

**IN THE HIGH COURT AT CALCUTTA**  
(Appellate Side)  
CONSTITUTIONAL WRIT JURISDICTION

***W.P.S.T. 414 of 2013***

Reserved on: 07.04.2021

Judgment on: 10.06.2021

***Jagadish Chandra Mondal***

***...Petitioner***

***-versus-***

***The State of West Bengal & Ors.***

***...State***

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL, CHIEF JUSTICE (ACTING)  
HON'BLE MR. JUSTICE ANIRUDDHA ROY**

**Present:-** M/s S.K. Nandi,  
S.N. Chattopadhyay, and  
Sizan Nandi, Advocates

...for the petitioners

Ms. Chaitali Bhattacharya, and  
Mr. Subhendu Roychoudhury, Advocates

...for the State

**JUDGMENT**

**Aniruddha Roy, J.:**

1. This writ petition has been filed assailing the order dated August 5, 2013 (for short, the impugned order) passed by the West Bengal Administrative Tribunal, Kolkata (for short, the Tribunal) in OA 1423 of 2012 (Jagadish Chandra Mondal vs. The State of West Bengal & Ors.)[the Original Application]. The Original Application was dismissed and the order of dismissal of the petitioner from service on the ground of conviction suffered by the petitioner in criminal case, was affirmed.
2. The petitioner was employed as constable at Howrah District Police Force. He was then charged with gross indiscipline conduct and dereliction of duty. The petitioner was arrested being involved in P.S. Case No. 4 dated January 22, 1987 and Barrackpore, P.S. Case No. 10

and 11 dated August 28, 1987 under Sections 429, 468, 120B of the Indian Penal Code (for short, IPC) as he forged the Railway warrants during 1984, 1985, 1986 and 1987 in the name of both fictitious and genuine persons in his official capacity and wrongly gained money by making false entries in the relevant documents. He remained in custody till May, 1987. Charge sheets was issued.

3. The petitioner was also involved in Titagarh, P.S. Case No. 297 dated October 27, 1989 under Section 498A and 306 of IPC as his wife was forced to commit suicide. He was arrested in this criminal case on October 27, 1989 and remained in custody till January 25, 1990. Necessary charge Sheet was filed. He was convicted by learned Second Additional District and Sessions Judge, Barasat, North 24 Parganas and was in custody for the period from September 24, 1992 till November 23, 1992. He was then released on bail on November 24, 1992 granted by High Court and the criminal appeal is still pending.
4. The enquiry proceeding was initiated by the Police Department. In the enquiry report some of the charges were proved against the petitioner and the finding of the Enquiry Officer was intimated to the petitioner on December 1, 2010. On the basis of the said enquiry report, a Show Cause Notice was issued on December 11, 2010.
5. On the basis of the said enquiry report disciplinary proceeding was initiated against the petitioner in which final order was passed by the disciplinary authority on January 31, 2011 whereby the petitioner was dismissed from service with immediate effect in terms of Regulation 864 of the Police Regulation of Bengal (PRB), 1943 (for short, 1943 Regulation) and consequential directions were also passed in the said order.
6. Being aggrieved by the final order the petitioner preferred the departmental appeal. By an order dated September 27, 2012 the appellate authority rejected the appeal and upheld the said final order

dated January 31, 2011. The said appellate order was challenged in the Original Application in which the impugned order was passed.

