

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 27495 OF 2011 (S-DIS)

BETWEEN:

- 1 . D. MUNISWAMY
S/O LATE DORESWAMY
AGED ABOUT 51 YEARS,
FORMERLY WORKING AS
HEAD CONSTABLE IN THE
RAILWAY PROTECTION FORCE,
BANGALORE
AND RESIDING AT NO.43,
16/2, KUMARASWAMY STREET,
PERAMBUR, CHENNAI-11

....PETITIONER

(BY SRI. M. SUBRAMANYA BHAT, ADVOCATE)

AND:

- 1 . THE DIRECTOR GENERAL OF RAILWAY
PROTECTION FORCE,
OFFICE OF THE RAILWAY
PROTECTION FORCE RAIL BHAVAN
NEW DELHI.
- 2 . THE CHEIF SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE
SOUTH WESTERN RAILWAY,
HUBLI.

3 . SENIOR DIVISIONAL SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE
BANGALORE.

....RESPONDENTS

(BY SRI. ABHINAY .Y.T, ADVOCATE AND
SRI. B.S. VENKATANARYANA, CGC)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE PENALTY ADVICE DATED 9.7.2009, ISSUED BY THE R2 MARKED AS ANN-G AND THE ORDER DATED 6/8.10.2009 MARKED AS ANN-H PASSED BY THE R3, VIDE ANN-G AND H AS THE SAME ARE VIOLATIVE OF ARTICLES 14, 16, 19 & 21 OF THE CONSTITUTION OF INDIA, DIRECT THE RESPONDENTS TO REINSTATE THE PETITIONER TO THE ORIGINAL POST WITH A FURTHER DIRECTION TO EXTEND ALL THE CONSEQUENTIAL BENEFITS TO THE PETITIONER INCLUDING FIXATION OF PAY, INCREMENTS, ARREARS OF PAY ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.09.2024, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. ORDER

The present writ petition is filed by a constable who was serving in the Railway Protection Force (RPF) at Chennai. The petitioner is challenging the penalty of dismissal from service, a decision that was also upheld by the appellate authority. The core of the petitioner's

grievance lies in the contention that the disciplinary proceedings against him were not conducted fairly, especially in light of his acquittal in a parallel criminal case.

2. The brief facts of the case are as under:

The petitioner was appointed as a Constable in the Railway Protection Force on January 26, 1981, in Chennai. On September 26, 1995, the petitioner, then functioning as a Head Constable, was apprehended and charged with gross misconduct and negligence. The specific allegation was that he unlawfully possessed 5 kg of brass chips, which were purportedly stolen from Shop No. 40 at the Shell Factory. This incident led to the registration of a criminal case against the petitioner and a co-accused, C. Munirathnam. Both individuals were prosecuted under Section 3 of the Railway Properties (Unlawful

Possession) Act. Simultaneously, the petitioner was served with a charge memo related to the incident.

3. After a full trial, the criminal court acquitted both the petitioner and the co-accused. The Court discredited the evidence provided by the prosecution, particularly the mahazar, and noted that there was no proper identification or certification to prove that the seized property belonged to the Railway. The Court further observed that the evidence presented was insufficient to establish the ownership of the brass chips by the Railway. The criminal Court also highlighted the mental anguish and loss suffered by the petitioner due to the prosecution. Subsequently, the respondents, considering the acquittal, dropped the initial charge memo dated February 6, 1996, by an order dated June 15, 2005. However, despite this, a fresh charge memo was issued on June 17, 2005, only two days after the

previous charges were dropped. The petitioner responded to the fresh memo, but the enquiry officer, after reviewing the evidence and witness testimonies, concluded that the charges were proven. This led to the disciplinary authority passing an order for the petitioner's removal from service, a decision that was later confirmed by the appellate authority.

