

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

WRIT PETITION NO. 1846 OF 2014

Sudhakar Shankarrao Chapke ... Petitioner.
Age : 57 yrs., Occ.: Service as Executive
Engineer, Training & Security,
MSEDCL, Eklahara, Nasik,
R/o. C/o. Shri N. A. Bhise, Flat No. 3,
Ganesh Vihar Apartment, Bodhle Nagar,
Nasik Pune Highway, Ashoka Rd., Nasik.

Versus

1. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), having its office at "Prakashgad", 6th Floor, Station Road, Bandra (E), Mumbai-51 Through its Managing Director.
2. The Regional Executive Director (I), ... Respondents.
MSEDCL, Kalyan, Plant No.B-1-2
Godrej Hill, Baravegaon Road,
Kalyan (W), Dist. Thane.

Mr. Ajay S. Deshpande, Advocate, a/w. Mr. Amol Gatne,
Advocate for the Petitioner.

Mrs. A.R.S.Baxi, Advocate for Respondent Nos.1 & 2.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 21st DECEMBER, 2017

(JUDGMENT RESERVED ON : 06.12. 2017)

(--"-- PRONOUNCED ON : 21.12.2017)

JUDGMENT : (Per Smt.Bharati H. Dangre, J.)

1 Being aggrieved by the order dated 21st June, 2013
passed by the Regional Director of Maharashtra State

Electricity Distribution Company Ltd. (MSEDCL), thereby imposing a penalty of withholding increment of the petitioner with cumulative effect, treating the period of dismissal from 08.08.2008 i.e. the date of his termination till the date of his resumption of duties on 16.09.2012 to be as extra-ordinary leave without pay and treating the period of suspension of the petitioner as suspension period. The petitioner has invoked the writ jurisdiction of this court and has prayed for quashing and setting aside the said order dated 21.06.2013, passed by the Regional Director of MSEDCL.

2 Before advertng to the grievance of the petitioner, we would be gainfully refer to certain factual events, leading us to adjudicate the reliefs sought in the writ petition.

The Petitioner was appointed as Junior Engineer with the Maharashtra State Electricity Board (MSEB) and, during his service career, he was promoted as Executive Engineer in October, 2003. On trifurcation of the Maharashtra State Electricity Board in the year 2005, the services of the petitioner have been allocated to the Maharashtra State

Electricity Distribution Company Ltd., (hereinafter referred to as 'MSEDCL'), which is a 100% State Government owned company / the public undertaking. While discharging his duties in the said capacity as Executive Engineer, the petitioner was implicated in an anti-corruption case on 08.02.2008 and the provisions of sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 were invoked and applied. Resultantly, the petitioner was tried by the learned Special Judge, Sindhudurg in Special Case No. 7 of 2009. The niceties of the criminal trial, would be adverted to at a little later stage.

The anti-corruption case was instituted against the petitioner on a complaint lodged by one Shri Keshav Shende, a contractor from Pune, who alleged that the petitioner had demanded an amount of Rs.50,000/- from the complainant, as a consideration for releasing his bills in the capacity as contractor. The petitioner was placed under suspension on 09.02.2008, pending the criminal prosecution. The petitioner was served with the charge-sheet, as contemplated under Rule

90 of the Service Regulations by the Respondent on 12.03.2008 to which the petitioner responded by filing a detailed reply. However, the petitioner was served with the show-cause notice of dismissal of his services on 30.06.2008 and the petitioner showed cause to the same, by contending that the criminal prosecution against him was yet pending and on the same set of facts, it was not open for the Respondents to initiate the disciplinary proceedings against him. However, according to the petitioner, in ignorance of the extensive reply filed by the petitioner, he was dismissed from service by order dated 08.08.2008.

3 Being aggrieved by the said order of dismissal, the petitioner approached this Hon'ble Court by filing a writ petition, which was numbered as W.P. No. 4006 of 2008 in the High Court of Judicature at Bombay, Bench at Nagpur, since at the relevant time, the petitioner was residing at Pusad in Yeotmal District, which was falling within the territorial jurisdiction of Nagpur Bench of the Bombay High Court.

