

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6628 OF 2015

Shri Shankar Shivaji Khuspe .. Petitioner
versus
The State of Maharashtra & Anr. .. Respondents

Mr. Nitin Dalvi for Petitioner.

Mr. C. P. Yadav – AGP for Respondents - State.

**CORAM: V. M. KANADE AND
M. S. SONAK, JJ.**

DATE : 09 AUGUST 2016

P.C.:

1] The petitioner challenges order dated 25 June 2013 made by the Maharashtra Administrative Tribunal, Mumbai (MAT) dismissing his original application no. 30 of 2010. The original application was instituted by the petitioner to challenge the orders dated 4 February 2008 and 8 February 2008 made by the respondents. By order dated 4 February 2008 penalty of stoppage of one increment for three years was imposed upon the petitioner and the order dated 8 February 2008 relates to the treatment of his period of suspension pending departmental enquiry.

2] Mr. Dalvi, learned counsel for the petitioner has submitted that the foundation of the charge in the disciplinary proceedings and foundation of charge in the NDPS prosecution launched against the petitioner was one and the same. He submitted that since, the criminal prosecution ended in '*clean acquittal*', there was no basis for the enquiry officer and the disciplinary authorities to conclude that the charge against the petitioner stands proved. Mr. Dalvi submitted that the appellate authority has incorrectly observed that the acquittal of the petitioner in the criminal prosecution, was not '*clean acquittal*'. For

these reasons, Mr. Dalvi submitted that the impugned order made by the MAT is required to be set aside.

3] We are satisfied that there is no substance in the contentions raised by Mr. Dalvi on behalf of the petitioner. The charge levelled against the petitioner was quite a serious one, in that, the petitioner was found in possession of brown sugar (gard) weighing about 40 grams at the main gate of Yervada Central Prison, where, the petitioner was posted as a prison guard. The charge was that the petitioner was attempting to smuggle narcotic substance in the jail premises. If the judgment and order dated 30 October 2007 in NDPS S.C. No. 11 of 2001, upon which the petitioner relies is perused, it cannot be stated that the acquittal ultimately awarded to the petitioner is '*clean acquittal*'. Further, in so far as the charge under section 66(i) (b) of the Bombay Prohibition Act, for which, the petitioner was also prosecuted in the same matter is concerned, the judgment and order very clearly records that benefit of doubt is being granted to the petitioner. Mr. Dalvi, took us through the judgment and order dated 30 October 2007, but was unable to establish that the acquittal was some '*clean acquittal*' as contended by him.

4] That apart, it is well settled that the scope and object of criminal proceedings and departmental proceedings is distinct and different. In criminal proceedings, the prosecution is required to prove the charge beyond reasonable doubt. Conviction in a criminal prosecution might result in curtailment of liberty. In contrast, the standard of proof in departmental proceedings is only preponderance of probabilities. Adverse findings in departmental proceedings, might result in imposition of penalty, which may range from, minor penalty like the one awarded to the petitioner in the present case or penalty of

dismissal. Merely because a government servant may have been acquitted in criminal prosecution, that by itself, is neither a bar to commence departmental proceedings nor a bar to hold the charges in the departmental enquiry, as proved. The Enquiry Officer, the disciplinary authority and the appellate authority have correctly appreciated the position in this regard and returned / confirmed findings that the charge levelled against the petitioner stands proved. The MAT has also correctly appreciated the material on record as well as the legal position and declined to interfere with the penalty imposed upon the petitioner.

5] In the present case, there is no complaint of any violation of principles of natural justice in the course of the departmental proceedings. There is no question of disproportionate penalty, particularly because, we are satisfied that the minor penalty, with which, the petitioner has got away is in fact not proportionate to the charge which is held as proved against him. It must be remembered that the petitioner is a prison guard and normally, there is no question of leniency, when, charge of attempting to smuggle narcotic substances is held as proved. Possibly, minor penalty has been imposed, taking into consideration some mitigating circumstances, which are not evident from the record. Be that as it may, we are satisfied that no case whatsoever has been made out to interfere with the impugned order.

6] Accordingly, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

(V. M. KANADE, J.)

