

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.2290 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the writ petitioner-formerly Sub-Inspector, Railway Protection Force Post, Marripalem (MPM), seeking the following reliefs: (i) to declare the proceedings No. Divl. Order No.45/ 2007, dated 12.2.2007, imposing the punishment of removal of the petitioner; and, (ii) declare the order of the Appellate Authority *vide* proceedings No.2007/ Sec(E).DAR-3/ 30, dated 28-9-2007, rejecting the appeal, as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. I have heard the submissions of *Smt.K. Udaya Sri*, learned counsel for the petitioner, and of *Sri Gowri Shankar Sanghi*, learned Standing Counsel representing the respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The petitioner was at the relevant time a Sub-Inspector and was attached to Railway Protection Force Post, Marripalem. While so, he was charged for gross negligence of duty, failure in carrying out the duty with due promptitude as a member of the Force, discreditable conduct, misconduct towards other members of the Force, wilful violation of duty, disobeying the lawful command of his superior officer, connivance in fraudulent delivery of auctioned materials and his subsequent involvement in a criminal case besides holding out threats to other RPF officers, resorting to falsehood and fabrications and absconding from the incident spot and site of enquiry. A charge was formulated against him and he was served with a charge sheet.

The contents of the article of charge and the allegations made in support of the charge *verbatim* read as under:

"I. Article of charge: -

Sri M.V. Rao, SPF/MPM now under suspension and attached to RPF Post/DLS/MPM is hereby charged for gross negligence of duty, failure to carryout with due promptitude his duty as a member of the Force, discreditable conduct, misconduct towards other members of the Force, wilful violation of duty, disobeying lawful command of his superior officer, connivance in fraudulent delivery of auctioned materials and subsequent arrest and being names as an accused in a criminal case, holding out threats to other RPF officers, falsehood and fabrication and absconding from the delivery spot and the site of the enquiry in connection an RP (UP) Act case in that,

- 1. On 28.02.2004 SP./MPM, M.V. Rao while on duty and witnessing the delivery of auction scrap PW materials from Ore Exchange Yad for 100 CST-9 Links pair plates to M/s Santosh Steel Enterprises, Nagpur, connived in excess delivery of PW materials i.e. 160 CST-9 Link Plates were loaded in 2 different trucks instead of 100 CST-9 Link Plates that were supposed to be loaded.*
- 2. He was named as an accused in criminal case registered at RPF Post (E COY)/ VSKP vide crime no.02/04 dtd.27.02.2004 U/ S3(a) RP(UP) Act and was arrested on 04.03.2004.*
- 3. On 28.02.2004, he threatened and abused SI/ CIB, U.Sarkar and others present with dire consequences and indulged in gross misconduct towards them.*
- 4. On 28.02.2004, he absconded from the delivery spot and the site of enquiry in connection with an RP(UP) Act case and made an incorrect diary entry at RPF Post/ MPM.*

II. Allegation: -

On 28.02.2004, at about 11:30 hours, a surprised check was conducted by SPF/ Uttam Sarkar of CIB/ WAT at the classification yard where auctioned PW materials (Scrap) was to be delivered to M/s.Santosh Steel Enterprises, Nagpur. It was found that truck no.AP 35 T 8099 was loaded with 80 nos of CST-9 Plate Link pairs and truck no.AP 31 V 8467 was loaded with 80 nos of CST-9 Plate Link pairs, loaded at ore exchange yard. The purchaser was supposed to load and take 100 CST-9 link pairs from the Ore Exchange yard. But 160 CST-9 link pairs were found loaded i.e. 60 CST-9 link plates more than what the purchaser was authorized to lift from the site of the auctioned lot at the ore-exchange yard. Due to the non receipt of credible and satisfactory explanation from the witnessing officials, it was a clear case of offence under the RP(UP) Act. IPF/ CR Sri N.L. Singh, IPF/ T.E COY Sri S.K. Das and SI/ HQ Sri

G. Ananda Rao were sent to the spot to cause preliminary enquiry and to assist SI/ CIB in this connection.

However despite order from the Sr.DSC/ WAT the SI/ WMY M.V. Rao, instead of co-operating with the officer on the spot for preparation of seizure list and other documents, he threatened SI/ CIB Sri U. Sarkar and other RPF officers by using filthy language. He there after, fled away and absconded from the spot and the site of enquiry in connection with the RP(UP) Act case. He also made and an incorrect diary entry at the RPF post/ MPM about having delivered the auctioned materials correctly to the purchaser.

Thus he is charged for the above gross negligence of duty, failure to carryout with due promptitude his duty as a member of the Force, wilful violation of duty, disobeying lawful command of his superior officer, connivance in fraudulent delivery of auctioned materials and subsequent arrest and being named as an accused in a criminal case, holding out threats to other RPF Officers, falsehood and fabrication, and absconding from the delivery spot and the site of the enquiry in connection with an RP(UP) Act case and thus he violated rule 146.2(i), 146.3(i), 146.4, 146.5(a), 146.6(i), 146.7, 147(xxii) of the RPF Rules, 1987 and rule 3(l)(i)(ii)(iii) of Railway Service Conduct Rules, 1966.

