prejudiced on account of non-production of the document.

38. This takes us to the last contention advanced by the learned counsel for the petitioner that the Inquiry Officer has committed an illegality in not taking the assistance of a handwriting expert while comparing handwriting contained in the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 and the charge report 31.03.2000. Again, after due consideration of evidence on record and other facts and circumstances of the case, a finding of fact has been arrived at by the Inquiry Officer that the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 were prepared by the petitioner, which finding has been affirmed by Disciplinary/Appellate Authority. No perversity or any other flaw has been pointed out to us by the learned counsel for the petitioner in the said finding. Merely because the Inquiry Officer did not take the assistance of a handwriting expert for comparing the handwriting contained in the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 and the charge report 31.03.2000 does not make the finding arrived at by the Inquiry Officer that the discharge journals Ex.Ka-3, Ex.Ka-4 and Ex.Ka-5 were prepared by the petitioner perverse.

We may note that the report of a handwriting expert would be evidence to assist the trier of facts and in the instant case the Inquiry Officer, but the decision on the matter of fact whether the writing was that of the petitioner had to be that of the inquiry officer and we find nothing wrong in the inquiry officer himself comparing the writing which was disputed by the petitioner as being his with the admitted writing of the petitioner.

39. In view of the above discussion, we find no merit in the present petition. The same is hereby dismissed.

40. Since the petitioner has lost his job we refrain from imposing costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 23, 2010
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