In the said writ petition, the petitioner made a grievance that the impugned order dated 08.08.2008, dismissing him from service, was issued in utter violation of principles of natural justice and he contended that initiation of the proceedings against him by virtue of Regulation 90, in the nature of summary proceedings, was not sustainable and no opportunity was afforded to him of being heard and, therefore, the petitioner contended that he could not have been removed from service in a summary manner and without holding a regular departmental enquiry. He also contended before the court that criminal prosecution initiated against him has resulted in his acquittal by judgment dated 05.10.2011 passed by the Special Judge, Sindhudurg and in the light of the said acquittal, the departmental enquiry itself was not sustainable and so also the penalty imposed on him is liable to be set aside. The Hon'ble High Court addressed the grievance of the petitioner and arrived at a conclusion that though the petitioner was acquitted by judgment dated 05.10.2011 delivered by the Special Judge, Sindhudurg but the criminal

appeal against the said judgment and order of acquittal was still pending. The Hon'ble High Court, after taking note of the fact that no regular departmental enquiry under Regulation 88 has been held against the petitioner, but, by referring to the judgment in the case of **U.P. State Spinning Co. Ltd., vs. R. S.Pandey and Another**, reported in (2005) 8 SCC 264, refused the relief of granting unconditional reinstatement (blanketly) in view of the acquittal in the criminal case but the Hon'ble Court moulded the relief to the effect of setting aside the order of removal of the services of the petitioners and directing his reinstatement in service but reserved the liberty in favour of the respondent-employer to proceed and hold a regular departmental enquiry against the petitioner under Regulation No. 88. The Hon'ble Court passed the following order in the said writ petition, which reads thus :

ORDER

- i. Writ petition No. 4006 of 2008 is partly allowed.
- ii. The impugned order dated 08.08.2008 passed by the respondent no. 2 removing the petitioner

from service is quashed and set aside with liberty to the respondent employer to hold a regular departmental enquiry against the petitioner in accordance with law and complete the same in any case within a period of six months from serving of the charge-sheet on the petitioner. The charge-sheet shall be served on the petitioner within eight weeks from today.

iii. The respondent employer shall issue formal order of reinstatement in service to the petitioner and shall be at liberty to place him under suspension pending regular departmental enquiry. Within a period of one week from the date of reinstatement, the petitioner shall be paid subsistence allowance from the date of suspension.

iv. The respondents shall fix the schedule and venue of the enquiry and shall hear the petitioner as to the amount required by him. The respondents shall take decision according to the fact situation after hearing the petitioner and accordingly make payment, if so decided, to the petitioner.

v. The issue about back wages, period of suspension, period of unemployment, etc. shall be decided by the Disciplinary Authority

simultaneously upon culmination of the enquiry proceedings.

vi.”

4 Pursuant to the said order dated 02.08.2012 passed by the Division Bench of this Court (Coram : Smt.Vasanti A. Naik and A. B. Chaudhari, JJ.), the petitioner was reinstated in service by order dated 07.09.2012 and he resumed his duties with the Respondent w.e.f. 17.09.2012. By another order dated 18.09.2012, the petitioner came to be placed under suspension once again, pending the disciplinary proceedings/ action under Service Regulation No. 88. The Petitioner was again served with the chargesheet on 24.09.2012 and according to the petitioner, the chargesheet was accompanied by the documents concerning the trap laid by the Anti Corruption Authorities and no independent documents were supplied along with charge-sheet. It is the case of the petitioner that the disciplinary proceedings initiated vide order dated 24.09.2012 were concluded by the enquiry officer, by submitting his report and the

proceedings were conducted on 15th and 16th March, 2013. A copy of the enquiry report alongwith the show cause notice dated 16.04.2013 was forwarded to the petitioner, calling upon the petitioner as to why the punishment of dismissal from service should not be inflicted upon him. The petitioner submitted his response to the said show cause notice and raised the grievance that the charges against the petitioner have not at all been proved and mere reliance on the documents by the Anti Corruption Bureau which were being put to use for the criminal trial, cannot be the material on which it could be said that the charges leveled against him in the disciplinary proceedings can be proved. On 19.06.2013 the petitioner came to be reinstated in the service by claiming benefit of the administrative circular no. 197 dated 26.12.2008 by issuing order dated 16.02.2013, and his suspension period was also terminated w.e.f. 18.09.2012. In pursuant to the said order, the petitioner resumed his duty on 24.06.2013.

5 It is the case of the petitioner that after his reinstatement in service, he was served with the final order of punishment dated 21.06.2013 issued by the Regional Executive Director, Kalyan by which following penalties were inflicted upon him :

- a) Stoppage of one year increment for a period of one year with cumulative effect.
- b) The period from 08.08.2008 i.e. the date of dismissal till 16.09.2012 i.e. the date of resumption of duty, be treated as the period of an extra-ordinary leave without pay.
- c) Period of suspension i.e. from 09.02.2008 to 07.08.2008 and 18.09.2012 to 24.02.2014 be treated as period of suspension by way of penalty.

It is this order, which has prompted the petitioner to invoke extra-ordinary writ jurisdiction of this court by filing the present writ petition.

