

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON	31.03.2021
ORDERS PRONOUNCED ON	08/06/21

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16148 of 2020

V.Prabakar

...Petitioner

vs.

Chennai Port Trust,
Rep. by its Chairman,
Rajaji Salai,
Chennai 600 001.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified mandamus, to call for the records of the Respondent in connection with the impugned order passed by him in Ref.No.CME/A1/1676/2013/MEE, dated 14.06.2014 and the Memorandum of the Respondent No.CME/A1/1676/2013/MEE, dated 19.10.2020 with the IO Report dated 14.08.2020 and quash the same and direct the Respondents to regulate the period of suspension and as well as out of employment as duty for all purposes and further direct the Respondents to draw and disburse the pay and allowances due to the Petitioner within a reasonable time.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondent : Mr.Haja Mohideen Gisthi,
Standing Counsel

ORDER

Petitioner has come up with this Writ Petition challenging the impugned order passed by the Respondent vide Ref.No.CME/A1/1676/2013/MEE, dated 14.06.2014 and the Memorandum of the Respondent vide No.CME/A1/1676/2013/MEE, dated 19.10.2020 with the IO Report dated 14.08.2020, and for a consequential direction to the Respondents to regulate the period of suspension and as well as out of employment period, as duty for all purposes and for a further direction to the Respondents to draw and disburse pay and allowances due to him.

2. Facts leading to the filing of the present Writ Petition, as narrated by the Petitioner in his Affidavit, are thus:

2(a) According to the Petitioner, he joined the services of the Respondent/Port Trust in January 1987. By merit and seniority, he was promoted as Deputy Chief Engineer in the year 2012. Though, he became due for promotion as Chief Engineer, on account of a pending criminal case, he could not claim for the post of Chief Mechanical Engineer, while some of his juniors were already promoted to the said post, to the other Ports.

2(b) As Deputy Chief Mechanical Engineer, the prime responsibility of the Petitioner was to provide power supply to various Port users inside the Port, based on their request and consumption charges are recovered from them as per the TNEB tariff.

2(c) It is stated by the Petitioner that, during the year 2013, a firm viz. M/s.Hunter Shipping and Trading was allotted open space inside the Port premises by the Traffic Department, at the western side of Ore Area near BD-II Area-I, measuring an extent of 8,230 sq. metres for a lease period of 11 months from 01.08.2012 to 30.06.2013, after getting approval from the Chairman, Chennai Port Trust. For such allotment, the firm has paid a Security Deposit of Rs.14,380/- towards temporary power supply. As the lease period expired on 30.06.2013, the firm submitted an Application on 17.06.2013 to the Deputy Traffic Manager of the Chennai Port Trust for renewal of lease for a further period of 11 months from 01.07.2013 to 31.05.2014.

2(d) Thereafter, on 03.07.2013, one Mir Iqbal Ali, Manager of M/s.Hunter Shipping & Trading Company met the Petitioner and submitted a letter dated 17.06.2013, in which the Deputy Traffic Manager (Lands & Building) has recommended to continue temporary power supply to the firm, as the Company's renewal application was under process. It is stated by the Petitioner that, after receiving oral permission from the Chief Mechanical Engineer, he endorsed in the letter for necessary action and instructed the then Executive Engineer (Power Supply) to extend temporary power supply for July 2013.

2(e) In the meanwhile, the firm received the renewal order from the Deputy Traffic Manager (L & B) after getting approval from the Chairman, Chennai Port Trust, on 08.07.2013, for renewal of the lease period from 01.07.2013 to 31.05.2014. After receiving the order, the Executive Engineer (PS) along with the Assistant Engineer, inspected the site and assessed the electricity load connected/utilized by the firm. The Security Deposit towards temporary power supply was worked out by the AE (PS)/EXE (PS)/SEC (ES & CH) as Rs.23,210/- and a letter was sent to the firm on 31.07.2013 to remit the amount.

2(f) On 05.08.2013, Mir Iqbal Ali, Manager of M/s.Hunter Shipping & Trading Company, met the Petitioner in his cabin and stated that, they are ready to pay the Security Deposit amount of Rs.23,210/- towards temporary power supply and requested him as to where to pay the same. The Petitioner advised him to remit the amount in the Finance Department of Chennai Port Trust. Then, the Petitioner began working in his Computer. After sometime, a group of 7 to 8 persons rushed to the Petitioner's cabin and introduced themselves as officials from CBI and informed the Petitioner that, he is arrested for receiving a bribe of Rs.25,000/- from Mir Iqbal Ali, Manager of M/s.Hunter Shipping and Trading Company. Though the Petitioner denied the said allegation and told them that, he has not received any money, the said Mir Iqbal Ali, who came along with the CBI officials, pointed out to the CBI officials that, some money was kept on the table behind the Laptop. Only thereafter, the Petitioner was able to see the money that was surreptitiously kept behind the Laptop by the Manager of the firm.

