

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

**+ W.P.(C) 1163/2012**

*% Judgment reserved on: 5<sup>th</sup> February, 2013*  
*Judgment delivered on: 15<sup>th</sup> March, 2013*

AJAY KUMAR ..... Petitioner  
Through: Mr. D.K. Aggrawal, Senior Advocate  
with Mr. Pramod Kumar, Advocate.

Versus

GAS AUTHORITY OF INDIA & ANR. .... Respondents  
Through: Mr.Sandeep Prabhakar and Mr. Amit  
Kumar, Advocates for Respondent  
No.1.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

1. Vide the instant petition, the petitioner is seeking quashing of the order dated 24.09.2011 passed by the respondent No.1/Disciplinary Authority, whereby the penalty of dismissal from service was imposed upon the petitioner. Also seeking quashing of the order dated 13.01.2012, whereby the appeal of the petitioner was dismissed by the Appellate Authority. The petitioner is seeking relief in the instant petition to reinstate him in service with all back wages.

2. Case of the petitioner is that on 13.07.2006, the petitioner initially had applied for registration slip in respect of the examination for the post of Executive Trainee. The said registration slip was

downloaded from the official website of the respondent No.1. After affixing the photograph duly attested by a Gazetted Officer, the same was sent to the respondent No.1. On the basis of the admit card, the petitioner appeared in the written examination held on 03.09.2006, and the petitioner qualified the same.

3. Thereafter, on the basis of certain complaint received from an untraceable person, namely, Umesh Kumar regarding impersonation on the part of the petitioner. On receipt of said complaint, the respondent No.1/Gas Authority of India Limited (GAIL) obtained the sample handwriting of the petitioner on 09.02.2009 and sent to the Government Examiner, of questioned documents, along with certain other documents.

4. On 13.03.2009, opinion report of the Government Examiner of the questioned documents was received by GAIL, wherein stated as under:-

*“It has not been possible to express any opinion on the writings marked Q13 to Q25 on the basis of material supplied.”*

5. On 16.05.2009, the petitioner was suspended by the GAIL and the matter was handed over to CBI.

6. After completion of investigation, CBI filed the charge sheet in the Trial Court on 16.04.2010 against the petitioner.

7. During the investigation, CBI had recorded the statement of Sh. Arijit Sarkar, Invigilator of the said examination, who has not

stated anything against the petitioner. Moreover, his statement did not create any doubt about the presence of the petitioner in the examination or impersonation on his part.

8. On 03.02.2010 and 22.11.2010, the petitioner was served with the Memorandum with Article of Charge for facing the departmental enquiry, which was duly replied by the petitioner. The Inquiry Authority submitted its findings before the Disciplinary Authority, wherein representation was submitted by the petitioner.

9. Meanwhile, on 05.04.2011, the petitioner was discharged at the stage of charge itself in the criminal case bearing R.C. No. 29(A)/2009 CBI/ACB/ND by the learned CMM, Delhi, wherein recorded as under:-

*“A perusal of the chargesheet and the statements of witnesses recorded in the matter reveals that except for GEQD opinion in the matter, there is no other legally sustainable evidence against the accused in the matter.*

*Law is fairly settled through a catena of judgments that GEQD opinion in itself cannot be the sole basis for conviction of an accused in the matter. However, with a view to satisfy myself further that strong suspicion of commission of offence by the accused is there, I have analysed the GEQD opinion and the documents referred therein. There were as many as 25 questioned handwritings of the accused and as many as 78 admitted handwritings of the accused and there were 13 specimen handwritings of accused. Firstly, the most important specimen handwriting of the accused, i.e “A5” was left out of consideration by GEQD for the reasons best known to them. As regards the opinion on questioned handwriting, i.e Q13 to Q25, no opinion has been*

