IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : **01.09.2022**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

W.P.No.3356 of 2018

C.Robert Vincent ... Petitioner

Vs.

1. The Chairman cum Managing Director
   The Oriental Insurance Co., Ltd.,
   Head Office, Asaf Ali Road,
   New Delhi.

2. The General Manager
   The Oriental Insurance Co., Ltd.,
   Head Office, Asaf Ali Road,
   New Delhi.

3. The Deputy General Manager
   The Oriental Insurance Co., Ltd.,
   P.B.No.1877, UIL Building, IV Floor,
   No.4, Esplanade, Chennai. ... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent Dept : Personnel, dated 20.09.2013 and the consequential order passed by the second respondent Ref No:517-A, dated 09.02.2016 and the consequent order passed by the first respondent Ref No:471-M, dated 27.10.2017 and quash the same and direct the respondent to allow the petitioner to retire and pay all his salary, promotion, terminal benefits core and noncore benefits to the petitioner.

For Petitioner	: Mr.Ebenezer Paul for Mr.P.Ganesan
For Respondents	: Mr.C.K.Chandrasekar Standing Counsel

O R D E R

The facts of the case as averred in the affidavit filed in support of the writ petition are as follows :

(i) The petitioner was working as Administrative Officer at the respondent company at its Divisional Office, Tirunelveli. At that time, the Central Bureau of Investigation, i.e., CBI registered a case against the Cashier and Office Assistant of the company for misappropriation of Rs.9 lakhs of the company's fund. Both these staff were not subordinate to the petitioner.

(ii) However after investigation, when the CBI filed charge sheet before the CBI Court at Madurai, the petitioner also had been included as Accused No.3 along with the two staff who stood as A1 and A2.

(iii) Simultaneously there has been a Disciplinary Proceedings initiated against the petitioner by the respondent company, pursuant to which, charge memo was issued against the petitioner, as if that the petitioner along with other two staff conspired to misappropriate the company's fund and based on which, enquiry was conducted.

(iv) Based on the Enquiry Officer's Report and after having given opportunity of hearing to the petitioner who has given his defence and reply to the said charge memo, not satisfied with the same, the Disciplinary Authority, i.e., the third respondent passed an order on 20.09.2013 imposing the maximum punishment of removal of service on the petitioner.

(v) As against the said order of punishment imposed by the third respondent, Disciplinary Authority, the petitioner preferred Appeal to the second respondent who is the First Appellate Authority on 02.12.2013 and the said appeal was decided by the second respondent Appellate Authority by order, dated 09.02.2016, where the Appellate Authority also having confirmed the order of punishment awarded by the Disciplinary Authority, has rejected the Appeal filed by the petitioner.

(vi) Aggrieved over the said order passed by the second respondent Appellate Authority, the petitioner preferred further Appeal to the first respondent on 24.02.2017, which was also rejected by the first respondent through the order, dated 27.10.2017, confirming the order passed by the Disciplinary Authority as well as the First Appellate Authority.

(vii) Challenging these orders, the petitioner has filed the present writ petition with the prayer to quash these orders and give a suitable direction to the respondents, since the petitioner has already superannuated, to pay the retiral and pensionary benefits payable to the petitioner. That is how this writ petition has been filed.

2. Opposing the said averments made in the affidavit filed in support of this writ petition, the respondents filed counter affidavit, where they have stated that, there was a charge memo issued against the petitioner, dated 20.07.2005 along with the two others for having misappropriated the cash and cheques received as Insurance premium from various persons and agents etc., and converted the same for his own use without accounting the same in the company by making false entries and thereby an amount of Rs.15 lakhs was misappropriated by the petitioner in collusion with one Kaleelul Rahman and John Christoper who were the staffs namely Cashier and sub-staff referred to above of the company.

3. The Enquiry Officer vide his report, dated 12.07.2012 held that the charges were proved. The report was forwarded to the petitioner vide letter dated 05.09.2012 and he had submitted his reply, dated 18.10.2012 and 09.01.2013 to the Disciplinary Authority.

4. After analysing the Enquiry Officer's Report as well as the reply given by the petitioner, the Disciplinary Authority, the third respondent

decided to impose the major punishment of removal of service against the petitioner, accordingly such order was passed on 20.09.2013.

5. As against which, appeal was filed to the second respondent, who also having considered the said appeal, rejected the same by upholding the order passed by the Disciplinary Authority.

6. The petitioner filed further appeal to the first respondent which has also been considered and rejected by the first respondent through the order, dated 27.10.2017.