Hence the allegation."

An enquiry officer was also nominated for conducting a domestic enquiry. The petitioner approached this Court and filed W.P.No.9589 of 2004, *inter alia*, contending that the charge sheet and the appointment of the enquiry officer are made in the very same proceedings. Though interim suspension of departmental proceedings was granted initially, the writ petition was later dismissed, on 27.12.2005. The writ appeal in W.A.No.202 of 2006 was disposed of with a direction to the respondents therein to pass appropriate orders after taking into consideration the explanation to be submitted on the finding of the enquiry officer. Be that as it may. In the enquiry that was conducted, 8 witnesses were examined on behalf of the department and 29 exhibits were marked. The petitioner filed his written defence statement. He also examined himself as a defence witness. After consideration of the material placed before him, the enquiry officer submitted a report, dated 29.03.2004. In his said report, he recorded a finding that the charges levelled against the charged employee/ petitioner were proved and held that the petitioner is guilty of the charges formulated against him; but, noted that the criminal case is still

pending. On communication of the enquiry report to the petitioner, he submitted his objections *vide* his representation, dated 26.07.2006. As his representation was found unsatisfactory, the disciplinary authority, having concurred with the findings of the enquiry officer, imposed a punishment of removal from service with immediate effect and *inter alia* observed that the period of suspension from 02.03.2004 to the date of the service of the said order be treated as period spent on suspension and that the petitioner/ charged officer shall not be entitled to monetary benefits except subsistence allowance during that period. The said order was communicated to the petitioner by proceedings, dated 12.02.2007, of the Senior Divisional Security Commissioner. Aggrieved of the order of the disciplinary authority, he preferred an appeal. The petitioner's appeal was rejected by the appellate authority by its order, dated 28.09.2007, holding, *inter alia*, that the procedure prescribed in the Rules has been followed while conducting the enquiry and that there was no miscarriage of justice or violation of legal provisions during the conduct of the departmental proceedings and that the findings of the enquiry officer are based on evidence adduced during enquiry and that the punishment awarded by the disciplinary authority appears to be fair and adequate and that therefore, the appeal is devoid of merit and is liable for rejection. On communication of the order of the appellate authority, the petitioner filed the present writ petition.

4. To avoid repetition and keep it simple, I shall deal with the contentions of the petitioner while dealing with the charges formulated and while examining the correctness or otherwise of the findings of the enquiry officer, which are approved by the disciplinary and appellate authorities.

5. Before proceeding further, it is necessary to note *infra*, the crux of the case of the department as is borne out by the evidence adduced during the course of enquiry.

5.1 On 28.02.2004, at about 11:30 hrs., U.Sarkar, PW4-Sub Inspector, while taking rounds at OEC yard [Ore Exchange Yard] noticed two trucks loaded with CST-9 plate links (hereinafter, 'plates or material' for brevity) going out of the said yard towards CLYD/ Goods shed. He followed the said two trucks and found that they were stopped at Goods shed on East side. He found the petitioner herein (charged Employee) along with two other witnessing officials, P. K. Gupta and M. Sridhar, and also a representative of the auction purchaser. On his enquiry with them he came to know that as per Sale Release Order they have effected delivery of auctioned 900 plates, on 27.02.2004, and that on 28.02.2004, the balance 100 plates along with 60 plates from the other lots, that is, total 160 plates were taken from ore exchange yard/ OEY to CYD/ MPM to effect further delivery at CYD. On suspicion that about 60 plates were excess delivered, he checked the two trucks viz., AP 35 T 8099 and AP 31 V 8467 containing 80 plates each. He found that 80 plates loaded in truck no. AP 31 V 8467 were unloaded by the East Side of goods shed and were again reloaded into the said truck and found that the said truck was re-loaded with 80 plates. Having suspected *mala fide* intentions, he reported the matter to his senior official, Sr.DSC/ RPF/ WAT. The said over loaded material is more than the material purchased by the purchaser and authorised to be lifted by the purchaser from the site of OEY. Thus, at the OEY more load was lifted, that is, 60 numbers of material was lifted and loaded in excess. The petitioner along with the said two other witnessing officials did not give satisfactory reply to PW4. Therefore, the said over load was found be to a clear case of an offence under the provisions of the Railway Property Unlawful Possession Act. The other officials including N.L. Singh, PW3, S.K.Das, PW1, G. Ananda Rao, PW2, and others came to the spot at about 12.40 hours on the instructions of Sr.DSC/ RPF/ WAT to make a preliminary enquiry and to assist PW4. An enquiry was made at the spot and both trucks were seized at about 18.35 hours by PW3 under the cover of a mediators' report/ seizure list. When the same was placed