*expressed, whereas on questioned handwriting from Q1 to Q12, it has been opined that the said handwriting do not match with the admitted handwritings at A1 to A3, A6, A7, A16 to A24, A27 to A31, A40 to A49, A51 to A53, A75 to A78. A perusal of the documents show that most of the admitted handwriting are upon the documents which were sent by accused to GAIL before appearing in the exams in the form of Application Forms, General Instructions etc. Q1 to Q12 are the questioned handwritings, which are in the form of numerals, whereas, Q13 to Q25 are the handwritings which are not only numerals, but there are alphabets as well. A perusal of these handwritings reveals that Q13 to Q25 are most elaborate kind of handwritings and opinion thereupon would have been of some consequences in the matter, but the same having not been given, even GEQD report cannot be held to be legally admissible against the accused in the matter.*

*In order to further satisfy myself as to whether there is any substance in the allegation that accused had made somebody else to appear for him in the examination, I have compared the photographs of the accused on document D20 and D24. The photographs are exactly similar. Document D24 inter alia contains instructions for the candidates. Condition No.5 of the same is relevant at this stage, which is reproduced as under:*

*“5. You have to bring a Photo Identity Card (Voter I-Card, Driving License, Passport, PAN Card or any other proof of identity) as a proof of your Identification. In absence of the same, you are not permitted to take the examination.”*

*Further recorded as under:-*

*“ This appears to be a case in which a disgruntled person having animosity against the accused set the*

*things into motion by sending an E.Mail to GAIL. During investigation, the sender of said E.Mail could not be traced, that itself is an indication of the fact that it was sent with a malicious intent against accused.*

*In view of the above discussion, I do not find any legally sustainable material against the accused to frame charges. The accused accordingly stands discharged from this case. His B/B stands cancelled, surety stands discharged. Endorsement(s), if any, on the documents of surety or accused be cancelled forthwith. Original document(s), if any, either of accused or of surety be returned to its rightful owner forthwith. File be consigned to Record Room after completion of necessary formalities.”*

10. Thereafter, the Disciplinary Authority vide the impugned order dated 24.09.2011 dismissed the petitioner from service of the respondent No.1. The petitioner preferred an appeal before the Appellate Authority, however, the same was also rejected vide order dated 13.01.2012.

11. Mr. D.K. Aggarwal, learned senior counsel appearing on behalf of the petitioner submitted that the impugned orders are based solely on the opinion of the Handwriting Expert (GEQD). The Disciplinary Authority and the Appellate Authority of respondent No. 1 failed to appreciate that no evidence came on record in support of the charge against the petitioner during the inquiry proceedings except the opinion of the GEQD. However, the Inquiry Authority held that the charge was proved solely on the basis of the said opinion of the GEQD.

12. Learned senior counsel further submitted that the Disciplinary

Authority and the Appellate Authority of respondent No.1 failed to appreciate the fact that the disciplinary proceedings as well as the criminal case were initiated on the basis of an anonymous complaint and the complainant could not be traced even till date despite the investigations conducted by the CBI, which is the premier expert criminal investigation agency of the Country.

13. He further submitted that in view of the above, obviously the complaint made against the petitioner is malicious and *malafide* and the same cannot be said to be proved in law unless the complainant appears in the inquiry or trial and opportunity is given to the petitioner to cross-examine him.

14. Learned senior counsel further submitted that the Disciplinary Authority and the Appellate Authority of the respondent No. 1 also failed to appreciate the fact that the opinion of GEQD has been threadbare examined by the learned CMM by applying the judicial mind and held that **“I do not find any legal sustainable material against the accused to frame charges.”**

15. Learned senior counsel submitted that the present case is of no evidence. The finding is due to the defects in the report in as much the documents have been left out of consideration, therefore, the report cannot be considered to be legal evidence.

16. He further submitted that the Disciplinary Authority, in the departmental proceedings, in order to prove charge has examined six witnesses. Witnesses No. 1 to 5 are officials of the department and the

last sixth witness is the Handwriting Expert. Since witnesses No. 1 to 5 have not deposited anything against the petitioner with respect to the alleged incident, therefore, their testimonies cannot be relied upon. So far as PW6 is concerned, the version of this witness is also not trustworthy, as discussed above.

17. Learned senior counsel has asserted that the comparison of handwriting is an imperfect Science and an Expert would not be able to state with 100% certainty that a particular signature is that of the person, who purportedly signed it.