7. Stating these factual aspects, the respondents in the counter affidavit further stated that, though the criminal case filed against the petitioner had been ended in acquittal, that would not *ipso facto* makes the findings given by the Enquiry Officer in the disciplinary proceedings redundant and thereby the punishment already awarded by the Disciplinary Authority as confirmed by the the Appellate Authority as stated supra, based on the disciplinary proceedings, cannot be reviewed or revisited and

therefore on the ground that the criminal case ended in acquittal, the petitioner cannot seek for review or revisiting of the order of punishment awarded against the petitioner pursuant to the Disciplinary proceedings, they contended.

8. It was also stated in the counter that, though it is same set of charges, for which both criminal proceedings as well as disciplinary proceedings simultaneously went on, of course on different forum, insofar as the degree of proof is concerned, it differs from each other. They further elaborated in the counter that, insofar as the criminal case is concerned, that degree of proof is beyond reasonable doubt, whereas in the disciplinary proceedings taken by the Department concerned, it is only preponderance of probability.

9. This legal position since has already been held in catena of decisions in law Courts, based on which, what was the conclusion arrived at independently through the disciplinary proceedings by way of enquiry through which Enquiry Officer's Report has been filed, the ultimate decision

has been taken by the Disciplinary Authority to inflict punishment against the petitioner, therefore that cannot be erased or modified or revisited or reviewed as sought for by the petitioner, therefore the prayer sought for in the writ petition cannot be countenanced, they contended in the counter affidavit.

10. With these averments, the learned respective counsel appearing for the parties have made submissions.

11. The learned counsel appearing for the petitioner has strenuously contended that, insofar as the acquittal registered by the petitioner in the criminal case is concerned, it is not an acquittal based on any benefit of doubt, in fact, it is a clear acquittal, that is honourable acquittal, that has been registered by the petitioner in the criminal case. In this regard, the learned counsel has relied upon the Judgment of the Criminal Court in C.C.No.1 of 2005, dated 20.03.2015 made by the II Additional District Judge for CBI Cases, Madurai.

12. The learned counsel appearing for the petitioner has further canvassed the point that, insofar as the criminal case is concerned, the FIR was filed and investigation went on only against the two other staffs not against the petitioner and ultimately only in the final charge sheet, the name of the petitioner since has been added or included, the trial court found it that, the petitioner is no way connected with the alleged conspiracy, that entered into between other two staff and therefore, a clear acquittal has been registered insofar as the petitioner is concerned.

13. Therefore, the learned counsel would contend that, when that being the position, when same set of facts have been dealt with by the enquiry officer during the disciplinary proceedings, there could be no further material available to the respondents to substantiate the allegation made against the petitioner as if that, the petitioner also has involved in the conspiracy with other two staffs for appropriating the company's money and therefore the very import of the main charge goes, hence the report made to that effect by the Enquiry Officer as if that the charge framed against the petitioner has been proved and based on which, the punishment awarded

against the petitioner by the Disciplinary Authority as confirmed by the Appellate Authority is untenable, hence, the learned counsel for the petitioner seeks indulgence of this Court against the impugned orders.

14. Per contra, Mr.C.K.Chandrasekar, learned standing counsel appearing for the respondent company by relying upon the averments made in the counter affidavit as well as by taking into account the charge framed against the petitioner and also taking into account the Judgment made by the criminal court, has vehemently contended that, insofar as the charge memo issued against the petitioner is concerned, he along with two others clandestinely involved in misappropriation of company's money, where several cheques issued in the name of the petitioner or his family members have been mixed up with the business transactions, thereby the cheques issued by the petitioner or his family members name had been shown as a guarantee for an illegal or unlawful chit company run by the other co-accused through whom these cheques have been routed through to the company. Therefore these kind of clandestine activities made by the petitioner since had been substantiated by their evidence adduced on behalf

of the prosecution before the disciplinary proceedings as the other delinquent has accepted such dealings, the petitioner cannot escape from the clutches of the charge memo framed in the disciplinary proceedings.

15. Therefore there was every justification on the part of the respondents to accept the Enquiry Officer's Report and based on which, since the charge framed against the petitioner has been proved, which involved the money transactions and thereby there has been a misappropriation of the company's money which amount to loss of confidence on the petitioner himself by the company, therefore, his continuance in the company as an officer is more required, hence, such a decision has been taken by the Disciplinary Authority to inflict the maximum punishment of removal of service against the petitioner, he contended.