6 In response to this writ petition, the MSEDCL has filed its affidavit, opposing the reliefs sought by the Petitioner. At the outset, it is stated in the affidavit that the petitioner has

an alternate remedy under the Maharashtra State Electricity Distribution Company Limited Employees Service Regulations of 2005. It is also stated that the petitioner has filed an appeal which was dismissed on 30.12.2013. As regards the merits of the matter it is not disputed that the petitioner had also approached this Hon'ble High Court at Nagpur Bench and that the Hon'ble High Court had ordered his reinstatement and granted liberty to the respondents to proceed with the departmental enquiry. It is stated in the affidavit that pursuant to the said order, the petitioner was permitted to resume his duties on 17.09.2012 and he was placed under suspension on 18.9.2012. It is further stated that a charge-sheet was issued to the petitioner on 24.09.2012 under Service Regulation No. 86 (3), Schedule-C, Items Nos. 12, 14, 15, 21, 23 etc.. It is further stated in the affidavit that the regular enquiry under Regulation No. 88 was held and a show-cause was issued to the petitioner on 16.04.2013 and on consideration of the reply submitted by him, the final order was passed on 21.06.2013 for stopping of increment for a period of one year

with cumulative effect and treating the period from his dismissal till his reinstatement, pursuant to the orders passed by the High Court, as period of an extra ordinary leave without pay and treating the suspension period as it is by way of punishment. The affidavit further states that considering the gravity of mis-conduct by a person like the petitioner, the departmental enquiry was held and the punishment order was issued. It is reiterated that the enquiry was held by the respondents in terms of procedure prescribed under the Rules and Regulations and also by following the principles of natural justice. It is also stated that the proceedings in the criminal case and departmental enquiry are different in their nature and the petitioner is not entitled to claim advantage of the order of acquittal, which was based on benefit of doubt. Further reliance is placed on Rule 10(A) (Amended) of the Service Regulations to deprive the petitioner of any wages for the period from 08.08.2008 to 16.09.2012 on the principle of "no work, no pay". It is also further stated that treating the period of suspension as it is by way of penalty is in view of

the fact that act of the petitioner has maligned the reputation of the respondent company in the eyes of the general public and has spread a bad message in the society.

Consequent to the filing of the said affidavit, the petitioner has filed the rejoinder affidavit, where he has admitted that he had filed the present writ petition in the second week of December, 2014, whereas the appeal filed by him, assailing the impugned order of penalty, is dismissed by the Appellate Authority on 30.12.2013 and as such there is no suppression on the part of the petitioner. According to the petitioner, the respondent has also tried to discern the stand of the petitioner based on the order in writ petition no. 4006 of 2008, dealing with the Service Regulations 10(A) (Amended), to justify the impugned order. However, according to the petitioner the Service Regulation 10(A) comes into play only in the event the incumbent is convicted by the competent court. By referring to administrative circular no. 197 dated 26.12.2008, the petitioner further contends in the affidavit that the said Circular deals with one

of convicted employees who is acquitted in appeal by the appellate court and reinstated in the service, he shall not be eligible for any payment from the date of termination of his services. However, according to the petitioner, this principle is not applicable to his case since he was acquitted by the Sessions Court. This affidavit is again rebutted by the respondent by filing a reply of the Assistant General Manager of MSDCL Ltd., Kalyan on 12.09.2014.

7 We have heard the arguments of the learned counsel Shri Ajay Deshpande alongwith Mr. Amol Gatne, Advocate appearing on behalf of the petitioner. The counsel for the petitioner would argue that the disciplinary proceedings initiated against the petitioner are not sustainable in the eyes of law as also in view of the position of law settled law by the Apex Court and by this court in the catena decisions, where it has been held that it is not permissible to conduct the departmental enquiry on the same set of facts for which the delinquent has been subjected to a criminal

prosecution. The learned counsel relied upon the judgment of the apex court in the case of **S. Bhaskar Reddy & Anr.** vs. **Superintendent of Police and Anr,** reported in AIR 2015 SCW 571, wherein the Hon'ble Apex Court, after referring to the judgment in the case of **G. M. Tank vs. State of Gujarat and Ors.,** has held that in a case where the facts and evidence in the departmental proceedings as well as in criminal proceedings are the same without there being any iota of difference, then, the appellant must succeed and specifically when there was an honourable acquittal of the employee during the pendency of the disciplinary proceedings, the same requires to be taken note of and the appeal deserves to be allowed. According to the counsel for the petitioner, the petitioner was charged for an act of demand of an illegal amount of Rs.50,000/- and the accusation against him is that he demanded the amount by way of illegal gratification so as to settle the claim of the contractor. However, when this accusation was put to trial, the trial court / the Special Judge, Sindhudurg, in Special Case was pleased to grant benefit of