2(g) It is the case of the Petitioner that, the Manager of M/s.Hunter Shipping and Trading Company, in order to wreck vengeance against him, for his refusal to adjust the amount already deposited towards the enhanced deposit, has chosen to prefer a false complaint against him and with the help of CBI officials, dipped his fingers in a glass tumbler containing phenolphthelene powder and the solution turned pink. With regard to the charge of corruption, the Petitioner was arrested and remanded to judicial custody on 05.08.2013 and came out on bail. He was suspended from service on 05.08.2013.

2(h) After investigation, a Charge Sheet was filed before the Additional Special Court (CBI), City Court Complex, Chennai 600104, on 03.12.2013 and taken on file as C.C.No.45/2013. On the side of the Department, as many as 12 witnesses were examined, 30 Exhibits and 3 Material Objects were marked. On the side of the defence, the Petitioner produced six documents. Pending disposal of the Criminal case, the Petitioner was issued with a Charge Memo containing as many as three charges under Regulation 12 of the Chennai Port Trust Employees (CCA) Regulations, 1988, on 14.06.2014. As the charges framed against him and the Charge Sheet filed before the Criminal Court are one and the same, arising out of the same alleged incident, the Petitioner approached this Court in W.P.No.17674 of 2014 and obtained an order on 04.07.2014 to keep the disciplinary proceedings in abeyance, pending disposal of the criminal case.

2(i) Pursuant thereto, the trial Judge found the Petitioner guilty of the charges and by an order dated 22.12.2015, convicted him under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act, and sentenced him to undergo two

years Rigorous Imprisonment and ordered to pay a fine of Rs.10,000/- and in default, to undergo three months Rigorous Imprisonment. Challenging the same, the Petitioner preferred a Criminal Appeal in Crl.A.No.18 of 2016 and this Court, by an order dated 11.01.2016 in C.M.P.No.257 of 2016, suspended the sentence imposed on him.

2(j) Based on the conviction sustained in the Criminal case, the Petitioner was issued with a Show Cause Notice dated 03.09.2016 under Regulation 17 of the Chennai Port Trust Regulations, as to why he should not be dismissed from service. The Petitioner submitted his reply to the Show Cause Notice on 16.09.2016 to keep him under suspension and not to impose any major punishment, pending disposal of the Criminal Appeal. But, the Respondent, in his order dated 21.09.2016 did not accept the reply and imposed a punishment of removal from service under Regulation 17(1) r/w 8 of CPT Employees (CCA) Regulations, 1988, w.e.f. 21.09.2016.

2(k) The Criminal Appeal in Crl.A.No.18 of 2016 was decided vide judgment dated 15.05.2017 and this Court found that, there is absolutely no evidence of demand and acceptance of illegal gratification by the Petitioner and acquitted him on merits. Based on the acquittal in the Criminal case, the Petitioner made a representation dated 25.01.2018 to the Respondent to reinstate him into service. As there was no response, the Petitioner filed a Writ Petition seeking a direction for reinstatement and the Respondent implemented the order and took the Petitioner back for duty and also issued an order reviving the disciplinary proceedings, which has already been dropped against him.

2(l) The Petitioner was directed to give a letter under coercion that, he has agreed to face the disciplinary proceedings, otherwise, he will not be reinstated into service. Though the Petitioner was reinstated into service, he was forced to attend the disciplinary proceedings. On denial of charges, one Jaisimha, Chief Mechanical Engineer of Port Trust, was appointed as the Inquiry Officer to conduct an oral enquiry against the Petitioner. On the side of the Department, as many as six witnesses were examined and 31 documents were marked. The Enquiry Officer held that Charge Nos.1 and 3 have not been proved and Charge No.2 as proved. Charge No.3 relates to corruption and the Enquiry Officer held that, the said charge is not proved, as there was no demand and acceptance.

2(m) Thereafter, the Respondent, instead of accepting the Report, has chosen to issue the impugned Show Cause Notice dated 19.10.2020 disagreeing in respect of Charge Nos.1 and 2 and held that, all the charges against the Petitioner are proved and directed him to submit a reply within 15 days and the Petitioner acknowledged the same on 21.10.2020.