16. The learned counsel appearing for the respondents, on further instructions, would also submit that, in view of the said maximum punishment of removal of service has been inflicted against the petitioner

and that has been approved or confirmed by both the Appellate Authority as well as the second Appellate Authority concurrently, the petitioner is not entitled for any retiral or pensionary benefits including the gratuity etc., except his own contribution made towards the Provident Fund and therefore the plea raised by the petitioner to that effect to grant the pensionary and retirement benefits to the petitioner cannot be accepted and therefore the learned standing counsel appearing for the respondents seeks indulgence of this Court to dismiss this writ petition as devoid of merits.

17. I have considered the said rival submissions made by the learned counsel appearing for the parties.

18. Insofar as the charge framed against the petitioner, it was the charge that, the petitioner failed to safeguard the interest of the insurance company and acted in a way unbecoming of public servant inasmuch as he misappropriated the cash and cheques received as insurance premium from various persons, agents etc., and converted the same to his own use without accounting the same in the company.

19. The relevant portion of the charge made against the petitioner as Annexure-I reads thus :

> "That Shri.Robert Vincent while functioning as Development Officer and Asst. Admn. Officer in The Oriental Insurance Company Ltd., BO.Nagercoil during the period 1995 to 2003 committed gross misconduct such as he failed to maintain devotion to duty, failed to safeguard the interest of the insurance company and acted in a way unbecoming of Public Servant in as much as he misappropriated the cash and cheques received as Insurance premia from various persons, agents etc., and converted the same for his own use without accounting the same in the Oriental Insurance Co., Ltd., or by accounting the same by making false entries and thereby he misappropriated the cash to the tune of Rs.15 lacs in collusion with Shri.Kaleelul Rahuman, Cashier and Mr.John Christopher, Sub-Staff misappropriated the funds of the Company to the tune of Rs.15 lacs and thereby caused corresponding wrongful loss to the Oriental Insurance Company Ltd., BO Nagercoil.

> Thus, Shri.Robert Vincent committed gross misconduct such as he failed to maintained devotion do duty, lack of integrity, failed to safeguard the interest of the insurance company Ltd., and acted in a way unbecoming of public servant and contravened Rule No.3, Sub Rule No.1 and Rule No.4 Sub Rules 1,2,5,9, 14 & 16 of General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (Amended)."

20. Based on this charge, the enquiry was conducted and ultimately the Enquiry Officer seems to have given a report stating that, the charge framed against the petitioner has been proved.

21. In this regard, it is to be noted that, it is not the case of the respondent department that, the petitioner single handedly misappropriated any cash of the company. It is a definite case of the department that, the petitioner in collusion with or in connivance with or in conspiracy with other two staff, one Kaleelul Rahman, Cashier and one John Christoper, sub-staff, had involved in such misappropriation activities.

22. In this context, simultaneously the CBI enquiry was conducted who after conducting the investigation has filed the charge sheet before the concerned criminal court. The criminal court after having concluded the full fledged trial of the case, has ultimately passed the Judgment on 20.03.2015 in C.C.No.1 of 2005 on the file of the II Additional District Judge, CBI Cases, Madurai.

23. In the said Judgment, the case of the petitioner has been dealt with and ultimately concluded by the Criminal Court to the following effect :

> "69. According to the evidence of P.W.2, Radhakrishnan Thambi, he admitted that in his cross examination that, A3 has signed as witness in Ex.P.6 and signature which is marked as Ex.P.7. Only at the request of P.W.2 and higher official A3 has put the signature only as witness. He did not know the role of A3 in the crime. Further, in Ex.P.2 and Ex.P.5, A3 was also signed as witness. From the evidence of P.W.2, P.W.29, P.W.33 and P.W.34, it is revealed that A3 was no way connected in this case as alleged crime or instances mentioned in the prosecution.

> Prosecution did not produced any reliable evidence against A3 in this case. Moreover, A3 name was not at all found in the FIR itself. He has signed in the above said document as a witness only. From the above facts and circumstances, it is seen that A3 is an innocent, there is no sufficient evidence and material to prove the offences against A3 and he has not committed any offences as alleged by the prosecution.
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> 70. Considering the facts and circumstances of this case, I am of the opinion that the prosecution has failed to prove the case against A3 as alleged by the prosecution for the offence U/s 120B r/w 409, 409 IPC and Section 13(2) r/w 13(1)(c) of P.C.Act, 1988 and 13(2) r/w 13(1)(d) of P.C.Act, 1988. Hence, I acquit A3 U/s 248 (1) Cr.P.C."

