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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
14.07.2021	14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25287 of 2017 and
W.M.P.Nos.26739 of 2017, 3563 of 2018 and 13864 of 2020

1.The Regional Manager,
State Bank of India,
(RBO III) (Disciplinary Authority)
State Bank of India
No.25, Swamy Nelliappa High Road,
Tirunelveli-627 001.

2.The Deputy General Manager
(Business & Operations)
Appellate Authority
State Bank of India
Administrative Office,
Maduram Complex,
No.2, Dr.Ambedkar Road,
Madurai-625 002.

... Petitioners

-vs-

1.The Presiding Officer
Central Government Industrial Tribunal-cum-Labour Court,
Shastri Bhawan,
Chennai-600 006.

2.Smt.Antony Mary
Plot No.94, Door No.10,
North Daring Nagar, V.M.Chatram,
Tirunelveli-627 011.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.18 of 2015 and quash its award dated 08.08.2016.

For Petitioner : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co.
For R1 : Tribunal
For R2 : Mr.Balan Haridas



O R D E R

The Writ Petition has been filed, challenging the Award of the 1st respondent dated 08.08.2016 made in I.D.No.18 of 2015, in and by which, the 2nd Respondent was directed to be reinstated within two months with 50% backwages and other attendant benefits.

2. For the sake of brevity, the parties are, in short, referred to as Bank and Employee respectively (for State Bank of India / Petitioners and Antony Mary/R2).

3. It was the case of the Bank that pursuant to the death of the husband of the Employee in harness, the Employee was appointed as Clerk on compassionate ground and in the year 2007, the Employee was working in the Palayamkottai Branch, in which CCTV cameras were installed to videograph the movement of staff members as well as customers. The Branch was also provided with a state of art counting machine, which can count currency notes without even removing the tag, besides having the currency chest of Reserve Bank of India in the Branch.

3.1. It was further case of the Bank that currencies remitted would be categorized in Sections (100 pieces) with a currency slip with the initial of the Clerk and Officer of the Branch, who make the section. As such, on 07.06.2007, the Postmaster of Palayamkottai Head Office, maintaining an Account with the Branch presented a Government Cheque for payment and out of the payment made, one Section of Rs.100/- note was found missing. The Bank conducted a thorough search of the missing bundle, which ended in vain and thereafter, on verification with CCTV Camera, it was found that the Messenger Thangavelu had counted 9 out of 10 Sections of Rs.100/- denomination and he left the place leaving one Section of Rs.100/- denomination in the counting machine itself. On seeing the left over bundle, the Employee removed the currency. The Officials of the Bank rushed to the residence of the Employee for an enquiry and the Employee denied the whole thing. Later on, the Employee voluntarily remitted Rs.10,000/- and the same was paid to the Complainant.

3.2. It was also the case of the Bank that a charge memo was issued to the Employee for misappropriation of Rs.10,000/- lying in the counting machine and she gave a reply to the charge memo denying the charges. In the enquiry, 12 documents were marked as Exhibits and the Head Messenger was examined and on the side of the Employee, 3 witnesses were examined. The Compact Disc showing the stealthy removal of the currency by the Employee was also marked as Prosecution Ex.1 and Cash Officers, Special Assistant and Deputy Cash Officer were cross-examined as D.Ws.1 to 3, who all deposed against the Employee. The Compact Disc



contained only a portion of the recordings captured on 07.06.2007 and the Employee insisted for production of the entire day's CCTV recordings without assigning reasons as to what for she wanted it.

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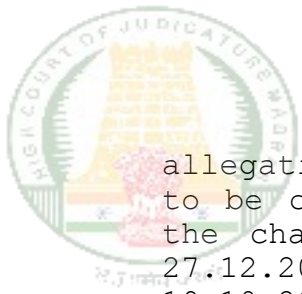
3.3. The Enquiry Officer, after considering the entire documents and evidence, submitted a report, stating that the Employee was guilty of charges and based on the said report, on 31.12.2011, the Employee was dismissed from service. The Employee preferred an appeal against her dismissal, stating entirely different versions inter alia to the extent that she had handed over the note packet to the Deputy Head Cashier. However, the her plea was rejected and her dismissal was confirmed by the Appellate Authority.