before the petitioner and the two other witnessing officials, they refused to sign the same on the instigation of the Inspector, S.K. Singh, RPF Post/ MPM. They did not sign the said list despite requests made to them by PWs1 to 4 and others present. For that reason all present remained at the spot till late night. The petitioner along with SI, A. Albert, and the said Inspector-S.K. Singh and their supporters used filthy language; and, they even were about to manhandle the PWs 1 to 4 and others present there. Then, PW3 sent a message to Sr.DSC/ RPF/ WAT. At about 01.30 hours of 29.02.2004, Inspector-J.Murmu-PW8 along with RPF and RPSF staff came to the spot and assisted the officers conducting enquiry. As the petitioner along with Inspector, S.K. Singh fled away, the rest of them left the spot at 02.00 hours along with the seized loaded trucks. PW4 submitted a report, dated 04.03.2004, to Sr.DSC/ RPF/ WAT.

5.2 As already noted, PWs3 & 2, came to the spot on the directions of Sr.DSC/ Waltair. They spoke about their participation in the enquiry proceedings. PW3 also stated that he prepared the seizure list. Further, according to them the petitioner and other witnessing officials did not give satisfactory replies at the time of spot enquiry. Thus, they both corroborated the version of PW4 on the relevant aspects. The evidence also discloses that inspector-S.K.Singh along with SI-Albert compelled PW3 to change the contents of the seizure list and that they both formed a group with P.Way staff, other staff of RPF and purchaser's men and shouted at and threatened PW4 and others by using filthy language and delayed the matter till late hours of the night and that on noticing that the situation is going out of control, PW3 gave message to security control and that on that PW8-Murmu, Inspector/ RPF Post/ VSKP arrived at the spot with security staff and that thereafter, PW3 gave a written complaint to PW8, at 08:00 hrs of 29.02.2004, and on that PW8 registered a case in Crime No.2/ 04 under Section 3-A of R.P.U.P Act and PW3 submitted a report dated 02.03.2004 to Sr.DSC/ WAT.

5.3 PW1, Inspector, S.K.Das, who went to the spot at 15:20 hrs., on 28.02.2004, on the orders of Sr.DSC/ WAT, deposed that he assisted PW4 and others in conducting the enquiry and that he was present at the time of recording statements and the seizure of the trucks by PW3 under the cover of seizure list. He also stated that on placing of the said list before the petitioner and the witnessing officials, they refused to sign the same under the instigation of Inspector S.K.Singh, RPF Post, MPM, inspite of the requests made to them. Thus, he corroborated the version of PWs4 & 3.

5.4 PW2, G. Ananda Rao, SI/ HQ/ WAT/ , who accompanied PW3 to the spot on the instructions of Sr.DSC/ WAT, stated that he came to classification yard/ goods shed and also caused enquires with all those present there. He further deposed about what he learnt on such enquiries. He also testified that he examined and recorded the statement of the purchaser's representative and that he made enquiries with PW1 and that it was disclosed that basing on the memo of Sr. Divisional Safety Officer/ Waltair 60 numbers of plates which were infringing the track were lifted from the OEC yard but the requisition of Sr. Divisional Safety Officer/ Waltair was not shown. He also stated that the two tucks were seized and that a seizure list was prepared and that the petitioner and the witnessing officials refused to sign the same and that the petitioner and PW4 quarrelled with each other in filthy language and that IPF/ S.K.Singh interfered and used filthy language and that on a further request also the seizure list was not signed and that on expecting danger to the officers, a message was given to Sr.DSC/ WAT for protection and security and that on that PW8 along with RPF and RPSF staff came to the spot and that in the meantime the petitioner slipped from the scene along with IPF/ S.K. Singh and that with the help of PW8 and his men they all came to RPF Post/ VSKP along with the seized trucks and materials. He spoke about recording of the statements and handing over of the case records, documents and a written report of IPF/ N.L.Singh to PW8, duly showing that the petitioner is absconding.

