

W.P. (S) No. 5404 of 2014

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Raj Kumar Biswas S/o Late Binod Biswas, R/o Railway Carriage Colony, PO
Tata Nagar, Ps Burma Mines Town Jamshedpur, District Singhbhum (East)

.....Petitioner

Versus

1. Union of India through the General Manager, South Eastern Railway, Garden Reach PO and PS Garden Reach, Kolkata
2. Divisional Railway Manager, South Eastern Railway, Chakradharpur, PO and PS Chakradharpur, District West Singhbhum, Jharkhand
3. The Additional Divisional Railway Manager, South Eastern Railway, Chakradharpur, PO and PS Chakradharpur, District West Singhbhum, Jharkhand
4. The Senior Divisional Railway Manager, South Eastern Railway, Chakradharpur, PO and PS Chakradharpur, District West Singhbhum, Jharkhand.

.....Respondents

For the Petitioner: Mrs. M.M.Pal, Sr. Advocate

For the Respondents : Mr. Mahesh Tiwari, Advocate

**CORAM:HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

By Court: Heard learned senior counsel for the petitioner and learned counsel Mr. Mahesh Tiwari representing the respondent-Railways.

2. Learned Central Administrative Tribunal has dismissed the challenge laid to the order of punishment of removal of service dated 5.10.2004 (Annexure-3) passed by the Sr. Divisional Mechanical Engineer, Chakradharpur whereunder the applicant/petitioner was removed from service with compassionate allowance equivalent to 2/3rd of pension. The appellate authority by its order dated 24.5.2006 (Annexure-4) had affirmed the punishment and later on, the Divisional Railway Manager, Chakradharpur vide his order dated 16th August, 2008 (Annexure-5) refused to interfere in the orders of punishment in revision. The applicant had sought reinstatement in service to the post of Technician Grade-I with all consequential benefits and also sought quashing of the orders passed by the disciplinary authority, the appellate authority and the revisional authority. Learned Tribunal vide impugned order dated 20.2.2014 (Annexure-9) passed in O.A. No. 215 of 2012 (R) with M.A. No. 71 of 2013 (R) also held that the case is hopelessly barred by limitation as the instant application had been filed after four years from the date of order of the revisional authority.
3. Applicant faced disciplinary proceedings vide memorandum of charges dated 17.1.2002 (Annexure-A/1) for the charges that he while functioning as Technical Grade II (C) /Tata committed serious misconduct by indulging

in encashment of death cum retirement gratuity (DCRG) Cheque No. 404948 dated 20.6.1997 of Rs. 26,150/- of Sri Narendra Nath Ex. G.S./Tata by falsely introducing himself as Sri Narendra Nath and thereby violated Para 3 (I) I, II, III of Railway Service Conduct Rules, 1966. As per the statement of imputation of misconduct an FIR bearing Case No. 153/ 2000 dated 27.11.2000 had been registered by the Branch Manager, SBI ,Jugsalai –JSR Police Station Jugsalai, JSR that Rly. Cheque no. B404948 dated 20.06.1997 was issued in favour of Sri Narandranath Ex-G.S./Comml/Tata for a sum of Rs. 26,150/- which had been fraudulently deposited in SBI, Jugsalai Branch JSR on 01.07.1997 in an account No. 01190007345 (old account no. 36/8679) by an imposter Sri R.K. Biswas, Technical Grade-II (C&W) Tata after falsely introducing himself as Sri Narendranath and he had also drawn a sum of Rs. 26000 on 18.07.2000. It further alleged that he had confessed to the fraudulent act through a confessional letter to the Branch Manager, SBI, Jugsalai and subsequently deposited the sum of Rs. 26,200/- in the fake account of Sri Narendra Nath on 29th September 2000. The Departmental proceedings ended in the imposition of punishment of his removal from service with compassionate allowance of 2/3rd of his pension.

The disciplinary authority came to the finding on the basis of the materials adduced during inquiry and the enquiry report that in the account opening form photograph of the applicant /petitioner had been affixed which he had confirmed being that of his. Sri Gopal Govind Paria, Primary School Teacher who introduced the petitioner to open the new account, had during departmental proceeding identified the petitioner as the person who had approached him in the bank to give witness in his favour to open a savings account in the State Bank of India, Jugsalai Branch. The petitioner in the fact finding inquiry had stated that he had deposited the amount of Rs. 26,000 through Sri M.N. Rao and confirmed it during the departmental proceedings. However, the same was partially incorrect as the amount was deposited by Tulsi Biswas who identified himself as elder brother of the petitioner before the bank authorities. This fact had been mentioned in the Bank Manager's letter dated 23.11.2000. The copy of the enquiry report was served on the petitioner on 27.12.2003 with advice to submit his final defence statement. He submitted his final defence statement on 12.1.2004. On consideration of all these materials, the impugned punishment was imposed upon him.