24. The Criminal court on appreciation of the evidence has categorically held that, the prosecution did not produce any reliable evidence against A3 in the case, that is the petitioner. It further held that, the name of A3 was not at all found in the FIR itself, he has signed in the above

said document as witness only. From the above facts and circumstances, it is seen that A3 is an innocent, there is no sufficient evidence and materials to prove the offences against A3 and he has not committed any offences as alleged by the prosecution.

25. The punishable offences against the petitioner, according to the prosecution was under Section 120(B) r/w 409 IPC, 409 IPC and under Section 13(2) r/w 13(1)(c) of P.C.Act and 13(2) r/w 13(1)(d) of P.C.Act, 1988.

26. Therefore the misappropriation, criminal conspiracy as well as the Prevention of Corruption Act provisions have been pressed into service against the petitioner while making the charge sheet before the criminal court by the prosecution, that is CBI.

27. However in respect of all these allegations and charges made against the petitioner, the trial court, having appreciated the evidence has given a honourable acquittal to the petitioner which has been recorded by the learned Judge, that it has acquitted A3 under Section 248(1) of Cr.P.C.

28. It seems that, the said Judgment has not further been appealed, therefore, it has become final.

29. In this context, the plea raised by the petitioner is that, the decision taken by the respondents in inflicting the maximum punishment of removal of service against the petitioner, whether can be reviewed or revisited ?

30. In this context, it is the stand and contention of the respondents that, simultaneously both criminal proceedings and departmental proceedings went on, of course for the same set of facts as well as the charges. Even though criminal court has come to the conclusion that the charge framed against the petitioner by the prosecution has not been proved, it is the settled proposition of law, according to the respondents that, the degree of proof in respect of the criminal case as well as the departmental proceedings is different from each other.

31. Insofar as the said legal proposition as projected by the respondents through his counsel is concerned, it is to be accepted because, no doubt the degree of proof in respect of criminal case is entirely different from the degree of proof to be adopted in departmental proceedings.

32. It is beyond reasonable doubt in respect of the former and mere preponderance of probability in respect of the latter. Hence by applying the principle of proof beyond reasonable doubt, if the criminal court come to the conclusion that, the charge framed against the petitioner is not proved, that would not *ipso facto* give raise to the accused or delinquent in the departmental proceedings to raise the point that the conclusion arrived at in the departmental proceedings is erroneous or liable to be revisited or reviewed.

33. However if we look at the case in hand, though it has been charged against the petitioner that, he conspired with other two staffs and misappropriated the respondent company's money to the extent of initially Rs.9 lakhs, subsequently calculated as Rs.15 lakhs is concerned, that money

has not been appropriated by the petitioner as per the evidence of the co-delinquent or co-accused.

34. This aspect has been recorded as the evidence of the other delinquent, namely Kaleelul Rahman who has stated that, he only misappropriated the money and he would return back the money to the company.

35. Insofar as the petitioner is concerned, the charge framed against the petitioner was mainly focusing that, the petitioner who was functioning as a Developmental Officer or Assistant Administrative Officer at the company during the relevant period was in collusion with Kaleelul Rahman and John Christoper misused and misappropriated the funds of the company in a systematic and organised manner. After collecting the premium in cash from the public, he used to give his own or friends or relatives cheques for the above said premium amount of the public to Kaleelul Rahman for presentation in a Bank. Obviously they were bounced. After rotating the money for his own use for one or two weeks, he used to deposit the money

in the Bank, then the cheque would be presented in the Bank through Kaleelul Rahman with the active help of John Christoper.

36. The cheques of Robert Vincent, i.e., the petitioner are appearing in the Daily Cash Book maintained in the OIC, Nagercoil during the relevant period. The accused used to issue cheques of Smt.Ponslay Asir, the Sister-in-law of Robert Vincent, that is the petitioner and one James, the father-in-law of the petitioner for depositing the money in the account of OIC, Nagercoil, but there were no records in the OIC, Nagercoil for them.

37. If we look at this aspect that of the charge made against the petitioner, insofar as these charges are concerned, there has been no strong defence available on the part of the petitioner. Therefore, it can safely be concluded that, this kind of charges or this part of the charges on the side of the petitioner since have been considered to be proved it can be accepted as a proven charge.

38. But at the same time, insofar as the main charge of misappropriation made against the petitioner is concerned, it is not the case of the respondents that, how the petitioner misappropriated the money if it is a delayed payment or the payment after a week or two, whether that could be treated as misappropriation is the another question. But in this regard, it must be looked in to that, the co-delinquent Kaleelul Rahman has accepted that he has misappropriated the money and he would return back the money and subsequently whether the money has been returned back or not is altogether is a different issue.

