

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP Nos. 420 and 111 of 2022 and
CWP Nos. 19296, 19308, 19310, 19706 of 2021
Date of Decision: 10.03.2022

Union of India and othersPetitioner(s)

vs.

Prinder Pal Singh and anotherRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Praveen Chander Goyal, Advocate,
and Mr. Abhimanyu Singh Thakur, Advocate,
for the petitioner(s).

Mr. Gurminder Singh, Sr. Advocate,
with Mr. J.S. Gill, Advocate,
for caveator-respondent No.1 (in CWP No. 420 of 2022)
for respondents (in CWP No. 111 of 2022).

Mr. Rishav Sharma, Advocate,
for respondent No.1 (in CWP Nos. 19706 and 19296 of 2021).

(Proceedings are being conducted through video conferencing,
as per instructions).

G.S. SANDHAWALIA, J.

The present judgment shall dispose of 6 writ petitions i.e. CWP Nos. 420 and 111 of 2022 and CWP Nos. 19296, 19308, 19310, 19706 of 2021 as common questions of facts and law are involved in all the writ petitions. Reference is being made to ***CWP No. 420 of 2022, Union of India and others vs. Prinder Pal Singh and another.***

In the present writ petition, the challenge by the petitioners is to the order passed by the Central Administrative Tribunal (in short 'the Tribunal') dated 28.11.2020 (Annexure P-4) whereby, the original applications of the private respondents have been allowed and the orders of

termination of the private respondents and the rejection of the appeals have been set aside. Further directions had been issued to reinstate them in service, however, only with notional benefits and the benefit would start from the date they join back. The needful was required to be done within two months from the date of receipt of the certified copy of the order.

The reasoning which weighed with the Tribunal was that once the private respondents have been acquitted on merits in the criminal proceedings by this Court and the charges as such were identical, the benefit had to be given on the departmental side as well. Reliance was placed upon the Division Bench decision of the Tribunal at Delhi in the case of ***Constable Mangal Singh vs. Government of NCT of Delhi and others, 2020 2 (CAT) 1*** wherein, the applicability of the judgment of the Apex Court in ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another, JT 1999 (2) SC 456*** had been applied.

Liberty as such which had been sought to proceed ahead once again by conducting proper inquiry under the Central Civil Services (Classification Control & Appeal) Rules, 1965 (in short '1965 Rules') was rejected on the ground that the employees had been facing the litigation for 30 years and some of them had also died and no purpose would be served by opening the matter once again. Reliance was placed upon various judgments that once there was gross delay on the part of the Government to complete the disciplinary proceedings, the said proceedings were liable to be quashed.

Accordingly, it was held that once there was no evidence to prove charge in the criminal Court and on account of the acquittal, the employee was entitled for all the benefits. The findings which had been

recorded on the departmental side were based on circumstantial evidence without conducting any proper inquiry as envisaged under the 1965 Rules and were held not to be sustainable and, therefore, it was held that the same was a half hearted inquiry which was not in accordance with the procedure laid down under the 1965 Rules.

Counsel for the petitioner-the Union of India has submitted that it is a case of appointment by taking recourse to forged documents and fraud permeates to the root of the matter and an adequate opportunity had been given to the employees. The Staff Selection Commission has not been impleaded and, therefore, only on the ground of acquittal by this Court, there was *per se* no ground for setting aside the dismissal order by the Tribunal. It is, thus, again submitted that the department should be given opportunity to proceed ahead with the departmental proceedings and liberty was not granted by the Tribunal wrongly.

Senior counsel for the caveator-respondents has submitted that the procedure prescribed under the 1965 Rules was never followed and no proper departmental inquiry was done in spite of a charge sheet having been issued way back on 22/29.11.2000 (Annexure A-6). In the absence of inquiry report in favour of the employer, major penalty of dismissal or termination could not have been passed. It is submitted that the decision as such of holding an inquiry by the Chief Commissioner of Income Tax in a cursory form was in the form of preliminary inquiry and not as per the procedure prescribed. Neither the employees were given proper opportunity and associated in the manner which is prescribed under the 1965 Rules and, therefore, decision dated 10.11.2003 was not justified.