3. Learned Senior Counsel appearing for the Petitioner contended that, mere participation of the Petitioner in the departmental proceedings after the acquittal in the criminal case cannot be put against him, as he had not been issued with any Show Cause Notice before reviving the disciplinary proceedings after acquittal in the criminal case and hence, the Charge Memo itself is unsustainable. He pointed out that, in the Show Cause Notice dated 03.09.2016, the Respondent decided to drop action on the Charge Memo dated 14.06.2014. There was no reservation to revise the departmental proceedings after disposal of the Criminal Appeal, which was pending before the Court, questioning the conviction. In the absence of reserving the liberty to reconsider the departmental proceedings, depending upon the result of the Criminal Appeal, the Respondent did not revive the departmental proceedings and proceeded further to conduct verbal enquiry. Since there was no reservation to revive the departmental proceedings, the impugned Charge Memo is liable to be set aside.

4. Learned Senior Counsel pointed out that, the Petitioner was forced to give an Undertaking that, he will co-operate with the disciplinary proceedings and only thereafter, he was reinstated into service. According to him, the Undertaking was obtained under coercion and misrepresentation cannot be a ground to decide the issue against the Petitioner.

5. It is further contended by the learned Senior Counsel for the Petitioner that, though it is open to the Disciplinary Authority to deviate with the views of the IO Report, the Disciplinary Authority has to tentatively give reasons in writing for such deviation and direct the Delinquent Officer to submit his representation and he must be given an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the IO Report in his favour. After receiving a reply, the Disciplinary Authority has to either accept or otherwise hold that, the charges against the Delinquent Officer are still proved and direct him to submit his representation for the proven charges.

6. Learned Senior Counsel went on to contend that, the Disciplinary Authority has straightaway come to the conclusion that, the findings recorded in respect of Charge Nos.1 and 3 cannot be accepted and held that, all the charges have been proved. According to the learned Senior Counsel, the Show Cause Notice is a pre-concluded one, since a decision has already been taken by the Disciplinary Authority and submitting a reply is only an empty formality. Hence, the Show Cause Notice is in violation of the principles of natural justice and on this ground alone, the impugned Show Cause Notice is liable to be set aside.

7. In support of his case, learned Senior Counsel appearing for the Petitioner, has relied on the following Supreme Court decisions:

(i) Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd., decided on 30.03.1999

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, in so far as it purports to allow the Writ Petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental inquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs.15,000/-."

(ii) G.M.Tank vs. State of Gujarat (Appeal (Civil) No.2582 of 2006, dated 10.05.2006)

"It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges leveled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant.. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same

set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

... ..

In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

(iii) Lav Nigam vs. Chairman & Managing Director, ITI Limited reported in (2006) 9 SCC 440

"10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

13. We have already quoted the extracts from the show-cause notice issued by the

disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.

14. The proceedings may be recommenced from the stage of issuance of a fresh show-cause notice by the disciplinary authority to the appellant indicating his tentative disagreement with the findings of the inquiry officer."

(iv) Siemens Ltd. Vs. State of Maharashtra, (2006) 12 SCC 33

"11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable."

(v) Oryx Fisheries Private Limited vs. Union of India, (2010) 13 SCC 427

"31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a

reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself.

41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

43. For the reasons aforesaid, this Court quashes the show-cause notice as also the order dated 19-3-2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed."

8. Learned counsel for the Petitioner has further relied on the following two judgments of this Court:

(i) Jawahar Santhakumar vs. The State of Tamilnadu (W.P.No.28724 of 2011, dated 16.04.2019)

"3. Shri K.Venkataramani, learned Senior Counsel appearing for the petitioner would submit that without touching upon various grounds raised in support of the

Writ Petition, he would confine his arguments only in regard to the letter of Disciplinary Authority dated 13.11.2008 which is also impugned in the Writ Petition, wherein, the Disciplinary Authority has decided to deviate from the findings of the Enquiry Officer and to hold the charges as proved, as according to him, such course adopted by the Disciplinary Authority is in complete violation of the established principles of natural justice and also contrary to the legal principles as laid down by the Hon'ble Supreme Court in number of decisions. He would therefore, urge this Court to interfere with the procedure adopted by the Disciplinary Authority in not giving any opportunity to the petitioner to explain and submit his representation in support of the favourable findings rendered by the second respondent Tribunal. The Disciplinary Authority has straight away concluded that the charges framed were proved without putting the petitioner on notice to explain his stand in regard to the findings of the Disciplinary Authority.