4. The order of punishment was imposed prior to the judgment of acquittal

rendered by the learned court of Judicial Magistrate, 1st Class, Jamshedpur in G.R. case no. 1957/2000, T.R. No.262 of 2005 in which apart from the petitioner his introducer Govind Gopal Paria was also accused. The judgment of acquittal is dated 6.7.2005. Learned Trial court has in the concluding paragraph recorded, inter alia, that the prosecution had failed to prove its case beyond the shadow of reasonable doubts, hence, both accused persons were thereby acquitted from the charges levelled against them. The appellate authority also did not find any merit in the appeal preferred by the applicant which is at page 77 of the supplementary affidavit of the petition. The appellant had sought reinstatement on the ground that he had been acquitted from the criminal charges on merits. The revision preferred by the applicant however stood dismissed by the revisional authority as per order dated 16.8.2008 (Annexure-5).

In the criminal trial, even as per the case of the applicant as stated in his rejoinder to the counter-affidavit, the prosecution had failed to examine the original Narendra Nath who was a charge sheeted witness, the investigating officer Sanjay Kumar Gupta, DAO/CKP, S.I. Railway and the Railway officer who wrote letter to the Bank, Tulsi Biswas had not been named as a charge sheet witness nor examined, though he had returned the money. Prosecution had also failed to prove the letter dated 29.9.2000 alleged to be the confessional statement of the applicant. Prosecution failed to show that the signature of the original Narendra Nath matched with the signature of Narendra Nath who opened the account in the State Bank of India, Jugsalai Branch. The signature of the person was not compared either in the proposal form or in the deposit form etc. PW-6 was declared hostile. The learned Magistrate therefore, held that the prosecution has failed to prove its case beyond the shadow of reasonable doubt and acquitted him. In such circumstances, it has been argued on behalf of petitioner that the acquittal was not on the basis of benefit of doubt but an honourable acquittal. An honourable acquittal would entail reinstatement as the charges in both the disciplinary proceeding and in criminal case are same and based on the same set of evidence. The railways have also accepted that in terms of Railway Boards' letter dated 7.7.1995 and 20.10.2002, the departmental case can be reviewed only if the employee is wholly exonerated/ acquitted in criminal case on merits without any benefit of doubt or on technical grounds. The orders of the disciplinary authority have also been challenged on the ground that the disciplinary proceedings were not fair.

5. Applicant/petitioner has also urged through statements made at para 17 of the writ petition that the Senior Divisional Mechanical Engineer was not the appointing authority and therefore, could not have passed the order of punishment of removal from service. According to statements made at para 17 of writ petition D.R.M. was the competent authority. However, it is pertinent to mention here that in the appeal /representation made by the petitioner on 26th May, 2006 before the Divisional Railway Manager, at one place at sub-para 15 it was stated that senior Divisional Mechanical Engineer is chief of our division in Mechanical Department who has passed the order in the disciplinary enquiry in favour of him. At sub-para 19, he has further stated that his appointment letter was issued by senior Divisional Mechanical Engineer , CNW./CKP not Divisional Mechanical Engineer which can be seen from his service sheet. The apparent contradiction in the stand of the applicant so far as the competent authority is concerned, is quite visible. Apart from this, no document to support the statement made at para 17 of the writ petition has either been brought on record by the applicant/petitioner herein. On the other hand, the respondents through their statements made in paragraph no. 23 of the counter-affidavit, have denied the statements made in paragraph nos. 16 and 17 of the writ application.
6. The legal issue whether departmental proceeding can continue on the same set of charges in which a criminal proceeding has also been initiated is no longer res-integra. The preposition of law is stated in the judgment relied upon by the learned counsel for the petitioner in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & another** reported in **(1999)3 SCC 679** paras 21, 26,27,30 and 34. The Apex Court upon survey of the precedents on the point reiterated the same in the case of **Karnataka SRTC V. M.G. Vittal Rao** reported in **(2012)1 SCC 442**. The underlying principle laid down is that the purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. The Apex Court in the case of **M. G. Vittal Rao** has also made reference to the judgment rendered by it earlier in the case of **Pandiyan Roadways Corpn. Ltd. Vs. N Balakrishnan** reported in **(2007)9 SCC 755** where it reconsidered the

issue taking into account earlier judgment and observed as under :-

“23. In Pandiyan Roadways Corpn. Ltd. V. N. Balakrishnan, this Court reconsidered the issue taking into account all earlier judgments and observed as under (SCC pp. 766-67, paras 21-22)

“21. There are evidently two lines of decisions of this court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony V. Bharat Gold Mines Ltd and G.M. Tank v. State of Gujarat. However, the second line of decision show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. Of Police v. Narender Singh), or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (see G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Noida Entrepreneurs Assn. v. Noida, SCC at p. 394, para 16).