It is accordingly contended that the appellate order dated

17.07.2019 passed under Rule 27 (Annexure A-26) suffered from the same legal infirmity and rather failed to notice the fact that once the judgment of conviction dated 16.05.2011 (Annexure A-17) had been set aside in criminal appeal on 10.05.2016 (Annexure A-19) and the judgment of the Special Judge, CBI Court had been reversed, there was no other option before the Appellate Authority, who was the Chief Commissioner of Income Tax but to allow the appeal which had wrongly been dismissed. It is to be pointed out that even then also, the department had failed to initiate the proceedings in the proper perspective under the relevant Rules and now at this belated stage, could not claim that they be given liberty to look into the matter on the departmental side. It is submitted that selection had been done by the officers and the Trial Court had acquitted the concerned officials at the initial stage who had been duly reinstated and given the necessary benefits but the private respondents herein had been wrongly convicted, which was reversed by this Court. Therefore, in the absence of any departmental proceedings being finalized or proceeding in accordance with Rules, the reliance as such on a cursory fact finding inquiry could not mean that the petitioner-department could dispense with the services of the employees who had been in service for almost a decade before they were terminated. It is submitted that the whole exercise was carried out on account of the fact that there were seniority issues which had arisen leading to the extreme step of dismissal which has been taken.

After hearing counsel for the parties at considerable length, this Court is of the opinion that the findings which have been recorded by the Tribunal as such is on the basis of well settled principles and is not liable to be interfered with. The factual aspect has been gone into in detail by the

Tribunal, which is to be noticed but the same is being summarized as under.

A perusal of the paper book would go on to show that on the basis of a letter dated 28.03.1992 which was addressed to the Income Tax Officer, nomination of candidates recommended for appointment to the post of Inspector of the Income Tax had been made. The name of respondent No.1-Prinder Pal Singh figured at Sr. No.3 in the said recommendation. On the basis of the said nomination, the appointment letter was issued on 30/31.03.1993 (Annexure A-3) in the pay scale of Rs.1640-60-2600-EB-75-2900. The employee was to be on probation of 2 years and the probation period could be extended and the medical fitness certificate was to be produced apart from the certificate of good character. Clause 11 provides that he was to pass the departmental examination for Inspector as per the Rules of Department and on 20.12.1999, almost 8 years later, the said employee alongwith 10 others, passed the examination, which was held in the months of May, 1999 and June, 1999.

A doubt was cast for the first time in February, 1999 on account of a letter addressed by the Assistant Commissioner of Income Tax, Headquarters to the Staff Selection Commission dated 18.02.1999. The FIR had also been lodged on 26.02.1999 against the employees apart against unknown officials of the Staff Selection Commission with the Delhi Police Special Establishment Branch (CBI). A FIR was then registered with the North West Region of the Income Tax Department, Chandigarh Branch on 10.10.2000 [Annexure A-7 (colly)]. On 24.05.1999 (Annexure A-5), the Staff Selection Commission wrote to the Assistant Commissioner of Income Tax that 21 employees mentioned therein did not figure in the result as well as the nomination letters had not been issued by the said office. Regarding

another candidate who had been nominated in 1988, further scrutiny was required by the Commission.

Resultantly, a charge sheet dated 22/29.11.2000 (Annexure A-6) was issued to respondent No.1 under Rule 14 that he had failed to maintain absolute integrity as a government servant in terms of Rule 3(1)(1) of the Central Civil Services (Conduct) Rules, 1964 and committed misconduct on account of the forged nomination letter issued by the Commission. It was the charge that it was a criminal offence which would automatically amount to misconduct and, therefore, the appointment was *void ab initio* and the employee had failed to maintain absolute integrity at all times as a government servant. The list of documents alongwith the list of witnesses including the letters dated 18.02.1999 and 24.05.1999 were relied upon apart from the witnesses of the Commission.

Resultantly, order dated 22.08.2021 (Annexure A-8) was passed terminating the service of respondent No.1 with immediate effect.

The operative part reads thus:-

“Whereas Shri Parinder Pal Singh present working as Inspector in the Office of Joint Commissioner of Income Tax range-IV, Chandigarh had obtained appointment in this department on the basis of nomination letter purported to be issued by staff Selection Commission.

And whereas the Staff Selection Commission vide letter No. 8/RD(NR)/SSC dated 24.05.99 informed that the name of Shri Parinder Pal Singh did not figure in the result then declared by the Staff Selection Commission and they had not issued any nomination papers recommending his appointment in the Department.