7. As rightly contended by the learned Senior Counsel for the petitioner that the above decision of the Hon'ble Supreme Court would squarely cover the case in favour of the petitioner herein. Once the findings are in favour of the charged Officer, the charged Officer must be given due and reasonable opportunity to put forth his claim in support of the findings and he should be given opportunity to impress upon the Disciplinary Authority about the findings in his favour. Such opportunity is the very essence of complying with principles of natural justice, which cannot be termed as hyper technical."

(ii) S.Balasubramanian vs. The Chief Engineer (General), Highways Department, Chennai (W.A.Nos.589 to 591 of 2018, dated 10.07.2019)

"8. The Hon'ble Supreme Court in G.M.Tank vs. State of Gujarat and Ors. (2006 (5) SCC 446) considered the maintainability of departmental proceedings after the

acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officers were the witnesses examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgments held that, it would not be prudent to continue the disciplinary proceedings after the acquittal by criminal Court on the basis of the very same charges and evidence."

9. On the other hand, learned Standing Counsel appearing for the Respondent/Port Trust contended that, the Petitioner has questioned the Charge Memo dated 14.06.2014 after a lapse of seven years and that, the Disciplinary Authority is entitled to disagree with the findings of the Enquiry Officer and it is not necessary that, a detailed reasoning has to be given and that, a crisp reasoning is sufficient, if it conveys the reason for disagreement. He submitted that, under Regulation 13 of Chennai Port Trust Employees' (CCA) Regulations, 1988, the Disciplinary Authority is well within his jurisdiction to (i) accept the report of the Inquiry Officer or (ii) to order further enquiry or (iii) to disagree with the report of IO duly recording the reasons for such disagreement. As such, the contention of the Petitioner that, the Respondent/Port Trust had personal grudge against the Petitioner which resulted in deviation from the IO Report is mere illusion and not acceptable.

10. Learned Standing Counsel went on to state that, it is well settled principle of law that, the acquittal of an employee does not entitle him or her to either automatic reinstatement into service and free from the disciplinary proceedings. He further submitted that, the Apex Court and this Court have time and again held that, mere acquittal from a criminal case, will not conclude the disciplinary proceedings.

11. To substantiate his stand, learned Standing Counsel has relied on the following decisions rendered by the Supreme Court.

(i) Suresh Pathrella vs. Oriental Bank of Commerce, 2006 (10) SCC 572

"11. In our view, the findings recorded by the learned Single Judge are

fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

(ii) Moni Shankar vs. Union of India, 2008 (3) SCC 484

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

(iii) Southern Railway Officers Association vs. Union of India, 2009 (9) SCC 24

"37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did

not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge."

(iv) Samar Bahadur Singh vs. State of U.P., 2011 (9) SCC 94

"7. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit."

(v) Union of India vs. Sitaram Misra, (2020) SCC Online 881

"14. The fact that the first respondent was acquitted in the course of the criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The High Court, in our view, has drawn an erroneous inference from the decision of this Court in M. Paul Anthony v. Bharat Gold Mines Ltd. [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810]. The High Court adverted to the following principle of law laid down in the above judgment: (SCC p. 687, para 13)

"13. ... While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal

case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

(vi) Karnataka Power Transmission vs. Nagaraju, 2019 (10) SCC 397

"13. Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court."

(vii) State of Rajasthan vs. Heem Singh, 2021 (2) SCC 332

"34. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association v. Union of India, this Court held:

"37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge."

(emphasis supplied)

(viii) Life Insurance Corporation vs. Mukesh Poonamchand Shah, (2020) SCC Online 234

"14. The position in this regard was elaborated upon in a judgment of a two judge Bench decision of this Court in Dy Director of Collegiate Education (Admn) v S Nagoor Meera, where Justice B P Jeevan Reddy speaking for the Court held:

"8. ... taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal." This Court specifically disapproved of the view of the Tribunal that until the appeal against the conviction was disposed of, action under clause(a) of the second proviso to Article 311(2) was not permissible. The Court held: 13 (1995) 3 SCC 377

"10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain

such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice." This view has been reiterated in another two judge Bench decision of this Court in K C Sareen v CBI¹⁴. Justice K T Thomas, speaking for the Court, held:

"12. ...When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself..."¹⁵ In State of Haryana v Balwant Singh¹⁵, the respondent, who was an employee of a public transport corporation, caused a death as a result of his rash and negligent driving. The Corporation had to suffer an award of the Motor Accident Claims Tribunal."