4. The petitioner's counsel vehemently argued that the enquiry officer failed to properly consider the acquittal order passed by the criminal Court. It was contended that the charge memo issued in 1996 was not pursued to its logical conclusion and that there was an unreasonable delay in the departmental enquiry, which was only dropped after nine years. The fresh charge memo was issued almost immediately after the previous one was dropped, using the same set of witnesses and evidence, a move the petitioner argued was unjust. Citing the judgment in

Ramalal vs. State of Rajasthan¹, the petitioner's counsel contended that the charges in the criminal case and the departmental enquiry were not just similar but identical, with the same witnesses, evidence, and circumstances being considered. The petitioner further pointed out that no departmental action was taken against Munirathnam, the co-accused, and argued that the doctrine of equality, as established in ***Rajendra Yadav v. State of MP***², should apply to both individuals. The petitioner also cited the judgment in ***Roop Singh Negi v. Punjab National Bank & Others***³, arguing that the penalty of removal from service, based solely on a confessional statement, was erroneous and not supported by substantial evidence.

¹ (2024) 1 SCC 175

² (2013) 3 SCC 73

³ (2009) 2 SCC 570

5. In response, the respondents' counsel argued that this Court, under the guise of judicial review, cannot function as an appellate forum. Relying on the judgment in ***State of Karnataka and another .vs. Umesh***⁴, it was contended that the disciplinary enquiry clearly established the petitioner's misconduct based on credible evidence. The respondents further argued that the principles governing disciplinary enquiries are distinct from those applicable in criminal trials, as emphasized in the judgment of ***Deputy Inspector General of Police .vs. S. Samuthiram***⁵. According to the respondents, the enquiry officer's findings were based on a proper evaluation of the evidence and should not be disturbed by this court.

6. Upon careful examination of the criminal Court's judgment, it is evident that the Court categorically found the identity of the seized brass

⁴ (2022) 6 SCC 563

⁵ (2013) 1 SCC 598

chips to be uncertain and insufficient to establish that the property belonged to the Railway. The prosecution's failure to provide proper documentary evidence was a significant factor in the acquittal of the petitioner. The same set of documents and evidence that were discredited in the criminal trial were, however, relied upon in the departmental enquiry. This Court notes that the enquiry officer did not examine the investigating officer, Harilal, whose testimony could have been crucial. Instead, the officer relied on hearsay evidence, which lacks credibility, and a confessional statement that was already rejected by the criminal Court. The reliance on such weak evidence to justify the petitioner's dismissal from service is unjustifiable.

7. In the present case, the acquittal by the criminal court has a direct and significant impact on the disciplinary proceedings initiated by the

department against the petitioner. While it is acknowledged that there is no absolute bar to conducting departmental proceedings simultaneously with criminal proceedings, it is equally clear that when both are based on an identical set of facts, the outcome of one can heavily influence the other. The criminal court's judgment, which acquitted the petitioner, categorically discredited the prosecution's evidence, particularly the mahazar report, and found that there was no credible proof that the seized property was indeed railway property. This finding casts serious doubt on the integrity and reliability of the evidence relied upon in the disciplinary proceedings.

8. The Enquiry Officer in this case erred by primarily relying on the purported confession of the petitioner without any supporting evidence to substantiate the charges. Courts have consistently

held that a confession alone, especially when not corroborated by independent evidence, cannot form the basis for a finding of guilt. For a disciplinary action to be upheld, the department is required to bring forth credible evidence that meets the standard of proof—namely, the preponderance of probability. However, in this case, the evidence presented, including the oral testimonies and documents collected by the Enquiry Officer, fails to meet this standard. The absence of independent corroboration and reliance on unsubstantiated facts weaken the department's case and render the proceedings unfair and legally unsustainable.

9. Moreover, as laid down in the landmark case of ***Moni Shankar v. Union of India***⁶, courts exercising judicial review have the authority to assess whether the findings of misconduct are supported by

⁶(2008) 3 SCC 484,

substantial evidence while excluding irrelevant factors. In the current scenario, the Enquiry Officer's findings are based on inferences drawn from facts that lack credibility and probative value. The criminal court's determination that the evidence was inadequate to prove the railway property's ownership, due to the lack of proper certification and discrediting of key witnesses, further undermines the foundation of the disciplinary action. This judgment illustrates that the same set of facts and evidence presented before the Enquiry Officer is not only insufficient but also fails to satisfy the legal principles governing the burden of proof.

