

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10444 of 2009

Sk. Akbar Alli

.... Petitioner

Mr. Jagdish Biswal, Advocate

-Versus-

State of Odisha and others

.... Opposite Parties

Mr. P.K. Muduli, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK**

DATE OF JUDGMENT: 09.03.2022

R.K.PATTANAİK, J

1. The petitioner being aggrieved of the disciplinary action and penalty imposed on him knocked the portals of this Court by invoking writ jurisdiction under Article(s) 226 and 227 of the Constitution of India, 1950 and questioned the legality and judicial propriety of the impugned order dated 20th May, 2009 (Annexure-10) passed in O.A. No.932(C) of 2006 and further sought for a direction to the opposite parties and particularly OP No.2 to promote him to the post of Inspector of Police with retrospective effect from 14th August, 2000 carrying consequential service benefits.

2.The contention of the petitioner is that the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter

referred to as 'the OAT'), while dealing with the subject matter, miserably failed to take cognizance of the law enunciated by the Supreme Court vis-a-vis a disciplinary proceeding and its effect, sustainability of the findings on acquittal of the charge in a criminal prosecution, when both are based on same set of allegations and evidence and resultantly, without applying its judicial mind and appreciating things in proper perspective, dismissed O.A.No.932(C) of 2006 and consequently, passed the impugned order under Annexure-10 which, therefore, deserves to be quashed.

3. As is made to reveal from the record, while the petitioner was posted as the SI of Police, Naikendihi P.S., Bhadrak in the year 1999, an F.I.R. was lodged by a lady Constable attached to the P.S. making allegations against him of outraging her modesty during the night of 19th/20th July, 1999 which was registered as G.R. Case No.845 of 1999 and on receipt of a complaint on 24th July, 1999 by the Superintendent of Police, Bhadrak (OP No.4), a disciplinary proceeding was also initiated on 5th October, 1999 vide D.P. No.08 of 1999. Thereafter, the petitioner was called upon to show cause. On 16th February, 2000, the petitioner submitted an explanation to OP No.4 denying all the allegations and requested to defer the disciplinary proceeding, since for the same incident, a criminal case was subjudice. However, the disciplinary proceeding was continued, wherein, the lady Constable examined herself along with others and then, the enquiry was concluded without any participation of the petitioner. Thereafter, OP No.4, on

receiving the enquiry report, being in agreement with its finding, awarded him one black mark and treated the period of suspension from 25th July, 1999 to 14th September, 1999 as such. Against the above punishment, the petitioner preferred an appeal before the DIG of Police, Eastern Range, Balasore (OP No.3), who, however, was pleased to set it aside on the ground that due opportunity of hearing should be provided and consequently, remanded the matter to OP No.4 with a direction to supply the documents and evidence received ex-parte and then, to pass final orders which should be after disposal of the criminal case. However, OP No.4 instead of keeping the disciplinary proceeding in abeyance till disposal of the criminal case, as was suggested, proceeded with it and repeated the punishment on 9th November, 2004 and some days thereafter, the judgment in G.R. Case No.845 of 1999 arrived, wherein, he was held not guilty for the offence of outraging modesty punishable under Section 354 IPC and thus, was acquitted. However, the punishment in disciplinary proceeding imposed on the petitioner was upheld in appeal and revision and finally by the OAT.

4. Heard Mr. J. Biswal, learned counsel for the petitioner and learned P.K. Muduli, learned AGA appearing for the State.

5. It is contended for the petitioner that apart from not being provided reasonable opportunity, the punishment pursuant to the disciplinary proceeding should be set aside since because there has been an acquittal in G.R. Case No.845 of 1999 which

is essentially based on same set of facts and material. While contending so, the learned counsel largely relied upon a decision of the Supreme Court in ***G.M. Tank v. State of Gujarat and Others AIR 2006 SC 2129***. It is further contended that in G.R. Case No.845 of 1999, not only the lady Constable but nearly 13 more witnesses were examined from the side of prosecution besides 19 documents were exhibited but the court disbelieved it and directed acquittal of the petitioner for the alleged offence and with such a clear finding, which is based on contesting evidence, the punishment which has been imposed upon him in the disciplinary proceeding is required to be set at naught.

6. Per contra, the learned Additional Government Advocate, would contend that ample opportunity was provided to the petitioner and OP No.4 rightly continued and concluded the disciplinary proceeding in DP No.08 of 1999 as there is no legal bar or prohibition as such against it merely for the pendency of the criminal case and as far as the punishment is concerned, it is absolutely justified since the allegation levelled against him by the lady staff was found to be worthy of acceptance and it has, therefore, to be upheld notwithstanding the order of acquittal in G.R. Case No.845 of 1999 in view of the settled position of law that different standards and considerations apply for disciplinary proceedings in juxtaposition to the criminal prosecutions. To buttress said argument, the decisions of the Supreme Court in

State of Rajasthan and others v. Heem Singh 2020 SCC OnLine SC 886; Union of India and others v. Dalbir Singh 2020 SCC OnLine SC 768; and Maharashtra State Road Transport Corporation v. Dilip Uttam Jayabhay 2022 SCC OnLine SC 1 have been relied upon by the learned AGA.