Now, therefore, in view of the fact that the very basis on which appointment was given does not exist, the services of Shri Parinder Pal Singh Inspector are hereby terminated with immediate effect.”

The matter was taken to the Tribunal and the Tribunal, vide order dated 29.04.2003, came to the conclusion that if a fraud is to be established, the same has to be done by holding an inquiry and associating the employees with the service and that they had served for 10 years and the reasoning given is as under:-

“15. After taking into consideration the rival contentions of the parties and the material brought on record, we find that normally an employee who has snatched an employment by resorting to fraudulent means is not entitled to an opportunity of hearing. Where fraud is established, no contract of service comes into being and consequently a simple order of discharge would be sufficient. This is the law of the land with which there can be no quarrel. The point which has been made out in the present case is whether the applicants, have infact, perpetuated fraud by producing fake and bogus nomination letters on the basis of which they were appointed. The respondent department has not come to its own independent conclusion that the nomination letters produced by the applicants were forged and fictitious merely on the basis of the letter writing by the Commission. The department itself did not hold any enquiry into the matter and has based the termination order on the letter of the Commission. As to what enquires were made by the Commission and what was the mode of the enquiry remains hidden in the penumbral zone far away from judicial scrutiny. Admittedly, the applicants were not associated in any enquiry and were not called upon at any stage to explain their point of view by the Commission. The enquiry pertains to the

examination which was conducted in the years 1988 and 1990. The applicants in their capacity of confirmed employees have served the department for the last 9 of 10 years. Now their services are sought to be terminated by labelling them with a stigma that they have committed fraud in securing the employment in the years 1991 and 1992. In our view, it was an eminently suited cases where a full dressed enquiry was required in which the active participation of the applicants should have been sought.

However, directions were issued to the Chief Commissioner of Income Tax, North-West Region to hold the inquiry while issuing notice to the applicants and after taking into consideration their objections and the exercise was to be completed within 6 months. The relevant portion reads thus:-

“17. After taking into consideration the decisions aforesaid and with a view to balance the rights of the parties, we dispose of all the Original applications filed by the applicants with the following directions:-

“the Chief Commissioner of Income tax, N.W. Region, Chandigarh shall himself hold an enquiry with regard to the genuineness or otherwise of the nomination letters produced by the applicant purported to have been issued by the Commission on the basis of which the applicants appointed, after issuing notice to all the applicants, regarding them to submit, inter-alia, the following information with the period to be specified by him.

- i. Whether they had applied for recruitment/ selection/ appointment to the post pursuant to the advertisement/ notification made by the Staff Selection Commission, New Delhi*
- ii. Whether they had appeared for the examination conducted by Staff Selection Commission in the*

1988-1990 and if so, their application No./ Roll Number allotted to them or the admission card issued by them and date of examination and place of Centre where the examination was given by the concerned applicants;

iii. What was their residential address given in the application form.

iv. What was their actual date of birth and the date of birth given by them in the applications submitted to the Staff Selection Commission;

v. Copy of the nomination letter delivered to them by the Commission if any, retained by them; or

vi. any other material information which may be relevant and germane to the enquiry in hand.

After taking into consideration objections and the information submitted by the individual applicant and scrutinizing the record available with the Staff Selection Commission, which shall be made available by the Secretary of the Commission. Respondent no. 4, appropriate speaking orders shall be passed. Needless to say, that each one of the applicants shall also be given an opportunity of hearing before passing the orders. This exercise must be concluded within a period of six months from the date of certified copy of orders produced before the Chief Commissioner of Income tax, N.W. Region, Chandigarh.

18. If ultimately after the enquiry, it is established that the nomination letters produced by the applicants and received by the department directly on the basis of which the applicants were issued the appointment letters were not forged, fictitious or bogus, but were genuine documents. In that event the impugned orders of termination of the applicants shall stand set aside and the applicants shall be reinstated in service ignoring the termination orders with all consequential benefits. If the outcome of the enquiry is otherwise i.e. It is found that

the nomination papers produced by the applicants were forged and fictitious, the impugned termination orders shall hold good and O.As filed by the applicants shall stand dismissed.”

