



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5794/2024

<u>PETITIONER :</u>	Sudhanshu s/o Ram Kumar Srivastava Aged about 53 years, Occ. Chief Manager (Mining) Western Coalfields Limited r/o G-7, Rachna Mathura Apartment Mankapur, Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS :</u>	1. Western Coalfields Limited (A Maha Ratna Company, Government of India Undertaking, A Subsidiary of Coal India Limited), Coal Estate, Civil Lines, Nagpur – 440001 through Chairman-cum-Managing Director.
	2. Chairman-cum-Managing Director Western Coalfield Limited Coal Estate Civil Lines, Nagpur 440001.
	3. Mr. Kul Bhushan Khanna Inquiring Authority General Manager (E & M) Retired Vigilance Department WCL head Quarters Coal Estate, Civil Lines, Nagpur.
	Mr. Akshay Sudame, Advocate for the petitioner
	Mr. Ajay Ghare, Advocate for the respondents

<u>CORAM :</u>	AVINASH G. GHAROTE
	AND
	ABHAY J. MANTRI, JJ.

Date of reserving the Judgment : 21/01/2025

Date of pronouncing the Judgment : 07/02/2025

J U D G M E N T : (PER : AVINASH G. GHAROTE, J.)

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1. Heard Mr. Akshay Sudame, learned Counsel for the petitioner and Mr. Ajay Ghare, learned Counsel for the respondents. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

2. The respondent no.1, had floated an e-tender, for 10
removal of all types of material from the Makardhokda-III Open Cast
Mine, which was allotted to M/s Sainik Mining and Allied Services
Limited. For reasons which are not herein germane, the tender
allotted to M/s Sainik Mining and Allied Services Limited was
terminated and the company was blacklisted. On the basis of a 15
complaint lodged by one Shri Swapnil Panchbhai with the Anti
Corruption Bureau under Section 7 of the Prevention of Corruption
Act, 1988 ("PC Act" for short hereinafter) against one Amit Sinha and
the petitioner, the CBI-ACB laid a trap and caught Amit Sinha red
handed. As the petitioner was also named in the FIR, the petitioner 20
was chargesheeted in Disciplinary proceedings under Rule 30 of the

Coal India Executives' Conduct, Discipline and Appeal Rules, 1978 by way of a Memorandum of charge which was replied to and an Enquiry Committee was constituted.

3. Meanwhile in Special (CBI) Case No.577/2022, the Special Judge (CBI), Nagpur, framed charges against the petitioner 5 and the said Amit Sinha under Section 120-B of IPC and Section 7 of the PC Act.

4. As many as 20 witnesses were examined by the prosecution in support of its claim. The learned Special Judge, by its judgment dated 30/03/2024, acquitted the petitioner and the said 10 Amit Sinha of all the offences which were alleged against them (pg.239).

5. After the acquittal, the petitioner by his communication dated 20/04/2024 requested the respondents to drop the departmental proceedings, in view of the judgment of the Special 15 Court, which came to be rejected on 04/09/2024 (253), as a result of which, the present petition has been filed.

6. Mr. Akshay Sudame, learned Counsel for the petitioner submits that once the Special Court (CBI) had by its judgment dated 30/03/2024 acquitted the petitioner, there was no warrant for the respondents to continue with the departmental proceedings on the very same set of facts and identical allegations and the rejection of the request of the petitioner to drop the departmental proceedings was unwarranted. In support of this contention he places reliance upon *Ram Lal Vs. State of Rajasthan and others (2024) 1 SCC 175*. He, therefore, submits that when the facts, charges and witnesses are not only same but identical, the departmental proceedings could not be permitted to be continued.

7. Mr. Ghare, learned Counsel for the respondents, vehemently opposes the submission and states that the scope and ambit of a departmental enquiry and that of criminal prosecution, are two different things and even if a delinquent employee is acquitted for the offenses under the IPC or for that matter under the PC Act, that by itself would not entitle the said employee, to escape from the departmental proceedings, which would examine the conduct of the delinquent employee vis-a-vis the conduct rules and in case the conduct of the employee is found amiss and contrary thereto, would

be entitled to impose any punishment, deemed proper, even if both were based upon the same set of facts. He, therefore, justified the rejection of the representation of the petitioner and submits that the enquiry ought to be permitted to go on.