doubt to the petitioner on appreciation of evidence on record and it has been held that there was no evidence relating to demand of bribe by the accused. He also relies on the findings of the Special Judge that he has been falsely implicated by the informant due to strained relations and the Special Judge has acquitted the petitioner of the charge with the offence punishable under sections 7, 13(1)(d) and 13(1)(e) read with section 13(2) of the Prevention of Corruption Act. The learned counsel for the petitioner places heavy reliance on the judgment of the Special Judge delivered on 5th October, 2011 and he would argue that in the light of the said acquittal, the disciplinary proceedings are not maintainable. The learned counsel would also argue that in the earlier round when the services of the petitioner were put to the end by passing an order on 08.08.2008, removing the petitioner from service and he had approached the Hon'ble High Court by filing the writ petition, though the Hon'ble High Court had held that the summary procedure adopted by the respondents to put an end to the services of the petitioner without conducting any Inquiry

was not justified and the Honourable Court had granted relief of reinstatement to the petitioner with liberty to the respondent employer to proceed to hold a departmental enquiry under Regulation No. 88, but that is in accordance with law. Advocate Shri Deshpande would argue that when liberty was given to the employer to conduct a departmental enquiry, the full fledged enquiry was not at all conducted and rather the enquiry proceeded in a mechanical manner relying upon the evidence adduced in the course of the trial, relying upon the anti - corruption trap and the material produced during trial and not a single independent witness was examined nor did the petitioner get opportunity to cross-examine any of the witnesses. According to the learned counsel the entire approach of the respondent amounted to throttling the well accepted principles of service jurisprudence. It is further argued that the charge against the petitioner in relation to mis-conduct was not proved during the course of the disciplinary enquiry and the enquiry was vitiated by not following the procedure of law which resultantly vitiated the

penalty imposed upon him. The learned counsel would also argue that the reliance placed on the administrative circular dated 26.12.2008 is totally unwarranted and the said circular is not applicable to this case which rather provides for contingency where the employee is acquitted of the criminal charges leveled against him and in that case the suspension has to be treated as duty period and the increments are required to be released on due dates and the pay of the employee to be re-fixed. The learned counsel for the petitioner would argue that the administrative circular no. 197 has been conveniently ignored by the respondents, while imposing the penalty as per the impugned order. The learned counsel would also argue that in case of other employees, who were similarly situated as the petitioner and whose orders have been placed on record by the petitioner at page 100 of the petition, the period of suspension has been treated in terms of the administrative circular no. 197 dated 28.12.2008 as leave without pay. The learned counsel, therefore, argued that the petitioner has been treated in a discriminatory manner,

by depriving him of the benefit of circular no. 197 and the benefit of which has been extended to other employee.

8 Per contra, we have also heard learned counsel Mrs. Baxi appearing on behalf of the respondent nos. 1 and 2. The learned counsel would argue that the parameters of disciplinary enquiry and the criminal proceedings, being distinct in nature the petitioner cannot take advantage of his acquittal in criminal proceedings. She would further argue that the standard of proof in criminal case is proof beyond reasonable doubt whereas in the case of the departmental proceedings, it is the preponderance of probabilities. She would further argue that mere acquittal in the criminal case which some time is the result of varying circumstances namely, either witnesses turning hostile or evidence not brought on record by the prosecution or it being not appreciated in its proper perspective, results in the acquittal but such acquittals are not necessarily the acquittals on merit and the acquittal on the ground of benefit of doubt would not stand on par with

the clear acquittal on merit after full-fledged trial and as the petitioner in the present case has been given the benefit of doubt. According to the learned counsel, the MSEDCL has made a provision in its service regulations and categorized certain conduct as 'misconduct' and the petitioner has been charge sheeted with such acts of misconduct on account of his behaviour, unbecoming of a public servant and bringing the image and reputation of the respondents company to disrepute. According to Mrs. Baxi, the charges levelled against the petitioner in the departmental enquiry pertain to such acts of misconduct as an employee of the respondents and he has been found to be guilty of such misconduct and, therefore, the penalty, which according to her, is quite distinct from the accusation which he faced in the criminal proceedings where he was alleged to have accepted an amount of Rs. 50,000/- and caught red handed, while accepting the said amount towards illegal gratification, by the Anti Corruption Bureau.