3.4. It was stated by the Bank that the Employee was also booked under Penal Provisions in C.C.No.40 of 2008 and the Criminal Court acquitted her on 03.04.2014, which has no bearing on the findings of the Enquiry Officer, as the Employee had not examined her witnesses before the Criminal Court.

3.5. It was further stated by the Bank that the Employee raised an Industrial Dispute on 21.07.2014 under Section 2(A)(2) of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947'), which was numbered as I.D.No.18 of 2015 by the 1st Respondent / Tribunal. The documents of the Bank were marked as Exs.M.1 to 13 and Exs.W1 to 12 were by the Employee and neither party let in any oral evidence. The Bank argued before the Tribunal based on the evidence of CCTV cameras to draw inference with regard to retention of the amount by the Employee on the short point of preponderance of probability. However, the Tribunal passed an Award in favour of the Employee, holding that the Bank failed to prove that the part of money that was alleged to be taken by the Employee from the counting machine was counted by P.W.1, as the machine was used by other staff members also. It further held that mere production of CD is not sufficient to prove the guilt of the Employee in the absence of proof of authenticity of the device and the Messenger of the Post Office, namely, Ambalavanan, who encashed the cheque from the Branch, was not examined. The plea of limitation put forth by the Bank was also negatived by the Tribunal, stating that the claim was made within the time stipulated under Section 2-A of the I.D.Act, 1947.

4. The Employee has filed a counter affidavit, inter alia stating as follows:

i) She was appointed in the Bank as an Assistant in the year 1995 and was placed under suspension by an order dated 09.06.2007, followed by a charge memo dated 01.07.2007 on the



allegation of misappropriation of Rs.10,000/- which was omitted to be carried out by one Thangavelu, Messenger. She had denied the charges levelled against her by way of explanation dated 27.12.2007 and the Enquiry Officer submitted a report dated 19.10.2011, hold the charges to be proved, based on which the 1st Petitioner passed the order dated 31.12.2011 dismissing her from service, without considering her request to postpone the personal hearing to some other date on account of her ill-health. In the appeal filed by the Employee, there was no favourable order, as the Appellate Authority confirmed the order of dismissal on 25.02.2021, by passing a cryptic order.

ii) It was stated that after her acquittal in the criminal case in C.C.No.40 of 2008 by the Chief Judicial Magistrate, Tirunelveli on 03.04.2014, she made a request to the Bank to reconsider the punishment imposed on her, which was declined on the reasoning that she was acquitted on benefit of doubt. The charges levelled against her were purely on the basis of a Compact Disc containing CCTV recordings taken on 07.06.2007, however, the complete events of that day were produced in the CD. Though the Compact Disc was certified by the Branch Manager, Palayamkottai on 14.05.2009, he was not the Chief Manager on the day of occurrence and therefore, he had no knowledge about its contents and therefore, she objected to the marking of C.D., as it has no evidential value.

iii) It was also stated that on the compliant of missing of Rs.10,000/- in the cash payment of Rs.5,00,000/-, that too, after few hours of leaving the Bank, instead of taking efforts to locate the note packet, she was accused of stealing it from the counting machine. She, being an Assistant, had to carry cash etc., and therefore, there was no co-relation between the incident recorded in the C.D. and the cash shortage and her request to play the entire recoding was not adhered to. As such, the charge framed against her was for making her a scapegoat, based on an untrue story and there was a contradiction in the deposition of witnesses.

iv) It was further stated that the charge was held to be proved on the basis of inadmissible evidence, viz., Ex.PEx.1 and the denial of production of entire CCTV recording was nothing, but violation of principles of natural justice, as the cash that was taken from the counting machine was not the cash payable to the Post Office. P.W.1 / Thangavel / Messenger could have missed the bundle of Rs.100/- denomination and the statement adduced by him before the Enquiry Officer, connecting the Employee to the incident, was not at all given either before the Chief Manager or the Police and therefore, it was a concocted one.

v) It was narrated in the counter that since there were several contradictions in the deposition of D.Ws.1 to 3 and the



Bank also refused to re-consider the imposition of punishment of dismissal after her acquittal in the criminal case, she raised an Industrial Dispute in I.D.No.18 of 2015 before the 1st Respondent, which, after considering all the materials on record, set aside the dismissal order, with a direction to the Bank to reinstate her into service. The Tribunal discussed the provisions of Section 65(B) of the Evidence Act and various dictum laid down by the Supreme Court and passed an elaborate Award, which does not warrant any interference by this Court.