12. Learned Standing Counsel for the Respondent/Port Trust further relied on an Apex Court decision in the case of Shashi Bhushan Prasad vs. Inspector General, Central Industrial Security Force reported in (2019) 7 SCC 797, wherein, it is held as under:

"9. The learned counsel further submits that what is being urged by the appellant has been examined by the High Court and this being the settled principle of law that in a disciplinary inquiry one has to proceed on the "preponderance of probability" whereas in the criminal case, the charge is to be "proved beyond reasonable doubt" being based

on two sets of fundamental principles which has been examined by the High Court in extenso needs no interference by this Court."

13. It is reiterated by the learned Standing Counsel for the Respondent that, the Charge Memo has been challenged by the Petitioner belatedly. That apart, the contention of the Petitioner that, the Undertaking to participate in the enquiry after the communication of the Respondent dated 25.07.2018, is only due to coercion and it cannot be put against the Petitioner, is unacceptable. For better appreciation, the Undertaking of the Petitioner as could be seen in page 43 of the Petitioner's Typed Set, is extracted below:

UNDERTAKING

I, Shri V.Prabakar, on reinstatement as Dy. CME (E) in the Trust's service, hereby undertake that, I will co-operate to proceed with the charge Memo No.CME/A1/1676/2013/MEE, dated 14.06.2014 which is revived and restored and I will not delay the departmental disciplinary proceedings on any account. Further, I agree that, Trust is free to take appropriate action against me, in the event of any failure on my part regarding the disciplinary proceedings."

14. Heard the learned counsel on either side and perused the material documents relied on by them including the judgments cited.

15. It is an admitted case that, the Petitioner joined the services of the Respondent/Port Trust in 1987 and was caught by the C.B.I. Officials through a trap, that he demanded bribe from the Manager of a firm. Subsequently, the Petitioner was as placed under suspension on 18.08.2013 and Charge Memo dated 14.06.2014 was issued to him. The Petitioner obtained stay of the departmental proceedings on 04.07.2017. Thereafter, the Petitioner filed Vacate Stay Petition and parties have addressed arguments on the merits of the case.

16. It is seen that, the XIII Additional Special Court (CBI), City Court Complex, Chennai convicted the Petitioner on 22.12.2015, to undergo two years Rigorous Imprisonment with a penalty of Rs.10,000/-, failing which, to suffer three months' imprisonment under the Prevention of Corruption Act. This Court, by an interim order suspended the sentence imposed on him and

finally, vide judgment dated 15.05.2017 passed in Criminal Appeal No.18 of 2016, the conviction was set aside and the Petitioner was acquitted from the charges.

17. As the charges framed against him and the Charge Sheet filed before the Criminal Court are one and the same, arising out of the same alleged incident, the Petitioner approached this Court in W.P.No.17674 of 2014 and obtained an interim order on 04.07.2014. On 01.08.2016, this Court dismissed the said Writ Petition, by holding as under:

"When the matter is taken up for consideration today, the learned counsel for the Petitioner has submitted that the Petitioner has been convicted on 22.12.2015 and he has preferred an appeal against the same and the same is pending. In view of the said fact, the prayer in this Writ Petition has become infructuous and accordingly, this Writ Petition is dismissed. However, in case the Petitioner succeeds in the Appeal, he is at liberty to challenge in a manner known to law."

18. Pursuant thereto, the Petitioner was issued with a Show Cause Notice dated 03.09.2016 and the relevant paragraph 7 is extracted below:

"7. In view of the above, it is conclusively established beyond doubt that, he has committed gross misconduct as convicted by XIII Additional Special Court for CBI cases. I hold that, this case satisfies the conditions under Regulation 17 (i) of the Chennai Port Trust Employees' (CCA) Regulations, 1988 and hence, it is decided to drop the proceedings initiated under Regulation 12 of the Chennai Port Trust Employees' (CCA) Regulations, 1988 vide order No.CME/A1/1676/2013/MEE, dated 14.06.2014 and to take action against Shri V.Prabakar, Dy. CME under Regulation 17(i) of the Ch.P.T.Es' (CCA) Regulations, 1988. Accordingly, having satisfied with the compliance of conditions under Regulation 17 (i) of the Ch.P.T.Es' (CCA) Regulations, 1988, I propose to impose the penalty of removal of Shri V.Prabakar, Dy. CME from the service of Chennai Port Trust. Hence, he is given an opportunity of making representation on the penalty proposed to be

imposed to the undersigned within seven (7) days from the date of receipt of this order, failing which, it will be assumed that, he has no representation and action will be taken as per the said Regulations."