9 The proposition that the disciplinary proceedings are distinct, exclusive and independent of the criminal proceedings, is no more res-integra and it is also a settled position of law that an act of acquittal in criminal proceedings would not preclude the employer from taking action or proceedings against its employee departmentally if the Service Rules, regulating the condition of service of the employee permits so. Admittedly, the service conditions of the petitioner are governed by the MSEDCL Employees Service Regulations of 2005. Said Regulations, by Rule 88 prescribe the procedure for dealing with the acts of mis-conduct which contemplates an action of suspension when employee is charged for misconduct or against whom a case in respect of criminal offence is under investigation, under Inquiry or trial. Rule 88 spells out the procedure to be followed by the employer departmentally in an proceedings against the employee which includes framing of charge, opportunity to submit written/oral statements, inspection of documents, recording of evidence etc.. The said Rule in detail prescribes the procedure

to be followed, on receipt of the report of the enquiry officer and communication of a decision including the penalty. Rule 90 of the Service Regulations MSEDCL, 2005 spells out summary proceedings to be followed in the following circumstances :

“Rule :- 90. Summary Proceedings :

The Competent Authority may hold summary proceeding/s in case,

(a) where the employee is caught red-handed having committed or while committing an act of misconduct,

(b) where there is obvious evidence of the act of misconduct having been committed or,

(c) where the misconduct or mis-behaviour is considered too grave and convincing to warrant or justify the normal procedure to be followed,

(d) where having regard to the surrounding circumstances and the gravity of the offence for which the employee is convicted in a court of criminal law, Competent Authority is of the opinion that summary proceedings are appropriate for deciding any punishment including dismissal or removal,

(e) where an employee is involved in misconduct of serious nature causing loss to the Company is due for retirement from the services of the Company within a period of three months.

Without following the procedure prescribed in Service Regulation 88 and take a decision on the evidence available after charge-sheeting the employee concerned, as prescribed in Annexure 3 and after giving him an opportunity to make a statement.”

10 The petitioner before us was prosecuted under sections 7, 13(1)(d) and 13 1(e) r/w. Section 13 (2) of the Prevention of Corruption Act, on a complaint made by one Electrical Contractor Shri Keshav Bhausahab Shende, who is a contractor, carrying out various electrical work and who was allotted electrical work in Kankavali Division. It was alleged that the said contractor had certain electrical bills to be cleared against the work which he had rendered at Kankavali under the contract allotted to him by the respondent company and he was requesting the petitioner, who was working as Executive Engineer, to release the said bill but there was no positive response from the petitioner. It is alleged that on 31.01.2008 Shri Shende had met the petitioner and for clearing the bills, the petitioner made a demand of Rs. 1,07,000/- as an illegal gratification. It is further alleged that the complainant realized that if his bills had to be released,

he has no option than to pay the amount demanded by the petitioner but he requested to reduce the said amount, which the petitioner refused but permitted him to satisfy the said demand in installments. The said complainant - Shri Shinde filed a complaint on 07.02.2008 with the Anti Corruption Bureau, Pune and pursuant to which a trap was laid on 08.02.2008 and the petitioner was caught red handed while accepting Rs. 50,000/- from the complainant at his residence. It is not in dispute that the petitioner was tried for the offences with which he was charged by the competent court, which resulted into his acquittal from the offence with which he was charged on the ground that the benefit of doubt which has been raised due to absence of evidence relating to the demand of bribe.

11 The petitioner being an employee, working on a responsible post of Executive Engineer, was charged for the acts of mis-conduct and the chargesheet came to be served upon him on 24.09.2012, wherein he was accused of mis-

conduct under various clauses of the MSEDCL Employees Service Regulations, 2005, including the following charges :

- i) Misconduct or conduct in contrast to good conduct.
(under the MSEDCL Employees Service Regulations of 2005, Schedule -KH, Rule No. 86(3), Serial No.12)
- ii) Dis-honesty.
- iii)Involved into activities detrimental to interest of the Company.
- iv)Demand of illegal gratification for individual benefit and accepting the amount of Rs. 50,000/-.
- v) Dereliction of duties.
- vi) Maligning the image of the company in the eyes of the general public.

The said chargesheet was served upon the petitioner and the petitioner abjured the guilt and filed his response/reply, denying the said charges leveled against him in the chargesheet. Shri Arun Namdav Rankhambe, the Chief Executive of MSEDCL, Kokan Parimandal, Ratnagiri, was appointed as Inquiry Officer, and the Inquiry proceeded against the petitioner. The said Inquiry Officer considered

the submission of representative of the Management, who put up the case of the respondents before the Inquiry Officer and the Petitioner was given an opportunity to meet all the six charges levelled against him in the departmental enquiry and the chargesheet was served on him.