5.5 Thus, PWs1 to 4 in one voice supported the case of the department on all the material aspects.

5.6 Now coming to the evidence of the remaining witnesses and the rest of the case of the department, it is to be now noted that PW5 deposed that, on 28.02.2004, after performing his duty at cash escorting company, while he was going to his railway quarter via MPM Yard at about 20.00 hours, he saw S.K.Das/ PW1, N.L. Singh/ PW3, U. Sarkar/ PW4, IPF/ S.K.Singh, charged employee and two other scrap delivery witnessing officials along with three trucks loaded with plates near goods shed, MPM, and that he observed that some argument was going on between S.K. Singh, charged employee, S-A.Tinagaran with other RPF Officers about the acceptance of the FIR and seizure list and signing on seizure list etc., and that he also requested Inspector, S.K. Singh, to accept the FIR and seizure memo and that Inspector S.K. Singh, got annoyed for the same and used filthy language against him and other RPF officers and created obstruction for the course of enquiry. This witness clearly stated that S.K. Singh used unwarranted language and threatened RPF officers stating that their end will be seen and challenged as to how the accused persons and seized materials will be moved from the site. He also stated that he remained at the spot up to 22.30 hours and that later he left for his house as the issue is not going to be solved. He further deposed that on 29.02.2004 at about 00.30 hours, as per the instructions of Security Control, he contacted Sr./ DSC/ Waltair from his residence and came to cash escorting office at about 01.00 hrs., and then left to Marripalem and that PC/ VSKP, and J. Murmu/ PW8, also came to the spot with RPF/ RPSF staff and that they all came to RPF Office/ VSKP along with three accused persons, two seized trucks and that he assisted J. Murmu-PW8 and that at about 04.00 hours, on 29.02.2004, he returned to the cash escorting company. He also deposed that on 05.03.2004, as per the instructions of the Sr.DSC, he accompanied the Vigilance branch officials and Engineering stock verifier and made joint

checking of plates at CYD/ WMY and that they made joint proceedings of the stocks of plates and submitted the same to Sr.DSC/ WAT and a copy of it to Inspector, J. Murmu, the investigating officer in the case. He also deposed that on his enquiry it was established that 60 nos., of plates were delivered excess, on 28.02.2004, during scrap delivery, though they were not connected or concerned to the SRO.

5.7 PW7, K. Ravi Kiran, Constable of RPF post, MPM, deposed to the following effect: 'On 28.02.2004 at about 09:10 hours, he accompanied charged employee to CLYD/ OEC Yard and assisted in the delivery of the scrap materials and that at OEC yard 160 numbers of plates were given delivery and the same were loaded into two different trucks bearing nos. AP 35 T 8099 and AP 31 V 8467 and that he does not know what quantity of plates belonging to auction delivery lot were loaded into which truck and what quantity of other plates were loaded from the other surrounding area at OEC yard. In all 160 numbers of plates of scrap were loaded into the two trucks and that the loading started at about 09:30 hours and completed at 11:00 hours and that both the trucks left for CYD/ MPM yard, that is, for railway goods shed area and that while approaching the railway goods shed area, U. Sarkar/ PW4 stopped the two trucks and made enquiries. The charged employee returned to RPF Post MPM at about 22.30 hours of 28.02.2004 and made diary entry and that he also signed the said entry and that thereafter he along with the charged employee left the post.'

5.8 PW8 is J. Murmu, Inspector, RPF Post/ VSKP. The summary of the evidence of this witness is as follows: - 'On 29.02.2004, at about 01:30 hrs., as per the orders of the Sr.DSC/ Waltair, he proceeded to the spot with staff. He reached the spot at 02:00 hrs. He assisted the enquiry in connection with some excess delivery of raw materials during the auction delivery. At the spot he found RPF officers and staff including PWs1 to 5 and two lorries detained by

them with load of raw materials and auction witnessing officials, purchaser's representative under their custody. He caused enquiries. Later, the officers came to RPF Post/ VSKP at about 2.30 hours along with the report, FIR and records received from Inspector N.L. Singh, PW3, and that he prepared the seizure list of all the documents received from PW3 and that he arrested three persons, two witnessing officials, JE/ P.Way P.K. Gupta, S.I.SA/ WAT-M. Sridhar and purchaser's representative, N. Satish Kumar, showing the charged employee as absconder and that he caused enquiries in the matter and registered the case in Crime No.2 of 2004 under Section 3(a) of RP(UP) Act, 1966 dated 29.02.2004 and that all the persons were released on bail.' He also spoke about the investigation conducted by him in the crime and recording of the statements of PWs1 to 3 and others. He further deposed as follows: - 'On 05.03.2004 he attended the joint check of CST-9 Plate Links by vigilance team and made a report and that he recorded the statement of PW4, on 02.04.2004, and that, on 12.05.2004, he re-examined the accused P.K. Gupta, M. Sridhar and N. Satish Kumar and further examined other witnesses.' He clarified that the charged employee has received the letter from SSE/ P.Way/ MPM, dated 27.02.2004, but did not obtain any order from Post Commander/ MPM and that the letter clearly asked the J.E/ P.Way one of the witnessing official to load 60 numbers of plate Links available at OEC Yard obstructing the railway lines and not part of the auction materials and that he verified the RPF scrap delivery register, dated 28.02.2004, the SRO and other records pertaining to the case including the gate passes and that three gate passes were issued, on 28.02.2004, for three trucks with the signatures of the witnessing officials, including the charged employee, who witnessed the scrap delivery, and that during enquiry and as per SRO 900 numbers of scrap-CST-9 Plate Links were delivered, on 27.02.2004 from OEC yard and that, on 28.02.2004, 487 nos., were delivered to the party as per records.