19. After the acquittal of the Petitioner vide judgment dated 15.05.2017 in Criminal Appeal No.18 of 2016, it has been decided to reinstate him into service, subject to the condition that, the Charge Memo dated 14.06.2014 is restored and revived and that, the Petitioner has also given an Undertaking that, he will not delay the departmental proceedings on any account.

20. In the present case on hand, the Enquiry Officer found the Petitioner not guilty of two charges, viz. Charge Nos.1 and 3 out of three charges. It is no doubt true that, the Disciplinary Authority is entitled to disagree with the findings of the Enquiry Officer and give an opportunity to the employee to submit an explanation and thereafter, take a view. However, the Disciplinary Authority came to the conclusion that, the findings recorded in respect of Charge Nos.1 and 3 cannot be accepted and held all the Charges to be proved, and directed the Petitioner to submit a Reply.

21. It is the case of the Petitioner that, there is a personal grudge against him, which resulted in deviated views of the Enquiry Officer's Report with regard to Charge Nos.1 and 3, when he has been asked to submit a reply. Relying on Lav Nigam's case (supra), the Petitioner contended that, the Charge Memo dated 14.06.2014 and the Show Cause Notice dated 03.09.2016 are biased, and hence, he has not sent any reply, as it is going to be only an empty formality.

22. Proceedings against the Petitioner were originally initiated under Regulation 12 of the Chennai Port Trust Employees' (Classification, Control & Appeal) Regulations, 1988. Thereafter, in terms of the conditions referred to in Regulation 17(i), proceedings have been initiated and punishment has been imposed. For better appreciation, Regulation 17 is extracted hereunder:

17. Special procedure in certain cases -
Notwithstanding anything contained in Regulation 12 to Regulation 16 (i) Where a penalty is imposed on an employee on the ground of conduct which had led to his conviction on a criminal charge, or (ii) Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an

inquiry in the manner provided in these regulations, or (iii) Where the Chairman is satisfied that in the interest of the security of the Port, it is not expedient to follow such a procedure, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit. 1 [Provided that, the employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in case under Clause (i)] Provided 1 [further] that the approval of the Central Government shall be obtained before passing such orders in relation to an employee covered by clause (a) of sub-section (1) of Section 24 of the Act."

23. Regulation 12 of Chennai Port Trust Employees' (CCA) Regulations, 1988 deals with the procedures for imposing major penalties and due opportunity will have to be granted to the delinquent employee while proceeding departmentally. Regulation 13 deals with the action on the Enquiry Report, when proceedings under Regulation 12 are dropped without any reservation. Regulation 17 gives ample power to proceed against the delinquent employee departmentally and come to a final conclusion.

24. In the case on hand, it is clear that, the Respondent has reserved the right to proceed against the Petitioner departmentally under Regulation 17 and drop the proceedings only under Regulation 12. Hence, the contention of the Petitioner that, once departmental action under Regulation 12 is dropped, there is automatic drop of further proceedings invoking Regulation 17, cannot be accepted.

25. According to the Respondent/Port Trust, they have reserved the right to proceed with departmental action against the Petitioner and it is not correct to state that, there was no reservation, as contended by the Petitioner. It is not an unconditional withdrawal of the Charge Memo, as pointed out by the Petitioner. Departmental proceedings and Criminal proceedings proceeded simultaneously and after conviction, the Respondent dropped the Charge Memo dated 14.06.2014 initiated under Regulation 12 vide Show Cause Notice dated 03.09.2016, so as to proceed against the Petitioner under Regulation 17(i).

26. It is seen that, the first two charges are the main ones, for demanding and accepting illegal gratification. The witnesses cited and examined in the Criminal case and the witnesses cited in the Departmental proceedings are one and the same. Also, documents relied upon in the criminal case and

departmental proceedings are one and the same. Dehors Charge Nos.1 and 3, Charge No.2 is serious in nature and that, it has been held to be proved. That itself is a serious offence warranting punishment.

27. According to the Petitioner, after receipt of the Show Cause Notice dated 03.09.2016, he had participated in the enquiry on 27.08.2019, without any grievance. After participating in the enquiry, for the first time, the Petitioner had taken a plea that, that an Undertaking to participate in the enquiry was obtained by coercion. Thereafter, the impugned Show Cause dated 19.10.2020 was issued to the Petitioner and he made a request seeking extension of time to submit a reply. Time was granted till 05.11.2020. However, without submitting a reply, the Petitioner filed the present Writ Petition and obtained an interim order. It is the case of the Petitioner that, the Disciplinary Authority has already taken a view and after holding that, the charges are proved, a Show Cause Notice cannot be issued and that, it is only an eye-wash.