18. He also submitted that since discharge of the petitioner from the criminal case has neither been challenged by the CBI nor by the complainant/respondent No.1, therefore, that has attained the finality and cannot be ignored merely by saying that there was no opportunity to cross-examine the Handwriting Expert.

19. To sum up his arguments, learned senior counsel for the petitioner has submitted that the only evidence before the Inquiry officer was opinion of the Handwriting Expert, which has become legally inadmissible after the judicial verdict as discussed above. There is no legal evidence on questioned documents Q1 to Q12.

20. To strengthen his arguments, learned senior counsel has relied upon a case of ***Union of India Vs. H.C. Goel, AIR 1964 SC 364 (V 51 C 46)***, wherein the Supreme Court has held as under:-

*“Now, in this state of the evidence, how can it be said that respondent even attempted to offer a bribe to Mr.*

*Rajagopalan. Mr. Rajagopalan makes a definite statement that respondent did not offer him a bribe. He merely refers to the fact that respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straightforward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had not been established.”*

21. He also relied upon case of ***Capt. M. Paulanthony Vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679***, wherein the Supreme Court held as under:-

*“12. This question, as observed earlier, is of a perennial*

*nature and has arisen more often than not in spite of the judicial pronouncements, specially by this Court, having settled the question and provided the answer. Still, the problem is raised either by the employer or by the employee in one or the other form. In the instant case, the order of dismissal had already been passed before the decision of the criminal case which ultimately resulted in the acquittal of the appellant. Whether the acquittal coupled with other circumstances, specially ex-parte proceedings, of the case, will have the effect of vitiating the departmental proceedings or the order of dismissal passed against the appellant, is the question which is to be considered in this appeal.*

*13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts*

*and the evidence in both the proceedings is common without there being a variance.*

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

*35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the*

*criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.”*

22. On the other hand, Mr. Sandeep Prabhakar, learned counsel appearing on behalf of the respondent No.1 has submitted that standard of proof required in a criminal case and civil matters are altogether different. The objective is different in a criminal case to prosecute and punish the culprit, whereas in the departmental inquiry, the preponderance of probabilities is required for taking the disciplinary action.

23. He further submitted that there is difference between an honourable acquittal and a mere acquittal. In the present case, there is no full trial in the criminal case and the petitioner has been discharged at the stage of charge itself. Whereas in the departmental inquiry, all witnesses have been examined and full opportunities have been given to the petitioner and only thereafter, the Disciplinary Authority has come to a particular conclusion of dismissing the petitioner from service. He further submitted that if there is no *mala fide* or violation of any procedure on the part of the Disciplinary Authority or the Appellate Authority, then this Court cannot sit as an Appellate Court under Article 226 of the Constitution of India.

24. Learned counsel further submitted that the acquittal by the criminal court does not automatically give petitioner the right to be reinstated into service. It is still open to the Competent Authority to take decision whether the delinquent Government servant can be taken into service or disciplinary action should be taken under the relevant

rules. The petitioner was given full opportunity to defend himself and all the rules and principles of natural justice were duly complied with. The Inquiry Authority was a retired DIG of Police from CBI, who held that the charges under Rule 4(1)(i) and (iii) read with Rule 5 (xvii), (xxx) and (xxxvi) of the GAIL Employees (Conduct, Discipline and Appeal) Rules, 1986 to be proved and established.

25. He further submitted that copy of the enquiry report dated 22.11.2010 was sent to the petitioner to enable him to file his representation. Moreover, he was also given the personal hearing on 28.01.2011. Thereafter, taking all these facts and circumstances into consideration, penalty of dismissal from service was imposed upon the petitioner under Rule 39 of the GAIL Employees (Conduct, Discipline and Appeal) Rules, 1986. Thereafter, the appeal of the petitioner was also considered by the Appellate Authority and after careful consideration of all the facts and circumstances rejected the same vide impugned order dated 13.01.2012 as the said Authority did not deem it fit to interfere with the order of the Disciplinary Authority.