10. Ultimately, the purported evidence used by the department to establish misconduct does not meet the requisite threshold of preponderance of probability. When the same evidence was already scrutinized and rejected by a competent criminal

court, it is unreasonable for the disciplinary authority to arrive at a different conclusion based on the same material. Consequently, it is evident that the findings of the Enquiry Officer are flawed and cannot sustain the charges against the petitioner. The disciplinary proceedings, therefore, lack the foundation of credible evidence necessary to support any adverse finding, making it imperative for the court to intervene and set aside the departmental action.

11. The order of disciplinary authority as also appellate authority are not supported by any reasons. While the enquiry officer has relied upon the confession made by the petitioner, and no reasons are assigned as to why the order of acquittal passed by criminal court on the basis of selfsame evidence is ignored by enquiry officer. The apex court in the case of ***Roop Singh Negi (supra)*** was of the view that the provisions of evidence act maybe not be applicable

in a departmental proceedings but the principles of natural justice are.

12. The enquiry officer simply relies on the statements of 6 witnesses submitted during the enquiry and referring these statements the enquiry officer has come to conclusions that the allegations stand proved. The Enquiry officer has also come to conclusion that 5 kg of brass seized from petitioner is in fact railway property. These findings recorded by Enquiry officer are not based on evidence which is legally admissible.

13. The Supreme Court of India in ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.***⁷ laid down that when a criminal case and a departmental proceeding are based on identical facts and evidence, and the accused is acquitted in the criminal case, the departmental proceedings should

⁷ (1999) 3 SCC 679

ordinarily not continue. The Court emphasized that if the acquittal in the criminal case is based on a finding that the evidence was not sufficient to substantiate the charge, and such acquittal is not merely on technical grounds, it should have a direct impact on the disciplinary proceedings. In the present case, the criminal court has categorically discredited the prosecution's evidence, including the mahzar report, holding that the prosecution failed to establish that the seized property was indeed railway property due to the lack of proper certification. This finding demonstrates that the evidence relied upon by the departmental enquiry lacks credibility.

14. Further, in ***Moni Shankar v. Union of India (supra)***, the Supreme Court reiterated that while exercising powers of judicial review, courts are entitled to assess whether relevant pieces of evidence have been considered, and whether any inferences

drawn are based on a proper appreciation of evidence. In the present case, the Enquiry Officer's reliance on the petitioner's alleged confession, without any corroborative material evidence to substantiate the charge, violates this principle. The Court in *Moni Shankar* underscored that mere confessions, especially those retracted or not corroborated by other independent evidence, cannot alone justify a finding of guilt in disciplinary proceedings. This is particularly true where the criminal court has acquitted the accused based on the failure of the prosecution to prove its case beyond a reasonable doubt.

15. Additionally, in ***G.M. Tank v. State of Gujarat and Anr.***⁸ the Supreme Court held that where the departmental proceedings and the criminal case are based on the same set of facts, and where the employee is acquitted in a criminal trial on the

⁸ (2006) 5 SCC 446,

merits of the case, the continuation of disciplinary proceedings would be unjust. The Court in this case observed that an acquittal by a criminal court which is based on the consideration of the entire evidence available on record must be given due weight, especially when the charges in both proceedings are identical. Here, the criminal court found that there was no evidence proving the railway property theft, and this acquittal was not on mere technicalities but based on substantive grounds that the prosecution failed to prove its case.

16. Thus, considering the principles laid down in the above judgments, it is evident that when the criminal court has acquitted the petitioner on substantive grounds, and where the departmental proceedings are based on the same set of facts and evidence, the findings of the criminal court should have a direct and substantial impact on the

disciplinary proceedings. The enquiry officer's findings, unsupported by credible evidence and reliant on a discredited confession, fail to meet the requisite standard of proof in disciplinary proceedings, which is the preponderance of probability. Therefore, under these circumstances, the disciplinary proceedings cannot be justified or sustained merely on evidence that has already been rejected by a competent criminal court.