28. This Court is of the view that, a correct reasoning has been given by the Disciplinary Authority for disagreement of the findings of the Enquiry Officer and there is nothing wrong in mentioning that, in case, the explanation is not satisfactory, he will be imposed with the punishment, which does not mean that, there is a prima facie conclusion by the Disciplinary Authority.

29. Mere participation of the Petitioner in the departmental proceedings after acquittal in the criminal case, cannot be put against him. It is not an estoppel and the Charge Memo can be questioned even after a finding in the domestic enquiry on legal grounds. It is open to the Department to proceed against the Petitioner departmentally even after acquittal in the criminal case and it is not a bar, as, in the criminal case, it has to be proved beyond all reasonable doubts, whereas, in departmental proceedings, the Department has to prove only on preponderance of probabilities. Merely because, the Petitioner has been acquitted, that the charges have not at all been proved beyond all reasonable doubts, the acquittal of the employee would not preclude the Department to proceed against him departmentally. Any conduct which is unbecoming on a date, service that amounts to malign the image of an organization or bring down its reputation, whether the employee is working, needs to be dealt with departmentally irrespective of acquittal in the criminal case.

30. The Petitioner's contention that an Undertaking has been obtained from him under coercion may not be correct. It was the request made by the Department and if he is not going to give an Undertaking, the Petitioner should not have made an Undertaking on receipt of the communication on 23.07.2018 and at

no point of time, he has stated that, he would not participate in the enquiry.

31. The contention of the Petitioner that, he has been asked to participate in the enquiry and affix his signature is a clandestine submission. There is no need for the Petitioner to make such an undertaking earlier and participate in the enquiry on various dates. The contention that, the Petitioner has slept over the matter for seven years and challenged it again, appears to be genuine.

32. It is no doubt true that, the party can be questioned after the final orders are passed. In this case, it is the Petitioner who is responsible for dragging on the proceedings, agreed to participate in the enquiry and act in a clandestine manner, thereby, protracted the proceedings.

33(a). This Court would like to emphasize that, sometimes, for the mistake committed by the Court, criminals like that of the Petitioner herein are acquitted by the Court. Since Mr.K.Venkataramani, learned Senior Counsel appearing for the Petitioner insisted that, the judgment of the High Court has to be read as a whole for a decision to be arrived at, naturally this Court would like to read the order of the Lower Court, which I did. On a reading of the judgments of the Trial Court and the High Court, this Court is of the view that, the reasoning given by the Trial court appears to be sound, even though the decision of the High Court is binding. The Petitioner has managed to get an order from this Court and this Court is not inclined to decide as to whether the Lower Court judgment was correct or the judgment of the High Court judgment was wrong, as I am not sitting in a Division Bench, moreso, there is no intra Court Appeal available against the order in Criminal Appeal.

33(b). The legal issues decided by the Criminal Court will not bind a Civil Court in the light of the authoritative pronouncement of the Apex Court that, the issue as to whether the findings recorded by the Civil Court are binding in criminal proceedings between the same parties in respect of the same subject matter, is no more res integra. In M/s.Karamchand Ganga Pershad vs. Union of India, reported in AIR 1971 SC 1244, the Apex Court has held as under:

"It is well established principle of law that the decisions of the Civil Courts are binding on the Criminal Courts. The converse is not true."

The findings rendered in the criminal proceedings i.e. in Criminal Appeal No.18 of 2016 will not bind the Writ Court, more

so, the departmental proceedings, as both are independent of each other. Though, there is no need for this observation, Mr.Venkataramani, learned Senior Counsel has invited a finding.

34. Learned Standing Counsel for the Respondent/Port Trust drew the attention of this Court to the communication dated 29.03.2021 of the Vigilance Department vide No.V1/1819/2013/Vig. furnishing the para-wise remarks on the Additional Reply filed by the Petitioner. The said communication bears the signature of the Deputy Chief Vigilance Officer. This Court is of the view that, the said Remarks should have been filed in the form of a counter on behalf of the Respondents

35. On the date of conclusion of arguments, it was brought to the attention of this Court that, there is a personal bias. Pleadings with regard to bias have not been taken during the time of enquiry or immediately thereafter.

36. It is further seen that, the Disciplinary Authority has disagreed with the findings of the Enquiry Officer by giving crisp and valid reasons. Even assuming for the sake of argument, that, the contention of the Petitioner is accepted, even with regard to Charge No.2, he has to face punishment. A word of caution has been mentioned that, in case, there is no satisfactory reply "punishment would be imposed". In corruption charges, moreso, when the Petitioner has been found guilty of the offence under the Prevention of Corruption Act in the departmental enquiry with regard to Charge No.2, and the observations are only a passing one, it cannot be construed that, the Disciplinary Authority has come to the conclusion that, he has made up his mind to hold that, the charges are proved.