5.9 It is pertinent to note at this stage that the petitioner-charged employee, did not cross-examine any of the witnesses and when an opportunity was given, he stated that he does not wish to cross examine the said witnesses, as per the material borne out by the record.

6. Now I shall deal with the defence of the petitioner-charged employee.

6.1(a) The first contention of the petitioner-charged officer, is this – “900 Plates were already delivered to the auction purchaser. 100 numbers are due to be delivered from the lots at OE yard. Accordingly, he along with the other witnessing officials gave delivery of 100 numbers of Plates, which are loaded into two trucks bearing nos.AP35 T 8099 and AP 31 V 8467. 60 numbers of plates, which are not auctioned material, were also available at OE Yard and they were causing obstruction to the Railway track and shunting operations and were infringing the movement of men and material at the said OE Yard; and, in-fact one Purushotham was injured on account of the obstruction being caused by the said 60 number of plates. Hence, there were directions to shift them. On the strength of exhibit P13, that is, letter, dated 27.02.2004, addressed to the J.E./I.P.Way by the Senior Section Engineer (P.Way), it was directed to shift 60 numbers of CST-9 plate links, which are obstructing lines, on 28.02.2004. The said work of shifting the said 60 numbers of plates from OE yard to CYD/MPM is a part of Engineering department's work. The said 60 numbers of plates were also loaded at the OE Yard into the two trucks along with the 100 plates to be delivered to the auction purchaser's representative with a *bona fide* intention to drop those 60 numbers of plates at the classification Yard in view of the instructions in the afore-said letter. These 60 numbers of plates were unloaded at CYD/MPM as mentioned by him in exhibit P12 daily diary entry, dated 28.02.2004, of RPF post. The joint check report made, on 05.03.2004, by the vigilance branch clearly indicated that the physical balance available on ground at the Classification yard is 574 numbers

including 60 numbers excess of Plates. If he had any criminal intention, all the 160 numbers excess of Plates would have been loaded in a single truck and gate pass for 100 numbers would have been handed over to the party. When PW4 came to the spot for surprise check and questioned the witnessing officials about the 60 numbers of plates, which were found in excess as per his counting, he was shown the letter issued by custodian, M.V.Kumar, that is, Senior Section Engineer. However, he was unsatisfied with the explanation and made a complaint that 60 numbers of plates were excess delivered. He did not verify the authenticity of the said letter from the issuing authority, who was very much present in the office in the same marshalling yard. PW2, Ananda Rao, also referred to in his evidence that P.K.Gupta stated that 60 numbers of plates, which were infringing the track of OE yard, were lifted only on the said memo of the said officer. Even in the enquiry report, the enquiry officer mentioned as follows: - 'Shri G. Ananda Rao, SIPF (PW-2) who accompanied PW3 to the spot also stated that while conducting the enquiry the above matter PW1/P.K. Gupta (one of the accused) stated to him that 60 nos. of CST-9 Plate Links which were infringing the track at OEC yard were lifted only on the memo of Sr.DSO/Waltair he also observed that the two trucks loading was completed, in the another truck which contain 160 nos. of CST-9 Plate Links. He also enquired about 60 nos of CST-9 Plate Links loaded excess but the purchaser's representative did not given any satisfactory reply and not shown any documentary evidence. He also made enquiry with the incharge PW1/MYD who attended the spot who also disclosed that basing on the memo of the Sr.DSO/.Waltair the 60 nos. of CST-9 Plate Links which were infringing the track were lifted from the OEC yard (not shown the requisition of the Sr.DSO/Waltair to him). He also narrated above sequence matter that had happened.' Thus, there was no intention much less a *mala fide* intention to excess deliver 60 numbers of plates to the auction purchaser. The 60 numbers of plates were loaded into the two trucks along with 100 numbers of plates to be delivered to the auction purchaser only with a view to shifting them from OE yard to classification Yard and in-fact, they were all unloaded near the goods shed of the yard."

6.1(b) Per contra, the learned Standing Counsel submitted as follows: -

‘On 28.02.2004, the petitioner while on duty and while witnessing the delivery of auction scrap material, that is, 100 CST-9 plate links, to the auction purchaser, connived with the other accused and also the auction purchaser and instead of loading 100 link plates allowed to load 160 link plates into the two trucks of the auction purchaser. PW4, who made a surprise check and who suspected the *bona fides* of the petitioner and others intercepted the trucks at the classification yard near goods shed and found that the material unloaded was reloaded into the trucks. According to the evidence brought on record, on enquires made, the petitioner and others did not offer any explanation much less valid explanation and in-fact resorted to hurling abuses in filthy language and threatened the officials, PWs1 to 4, and, therefore, on a message sent for security and protection, PW8 came with his RPF and RPSF staff to the spot and assisted in the enquiry. The petitioner and another slipped from the spot without signing the seizure list whereunder the trucks and material were seized. The said letter, exhibit P13, dated 27.02.2004, said to have been received by the petitioner from Senior Section Engineer is ambiguous and suspicious letter and it was introduced as an after thought to cover up illegal and unlawful transportation of 60 numbers of plates by mixing them with the balance auctioned scrap of 100 numbers of plates to be delivered to the auction purchaser.’