39. Looking from the categorical findings given by the criminal court in the Judgment referred to above, it has clearly stated that, absolutely there has been no connection of the petitioner with other two two delinquents or accused in the criminal case and the petitioner was adjudged as an innocent person. That is how in respect of all the charges framed against the petitioner under various sections of IPC as well as the Prevention of Corruption Act is concerned, those charges since have not been proved and no acceptable evidence has been produced by the prosecution side to the

satisfaction of the criminal court, it has come to the conclusion that, the charge framed against the petitioner has not been proved and accordingly, he was entitled to get clear acquittal and therefore, the petitioner has been acquitted by the criminal court.

40. The said acquittal registered by petitioner before the the criminal court cannot be termed as an acquittal arising out of the benefit of doubt instead it can only be construed as a honourable acquittal.

41. When the delinquent has registered the honourable acquittal before the Court of law after full fledged trial and in respect of the same set of charges when disciplinary proceedings already been commenced and concluded, where based on the preponderance of probability as degree of proof, since the disciplinary authority has come to the conclusion that, the charges framed by the department against the petitioner has been proved and which ended in a major punishment of removal of service, this Court feel that, the said decision taken by the respondents department can be revisited or reviewed in the light of the criminal court Judgment.

42. In this context, it cannot be construed that, the petitioner has not at all involved in any action amounting to be an action unbecoming of a Government servant and therefore such a violation made on the part of the petitioner since has been proved that, he has belatedly given the cheque or he has issued the cheque in his name or his family members name and after bouncing the same by making the delayed payment in the Bank in the name of the customers of the company certainly some unlawful activities taken place, for which the petitioner also is answerable.

43. For such an action on the part of the petitioner, whether the major punishment of removal of service is to be inflicted against the petitioner is the next question.

44. In this context, even the law Courts have held in number of cases,that unless the punishment awarded by the Disciplinary Authority out of the full fledged enquiry conducted through the disciplinary proceedings shocks the conscience of the Court, normally court would not interfere with the quantum of punishment.

45. Here in the case in hand, in respect of same set of charges, when a clear honourable acquittal has been registered by the petitioner before the Court of law, where the full fledge trial has been conducted, even though *ipso facto* that would not be a basis to come to a conclusion in the departmental proceedings, this Court feel that, when the charge of misappropriation mainly has been made against the petitioner and this has been concluded by the criminal court that, he has not misappropriated any money and no evidence has been produced and he has been declared to be an innocent one, this Court feel that, the respondents can consider him for giving an alternative punishment to the petitioner for the proven charges namely, issuance of cheques in his name and his family members name and belatedly made the payment after collecting the same from the customers.

46. If such kind of modified or alternative punishment like compulsory retirement is inflicted against the petitioner, he would be entitled to get the retiral and pensionary benefits, as he has rendered long years of service to the respondents company. Therefore at the end of his long career, he cannot be shown his door with empty hands as that would

have a greater repercussion in the rest of the life of the petitioner at the advanced age.

47. Having taken note of all these factors and the totality of the situation, based on the discussion herein above made, this Court feel that, the major punishment of removal of service inflicted against the petitioner can be revisited by the respondents for awarding any alternative punishment including the punishment of compulsory retirement, thereby making the petitioner eligible to get retiral and pensionary benefits and for such limited purpose, this Court feel that, the matter can be remitted back to the respondents company.

48. In the result, the following orders are passed in this writ petition :

(i) That the impugned orders insofar as inflicting the maximum punishment of removal of service alone is set aside for the purpose of remitting the matter back to the respondents for reconsideration for awarding an alternative punishment which includes the compulsory retirement against the petitioner.

(ii) In this regard, the respondents are hereby directed to consider the aforestated facts and circumstances including the honourable acquittal registered by the petitioner and the findings given by the criminal court in this regard in favour of the petitioner and accordingly, pass an order giving a modified punishment to the petitioner including the one, that is compulsory retirement as a punishment commensurate with the proven charges against the petitioner.

(iii) As a sequel, the petitioner since would be entitled to get retiral and pensionary benefits and whatever such retiral or post retiral benefits, that shall be calculated and be paid to the petitioner in accordance with the rules which are in vogue.

(iv) The needful as indicated above shall be undertaken by the respondents within a period of Eight weeks from the date of receipt of a copy of this order.

49. With these direction, the writ petition is ordered accordingly. However, there shall be no order as to costs.

01.09.2022

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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R.SURESH KUMAR, J.

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