5. Learned counsel for the Bank submitted that the Criminal Court acquitted the Employee on the ground of benefit of doubt and not on honourable acquittal. Though the Employee was dismissed from service on 31.12.2011 and the Industrial Dispute was raised after a period of three years and Section 2(A), which was amended on 15.09.2010, stipulates that the application should be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. Since the Employee had not approached the Tribunal within the specified time, the Dispute itself is barred by time. He further submitted that when an Institution lost confidence in its employee on account of the employee's lack of integrity, the punishment of dismissal from service cannot be said to be excessive in the interest of that Institution and the Public as a whole. He also submitted that the observation of the Tribunal with regard to the strict observance of the provisions of the Evidence Act will not stand in the eye of law, especially Labour jurisprudence, as the Apex Court, in a number of judgments categorically held that the strict rules of Evidence Act are not applicable to the Industrial Laws. It was argued that the Employee cannot, as a matter of right, demand for re-consideration of the punishment of dismissal from service, merely relying on her acquittal from the Criminal Court, as the prima facie requirement as far as departmental proceedings is concerned is the proof of preponderance of probability and the question of proving the charge beyond reasonable doubt, like that of criminal case does not arise in an enquiry.

5.1. Learned counsel for the Bank, in support of his submissions, relied upon the following judgments of the Supreme Court:

i) Union Bank of India vs. Vishwa Mohan, (1998) 4 SCC 310;

"11.... It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had



committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non furnishing of the inquiry report/findings to him."

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ii) Deputy General Manager and others vs. Ajai Kumar Srivatsa, (2021) 2 SCC 612;

"43. Before we conclude, we need to emphasize that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the Respondent dated 24th July, 1999 confirmed in departmental appeal by order dated 15th November, 1999."

iii) State of Haryana vs. Rattan Singh, 1977 (2) SCC 491;

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.

iv) Workmen of Balmadies Estate vs. Management Balmadies Estates and others, 2008 (4) SCC 517;

"7. It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic Tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the Domestic Tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a Civil Court could do when a lis is brought before it. The Indian Evidence Act, 1872 (in short the 'Evidence Act') is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt



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may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility."

v) Avinash Sadashiv Bhosale vs. Union of India and Others, (2012) 13 SCC 142;

"46. In our opinion, the failure of the prosecution in producing the necessary evidence before the trial court can not have any adverse impact on the evidentiary value of the material produced by the Bank before the Inquiry Officer in the departmental proceedings. Before the Inquiry Officer, the Bank had placed on the record all the relevant documents which clearly establish that the appellant had exceeded his discretionary powers in purchasing the cheques and issuing demand drafts to show undue favour to the three construction companies named in the charge sheet. In view of the above, the findings recorded by the Inquiry Officer can not be said to be based on no evidence."

6. Per contra, Mr. Balan Haridas, learned counsel for the Employee vehemently contended that the Employee was working as Cashier in the Bank and as such, carrying cash bundles, note packets, etc, was her routine job. As rightly observed by the Tribunal, the CCTV recordings were tuned according to the Bank's whims and fancies, as mere carrying of note packet by the Employee was copied in the Compact Disc and the same was produced as evidence, without producing the entire events of the day and no conclusion can be arrived at on the basis of the recordings in the CCTV, as it cannot be taken as a gospel truth. He further contended that the Employee had rendered unblemished service and except Compact Disc, there was no iota of evidence to link the employee with the missing of Rs.100/- denominations. Moreover, the Compact Disc was not certified in terms of Section 65B of The Indian Evidence Act, 1872, as the Officer, who marked the Compact Disc as evidence was not aware of its contents of the Compact Disc and the mandatory requirement of the provision reads as follows:

"65(B) (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;



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(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

6.1. He also contended that when the Criminal Court has acquitted the Employee, the Bank should have automatically reinstated her, but unfortunately, the Employee was dismissed from service for no fault of her. In fact, it was the Employee, who had voluntarily agreed for depriving her back wages.