The Chief Commissioner, in pursuance of the same, came to the conclusion that the Commission had denied nominating the employees and that there was no roll number and the nomination letter was forged and a fictitious document and held that the termination on an earlier occasion on 22/23.08.2011 was justified. The procedure which had been prescribed under the Rules admittedly was never followed, though the necessary charge sheet, as noticed, had been issued.

Fresh original applications were preferred wherein, the said orders were upheld on 31.10.2006 (Annexure A-12) on the ground that sufficient compliance was made of the directions given earlier. One case i.e. **CWP No. 1300 of 2007, Bhupinder Singh vs. UOI** was withdrawn with liberty to approach the Tribunal vide order dated 27.03.2009 (Annexure A-13). Similar orders were passed in **CWP No. 14719 of 2009, Bhupinder Singh and others vs. UOI** on 23.03.2010 (Annexure A-14) and in **CWP No. 18923 of 2007, Prinder Pal Singh vs. UOI and others** filed by respondent No.1-Prinder Pal Singh on 23.03.2010 (Annexure A-15). The Tribunal chose to adjourn the matter *sine die* keeping in view the fact that the matter was pending before the CBI Special Court vide order dated 04.04.2011 (Annexure A-16).

It is a matter of record that initially, there was a conviction as such by the Special Court of the 28 employees under Sections 420, 471, 120B IPC but accused No.29 namely Suresh Chand Sharma and accused No.30 namely Satnam Singh who had been working as Inspector and Tax

Assistant in the Confidential Branch were acquitted. The original applications thereafter were withdrawn on 27.09.2011 (Annexure A-18) with liberty to approach the Court in case the appeals which had been filed before this Court were accepted. The relevant order reads thus:-

“At this stage the learned counsel for the applicant seeks and is allowed to withdraw this O.A., with liberty to approach this court in case some favorable orders are passed by the Hon'ble High Court of Punjab and Haryana, Chandigarh against his conviction in the Criminal case decided by the CBI Special Court, Patiala.

In view of this submission as above this O.A. stands disposed of as withdrawn with liberty that the applicant may approach this Court after exhausting all the statutory remedies available to him under the relevant rules after final outcome of his case pending in the High Court, if it is so required. O.A. Stands disposed of accordingly. No costs.”

The acquittal thereafter in **CRA-S-1508-SB-2011, Avtar Singh and others vs. CBI** decided on 10.05.2016 (Annexure A-19) was allowed and the judgment of conviction was set side while noting that the original records of selection were destroyed and what was the role of the concerned income tax officials and appellants had never been ascertained by the investigating agency. Photocopies of the computer generated documents had been taken into consideration for recording a conviction and, therefore, there was a failure on behalf of the prosecution as such to bring on record admissible evidence in support of the prosecution and the onus had been wrongly shifted upon the employees. It is not disputed that the opinion of the Attorney General was taken on 07.01.2017 and he did not recommend

filing of a Special Leave to Appeal against the said judgment of acquittal.

The relevant portion reads thus:-

“Notes above.

I have examined the notings. I have also gone through the High Court judgment Mr. Justice Fateh Deep Singh dated 10.5.2016.

I find that the case does not involve any substantial question of law which requires interpretation by the Supreme Court of India. I also find that the alleged offence is of 1991 Prosecution was launched only 1999. 26 years have elapsed since then. I see no purpose, in filing an SLP.

Sd/-

Mukul Rohtagi

Attorney General India

7.01.2017”

Thereafter, representations as such were furnished for reinstatement and eventually, the original applications were filed, which have been allowed vide the impugned order dated 28.11.2020 (Annexure P-4) whereby, reinstatement has been directed with notional benefits.

Thus, from the above sequence of events, one aspect is apparently clear that the petitioner-department as such had initiated the proceedings as per the 1965 Rules for employees who had served them for almost over 8 years and who were duly confirmed as such and had also, as noticed, passed the departmental examination. The procedure prescribed under the said Rules provides that where a major penalty is to be imposed under Rule 11 which entails dismissal from service, a procedure has been prescribed under Part VI for imposing major penalties under Rule 14. The same provides that no order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after inquiry is held, as

may be in the manner provided under this Rule and Rule 15. Rule 11(ix) provides for dismissal from service.