17. These Supreme Court judgments underline the importance of a holistic evaluation of evidence and the principle that disciplinary proceedings should not continue if the foundation of the allegations is identical to a case where the criminal court has acquitted the accused on merits.

18. Charge memo issued on Feb 6, 1996 was dropped in 2015. Four years after acquittal, a fresh

charge memo is issued only against petitioner, while co-accused is let off.

19. The Supreme Court of India, in several judgments, has laid down the principle that when two employees face similar charges based on identical or substantially similar facts, and one is acquitted or discharged, the other employee is also entitled to similar treatment in the interests of fairness, parity, and equality under the law.

20. In ***Man Singh v. State of Haryana***⁹, the Supreme Court held that if co-accused employees are similarly situated and one is exonerated or acquitted, the other is also entitled to the same benefit. The Court emphasized the importance of maintaining parity and fairness in disciplinary proceedings, particularly when the charges are the same, and the evidence or the basis for the charges is identical. The

⁹ 12 SCC 331,

principle of equality before the law, enshrined in Article 14 of the Constitution of India, mandates that similarly situated persons should not be discriminated against.

21. Similarly, in ***Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh***¹⁰, the Supreme Court reiterated that when charges against employees are identical, and one employee is acquitted or let off, the other employees should also receive similar treatment unless there is a clear and distinguishable reason for different treatment. If a fresh charge memo is issued against only one employee, while the co-accused, facing similar allegations, is let off, it amounts to a violation of the principles of natural justice and fairness.

22. Applying these principles to the present case, the issuance of a fresh charge memo in 2015

¹⁰ (2004) 8 SCC 200

against the petitioner alone, after dropping the initial charge memo in 1996 and after the petitioner was acquitted by the criminal court in 2011, is unjust and arbitrary, especially when the co-accused C.Munirathnam has been let off without facing any further disciplinary action.

23. Another critical point that warrants interference by this Court is the respondents' failure to take any action against Munirathnam, the co-accused, who was also found in possession of the brass chips on the same day. If Munirathnam was granted the benefit of acquittal in the criminal case without facing any departmental enquiry, the principle of equality should equally apply to the petitioner. This inconsistency further undermines the legitimacy of the disciplinary proceedings against the petitioner.

24. The report of Enquiry officer is clearly based on merely *ipse dixit* as also surmises and conjectures. The inference is drawn by enquiry officer apparently are not supported by any evidence and the said material is dealt by the criminal court and acquittal order is passed by categorically recording a finding that theft of railway property is not substantiated. Property seized and mahazar conducted therein does not substantiated that property is railway property and there is no proper certification by concerned authority. Even in the departmental enquiry there is no direct evidence to substantiate that, what was sized from petitioner is in fact railway property and in absence of proper certification and merely based on suspicion the enquiry officer has submitted a report that charges stand proved.

25. In the light of the above analysis, this Court finds that the order of dismissal from service is not sustainable. The disciplinary enquiry was marred by a reliance on irrelevant facts, weak evidence, and improper inferences. The principles of natural justice were not adhered to, and the enquiry officer's report is based on conjecture rather than solid evidence. The petitioner's acquittal in the criminal case should have been given due consideration in the departmental enquiry. Therefore, the dismissal order is liable to be quashed, and the petitioner is entitled to be reinstated with all consequential benefits.

26. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

- (i) The writ petition is allowed.

(ii) The impugned order of dismissal dated 9.7.2009 passed by respondent No.2 and confirmed by respondent No.3 vide order dated 6/8.10.2009 as per Annexures-G and H are hereby quashed.

(iii) The respondents are hereby directed to settle all retiral benefits by extending continuity of service till attainment of the age of superannuation.

No order as to costs.

SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE

*alb/-