37. The Apex Court in a catena of decisions, has held that, even if one charge is proved, the employee can be shown the doors and it has also held that, both the Department and Criminal proceedings can go on simultaneously. In Ajaykumar Choudhary vs. Union of India, (2015) 7 SCC 291, the Apex Court has held reasonably that, if criminal case is not concluded within one year from the date of F.I.R., the Departmental proceedings can go on.

38. In several cases, criminal proceedings are not concluded within a time frame and takes decades, as investigation takes its own sweet time and every time, during investigation, there is intervention either by the Court or extraordinary pressure to the Investigating Officer. And, in that process, when an employee dies or attains the age of superannuation, and in the absence of Rules to continue the departmental proceedings after the age of retirement, all the terminal benefits including backwages of those employees involved in the offence of corruption or any other serious

offence, becomes a bounty. Hence, the Court shall allow the departmental proceedings to go on, irrespective of the pendency of the criminal case. If criminal proceedings are not concluded within one year from the date of F.I.R., final orders in the departmental proceedings shall be passed and the decision can be put in a sealed cover till the outcome of the criminal proceedings. In the meantime, if an employee dies or attains the age of superannuation and if there is any insistence from the employee or from his or her legal heir, the sealed cover can be opened and depending upon the result, benefits, if any, can be extended. Even restraining passing of final orders will be dangerous to the Institution when charges are severe in nature, like the present one on hand. Corruption is like cancer. If it is not curtailed, we will have corrupt Society, as it will spread rapidly.

39. In the case on hand, because of the interim order passed by this Court in W.P.No.17674 of 2016 staying the departmental proceedings, the Petitioner is trying to escape from the clutches of law on technical grounds. Normally, Courts should be slow in granting stay of the departmental proceedings. Nowadays, instances are such that, some of the permanent employees in Government service, commit serious offences with regard to defalcation of funds, take a suspension order, keep quiet, then attain the age of superannuation and thereafter, take a stand on technical ground and go scot-free. It is a very bad practice in service law and Courts are also made as a scapegoat to enrich the corrupt. Even if time frame to complete the proceedings is given, it is not mandatory and becomes only directory and ultimately, it is dilatory. The case on hand is a classic example of protracting the proceedings by a hardcore miscreant.

40. I find much substance in the arguments of the learned Standing Counsel for the Respondent and that, the observation made in the Show Cause Notice cannot be construed that, the Respondent has pre-determined the issue with regard to the Petitioner's guilt, moreso, with regard to Charge Nos.1 and 3. Insofar as Charge No.2 is concerned, it has been clearly proven in the domestic enquiry and that itself is suffice to hold the Petitioner guilty and to impose a capital punishment.

41. In view of the foregoing, I find no merits in the Writ Petition and the same is liable to be dismissed. The observation with regard to the punishment imposed on the Petitioner as regards Charge No.2 is only for disposal of this Writ Petition and it is open to the Respondent/Port Trust to take a decision after a reply is submitted by the Petitioner.

42. At the time of pronouncement of orders, learned Standing Counsel for the Respondent/Port Trust represented that, the Petitioner is going to attain the age of superannuation on 30.06.2021 and that, time may be stipulated for submitting a Reply and passing of orders thereon.

43. Learned counsel for the Petitioner on record submitted that, the Petitioner will submit his Reply within ten days' from today.

44. Taking note of the said submissions, the Petitioner is given ten (10) days' time from today to submit a Reply to the Respondent, failing which, the Respondent is entitled to proceed against him based on the records available. It is made clear that, the Petitioner shall not seek time for submitting a Reply under any circumstances, even be it COVID-19, as he has already sought time on this pretext. However, if the Petitioner fails to submit a Reply, he cannot take a stand that, he was not afforded an opportunity to submit his explanation. The Respondent/Port Trust shall pass final orders based on the Petitioner's Reply, on or before 29.06.2021.

In fine, this Writ Petition stands dismissed with the above direction and observation. No costs. Consequently, connected W.M.P.Nos.20135 and 20388 and 24136 of 2020 are closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Chairman, Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

+1cc to Mr.S.Haja Mohideen Gisth, Advocate, S.R.No.27585
+2cc to Mr.M.Muthappan, Advocate, S.R.No.27598,27572

W.P.No.16148 of 2020

RSI (CO)
CB(14/06/2021)