6.2. Learned counsel for the Employee, on his side, referred to the following judgments of the Supreme Court to defend his case effectively:

i) Union Bank of India and others vs. Gyan Chand Chattar, (2009) 12 SCC 78;

"29. In view of the above, law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjunctures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct."

ii) G.M.Tank vs. State of Gujarat and others, (2006) 5 SCC 446;

"23. In R.P. Kapur v. Union of India (supra), a Constitution Bench of this Court observed:



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If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow, where the acquittal is other than honourable.

24. In the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and Anr. v. Ramchandra G. Modak and Ors. (supra), the same question arose before this Court. This Court, in paragraph 6, held as under:

6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honorably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. (emphasis supplied)"

iii) Union of India and others vs. Naman Singh Shekhawat, (2008) 4 SCC 1;

"35. It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods. His visit to the border for discharging his duties did not tantamount to misuse of the post or the authority. No evidence has been presented that he did not have the authority to go to the border side on official duties and even the department had not forbidden him from going to that place. It was held that as misappropriation of the property has not been proved, the question of any criminal conspiracy did not arise. No evidence had been adduced to bring home the charge of criminal conspiracy, which is an independent crime.

39. In M.V. Bijlani v. Union of India and Ors. MANU/SC/1857/2006 : (2006) IILLJ800SC this Court stated the law in the following terms:

"25. ...Although the charges in a departmental



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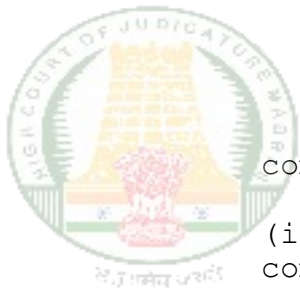
proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.""

iv) Anvar P.V. vs. P.K.Basheer and others, (2014) 10 SCC 473;

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed Under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned Under Sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions Under Section 65B(2). Following are the specified conditions Under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the



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computer in the ordinary course of the said activity;

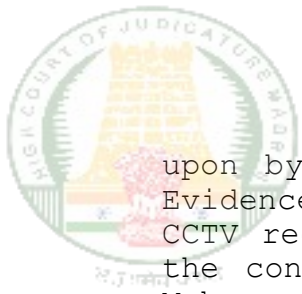
(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice."

v) Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1;

"32. Quite obviously, the requisite certificate in Sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate Under Section 65B(4). This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of Anvar P.V. (supra) which



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upon by the Employee, with regard to Section 65 of the Indian Evidence Act was one relating to a criminal case. A part of the CCTV recordings can be looked into for the purpose of coming to the conclusion, where charges have been duly proved. In *Shafhi Mohammad vs. The State of Himachal Pradesh*, reported in (2018) 2 SCC 801, the Supreme Court held that the requirement of producing a certificate under Section 65B(4) is procedural and not always mandatory. A party who is not in possession of the device from which the document is produced cannot be required to produce a certificate under Section 65B(4). The Court was of the view that the procedural requirement under Section 65B(4) is to be applied only when electronic evidence is produced by a person, who is in control of the said device, and in a position to produce such a certificate. However, if the person is not in possession of the device, Sections 63 and 65 cannot be excluded. The Apex Court in the case of *J.D.Jain vs. The Management of SBI*, reported in 1982 AIR 673 was pleased to hold that even hearsay evidence is admissible in the domestic enquiry and that being the case, the CCTV footage has got more value than the hearsay evidence and there is no need for the Bank to victimize the Employee. In this case, there was a voluntary statement made by the Employee herself, in addition to direct confession, that she had taken Rs.10,000/-, which was lying in the counting machine and handed over to the Cashier, but, however, she failed to prove the said aspect by way of cross examination of Perumal and no question was put to him. Perhaps, the Employee would have thought that in case of getting a negative answer, that would damage her case and therefore, she must have kept quiet. Of course, it is true that the Labour Court, Tribunal or National Tribunal, as the case may be, have vast powers, having exclusive rights to set aside the order of discharge or dismissal and direct reinstatement of the workman, such powers should not be used in the case of misappropriation, breach of trust and the like, as we have past experience of the Bank allowing two notorious persons to escape from this Country by evading payment of huge amount received as debts from Banks.

