

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

WRIT PETITION NO.12111 OF 2012

Sanjay Kumar Rai	]	
Inspector (Dismissed),	]	
R/at: House No.15, Block C-52	]	
Sector-7, New Panvel (E),	]	
Navi Mumbai. Pin-410 206	]	...Petitioner

vs.

1.Union of India	]	
represented by: The Secretary,	]	
Ministry of Home Affairs, South Block	]	
New Delhi-110 001	]	

2. The Director General	]	
Central Industrial Security Force	]	
(Ministry of Home Affairs),	]	
A/13 CGO Complex, Lodhi Road,	]	
New Delhi-110 003	]	

3. The Inspector General	]	
(Air-Port Sector), A/13, CGO	]	
Complex, Lodhi Road,	]	
New Delhi-110 003	]	

4. The Dy. Inspector General	]	
(West Zone), Central Industrial	]	
Security Force, (Ministry of Home Affairs),	]	
R.C. F. L. Complex, Chembur, Mumbai-400 074	]	...Respondents

...

Mr. A. K. Jalisatgi a/w Mr. Asif J. Patel for the petitioner.
Mr. Y. S. Bhate a/w Mr. N. R. Prajapati for UOI.

...

**CORAM : ANOOP V. MOHTA AND
G.S. KULKARNI, JJ.
DATE : 11 AUGUST 2016.**

JUDGMENT: (Per G.S.Kulkarni,J.)

. The petitioner who was in the service of the Central Industrial Security Force has filed the present petition challenging the communication dated 11/10/2012 by which representation made by the petitioner for reinstatement in service, in view of the acquittal in the criminal case, has been rejected by the respondents.

2. Admittedly, the petitioner was dismissed from service after a full fledged departmental enquiry by an order dated 18/2/2005. The dismissal order was challenged by the petitioner in a departmental appeal and then a revision. However, the same was confirmed. Thereafter the petitioner had filed Writ Petition No.297/2005 before this Court which came to be rejected by the Division Bench by an order dated 7/11/2006. Further Review Petition No.25/2007 was also filed seeking review of the orders dismissing the Writ Petition. This Court dismissed the Review Petition by order dated 11/12/2007. The petitioner thereafter had approached the Hon'ble Supreme Court in SLP No.6987-6988/2009 which was dismissed by order dated 7/7/2009. The issue on the departmental proceedings accordingly attained finality however at that time the criminal proceedings against the petitioner were pending.

3. By an order 18/6/2012 passed by the learned Metropolitan Magistrate, Andheri the petitioner was acquitted in the criminal proceedings. On the basis of this acquittal the petitioner made representation seeking reinstatement in service which is rejected by the impugned communication.

4. It is a settled principle of law that the departmental proceeding and the criminal proceeding stand on entirely different footing. The test in the departmental proceeding to impose a punishment is preponderance of probabilities, whereas test in the criminal proceeding to convict a person is proof of the charges beyond reasonable doubt.

5. Admittedly, dismissal order assailed by the petitioner has attained finality as noted by us above. The only contention as advanced on behalf of the petitioner is that, as now, the petitioner stands acquitted in the criminal proceedings, the petitioner becomes entitled for a reinstatement. We do not agree .

6. At the hearing of this petition we raised a specific query to the learned counsel for the petitioner as to whether there is any Rule/Regulation which would entitle the petitioner to seek automatic reinstatement in view of the acquittal in the criminal proceeding. Learned counsel for the respondent could not draw our attention to any Rule which would entitle the petitioner to such a benefit as sought for in the facts and circumstances of his case. This position is also confirmed by the learned counsel for the respondent.

7. The law on this issue is well settled in view of the decision of the Supreme Court in the case of “**Deputy Inspector General of Police and Another Vs. S.Samuthiram**”(2013) 1 SCC 598” wherein it is held that even if an employee is honourably acquitted by the criminal court, no right is conferred in the employee to claim any benefit including reinstatement for the reason that the standard of proof in the

departmental proceedings and those in the criminal proceedings are entirely different. It is also held that it would also depend on the service Rules in question. The law as laid down in this decision can be noted from paragraphs 26 to 28 which reads thus:-

“26. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue

whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.

28. In view of the above mentioned circumstances, we are of the view that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings as against the respondent, in its limited jurisdiction under Article 226 of the Constitution of India.”

8. The decision in the case of ***S.Samuthiram*** (*supra*) is followed in the subsequent decision of the Supreme Court in the case of “***Commissioner of Police vs. Mehar Singh***” (2013)7 SCC 685” and thereafter in the decision in the case of “***State of West Bengal & Ors. Vs. Sankar Ghosh***” (2014)3 SCC 610, wherein reiterating the observations as made in the case of “***S.Samuthiram***” (*supra*) the Supreme Court has made the following observations:-

“18.We indicate that the respondent could not lay his hand to any rule or regulation applicable to the Police Force stating that once an employee has been acquitted by a Criminal Court, as a matter of right, he should be reinstated in service, despite all the disciplinary proceedings. Even otherwise there is no rule of automatic reinstatement on acquittal by a Criminal Court even though the charges levelled against the delinquent before the Enquiry Officer as well as the Criminal Court are the same.”

9. In the recent judgment in the case of “***Baljinder Pal Kaur Vs. State of Punjab and others***, (2016)1 SCC 671” the Supreme Court has referred with approval the law laid down in the case of

S.Samuthiram (supra) and Mehar Singh (supra).

10. In view of the above clear position in law the petitioner is not entitled to the reliefs as prayed for in the Writ Petition which seek reinstatement in service. The departmental proceedings against the petitioner have attained finality and now the same cannot be reopened only because the petitioner is acquitted by the Criminal Court. Petition is accordingly dismissed. No order as to costs.

(G.S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)