7. In so far as the impugned order under Annexure-10 is concerned, the OAT held that both the proceedings can go simultaneously and the rigour of proof to establish the misconduct is different from that of a criminal prosecution and concluded that OP No.4 considered the enquiry report and provided reasonable opportunity to the petitioner by strictly adhering the rules of procedure and authorities in appeal and revision did consider the matter properly and therefore, it cannot be disturbed unless the same were shown as malafide or in violation of the principles of natural justice.

8. Indeed, the punishment which was originally imposed upon the petitioner by OP No.4 under Annexure-3 was interfered with under Annexure-5 by OP No.3, while entertaining an appeal, of course, with a direction that the disciplinary proceeding with its final orders should be passed after disposal of G.R. Case No.845 of 1999. As it appears, copies of the relevant documents and depositions of the witnesses recorded during the disciplinary proceeding were supplied to the petitioner through OP No.4 with a direction to submit a written defence by 10th October, 2003, which, as claimed, was duly received by him on 29th September, 2003 having been

communicated vide letter No.2612/RO dated 25th September, 2003. But, the petitioner failed to submit the written defence. It is further claimed that for reasons best known, the petitioner did not lay the defence in spite of several notices issued to him. Rather, it is made to suggest that the petitioner prayed time for submission of written defence later to the disposal of the criminal case which was not obliged by OP No.4, who instead proceeded with the disciplinary proceeding and finally imposed the punishment under Annexure-7 which was, thereafter, upheld in appeal and revision too vide Annexure-8 and 9 respectively and lastly by the OAT under Annexure-10.

9. In ***Heem Singh*** case (*supra*), the Supreme Court while considering the effect of an acquittal observed that precedents indicate that any such acquittal under special circumstances narrated therein does not conclude a disciplinary enquiry while referring to one of its earlier judgment in ***Southern Railway Officers' Association v. Union of India (2009) 9 SCC 24***, wherein, it was observed that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority as the position of law is well settled that an order of dismissal can still be passed even if the delinquent had been acquitted of the criminal charge. Another decision in ***Inspector General of Police v. S. Samuthiram (2013) 1 SCC 598*** was also referred to by the Supreme Court in ***Heem Singh*** case to hold that unless the accused has an honourable acquittal in the criminal case as opposed to an ordinary one shall not affect the decision

in the disciplinary proceeding leading to an automatic reinstatement. The meaning of the expression 'honourable acquittal' was under consideration before the Supreme Court in ***RBI v. Bhopal Singh Panchal (1994) 1 SCC 541*** and in that case, it was held that mere acquittal does not entitle an employee to reinstatement in service and the acquittal has to be honourable, which means, the accused is said to be fully acquitted of blame or exonerated and the aforesaid decision was also quoted with approval in **Heem Singh** case. In fact, the celebrated and judgment legal classicus on the subject is of the Supreme Court in ***R.P. Kapur v. Union of India AIR 1964 SC 787*** in which it was held that even in the case of acquittal, departmental proceeding may follow where the acquittal is other than honourable. In ***Dalbir Singh*** case (*supra*), the Supreme Court affirmed the view that a disciplinary action cannot be stifled unless the foundation is based on a false case or no evidence. Again in ***State of Assam v. Raghava Rajgopalchari 1972 SLR 44 (SC)***, the Supreme Court borrowed the view expressed in ***Robert Stuart Wauchope v. Emperor ILR (1934) 61 Cal. 168***, wherein, the expression 'honourably acquitted' was elaborated upon and defined.

10. Referring to the decisions discussed herein above, the Court is of the view that notwithstanding an order of acquittal which does not fully and completely exonerate the delinquent from a criminal charge, it would not entitle him to claim that the disciplinary proceeding should be dropped or for that matter, the punishment imposed as result to be set aside. The

terminologies, such as, 'ordinary acquittal' and 'honourable acquittal', as observed by the Supreme Court, have emerged from judicial pronouncements. In case, where the Court records that the accused has been falsely implicated and that there was absolutely no evidence to connect him to the crime, then it is treated as an 'honourable or clean acquittal'. However, if for various reasons, such as, lack of evidence, benefit of doubt, prosecution witnesses turned hostile or star witness resiled during trial, it would only result in an acquittal and not an acquittal honourably. There is no tenebrosity in the settled principles of law that if there is acquittal on certain grounds like benefit of doubt etc. from the charge of an offence involving moral turpitude, it would not automatically entitle exoneration from the disciplinary action.