6.1(c) I have given earnest consideration to the contentions of both the sides on this aspect. PWs1 to 4 in one voice stated about the excess lifting and proved the imputations in the charge. They were not cross-examined by the petitioner. He did not produce exhibit P13 letter at the spot. The department contends that the said M.V. Kumar, Senior Section Engineer, is not competent to give such letter and that the said letter was introduced as an after thought. In-fact, a departmental enquiry was also initiated against M.V. Kumar, Senior Section Engineer. In his enquiry, the charge was that he was authorised to

effect delivery of the material to the auction purchaser as per the Sale Release Order and that while implementing the said order and effecting delivery of scrap, he violated the instructions in the SRO and effected fraudulent and excess delivery of 60 numbers of CST-9 link plates and that he shielded the accused officials by issuing a back dated letter, that is, letter dated 27.03.2004, to lift excess P.Way materials from OEC yard though he is not authorised to do so and thus, connived with the accused in fraudulent delivery of excess materials. In the enquiry against him, he was found guilty of the charges levelled against him; but, he was not awarded any punishment as he had already retired from service, on 31.05.2011, on attaining the age of superannuation and as the property was not lost and no actual loss was caused to the Railways and as he had suffered mental agony for four years and his terminal benefits were withheld at the fag end of his service. This aspect of the matter makes it evident that the letter, exhibit P13, being relied upon by the petitioner does not advance his defence any further. It is to be noted that the petitioner also failed to obtain any written permission from the post commander/ inspector/ RPF Post/ MPM or from Senior DSC/ ASC and failed to reflect the facts in the security control message flashed on completion of delivery on 27.02.2004. The evidence on record shows that instead of 100 numbers, 160 numbers of plates were excess lifted and the same were taken to the classification yard by loading in the trucks of the purchaser by clubbing the excess plates with the 100 numbers to be delivered to the auction purchaser and giving no scope for the identification of the 60 numbers of plates which were excess delivered. The departmental enquiry proceedings reflect that, on 27.02.2004, six trucks were utilised and each truck was loaded with 160 numbers of plates by obtaining six gate passes, whereas, on 28.02.2004, 80 numbers of plates each were loaded in two trucks by mixing up 60 numbers of excess plates. The preliminary enquiry report and the evidence lay bare that

the petitioner made an incorrect diary entry at RPF post Mairipalem to indicate that auction material was correctly delivered to the purchaser.

6.1(d) On the above analysis, this Court finds that the first line of defence of the petitioner is untenable as rightly held by the enquiry officer and the disciplinary authority and hence, this Court holds that there is no merit in the defence of the petitioner.

6.2 Dealing now with the contention regarding the charges related to abscondance from the spot, hurling of abuses & giving threats to PW4 and other officers and indulgence in misconduct, the defence of the petitioner is that in the report of N.L.Singh and in the report/letter of S.K.Das, Inspector of the team, they had only mentioned about S.K.Singh, IPF/WMY and A.Albert Thinakaran, SI/WMY, and they had requested to take action against the said two persons; but, instead of taking necessary action against those officials, action was unfortunately taken against the petitioner, though there was nothing in the reports or the letter that the petitioner abused or threatened PW4 and other officers. His further contention is that absolutely there is no evidence on the said aspect of the charges. However, learned Standing Counsel pointed out that there is ample evidence and that none of the witnesses of the department were cross-examined by the petitioner though they stated that the petitioner also indulged in hurling abuses and in giving threats to PW4 and other officers with dire consequences. The summary of evidence makes it clear that the petitioner and other witnessing officials did not give satisfactory replies and failed to sign the seizure list despite requests made by PW4 and other officers and delayed the matter till late night. Further, the evidence discloses that petitioner along with SI.Albert and Inspector S.K.Singh and their supporters used filthy language and in-deed they all were about to manhandle PWs1 to 4 and others present there and that therefore, on a message given by PW3, PW8-Inspector along with staff came to

the spot and assisted the Officers in conducting the enquiry and that thereafter the petitioner absconded from the spot and that he was shown as an absconder in the later proceedings. Hence, the second line of defence is also untenable and devoid of merit and is hence, liable for rejection. The said defence is accordingly rejected. As a sequel, this Court finds that the findings of the enquiry officer on the said aspects of the charges are sustainable in the facts and circumstances of the case.