7. Mr. Swapan Kumar Nandi, Learned Advocate, appearing for the petitioner submitted that, arising out of the criminal case filed against the petitioner and against the conviction thereunder the petitioner preferred appeal before this High Court being Criminal Appeal No. 310 of 1992, which was admitted vide order dated November 23, 1992 and he was granted bail. However, the appeal is still pending. Mr. Nandi then submitted that, the appeal is a continuation of the original criminal case/sessions case in which the coordinate bench of this Court, on a prima facie satisfaction in favour of the petitioner, granted him bail. Therefore, the employer and its enquiring or disciplinary authority including the appellate authority had no authority to hold him guilty and dismiss him from service. The learned counsel for the petitioner placed reliance on Regulation 864 of the 1943 Regulation and submitted that, a Police Officer sentenced by a Court, as in the present case, for an offense not implying moral turpitude shall ordinarily be dismissed; but, in trivial cases some lenient form of punishment than dismissal may be awarded or the offender may not be punished.
8. In support of his contention the learned counsel for the petitioner had relied upon several decisions, vide, *In re: M.A. Mathai, reported at 1979 (1) CHN 149*; *In the matter of: The Divisional Personnel Officer, Southern Railway & Anr. vs. T.R. Chellappan, reported at 1976 SCC (L & S) 398*; *In the matter of: Jagtar Singh vs. The State of Punjab & Anr., reported at 1989 (5) SLR 109* and *In the matter of: Krishna Gopal Sharma vs. State of U.P., reported at 2005 (2) ATJ 306*.
9. Ms. Chaitali Bhattacharya with Mr. Subhendu Roychoudhury, advocates appearing for the State submitted that, it is an admitted position that the petitioner, has suffered sentence, in a criminal proceeding and the charges against the petitioner, as would be evident

from such criminal proceedings, were not trivial but grave. The petitioner being an employee of the Police Force had been prosecuted against in several criminal cases from time to time as evident from records. It would clearly show that a police personnel being the petitioner had no moral turpitude. She then submitted that, Regulation 864 of 1943 Regulation provides for that in trivial cases dismissal of the concerned charged employee may not happen. However, in the present case the charges framed against the petitioner are very much grave, serious and not trivial in nature. Thus, the petitioner cannot take any aid from Regulation 864 of the 1943 Regulation.

10. Ms. Bhattacharya, the Learned State Counsel then submitted that, the petitioner had not received honourable acquittal as the criminal appeal is still pending from the order of conviction and sentence. Mere grant of bail to the petitioner in the criminal appeal does not mean honourable acquittal of the petitioner by the Appellate Court. Merely was granted during pendency of the appeal. Hence, this cannot be a ground for not affirming the order of dismissal passed by the employer against the petitioner from his service. The learned State Counsel relied upon the judgments of the Hon'ble Supreme Court in support of her contention namely, *in the matter of: Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao, reported at (2012) 1 SCC 442* and *in the matter of: Deputy Inspector General of Police & Anr. vs. S. Samuthram, reported at (2013) 1 SCC 598*.
11. After hearing the learned counsel for the parties and on a perusal of material before this Court, it appears that the petitioner being the charged employee of Police Force was granted adequate opportunity to participate in the enquiry proceeding as well as in the disciplinary proceeding conducted by his employer and also before the appellate authority. It is also evident that the nature of criminal charges framed against the petitioner are extremely heinous and grave and not of trivial in nature. The petitioner being a part of Police Force lacks moral

turpitude which is the basic ingredient to become an employee of a Police Force.

12. Regulation 864 of the 1943 Regulation, the relevant portion whereof provides for a punishment other than dismissal only when the charged employee suffers sentence in a criminal proceeding which is trivial in nature. In the present case the charges for which the petitioner had suffered sentence by the Criminal Court are grave and heinous and not trivial in nature at all. The said Regulation 864 of the 1943 Regulation will not apply in the present case. In as much as, it is true that appeal is the continuation of the parent proceeding. In the present case the criminal appeal preferred by the petitioner is still pending for final adjudication and the coordinate bench in appeal granted bail to the petitioner. Thus, it is not a fit case in the facts and circumstances, where the order of dismissal from service suffered by the petitioner in view of his conviction and sentence can be set aside or reversed.
13. The ratio of the judgments relied on behalf of the petitioner are not applicable in the facts and circumstances of the present case. *In re: M.A. Mathai, (supra)*, the charges against the delinquent employee was inter alia under Prevention of Corruption Act, 1975 read with Section 161 of IPC, in which the charged employee had preferred a criminal appeal from the order of conviction where the Appellate Court admitted the appeal and the charged employee was allowed to remain on bail and fine imposed was stayed. Such fact was not at all considered by the disciplinary authority and the order of the disciplinary authority was significantly silent about the same. *In the matter of: Divisional Personnel Officer, Southern Railway (supra)* the charged employee was convicted for an offence under Section 420 of the IPC and the Jurisdictional Magistrate, however, instead of sentencing him ordered him to be released on probation under the provisions of the Probation of Offenders Act. *In the matter of: Jagtar Singh (supra)* the charges were under the Prevention of Corruption Act read with Section 161 of IPC where the