26. Further submitted that the petitioner has already exhausted his remedy of appeal, therefore, he cannot raise same issue in the present petition as there were serious charges against the petitioner as under:-

*“Shri Ajay Kumar took the employment in GAIL as Executive Trainee w.e.f. 27.09.2007 fraudulently by not writing the written examination himself at Kolkata Centre at Tirthapati Institution, 142/1, Rash Behari Avenue, Kolkata, held on 03.09.2006 which was mandatory, but by another person impersonating Shri Ajay Kumar who had written the examination, thereby*

*Shri Ajay Kumar got himself short listed for interview in the selection of Executive Trainee.”*

27. Learned counsel further submitted that the petitioner deceitfully gained employment in GAIL, thus, he exhibited lack of absolute integrity and conduct unbecoming of an employee of the company or the public servant.

28. Learned counsel has fairly conceded that there is no other evidence against the petitioner except the opinion of the Handwriting Expert. His report is authentic and scientific one, therefore, the respondents have relied upon the same. There is no violation of the principles of natural justice as the Handwriting Expert was fully cross-examined by the petitioner in the departmental inquiry, whereas in a criminal case, there was no opportunity to cross-examine the Expert at the initial stage of charge.

29. To strengthen his arguments, learned counsel for the respondent has relied upon a case of ***Ajit Kumar Nag Vs. General Manager (PJ) Indian Oil Corpn. Ltd. Haldia & Ors., (2005) 7 SCC 764***, wherein the Supreme Court has held as under:-

*“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 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 offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with 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 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 dismissing him from service deserves to be quashed and set aside."*

30. The same view has been reiterated in the case of **M.G. Vittal Rao** (*supra*), wherein the Supreme Court has held as under:-

*"8.The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of Article 311(2)(b) of the Constitution of India, 1950, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal*

*proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. In **Nelson Motis v. Union of India and Anr.** MANU/SC/0387/1992 : AIR 1992 SC 1981, this Court held:*

*The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.”*

31. Learned counsel for the respondent has also relied upon the case of **Capt. M. Paulanthony** (*supra*), wherein the Supreme Court held as under:-

*“33. Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex-parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex-parte, stand vitiated.”*

32. I have heard learned counsel for the parties.

33. The learned CMM in his order dated 05.04.2011 has recorded that the statements of witnesses recorded reveal that except for GEQD opinion in the matter, there is no other legally sustainable evidence against the accused in the case. He has further recorded that law is fairly settled through a catena of judgments that GEQD opinion itself cannot be the sole basis for conviction of an accused.

34. There were as many as 25 questioned handwritings, 78 admitted handwritings and 13 specimen handwritings of the petitioner. About questioned handwritings from Q1 to Q12, it has been opined that the said handwritings do not match with the admitted handwritings at A1 to A3, A6, A7, A16 to A24, A27 to A31, A40 to A49, A51 to A53, A 75 to A78.

35. As has been held in the case of *H.C. Goel (supra)*, the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.

36. In the case of *Capt. Paulanthony (supra)*, it has been observed that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is

being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different from that required in a criminal case.

37. The law is well settled that while in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. However, the little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence.

38. No doubt, in a criminal case, the petitioner has been discharged at the stage of charge itself. The main base of discharge was that GEQD opinion cannot be the sole basis for conviction of an accused. However, against the petitioner the opinion of the handwriting expert (GEQD) is as under:-

*“My opinion that the person who wrote the blue enclosed writings and signatures stamped and marked S1 to S13; A1 to A3, A6, A7, A16 to A24, A27 to A31, A40 to A49, A51 to A53, A75 to A77; A8 to A15, A32 to A39 and A54 to A74 did not write the red enclosed writings and signatures similarly stamped and marked Q1 to Q12 is based upon the cumulative consideration of fundamental divergences occurring between the questioned and standard writings and signatures.”*

39. The said GEQD after discussing the opinion in detail on almost all the letters has opined as under:-

*“The aforesaid divergences in the writing habits between questioned and standard writings and signatures are fundamental in nature and are beyond the range of intended disguise and natural variations and when considered collectively lead me to the opinion of different authorship.”*

40. In addition, Shri Arvind Singh, PW1, Senior Officer, GAIL (HR) has deposed to the effect that he identified the handwriting of the petitioner in the service booklet which has been countersigned in his presence. The said witness was not cross-examined by the petitioner.