10. In this case, even going by the stand of the Employee, she had taken some amount from the counting machine incidentally and therefore, by applying the principle of preponderance of probability, it can be inferred that she had committed misconduct. Even if the contention of the Employee is accepted that the video footage cannot be relied upon, still the Employee did not make out a better case, as independent of the CCTV footage, one Perumal, Cashier was examined, to whom the said amount of Rs.10,000/- was said to be entrusted and nothing prevented her to pose question in the witness box, when he was there that the money was given to him and that the note packet, which has been mentioned with regard to the alleged date of incident, is a different one.

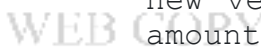


11. The foremost contention canvassed by the Employee was that the acquittal in the criminal case should be taken note of by the Authorities concerned for her reinstatement cannot be accepted, as the proceedings in the criminal case are independent one, whereas departmental enquiry is based on preponderance of probability. In this case, the Employee was acquitted as early as in 2014 and not during the enquiry proceedings. Even assuming for the sake of argument that the judgment in the criminal case was in favour of the Employee during the enquiry proceedings, it can be completely brushed aside by the Disciplinary Authority and the Enquiry Officer, as it has no bearing in the departmental proceedings, as both are independent of each other and the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, clearly laid down a dictum as under in this regard:

"19....Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order.

..... In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

12. In the similar line, I have also held in the case of V.Mohanraj vs. The Secretary and two others [W.P.No.13 of 2021] decided on 06.01.2021, that if Criminal Proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day to-day basis and bring the issue to a logical end at the earliest point of time and the employee will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics. It is appropriate to point out here that most of the Criminal cases end in acquittal on account of missing of chain / link of events and if the acquittal of an employee from the criminal case alone is taken for the purpose of deciding the issue in the departmental proceedings, it would amount to giving a green signal / license to that employee to commit acts of misappropriation, etc., falling under the provisions of P.C.Act,



13. The Employee, after being caught red handed, came with a new version of plea that she pledged her jewel and remitted the amount of Rs.10,000/-. Even assuming for the sake of argument that her plea was true, the fact that she had taken money has not been disputed in the cross examination, when Perumal, Cashier was in the box to establish the case against her. The conclusion arrived at by the Tribunal, by relying upon the judgment of the Apex Court in Commissioner of Income Tax, Calcutta vs. Hooghlyl Mills Company Ltd., reported in (2007) 1 SCC 571, holding that "if departmental proceedings and criminal case are based on identical set of facts, evidence in both the proceedings are common and employee is acquitted in the criminal case, an order of dismissal already passed may be set aside", does not hold good, in view of the authoritative pronouncement of the Apex Court in M/s.Karamchand Ganga Pershad and another vs. Union of India and Others, reported in AIR 1971 SC 1244, wherein the Apex Court held as under:-

14. In the present case on hand, after the Employee was found guilty of the charges, the criminal case had ended in acquittal in 2014 based on benefit of doubt. The Tribunal cannot expect the authorities to consider the plea of the employee for reinstatement on the main reasoning that the Employee got a favourable order from the criminal Court and if an employee, who was dismissed from service, is allowed to continue in service based on the Criminal Court verdict, then the Management will be at risk, as they have to pay through their nose. The employee, who was found to be indulged in misappropriation of public fund, must be shown the doors.

<https://hcservices.ecourts.gov.in/hcservices/>



Dispute was beyond the limitation period, is not accepted and hold that the argument made by the Bank to that extent stands rejected.

16. In fine, finding much force in the contention of the Bank, except the plea of Limitation, this Writ Petition is allowed and the Award of the 1st Respondent dated 08.08.2016 passed in I.D.No.18 of 2015 is hereby set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

The Presiding Officer
Central Government Industrial Tribunal-cum-Labour Court,
Shastri Bhawan,
Chennai-600 006.

+lcc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.47100

+lcc to Mr.Balan Haridas, Advocate, S.R.No.47077

W.P.No.25287 of 2017

AD(CO)
CB(06/10/2021)