

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO. 12802 OF 2022

Shri Tanaji Namdeo Vhanmane. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.Anant Wadgaonkar for the Petitioner.
Mr.B.V.Samant, Addl.GP for the Respondents.

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 17 October 2023.

P.C. :

The Petitioner is challenging the order passed by the Maharashtra Administrative Tribunal dated 7 January 2015 dismissing the Original Application No.362/2012 filed by the Petitioner.

2. The Petitioner was working in Veterinary Hospital at Vita, Sangli as an Attendant in Class-IV cadre. On 3 June 2009, the Petitioner assaulted his superior Dr.Ashok More, damaged the furniture and set a motorcycle on fire. An offence was registered against the Petitioner under sections 353, 332, 435 and 427 of the Indian Penal Code. A Regular Criminal Case No.101/2009 was registered against the Petitioner in the Court of Judicial Magistrate,

First Class, Vita. A chargesheet was served upon the Petitioner with the departmental enquiry on 2 December 2009. An Enquiry Officer was appointed. The Petitioner engaged services of a retired court employee to defend him. Nine witnesses were examined. The Enquiry Officer after conclusion of the enquiry submitted enquiry report on 30 July 2010 and the Petitioner was held to be guilty of three charges that were framed against him. The charges were of assaulting his superior on 3 June 2009, damaging the office property i.e. computer, printer, table glass, ceiling fan, and setting on fire the motorcycle belonging to another employee. The Disciplinary Authority by order dated 13 January 2011 accepted the report of the Enquiry Officer and removed the Petitioner from service with a rider that punishment would not disable the Petitioner from securing another government job. The Petitioner filed an administrative appeal which was dismissed. Thereafter the Petitioner filed Original Application No.782/2011. The Tribunal opined that while disposing of the appeal the Appellate Authority had committed breach of principles of natural justice as proper opportunity of hearing was not given to the Petitioner and set aside the appellate order and remanded the proceeding to the Appellate Authority. Upon remand, the Appellate Authority dismissed the appeal filed by the Petitioner by order dated 29 February 2012. Challenging the said order, the Petitioner filed present Original Application No.362/2012 which was dismissed by the impugned order dated 7 January 2015.

3. We have heard Mr.Vadgaonkar for the Petitioner and Mr.Samant, Additional Government Pleader for the Respondents.

4. The primary contention of the Petitioner is based on the order passed by the Judicial Magistrate acquitting the Petitioner from the offence he was charged. It is the contention of the Petitioner that since on the selfsame grounds both disciplinary and criminal cases have been founded and since criminal case has been resulted in acquittal, the outcome of the disciplinary enquiry ought to have been set aside. This argument was also advanced before the Tribunal and the Tribunal held that the scope of disciplinary enquiry and the criminal proceedings is different inasmuch as the burden of proof. The Tribunal also held that the Magistrate had not acquitted the Petitioner on merits but by giving benefit of doubt.

5. No position of law is placed before us by the Petitioner that moment the employee is acquitted from criminal trial, no matter on what ground, that the punishment given in a disciplinary proceeding arising from the same incident must necessarily be set aside. The Petitioner has relied upon the decision of the Supreme Court in the case of *M.Paul Anthony v. Bharat Gold Mines Ltd*¹, wherein, in paragraph-13, the Hon'ble Supreme Court has held thus:

“13. As we shall presently see, there is a consensus of judicial

¹ (1999) 3 SCC 679

opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

Then the conclusions have been summarized in paragraph-22 of the said decision which read thus:

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

6. Keeping the principle in mind, we have examined the decision of the learned Magistrate. Based on certain discrepancies in the evidence, the Petitioner has sought to contend that the conclusion of acquittal is proper. The learned Magistrate found discrepancy in the evidence of P.W.3- the Petitioner's superior as regards time and whether this witness, the superior could have been present at the place of incident.

7. The prosecution had placed on record injury certificate in respect of the officer who was assaulted. The doctor, who was examined, deposed that he found contusion on the Petitioner's superior. The injury, as per the prosecution, correspond to the time

of the incident. Therefore, the fact that superior suffered contusion has been established in the criminal trial as well. Based on the variance in time and upon difference in Muddemal that the learned Magistrate gave benefit of doubt to the Petitioner. Therefore, this is not a case based upon the acquittal, on which finding order of removal from service can be set aside.

8. The charges of assaulting superior, damaging the office property and setting on fire the motorcycle of another employee are serious charges and there is no error committed by the Disciplinary Authority in imposing the penalty of removal from service. No error is committed by the Tribunal in concluding based on the acquittal by the learned Magistrate in the Petitioner's case that the order of punishment confirmed in appeal cannot be said aside.

9. Writ petition is accordingly rejected.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)