

**HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN  
AND  
HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION No. 36331 of 2018**

**ORDER:** *(per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)*

The petitioner has challenged the legality of order, dated 11.09.2018, passed by the Central Administrative Tribunal, Hyderabad Bench, whereby, the learned Tribunal has dismissed the O.A.No.021/00480/2017 filed by the petitioner, *inter alia*, on the ground that merely because he has been acquitted in a Criminal Case, he cannot claim that departmental enquiry should be dropped against him.

Briefly, the facts of the case are that the petitioner was working as a Senior Audit Officer, under the Principal Accountant General (General & Social Sector Audit). On the basis of a complaint received from the staff of S.G.P.R. Government Polytechnic, in 2012, the Central Bureau of Investigation ('CBI', for short), registered a case against the petitioner under Section 7 of the Prevention of Corruption Act, 1988 (for short, 'the Act'). Due to the registration of the criminal case, by order dated 25.01.2012, the petitioner was suspended from the service. After the completion of the investigation, the CBI filed a charge-sheet against the petitioner, and against the co-accused, namely, Mr. P. Rama Rao, for the offences under Sections 7 and 13(2) read with Section 13(1)(d) of the Act. Since

the petitioner was facing a criminal trial, on 15.07.2014, the respondent No.2 initiated a disciplinary proceeding against the petitioner.

Since the petitioner was aggrieved by the fact that while he was facing the criminal trial, he was directed to face the departmental proceedings on the same set of facts, he filed O.A.No.21/178/2015 before the learned Tribunal. In the O.A., the learned Tribunal granted a stay against the continuation of the departmental proceedings. By order dated 05.04.2017, the said O.A. was disposed of by the learned Tribunal. Based on the directions given in the order dated 05.04.2017, the petitioner submitted a representation on 28.04.2017 before the respondent No.2. In the representation, the petitioner prayed that the departmental enquiry should be dropped on the ground that he has been acquitted in the Criminal Case by order dated 20.04.2016. However, by Memo dated 11.05.2017, the said request was declined by the respondent No.2. Moreover, since the criminal trial had come to an end, the departmental enquiry was reinitiated by order dated 11.05.2017, and an Inquiry Officer was appointed by order dated 12.05.2017. Since the petitioner was aggrieved by the re-initiation of enquiry, and by the appointment of the Inquiry Officer, he filed the O.A.No.021/00480/2017 before the learned Tribunal. However, by order dated 11.09.2018,

the learned Tribunal has dismissed the O.A. Hence, this petition before this Court.

Mr. K.R.K.V. Prasad, the learned counsel for the petitioner, pleads that since the petitioner was acquitted by the Criminal Court, and since the departmental enquiry is based on the same set of facts, the departmental enquiry cannot be continued against the petitioner. Firstly, with the acquittal of persons, innocence has been strengthened. Therefore, no fruitful purpose would be served by forcing the petitioner to undergo the ordeal of the departmental enquiry. Secondly, the learned Tribunal has dismissed the O.A. ostensibly on the ground that there is no evidence in the departmental proceedings. However, the case of the petitioner is that the departmental proceedings should be dropped. Therefore, the question of recording any evidence will not even arise. Thus, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. B. Narasimha Sarma, the learned counsel for the respondents, submits that since the criminal trial, and the departmental proceedings function on two different planes, as the burden of proof in both the proceedings are distinct and different, there is no requirement in law that the departmental proceedings should be dropped in the case of acquittal. Therefore, the learned counsel supported the impugned order.

Heard the learned counsel for the petitioner, and perused the impugned order.

It is, indeed, trite to state that in a criminal trial, the prosecution has to prove the charge beyond the shadow of doubt. Hence, the proof must be 100%. However, in the departmental enquiry, the charge is to be proved based on the preponderance of evidence. Hence, the burden of proof is distinct in both criminal trial, and in departmental proceedings. Therefore, in a catena of cases, the Hon'ble Supreme Court has also opined that merely because a delinquent officer may have been acquitted in a criminal case, it would not necessarily lead to the dropping of the departmental proceedings against the delinquent officer. In **Union of India and another v. Purushottam**<sup>1</sup>, the Hon'ble Supreme Court held as under:

*“....However, on this aspect of the law, we need go no further than the recent decision in Inspector General of Police v. S. Samuthiram {(2013)1 SCC 598}, since it contains a comprehensive discourse on all the prominent precedents. This Court has concluded, and we respectfully think correctly, that acquittal of an employee by a criminal court would not automatically and conclusively impact departmental proceedings:*

*Firstly, this is because of the disparate degrees of proof in the two viz., beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries.*

*Secondly, criminal prosecution is not within the control of the department concerned and acquittal could*

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<sup>1</sup> (2015) 3 Supreme Court Cases 779

*be the consequence of shoddy investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the trial, etc.*

*Thirdly, an acquittal in a criminal prosecution may preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the criminal court must conclude that the accused is innocent and not merely conclude that he has not been proved to be guilty beyond reasonable doubt.”*

The learned Tribunal has expressed the same opinion in para 10 of the impugned order. Therefore, this Court does not find any illegality or perversity in the impugned order.

For the reasons stated above, this Court does not find any merit in the present writ petition; it is, hereby, dismissed.

Pending miscellaneous petitions, if any, shall stand dismissed. There shall be no order as to costs.

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**RAGHVENDRA SINGH CHAUHAN, ACJ**

Date: 14.06.2019

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**DR. SHAMEEM AKTHER, J**