On a careful consideration of the each charge and after taking into consideration the stand of the respondent through its representative and the petitioner, the enquiry officer submitted his detailed report by holding that all the six charges levelled against the petitioner in the chargesheet dated 24.09.2012 stand proved. The petitioner was supplied with the copy of the enquiry report and was also issued a show cause notice on 16.04.2013 by the respondent, directing the petitioner to show cause as to why the penalty of dismissal from service should not be imposed on him. The petitioner submitted a detail response, which has resulted into issuance of final order on 21.06.2013, which is impugned in the present petition and the details of which have been already narrated above by us.

The contention of the petitioner is that the said enquiry is merely a farce, as no witnesses were examined during the course of the enquiry and that the material, relied upon by the criminal court, was put to use during the course of the disciplinary enquiry. We do not agree with this contention of the petitioner, as we did not find any flaw in the conduct of the departmental enquiry. We are also not impressed by the repeated reference of the petitioner to the order of acquittal passed by the competent criminal court, acquitting him of the charges of accepting the amount of bribe. The acquittal from the competent criminal court in no case would preclude the employer from exercising its power of proceeding departmentally against the employee in accordance with the Rules and Regulations in force. The purpose of departmental enquiry is to deal with an employee departmentally, as the employer expects its' employee to act with a sense of responsibility and every employer expects his employee to act with utmost honesty and integrity. Ultimately, the relationship between the employer and employee involves a

degree of trust and if the employee is charged and is arraigned in any criminal case, the employer may feel loss of confidence and faith in such employee and would test the employee from the angle as to whether he is fit to continue his relationship with him or not. The employee is made aware while entering into the service agreement with the employer about his duties and that he will have to maintain integrity, devotion to duty and not to indulge in any act which is unbecoming of an employee of a company. Every public employment has its own sets of Rules, determining “misconduct” or such “forbidden conduct”, of an employee. The employee is also obliged to act in a public interest and not to mis-use his position so as to derive any financial or material benefit for himself and bring the image of his employer to disrepute. The Respondent MSEDCL being the public undertaking and the petitioner being a public servant, was duty bound to act in a manner conducive to a public servant and assist the respondent company, who was endowed with the responsible work of distribution of electricity throughout the

State by efficiently discharging his duties with utmost honesty and integrity. On the accusation of accepting the bribe to settle the claim of one of the contractors, rendering the services to the respondent company, the employer thought it fit to subject the petitioner to disciplinary proceedings for the acts which have been spelt-out in the service regulations as “misconducts” and the petitioner was served with a charge-sheet, before conducting the departmental enquiry. The acquittal of the petitioner in the criminal proceedings does not preclude the employer from conducting the departmental enquiry and imposing a penalty on him in accordance with the Disciplinary Rules, governing the employees of the respondent company and the acquittal from the criminal charge does not ipso facto absolve the petitioner from facing such a departmental enquiry. The scope of criminal proceedings and the departmental enquiry are distinct, being different in the mode of enquiry, scope of enquiry, standard of proof and vary from purpose of conduct of such proceedings. For the purpose of criminal prosecution is to inflict proper punishment as an

offender, whereas the purpose of departmental prosecution of the public servant is to maintain integrity, honesty and truthful conduct in performance of the public duty, weighing his conduct so far to render efficient public service. Any conduct which is unbecoming of a public servant, which amounts to maligning the image of an organization or bringing in disrepute the organization where the employee is working, needs to be tackled departmentally irrespective of whatever may be the fate of the criminal proceedings.

12 In this background, the respondent has issued chargesheet to the petitioner and proceeded against him by conducting a departmental enquiry, which resulted in imposition of penalty on the petitioner. In arriving at a conclusion that the charges levelled against the petitioner have been proved, the respondent did not examine any witness but relied upon the undisputed conduct of the petitioner, which clearly reflected his conduct unbecoming of a public servant i.e. the conduct of dishonesty which had brought the

respondent company to dis-repute. The enquiry officer weighed the conduct of the petitioner qua each of the charges levelled against him and applied the parameters of the misconduct and undisputed conduct of the petitioner, namely, soliciting illegal gratification from a contractor dealing with the respondent company for settlement of his bills for the electrical work done by him for the respondent company and this conduct of the petitioner has been charged as a conduct in contrast to a “good conduct”. This conduct of the petitioner was also held to be an act of dishonesty since he was caught red handed while accepting the amount of illegal gratification. The allegation of accepting the amount of bribe by the petitioner by way of illegal gratification has also been held to be responsible for maligning the image of the respondent company since the incident of accepting the alleged illegal amount by the petitioner and his arrest was widely published in the newspaper. On the basis of the allegations that the petitioner had demanded the amount towards illegal gratification from the complainant, though he was acquitted

of the charges levelled against him under the relevant provisions of the penal statutes since the prosecution was required to prove the case beyond reasonable doubt and it had failed to do so and the petitioner was held to be entitled for the benefit of doubt by the criminal court of competent jurisdiction. The enquiry officer arrived at a conclusion that the said conduct of the petitioner though was held to be entitled for a benefit of doubt in the criminal proceedings, has gained a feeling of mis-trust at the end of the employer, who found his act to be unbecoming of a public servant coupled with the act of dishonesty and the act of undermining the image of the company in the eyes of general public and the enquiry officer found all the charges levelled against the petitioner in disciplinary proceedings to have been proved since the parameters to be made applicable in the departmental proceedings are based on preponderance of probabilities and not on a proof, beyond reasonable doubt as in a criminal trial. The Service Rules of the respondent company treated certain conduct of the employees to be