It is not disputed that in pursuance of the said procedure, the Disciplinary Authority had drawn up a cause that the substance of imputations of misconduct and statement of the imputations of misconduct by giving all the relevant facts including referring to the list of documents and the list of witnesses as prescribed under Rule 14(3)(ii) sub-clause (a) and (b). Instead of calling for the response of the government servant who was required to submit his written statement of defence as prescribed under Rule 14(4)(b), an order of termination had been passed on 28.08.2001 in a summary manner. No inquiry as such was held and neither any presenting officer was appointed to present the case in support of the articles of charge after taking the written statement of defence. As per the procedure prescribed under Rule 14(14), the articles of charge which were proposed to be proved were to be produced on behalf of the Disciplinary Authority and the witnesses were to be examined on behalf of the presenting officer and could be cross examined on behalf of the respondent-government servants. Thus, the dismissal order was passed which had been rightly set aside and keeping in view the nature of the controversy involved and directions had been given that the Chief Commissioner of Income Tax should hold an inquiry.

Without following the procedure which is prescribed as per Rules, as has been discussed above, only on the basis of the letter dated 10.11.1998 issued by the Staff Selection Commission that the nomination letter dated 20.01.1992 was forged by holding that the application form was not available with the employee, the onus was shifted as such upon the

respondent-employee that he did not furnish any copy of receipt as proof of payment of fee, copy of result showing as selected or any correspondence from the Staff Selection Commission. Reliance was placed upon the fact that the Staff Selection Commission had confirmed vide letter dated 03.10.2003 that 10 nomination letters had not been issued by the said office which contained the names of 21 candidates. It was mentioned that the record was lying with the CBI and the certified and true copies have been obtained from the CBI, Chandigarh. On the basis of the said record as such, it was seen that roll numbers had not been allotted and which had been put to the candidate. The factum was noted that the original application form was not available and the applicant had only shown photocopies of the alpha lists and results and that the date of birth and roll numbers of the persons appearing did not correspond to his date of birth and his roll number. Resultantly, while recording a finding that the applicant had not produced any evidence in support of his cause, the finding was recorded that his name did not find place in the list of selected candidates and it was, thus, held that the applicants had got forged nominations and, therefore, the earlier termination orders were upheld.

From the above sequence of events, it would be clear that the candidates as such never got an opportunity to cross examine the officials of the Staff Selection Commission as none was examined by the respondent-department. Only on the basis of information sought from the Commission, an adverse inference as such was drawn against the candidates. The onus was, thus, shifted upon them against the prescribed procedure that when departmental proceedings are being held, the onus to firstly prove in affirmative was upon the department as such to substantiate the charge in

question on the basis of which the charge sheet has been issued. As mentioned above, the charge sheet also talked about the list of witnesses which included the then Regional Directors of the Staff Selection Commission and the Inspector of the Chief Commissioner of Income Tax, North-West Region, Chandigarh.

The learned Single Judge of this Court, while dealing with the appeal pertaining to the conviction, noticed that the very axis on the basis of which the prosecution story revolved, was that the letters of appointment/nomination letters had originated from the confidential branch of the Income Tax Department. The concerned officials stood acquitted and, therefore, the conclusion arrived was that the petitioners could not be held responsible for the same set of allegations since the case was of conspiracy *inter se* the said officials. Therefore, a conclusion was arrived at that a partisan investigation had been conducted and nomination papers were never returned back with any objections, which was the requirement if there was no embossing of the special stamp of the Commission. The fact that alleged forgery and nomination letters were issued way back in the year 1991 and only at the juncture of fixation of seniority, a dispute had arisen weighed with the learned Single Judge. It was also noticed that no original records of selection had been taken into possession by the investigating agency and that the records stood destroyed. The factum of originals being issued by department by processing the appropriate applications after the applicants were found to qualify the minimum qualifications leading to their appearance in the examination were the relevant records which had not been produced in original. It was accordingly held that in the absence of originals, the findings recorded that the documents were forged could not be

sustained. The exhibiting of documents on account of lack of due proof as per the law laid down by the Apex Court and while referring to the relevant provisions of the Indian Evidence Act, 1872 as such had weighed with the learned Single Judge to come to a finding that there was no admissible evidence as such available with the prosecution vide which the conviction could have been recorded. The onus has, thus, wrongly been shifted and the Commissioner of Income Tax has wrongly come to the conclusion that the documents were forged.