22.....’41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. (see e.g. Krishnakali Tea Estate and RBI v. S.Mani) Each case is, therefore, required to be considered on its own facts. (see also Ram Tawekya Sharma v. State of Bihar and Roop Singh Negi v. Punjab National Bank.)”

At paragraph no. 24 of the report it was held that there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. It was further observed that the judgment of Apex Court in the case of **Capt. M Paul Anthony**, does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic inquiry.

The Apex Court further went on to observe at para 25 of the report that once the employer has lost the confidence in the employee and the bonafide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. [See: (1972)1 SCC 814 *Air India Corpn. v. V. A. Rebellow*, (1972)4SCC 569, *Francis Klein & Co. (P) Ltd. V. Workmen*, (2005)2 SCC 481 *BHEL. V. M.*

Chandrasekhar Reddy].

7. The ratio rendered by the Apex Court in the case of **Kanhaiya Lal Agrawal Vs. Gwalior Sugar Co. Ltd.** Reported in **(2001) 9 SCC 609** was also referred to at paragraph no. 26 whereunder the Court had laid down the test for loss of confidence. To find out as to whether there was bonafide loss of confidence in the employee, thus observed that the following aspects have to be examined:- (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved. [See: (1997)6 SCC 271 *Sudhir Vishnu Panvalkar v. Bank of India*].

In the case of **SBI Vs. Bela Bagchi** reported in **(2005)7 SCC 435**, the Apex Court had repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can not be removed from service in a case of loss of confidence. Reliance has been placed upon its earlier judgment rendered in the case of **Disciplinary Authority –cum- Regional Manager Vs. Nikunja Bihari Patnaik** reported in **(1996)9 SCC 69**.

From the ratio rendered by the Apex Court as referred to herein above, it can, therefore, be easily said that the departmental proceedings on the same set of charges could have continued against the employee in question even if he was facing criminal prosecution. In the facts of the present case, departmental proceeding was concluded before the judgment of acquittal was rendered.

8. Learned counsel for the petitioner has laboured to question the findings of fact rendered in the departmental proceeding as affirmed by the appellate and revisional authority and by learned Central Administrative Tribunal as well. However, we may at this stage, observe that the scope of judicial review relates to the decision making process and whether the findings of the disciplinary authority are based on some evidence or not. The Court or Tribunal cannot re-appreciate the evidence and substitute its own finding. Reliance may be placed on the case of **B.C. Chaturvedi Vs. Union of India** reported in **1996 (1) LLJ 1231**. While exercising jurisdiction under

Article 226 of the Constitution of India, the High Court does not act as appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to the decision of a case on merit as an appellate authority.

The findings of the disciplinary authority as also referred to in the impugned order by the learned Central Administrative Tribunal goes to show that the death-cum-retiral cheque bearing No. 404948 dated 20.06.1997 issued in the name of one Narendra Nath was deposited in the Saving Account no. 0110007345 in the SBI, Jugsalai Branch, Tata on 01.07.1997 after the account was opened on 30.06.1997 in the name of the applicant/employee. The photograph of the employee was pasted on the account opening form. The person who introduced applicant, namely, Sri Gopal Govind Pariya, Primary School Teacher had himself deposed during the inquiry that he had introduced the applicant in opening of the new bank account. Other material facts borne on record during the fact finding inquiry were also adduced as material evidence during the departmental proceedings in which the applicant duly participated. As a matter of fact, the applicant in reply to question no. 19 in the inquiry had categorically stated that natural justice had been given to him. This statement contained at paragraph 8(j) of the counter-affidavit to that effect is not disputed by the petitioner. As such, the disciplinary authority proceeded to hold the applicant guilty of the charges which were of serious nature. The allegations that the disciplinary inquiry was not conducted in the fair manner, therefore, stand refuted in view of the aforesaid discussions.

9. Learned senior counsel for the petitioner has strenuously argued that since it was an honourable acquittal of the applicant he was required to be reinstated in service.
10. Learned counsel for the respondents-Railway has defended the impugned order and submitted that scope of judicial review is limited Under Article 226 of Constitution of India. He submits that finding of fact recorded by the disciplinary authority in appeal or revision cannot be scrutinized in the nature of the appeal by this Court. He further submits that the disciplinary authority had come to a finding of guilt and passed the order of punishment on 5th October, 2004, much before the judgment of acquittal rendered by the learned Judicial Magistrate, 1st Class, Jamshedpur on 6th July, 2005. All material facts and grounds of challenge raised by the applicant had been duly considered by the learned Tribunal and negated by a well-reasoned

order, which needs no interference.