41. The witness Shri K. Rajan, Sr. Manager (HR), PW2 deposed with regard to the documents Ex.P7, P9 and P15 and documents P8 which were the leave applications of the petitioner, duly sanctioned by him.

42. Shri Rakesh Roshan Soreng, Manager (HRD) PW3 has deposed with regard to the documents marked as P6 wherein he deposed with regard to the issuance of appointment letter to the petitioner after he had been duly selected and that if any contention or declaration furnished by the candidate was found to be false or that the candidate had wilfully suppressed any material information, in that eventuality the candidate was liable to be removed from the services of GAIL.

43. Shri Ashok Angral, Chief Manager (HR) has deposed with regard to the exhibited documents P1 to P23 and had categorically admitted that on comparison the writing of Ex. P16 to P18, i.e., the documents/handwriting pertaining to written examination held at

Kolkata are not of the same person as that of the petitioner. The same was fortified by the opinion obtained from the Government Hand Writing expert and on the basis of the difference in the handwriting the conclusion was arrived at by the Inquiring Authority.

44. Moreover, Shri M.C. Joshi, Deputy Government Examiner was questioned with regard to expert report about the variation in the handwriting of the petitioner on the basis of the written examination held at Kolkata and various other documents written by the petitioner during the course of his examination.

45. On the basis of assessment of evidence in respect of each Article of Charge, it was duly proved that petitioner did not write his examination for the post of Executive Trainee in GAIL held on 03.09.2006 at Kolkata and somebody else wrote the said examination on his behalf.

46. The case of *Capt. Paulanthony (supra)*, as has been heavily relied upon by the counsel for the petitioner is not applicable in the facts and circumstances of the present case for the reasons that in the said case there was full trial for the criminal case. All the witnesses were examined, cross-examined and thereafter the Court opined that neither any search was conducted nor any recovery was made from the residence of the person, thus the prosecution could not establish the case against the said person.

47. Whereas in the case in hand, the petitioner was discharged at the stage of charge itself, therefore, there was no opportunity of examining

and cross-examining the handwriting expert. If the case in hand was on the same footing, the position would have been different. But it is established that handwriting in the exam and admitted handwriting was different. Therefore the Department, after conducting the departmental enquiry and after giving full opportunity to cross-examine all the witnesses, has rightly removed the petitioner from services. In the departmental proceedings only the preponderance of probability is required and it has not to be tried in the same manner as the procedure in the criminal case.

48. The objective in criminal case is to prosecute and punish the culprit whereas in departmental enquiry preponderance of probability is required for taking disciplinary action.

49. It is pertinent to mention here that the petitioner has not raised any issue of *mala fide* or violation of any procedure or of the issue of jurisdiction. Therefore, this Court cannot sit as an Appellate Court under Article 226 of the Constitution of India.

50. 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 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'.

51. Acquittal by the criminal court does not automatically give the right to be reinstated into service. The disciplinary authority has given him full opportunity to defend himself and the rules and principles of natural justice were duly complied with. Copy of inquiry report dated 22.11.2010 was sent to the petitioner to enable him to file his representation. After taking all the facts and circumstances into consideration, penalty of dismissal from service was imposed upon the petitioner under Rule 39 of the GAIL Employees (Conduct, Discipline and Appeal) Rules, 1986. Thereafter, the appeal of the petitioner was also considered by the appellate authority and after careful consideration of all the facts and circumstances rejected the same vide its order dated 13.01.2012.

52. In view of the above discussion and settled legal position, I am not inclined to interfere with the decision arrived at by the disciplinary authority and the appellate authority. Consequently, I find no merit in the instant petition and the same is dismissed.

53. No order as to costs.

**SURESH KAIT, J.**

**MARCH 15, 2013**

*sb/jg/RS*