As noticed above, the appeal was not preferred. There is no denying the fact that in order to record a conviction, the material which is on record is to be of such nature which elicits confidence with the Court and the charge has to be proved by the prosecution beyond a reasonable doubt. The benefit as such was given to the respondents on that account. However, then on the same set, the employees could be proceeded against on the departmental side and the standard of proof as such would be much lesser but would be one of preponderance of probabilities. However, the petitioners chose not to initiate those proceedings in accordance with law and take it to the logical end under the relevant Rules, as has been noticed above.

Even when after the criminal appeal was allowed on 10.05.2016, the statutory appeals as such were decided under Rule 27 on 17.07.2019 (Annexure A-26) by the Chief Commissioner of Income Tax, North-West region, Chandigarh. The last appeal was dismissed on the ground that no new evidence/document in support of the contention that the employee had applied for recruitment pursuant to the advertisement made by the Staff Selection Commission or any admission card had been

produced. Resultantly, without appreciating the fact that the conviction itself had been set aside, the appeal was dismissed without any decision being taken that the matter could be proved on the departmental side as such by holding a regular departmental inquiry.

Resultantly, it does not lie in the mouth of the petitioners at this stage to say that a fresh opportunity be given to lead evidence as such and to produce the record regarding the original applications submitted by the employees. In similar circumstances, once there was an acquittal as such of the same set of charges and even though on the departmental side, the matter had been proved by an *ex parte* proceedings on the basis of the dismissal order being passed, the Apex Court held that the order of dismissal would not be justified in the celebrated case of ***Capt. M. Paul Anthony's case (supra)***.

In the said case, it has been noticed that an FIR had been lodged on the same allegations on which the employee was charge sheeted and the employee had not put in appearance before the departmental proceedings on account of medical certificates and asked for deferring of the criminal proceedings. Eventually, he was acquitted by the criminal Court and the dismissal order was challenged in appeal on said basis, which was rejected. The writ petition had been allowed by the learned Single Judge of the High Court and reinstatement was ordered and liberty was given to initiate fresh proceedings. In appeal, the order was set aside by the Division Bench, which matter was then taken to the Apex Court.

Resultantly, finding recorded was that there was no bar to departmental proceedings and proceedings in criminal case being proceeded simultaneously and separately as a absolute rule. It was, however, held that

the prosecution case had been thrown out by the criminal Court and the employee had been acquitted by judicial pronouncement and, therefore, it would be unjust and unfair to allow the *ex parte* departmental proceedings to stand and accordingly, it was held that the Division Bench had wrongly reversed the order. Even the benefit given to conduct fresh disciplinary proceedings was declined, as had been directed by learned Single Judge keeping in view the fact that the acquittal pertained to the year 1987 whereas, the Apex Court was deciding it in the year 1999. All the necessary benefits were also granted of reinstatement and entire arrears of salary. The relevant portion reads thus:-

“34. 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 Enquiry 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 Enquiry Officer and the Enquiry 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.

35. 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.

36. 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/-."

In *G.M. Tank vs. State of Gujarat and another*, 2006 (5) SCC

446, the Apex Court held that the nature of charge in the departmental

proceedings and the criminal proceedings has to be seen, whether they are similar in nature. The nature of the evidence collected during inquiry and investigation and the witnesses, which have been examined in both the criminal case and departmental cases have to be examined, whether the charge as such was identical and whether the benefit of acquittal would thus flow. The relevant portion reads as under:-

“The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the

conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.”

In the present case, the Tribunal has not granted any arrears as such and only directed the reinstatement with notional benefits. The employees are also satisfied with that and have not filed any cross writ petitions though the order was pronounced way back on 28.11.2020. Financial interest of the petitioner-department has also been looked after and, therefore, in such circumstances, the prayer as such made now at this belated stage for continuing with the departmental proceedings to bring home the charge of misconduct is not liable to be accepted.

The employees have been litigating for their rights for the last more than two decades after the termination order and it would be highly unjust at this stage to allow the petitioners to follow such a procedure when it was always open to them to have done so at the outset. Rather they had also initiated the same but not followed it up in accordance with law. Thus, they cannot get the benefit of their own wrongs by keeping the employees out of service on account of their own inaction.

Resultantly, keeping in view the above discussion, the present

writ petitions are dismissed in limine, however, on valuable assistance given
by counsel for the caveator.

(G.S. SANDHAWALIA)
JUDGE

10.03.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No