11. We may profitably quote the opinion of the Apex Court as contained in the case of **Deputy Inspector General of Police and another vs. S. Samuthiram** reported in **(2013)1 SCC 598**, relied upon by counsel for the petitioner herself. Para 24, 25 and 26 of the report containing opinion of the Apex Court is quoted hereunder :-

Honourable acquittal

“24. The meaning of expression “honorable acquittal” came up for consideration before this Court in RBI V. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. 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.

25. In R.P. Kapur V. Union of India it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam V. Raghava Rajgopalachari this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope V. Emperor which is as follows: (Raghava case, SLR p. 47, para 8)

“8.’The expression “honorably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”. (Robert Stuart case, ILR pp 188-89).

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

doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

(Emphasis supplied)

In the judgment rendered in the case of **S. Bhaskar Reddy and another Vs. Superintendent of Police and another** reported in **(2015) 2 SCC 365** cited by the learned Senior Counsel for the petitioner, the same principles laid down on the meaning of expression 'honourable acquittal' as referred to in the case of **S. Samuthiram** (supra) have been relied upon by the Apex Court. As such, the issue at hand is to be examined in the light of the principles laid down by the Apex Court regarding the meaning of expression 'honourable acquittal'.

12. It follows from the opinion quoted above that mere acquittal does not entitle an employee to reinstatement in service, unless it is held to be honourable. Though, the expression "honourable acquittal" is not defined precisely in the Code of Criminal Procedure or the Penal Code but, the Apex Court at para 24 (supra) quoted above, proceeded to observe that when an 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 is honourably acquitted. The Apex Court further at paragraph no. 26 quoted above, observed that there may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand prosecution had not taken steps to examine many of the crucial witnesses on the ground that complainant and his wife have turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. The Apex Court therefore, was of the opinion that the respondent cannot be said to have been honourably acquitted by the criminal court.
13. In the facts of the present case and from the judgment of the learned Judicial Magistrate, 1st Class, Jamshedpur dated 6.7.2005 rendered in the case of the applicant, it is apparent that the prosecution had failed to examine the original Narendra Nath who was a chargesheeted witness, the investigating officer Sanjay Kumar Gupta, DAO/CKP ; Tulsi Biswas who was not even included as charge sheeted witness, though he was alleged to be the elder brother of the applicant and had deposited the cheque in the account opened at SBI, Jugsalai Branch. Other material documents had also not been adduced during the evidence, neither did prosecution take efforts to compare the

signature of Narendra Nath in the bank account opening or deposit form with his original signature. PW-6, on the other hand, had been declared hostile. It therefore cannot be said that the accused had been acquitted after full consideration of the prosecution evidence and as such prosecution had miserably failed to prove the charges levelled against the accused. It cannot either be said that there was a hot contest in the criminal trial in such circumstances which ended in acquittal of the applicant. It is also obvious from the operative portion of the judgment rendered by the judicial magistrate that the prosecution has failed to prove the case beyond shadow of reasonable doubt. The accused person got acquitted consequent thereto. The acquittal of the applicant cannot be said to be honourable in that sense. The judgment relied upon by the learned senior counsel for the petitioner therefore cannot come to the aid of the applicant. We also do not find any convincing explanation for the delay of four years, on the part of the applicant, in filing the Original Application in 2012 when revisional authority had rejected his revision application on 16th August, 2008 itself. The applicant seems to have conjured up the explanation on the basis of his representation made before the National Commission for Scheduled Caste which had referred the matter for consideration through letter dated 18.3.2009 (Annexure-6) and Annexure- 8 dated 21.5.2010. The applicant failed to invoke the statutory remedy available under the Administrative Tribunal Act, 1985 within the period of one year as per Section 21 thereof. Mere representation before the National Commission for Scheduled Caste, in such circumstances, or the plea of mental tension could not amount to sufficient explanation of delay in filing the O.A.. In such circumstances, the learned tribunal had reason to hold that Original Application was hopelessly barred by limitation.

14. On consideration of the entire facts and reasons recorded hereinabove, this court does not find any reason to interfere in the impugned orders dated 20.02.2014 passed in O.A. No. 215/2012 (R) with M.A. No. 71/2013 (R) by the learned Central Administrative Tribunal, Circuit Bench at Ranchi. Accordingly, the instant writ petition stands dismissed.

(Aparesh Kumar Singh,J)

(Ratnaker Bhengra,J)