6.3(a) The next contention of the petitioner is that the petitioner was honourably acquitted in the criminal case and that, the petitioner is entitled to be exonerated from the charges for which he was found guilty during the departmental enquiry, as the subject matter of the charges in the departmental enquiry is exactly the same as the subject matter of the charges framed against him in the criminal case and as the facts and the imputations in both the charges are identical. In support of the said contention, reliance was placed on the decision of the Supreme Court in *G.M. Tank v. State of Gujarat*¹ wherein it was held as follows: - ‘When an employee is honourably acquitted by the competent court on the same set of facts, evidence and witnesses, the dismissal order based on the same set facts and evidence on the departmental side, is liable to be set aside in the interest of justice.’ Reliance was also placed on the decision in *S. Bhaskar Reddy v. Superintendent of Police*² wherein the Supreme Court while following the ratio in the decision supra, defined the meaning of ‘honourably acquitted’ as follows: ‘When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.’ Based on the acquittal of the petitioner in the criminal case and the dismissal of the appeal and the ratios in the above decisions, the

¹ (2006) 5 SCC 446

² (2015) 2 SCC 365

learned counsel for the petitioner contended as under: - 'The petitioner-accused was not acquitted because some witnesses had turned hostile or due to any procedural lapses but only after consideration of the facts and evidence and the submissions of the parties. The department also preferred an appeal in Crl.A.No.667 of 2006 challenging the judgment of acquittal and the same was dismissed, on 30.11.2016, by this Court. Therefore, the judgment in the CC has become final. In view of the honourable acquittal of the petitioner in the criminal case, he is entitled to be exonerated of the charges levelled against him in the departmental enquiry as the facts, evidence and the imputations constituting the charges in both the proceedings are identical.'

6.3(b) Per contra, learned Standing Counsel for the Railways contended that acquittal in a calendar case/ criminal case has no affect on the previously concluded departmental proceedings. He placed reliance on the decision in *Baljinder Pal Kaur v. State of Punjab*³ wherein the facts and ratio are as follows: - 'The appellant before the Supreme Court was aggrieved of an order of her dismissal from service, which was confirmed in the civil writ petition by the High Court of Punjab and Haryana. Apart from initiation of departmental enquiry, a crime was registered against the appellant for certain offences punishable under the provisions of the IPC and the provisions of the Prevention of Corruption Act, 1988, and after investigation, she was charge sheeted and eventually she was acquitted by the Special Court, Ludhiana, after full fledged criminal trial. Therefore, she contended that the High Court was in error in law in not allowing the writ petition seeking quashing of the dismissal of the appellant from service. She placed reliance on decisions of the Supreme Court in *Capt.M. Paul Anthony v. Bharat Gold Mines Ltd.*, [(1999) 3 SCC 679], *G.M. Tank v. State of Gujarat* (1 supra) and *Jasbir Singh v. Punjab & Snd Bank* [(2007) 1 SCC 566]. The Supreme Court while referring to the decision in Paul

³ (2016) 1 SCC 671

Anthony's case reiterated the following principles which are culled out in the said case:

- i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- iii) whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
- iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

Further, the Supreme Court distinguished the case of the appellant from Paul Anthony's case and then referred to the decision in Union of India v. Bihari Lal Sidhana [(1997) 4 SCC 385] and held that it is true that the respondent was acquitted by the criminal court but acquittal does not automatically gave him the right to be reinstated into the service. Ultimately, the Supreme Court dismissed the appeal before it confirming the orders of the High Court.

6.3(c) A plain perusal of the decisions would indicate that mere honourable acquittal by a criminal Court would not confer any right on the employee to claim any service benefit including reinstatement as the standard of proof required for holding a person guilty by a criminal Court is proof beyond

reasonable doubt whereas in the enquiry conducted by way of disciplinary proceedings the standard of proof is preponderance of probabilities. Further, 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. Therefore, it appears that the contentions of the parties herein have to be examined having regard to the facts of the present case as it is clear from the legal position obtaining that the present issue has to be decided on the facts of the individual case.

6.3(d) Turning to the facts of the instant case, it is to be noted that in the case on hand, in the criminal case, the learned Judge of the trial Court observed in paragraph 34 of the judgment as follows:

‘The explanation given by A5 and A3 is that because of injuries received by one Purushottam, the 60 CST-9 plate links were tried to be removed from one place to another. Unless 60 CST-9 plate links were taken out of the railway premises, it is improbable to say that A1 to A8 were in unlawful possession and A2 to A7 and A9, A10 helped the aforesaid accused to take away 60 CST-9 plate links unlawfully.’