“misconduct” and certain acts of the employees have been categorized as amounting to “misconduct” and the respondent by following the procedure established by the law, as per the service regulations, have inflicted penalty on the petitioner in terms of its regulations since it was proved that the act of the petitioner was detrimental to the interest of the respondent organization and the respondent took decision to inflict penalty on the petitioner. We did not find any perversity or illegality in the impugned order as punishment has been imposed after following the due procedure and after offering a sufficient opportunity to the petitioner to deal-with the said charges levelled against him.

13 The petitioner placed heavy reliance on the administrative circular no. 197 dated 26.12.2008 issued by the respondent company and on the basis of the said circular, the petitioner had argued that when an employee is acquitted of the criminal proceedings filed against him by the Anti-Corruption Bureau, the said period of suspension is to be

treated as duty period; whereas in the present case, the period of suspension has been treated as suspension period. We do not find any force in the submission advanced on behalf of the petitioner, as we have noted that the order passed or the penalty imposed by the respondent is of withholding a future increment for a period of one year with cumulative effect. By another limb of the impugned order, the period of dismissal from 08.08.2008 to the date of his joining on 16.09.2013 has been treated as extraordinary leave without pay. The learned counsel for the respondent had invited our attention to Rule 10-A of the Service Regulations which contains instructions to the effect that if an employee is acquitted in appeal in the appellate court, he should be reinstated in service but he shall not be eligible for any payment from the date of termination of his service to the date of his reinstatement in the service on the principle of "no work, no pay". We would gainfully refer to the said Regulation 10-A in the following manner :

"SR 10-A Cir. No. GAD/V/A/DAC/6573 dt. 24-11-1992.

Admission of an appeal does not stay the order of the trial Court. The Central Administrative Tribunal has concluded that release on bail is not the same as suspending

conviction and that the Department may impose penalty when one has been convicted by lower court, even if he has filed an appeal.

In view of the above position following instructions are issued;

(i) On conviction of an employee by a trial court the provisions under Service Regulation No. 10-A are to be invoked and action to terminate the services of such convicted employee should be taken by the Competent Authority, forthwith.

(ii) In case such employee gets acquitted in Appeal in the Appellate Court, he should be reinstated in service. But he shall not be eligible for any payment from the date of termination of his service to the date of his reinstatement in the services, on the principle of "NO WORK NO PAY". He will, however, be eligible for restoration of his seniority and other terminal-benefits.

Further, there is no bar to hold and continue a Departmental Enquiry, simultaneously, pending outcome of the criminal case provided the charges in Departmental Enquiry are other than the charges under the consideration in criminal case against such employee. In fact, it is advisable to start a separate Departmental Enquiry in all such cases of criminal offence and take independent action without awaiting the outcome of criminal case."

This Hon'ble Court had an opportunity to deal with the said Regulation 10-A in writ petition no.2301 of 2013 (Ramchandra Bapusaheb Desai vs. Maharashtra State Electricity

Distribution Company Ltd.,) to which one of us (Hon'ble Shri Justice S. C. Dharmadhikari,J.) was a member and we would gainfully refer to certain paragraphs from the said judgment i.e. paragraphs nos. 8,10 and 11, which read as under :

8. Having said this, we find that Service Regulation 10-A completely supports the case put forth by Ms. Baxi. Service Regulation 10-A reads thus:-

”SR 10-A Cir. No. GAD/V/A/DAC/6573 dt. 24-11-1992.

Admission of an appeal does not stay the order of the trial Court. The Central Administrative Tribunal has concluded that release on bail is not the same as suspending conviction and that the Department may impose penalty when one has been convicted by lower court, even if he has filed an appeal.

In view of the above position following instructions are issued;

(i) On conviction of an employee by a trial court the provisions under Service Regulation No. 10-A are to be invoked and action to terminate the services of such convicted employee should be taken by the Competent Authority, forthwith.