11. Apart from above, the degree of proof in a criminal prosecution is much higher than in departmental proceeding. It is settled law that strict burden of proof which is necessary to establish guilt in a criminal court is not required in a disciplinary proceeding, where preponderance of probabilities is sufficient. At times, it is difficult to assimilate and put forth clean evidence in order to establish the prosecution case which often results in acquittal, whereas, in departmental proceedings, the standard of proof is different which is based on preponderance of probabilities unlike beyond all reasonable doubt. Therefore, even when a criminal case ends in acquittal which could be on account of various reasons, not being an honourable exit, unlikely to impact either the continuation of

the disciplinary proceeding or its outcome. If a disciplinary proceeding finally results in establishment of the charges levelled leading to imposition of punishment, it cannot be tinkered with on the ground that the delinquent had an acquittal in the criminal case unless such acquittal to be full and absolute exoneration. In so far as the present case is concerned, the complainant was examined and also other witnesses during the disciplinary proceeding and considering the entirety of the materials, O.P.No.4 imposed the penalty accepting the finding of the enquiry. In G.R. No.845 of 1995, the complainant was also examined besides good number of witnesses but the criminal court was disinclined to accept the evidence for reasons, such as, the petitioner could not have committed the overt acts in presence of other officials of the P.S. and for the fact that the lady staff did not disclose the alleged incident to her neighbors, etc. Rather, the court accepted the evidence of the petitioner which is in contrast to the claim of PW 10, another employee of the P.S. The brother and sister-in-law of the informant to whom she had disclosed the incident were not examined from the side of the prosecution, for which, the court held that it was quite unusual on her part not to share it with any one staying close by till was disclosed to the family members. The hand writing expert was also not examined and interestingly, the exhibit which was produced before the court was related to a different case. Under the above circumstances, the acquittal of the petitioner, according to this Court, is not an honourable acquittal and is rather exoneration by extending a benefit of doubt.

12. It is reiterated that an acquittal which is due to want of evidence is not an honourable acquittal. If after full consideration of evidence, the same is disbelieved and the prosecution said to have miserably failed to prove the charges; or it is held to be false case; or neither to be a false case nor acquitted on the ground of benefit of doubt, under such circumstances, an acquittal may have to be held as honourable or acquittal of all blame. Even after considering the entire evidence, when it is totally disbelieved, it may possibly be said an honourable acquittal. In the case at hand, though the court in G.R. No.845 of 1999 rejected the evidence of the lady staff on certain grounds, even then also, it cannot be characterized as an honourable acquittal so as to impact the final decision taken in the disciplinary proceeding. On a wholesome appreciation of the judgment of the court in G.R. No.845 of 1999, it would not be incorrect to sum up that the petitioner was let off with an order of acquittal on a benefit of doubt. As earlier discussed, the standard of proof which is required in a criminal case is of different level and degree from a disciplinary proceeding and in the present case, there was a positive finding in the enquiry which was accepted by OP No.2. So to say, OP No.4 being the disciplinary authority considering the evidence on record arrived at a subjective satisfaction vis-a-vis the misconduct of the petitioner. The disciplinary proceeding was conducted as per the rules and procedure and in fact, the petitioner was allowed to participate albeit he chose not to file written defence but O.P.No.4 having

regard to the entirety of the facts and circumstances proceeded to impose the punishment, which according to the Court, cannot be said to suffer from any serious legal infirmity.

13. The petitioner's defence heavily depended on the judgment of the Supreme Court in **G.M. Tank** case (*supra*) stating that when the criminal court, on the same set of facts and evidence, acquitted him, the punishment in disciplinary proceeding cannot be sustained. On a sincere reading of the aforesaid judgment, it would reveal that in that case, there was no iota of evidence found and proved against the delinquent, who had been dismissed from service via a disciplinary proceeding on the allegation of having accumulated excess income by way of gratification and as against such a background, the Supreme Court held that the acquittal being an honourable one on same or identical set of facts and evidence, the order of dismissal cannot be allowed to stand. The decision (*supra*) is not an authority to subscribe that even in case of ordinary acquittal, the disciplinary action not to lie or the punishment to die down naturally simply on the ground that both the proceedings are based on same set of facts and evidence. In the aforesaid decision, the order of dismissal was interfered with for the reason that considering identical facts and evidence, there was an honourable acquittal and as such, the distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not therefore be applicable. To succinctly put forth, the decision in **G.M. Tank** case rather reaffirms the view that

punishment in disciplinary proceedings cannot be allowed to stand, when there is a case of no evidence with a resultant clean acquittal.

14. Furthermore, *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another MANU/SC/0225/1999* and *Krishnakali Tea estate v. ABC Mazdoor Sangh and another MANU/SC/0743/2004* were of a no case proved; *Corporation of the City of Nagpur, Civil Lines, Nagpur and another v. V. Ramachandra G. Modak and others MANU/SC/0419/1981* related to clean acquittal and no expediency to continue with the departmental proceeding; *Ajit Kumar Nag v. GM(PJ), IOCL Ltd., Haldia and others MANU/SC/0584/2005* on standard of proof vis-à-vis domestic and court proceedings have also been gone through and examined by this Court which explicitly confirm the view already endorsed and do not vacillate with any differing opinions.

15. For the foregoing reasons, the writ petition sans merit and deserves a dismissal and accordingly, it is ordered.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

K.C.Bisoi/Secretary