conviction and sentence were to suffer rigorous imprisonment for one year and to pay a fine. The charged employee therein preferred criminal appeal in which he was granted bail till disposal of the appeal. Subsequently, the sentence was also suspended. *In the matter of: Krishna Gopal Sharma (supra)* in the order of dismissal from service the conduct of the charged employee leading to his conviction was not discussed which is mandatory under Article 311(2) of the Constitution of India.

14. In the present case, the entire fact of conviction, pendency of criminal appeal preferred by the petitioner, and the bail granted to the petitioner were duly considered by the employer and only then the order of dismissal was passed. In the present case, the petitioner from time to time was arrested on the charges under Sections 429, 468 and 120B of IPC for forging Railway warrants in the name of diverse persons in his official capacity and wrongly gained money by making false entries in the relevant documents. The nature of offenses are heinous, more so the petitioner was a Railway employee and had committed the offenses by taking advantage of his employment. The petitioner was further taken on custody on the charges under Section 498A and 306 of IPC as his wife allegedly was forced to commit suicide. He was convicted by the jurisdictional Criminal Court in all such occasions. It, thus, appears that, the charges for which the petitioner was convicted in the present case were more heinous in nature than the charges for which the delinquent employees had suffered conviction in the facts and circumstances of the judgments relied upon on behalf of the petitioner. Petitioner's appeal is still pending before this Court. Grant of bail to the petitioner in such appeal will not come to his rescue. Considering the aforesaid factors it is apparent that the judgments relied upon by the petitioner would render no assistance to him in the facts and circumstances of the case.

15. *In the matter of: Divisional Controller, Karnataka State Road Transport Corporation (supra)*, the Hon'ble Supreme Court had observed as under:

*"11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from services was based in conviction by the criminal court in view of the provisions of Article 311(2)(b) [sic Article 311(2) second proviso (a)]\* of the Constitution of India, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.*

*31. The instant case requires to be examined in the light of the aforesaid settled legal proposition and keeping in view that judicial review is concerned primarily with the decision-making process and not the decision itself. More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption or theft, no punishment other than the dismissal may be appropriate.*

*32. The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry report was accepted by the disciplinary authority and there is no grievance on behalf of the respondent workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The disciplinary authority imposed the punishment of dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in fair manner and charges have rightly been proved against the delinquent employee. However, considering the difference in the standard of proof required in domestic enquiry vis-à-vis that applicable to a criminal case, the Labour Court repelled the argument of the respondent workman that once he stood acquitted he was entitled to all reliefs including reinstatement and back wages. The learned Single Judge as well as the Division Bench had*

*simply decided the case taking into consideration the acquittal of the delinquent employee and nothing else.*

*33. In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges leveled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same; there were no additional or extra witnesses; and without considering the gravity of the charge, we are of the view that the award of the Labour Court did not warrant any interference. Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not challenged by the present appellant by filing writ appeal. Therefore, the delinquent employee is entitled to the said relief”.*

16. *In the matter of: Deputy Inspector General of Police & Anr. (supra), the Hon’ble Supreme Court had observed as under:*

*“ 24. The meaning of the expression “honourable 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”, “acquittal of blame”, “fully exonerated” and 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 leveled 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 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:*

*“8. ... “The expression “honourably 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 misappropriate 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".' "*

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 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.

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

17. In view of our fore going discussions and the reasons stated, this Court is of the firm view that the Tribunal while passing the impugned order

had acted within the permissible limit of its jurisdiction and had correctly considered the law prevailing on the field. Therefore, the impugned order is not interfered with.

18. The present writ petition being **W.P.S.T. 414 of 2013** stands dismissed.

19. There shall, however, be no order as to costs.

**(Rajesh Bindal)**  
**Chief Justice (Acting)**

**(Aniruddha Roy)**  
**Judge**

Kolkata  
10.06.2021  
.....  
P.A. (RM)