(ii) In case such employee gets acquitted in Appeal in the Appellate Court, he should be reinstated in service. But he shall not be eligible for any payment from the date of termination of his service to the date of his reinstatement in the services, on the principle of "NO WORK NO PAY". He will, however, be eligible for restoration of his seniority and other terminal-benefits.

Further, there is no bar to hold and continue a Departmental Enquiry, simultaneously, pending outcome of the criminal case provided the charges in Departmental Enquiry are other than the charges under the consideration in criminal case against such employee. In fact, it is advisable to start a separate Departmental Enquiry in all such cases of criminal offence and take independent action without awaiting the outcome of criminal case."

10. In view of this clear Regulation, and the validity of which has not been challenged in these proceedings, we are unable to agree with Ms Sarnaik's submission that it would be inapplicable to the Petitioner, because his was a case where he was acquitted by the trial court and was not acquitted in appeal. This Court in the case of Ramchandra Bapusaheb Desai v. Maharashtra State Electricity Distribution Company Limited,¹ (in paragraph 10 of its decision) has categorically held that a perusal of this Regulation (Regulation 10-A) would indicate as to how in case an employee gets acquitted in appeal or is acquitted otherwise by the trial court itself, he shall be reinstated in service. He would however not be eligible for any payment from the date of termination of his service to the date of his reinstatement on the principle of 'No work no pay'. We, therefore, find no substance in the argument of Ms Sarnaik that this Regulation would apply only in a case where an employee is first convicted by the trial court, and thereafter, acquitted in appeal. The principle of "NO WORK NO PAY", would apply not only in cases where an employee is first convicted and thereafter acquitted in appeal, but would also apply in a case of an employee who is acquitted by the trial court itself. We must mention here that even in the case of Ramchandra Bapusaheb Desai v. Maharashtra State Electricity Distribution Company Limited¹ the Petitioner was acquitted by the trial court itself. Despite this, placing reliance on Regulation 10-A, this Court took the view that the Petitioner therein was not entitled to any payment from the date of termination of his service to the date of his

reinstatement. Not only is the said decision binding on us but we are in full agreement with the same.

11. We also do not find any merit in the argument of Ms Sarnaik that we ought to take a different view because in the facts of the present case, it was a case of a 'clean acquittal' or a 'honourable acquittal' rather than one that was on 'reasonable doubt'. Firstly, we do not find any such differentiation in Regulation 10-A. Regulation 10-A clearly stipulates that where an employee is acquitted he should be reinstated in service, but would not be eligible for any payment from the date of termination of his service to the date of his reinstatement. The Regulation makes no differentiation between an acquittal by virtue of reasonable doubt or what Ms Sarnaik would term as an "honourable acquittal" or a "clean acquittal". In view of the clear and unambiguous language of Regulation 10-A staring the Petitioner in face, and which Regulation has not been challenged before us, then all the more we are unable to agree with Ms. Sarnaik on this point."

14 We also do not find any substance in the contention of the petitioner that the period of suspension has to be treated as duty period. The circular relied upon by the petitioner, namely, the administrative circular no. 197 deals with the subject of regulating the period of suspension and the cumulative reading of this circular is only indicative of the fact that how the period of suspension is to be treated and that it is to be decided after prosecution case is finally decided and it cannot be decided as long as a criminal case is pending

and it is only on the contingency of acquittal, the period of suspension is to be treated as duty period. However, this is not the mandate in every case that such period has to be treated as a duty period. The Disciplinary Authority, taking over all view of the matter and the conduct of the petitioner has deemed it appropriate and took a decision to treat the suspension period as such and there is no perversity in the said decision, as employee cannot by way of right claim that he is entitled to treat this period as duty period. In fact, the respondent authorities have obliged the petitioner by granting him continuity of service by treating his period from dismissal till reinstatement as leave without pay and thereby regularizing the said period and saved him of the consequence of break in service and the decision to treat the suspension period, as it is by way of penalty while taking into consideration the nature of the accusation against the petitioner and the findings recorded by the Inquiry officer in its enquiry report.

15 It is seen that the petitioner had also approached the appellate authorities and the appellate authorities have refused to interfere in the impugned order dated 21.06.2013 and was rather pleased to uphold the said order. We do not find any perversity in the said order since the said order takes into consideration the conduct of the petitioner which was detrimental to the interest of the organization and the organization has taken a decision to impose penalty on the petitioner so as to act as a deterrent on others from indulging into such acts of corruption or improper conduct in the capacity of public servant.

16 Hence, we do not find that the order impugned in the present petition suffers from illegality, perversity or from any error of law apparent on the face of the record.

 In the result, the impugned order passed by the Respondent on 21.06.2013 is upheld and we find that the petition filed by the petitioner is without any merit and

substance and the same deserves to be dismissed. It is accordingly dismissed.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

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