The learned Judge also held that there was no *mala fide* intention to lift away the property and that none of the accused were in unlawful possession of the aforesaid property. Accordingly, and for the above said reasons, the accused including the petitioner herein were acquitted in the criminal case. But, in the departmental enquiry against the present petitioner, the evidence brought on record, particularly of the witnesses PWs1 to 4, who are not cross examined and whose evidence remained unrefuted sufficiently established the ingredients of the charges. The charge in the departmental enquiry is not unlawful possession of the Railway property or theft of property. The ingredients constituting the charges are related to gross negligence in discharge of duty, failure in carrying out duty with due promptitude as a member of Force, wilful violation of duty, disobeying the lawful command of his superior

officer, connivance in fraudulent delivery of auctioned materials and his involvement in the criminal case as a sequel to the said acts besides hurling abuses and giving threats to the officers and resorting to falsehood and fabrications of records and abscondance from the enquiry spot. Thus, the facts on which the charges are formulated, the evidence adduced to prove the said charges and the contentions of the parties are not identical. Therefore, in the peculiar facts of the case, the mere acquittal of the petitioner-accused, charged officer, in the criminal case does not automatically give him the right to be reinstated into the service or exoneration from the charges related to the departmental enquiry.

6.4 Finally, coming to the last contention that the petitioner is alone singled out for departmental enquiry and that the others involved were not proceeded against, this contention needs a mention only to be rejected for the reason that the respondents proceeded against not only the petitioner but also the others. This Court already referred to supra, the departmental enquiry proceedings against M.V. Kumar, Senior Section Engineer, who already retired from service. To substantiate the contention that the others were also proceeded against departmentally, the respondents produced certain additional documents. One of the documents relates to the major penalty proceedings against said M.V. Kumar. And, another document relates to the departmental proceedings against S.K.Singh, IPF/ MPM vide D.O.No.249/ 2005, dated 14.06.2005, which on a perusal reflects that he was also departmentally proceeded against for similar charges and that he was also found guilty of the said charges and he was awarded punishment of reduction in rank from Inspector to Sub-Inspector for a period of two years with cumulative effect and lowering the stage in scale of pay etcetera. This contention, therefore, is of no avail to the petitioner.

7. Certain other feeble contentions were raised *inter alia*, stating that no explanation was called for and that the enquiry proceedings were initiated in violation of principles of natural justice. On this aspect, reliance was placed on the decision in K. Sambasiva Rao v. Southern Power Distribution Company of A.P. Ltd.,⁴. In the case on hand, the petitioner earlier approached this Court by way of a writ petition stating that the issuance of charge sheet and the appointment of enquiry officer were done by virtue of one proceeding. The said writ petition was dismissed and the writ appeal was also disposed of directing the petitioner to offer his explanation and the respondents to pass appropriate orders after taking into consideration the explanation to be submitted on the findings of the enquiry officer. Hence, the said contentions are now not open to the petitioner and the said contentions, in any view of the matter, need no countenance as the departmental proceedings were conducted by duly following the procedure and the principles of natural justice.

8. Before parting, it is necessary to deal with the scope and ambit of the jurisdiction of this Court in a matter of this nature. Therefore, it is trite to refer to the decision in Union of India v. P. Gunasekaran⁵ wherein the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;

⁴ Order, dt. 10.12.2009, of this Court in WP.Nos.22368&23010 of 2008

⁵ (2015) 2 SCC 610

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

8.1 It is also now apt to refer to the following decisions relied upon by the learned counsel for the petitioner-charged employee.

Allahabad Bank and others v. Krishna Narayan Tewari⁶ is relied upon in support of the proposition that if the findings in the departmental enquiry are unsupported by evidence and/or are of such nature that no reasonable person would arrive at, then writ court would be justified in examining the matter in detail before accepting or rejecting the findings recorded by the enquiry officer and approved by the disciplinary and appellate authorities.

Sanjoy Kumar Singh v. Union of India and others⁷ is relied upon in support of the proposition that there is no straight jacket formula prescribed in the matter of interference of the writ Court in its judicial review and each case is to be decided in its own perspective and on perusal of the documents on record of that particular case and that judicial review is meant to ensure that the individual received fair treatment.

⁶ (2017) 2 SCC 308

⁷ 2001 SCC Online Cal652

8.2 In the light of the above legal position and the facts peculiar to the case, which are already adverted to supra, merits and demerits of the rival contentions needed no exhaustive examination in this matter. However, in view of the rival contentions, this Court examined the matter, in detail. On such careful examination of the matter, in detail, this Court finds that the findings in the departmental enquiry, which are based on adequate and admissible material evidence, are just and fair conclusions and such well reasoned findings do not warrant interference. Adverting to the contention that the other charged employees were given lesser punishments and that this petitioner was removed from service, it is to be noted that the petitioner being a witnessing official of the Force according to the charges proved, connived with others and facilitated fraudulent loading of excess number of railway material in the trucks of the auction purchaser along with the 100 numbers of plates, which are only to be delivered to the auction purchaser. Considering the nature of the charges proved, this Court finds that this is not a fit case to even reduce the quantum of punishment, as, in the facts and circumstances of the case, it cannot be said that the punishment imposed is disproportional to the gravity of the charges held proved.

9. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

19.07.2017
Vjl

M. SEETHARAMA MURTI, J