8. In ***Ram Lal*** (supra) the Hon'ble Apex Court, while considering a similar position the following principles have been summarized :

“10. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the disciplinary authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. (See SBI v. A.G.D. Reddy [SBI v. A.G.D. Reddy, (2023) 14 SCC 391 : 2023 SCC OnLine SC 1064 : 2023 INSC 766] .) As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the disciplinary authority have ignored material evidence and if it so finds, the courts are not powerless to interfere. (See United Bank of India v. Biswanath Bhattacharjee [United Bank of India v. Biswanath Bhattacharjee, (2022) 13 SCC 329 : (2023) 2 SCC (L&S) 705 : 2022 INSC 117] .)

11. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See State of T.N. v. S. Samuthiram [State of T.N. v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] .)

12. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. (See G.M. Tank v. State of Gujarat [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121], State Bank of Hyderabad v. P. Kata Rao [State Bank of Hyderabad v. P. Kata Rao, (2008) 15 SCC 657 : (2009) 2 SCC (L&S) 489] and S. Samuthiram [State of T.N. v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] .)

28. Expressions like “benefit of doubt” and “honourably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

29. *We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” — in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” (see Vijayee Singh v. State of U.P. [Vijayee Singh v. State of U.P., (1990) 3 SCC 190 : 1990 SCC (Cri) 378]).*

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30. *We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121].”*

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9. The position will thus have to be examined in light of the above principles.

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10. The factual position in the matter as recorded in paras 2 to 8 of the judgment dated 30/03/2024 of the learned Special Judge (CBI), Nagpur is as under :

“2. The prosecution case shorn of superfluities is narrated as under:

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The Western Coalfields Limited (WCL) issued Work Order No. CWL/UA/CGM/GM(Opm)/Tender/WO/2016/2487 dated 08.12.2016 to Sainik Mining and Allied Services Limited for coal excavation and overburden removal at the Makardhokda-III site for a period of 83 months commencing from 25.11.2016 to 24.10.2023. Sainik Mining and Allied Services Limited had subcontracted overburden removal work from the Makardhokda-III site of the WCL to Mech Technic Infra Private Limited. As per the order dated 28.09.2021, Sai Ashirvad Services of PW-2 Swapnil supplied a Dozer to Mech Technic Infra Private Limited on rent. On his reference, GMMCO Limited supplied on rent. Those machines were deployed at the Makardhokda-III site of the WCL.

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3. The WCL by the order dated 08.12.2021 terminated the contract awarded to Sainik Mining and Allied Services Limited. After the termination of the contract, PW-2 Swapnil approached accused No.1 who was then working as the Chief Manager (Mining) at the Makardhokda-III site of the WCL for the release of his Dozer and the Grader of GMMCO Limited. However, he avoided releasing the equipment under some pretext. So, on 25.01.2022, he filed a complaint with the CBI, ACB, Nagpur against accused No.1 under the apprehension of demand of a bribe from him.

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4. On 27.01.2022, PW-17 PI Niraj Gupta verified the demand of a bribe in the presence of the panch witnesses. During the verification proceedings, it was revealed that accused No.2 demanded a bribe of Rs.50,000/- on behalf of accused No.1 and Rs.2000/- for him for releasing his equipment from the Makardhokda-III site of the WCL.

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5. Based on the FIR lodged by Mr. Mohd. Salim Khan, DIG, CBI, Nagpur, Crime No. RC0282022A0002 for the offence punishable under Section 120-B of IPC and Section 7 of the PC Act came to be registered against the accused.

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6. On 29.01.2022, accused No.2 asked PW-2 Swapnil to come near the WCL Hospital, Umrer. So, PW-15 Dy.SP Chogle sent him along with PW-3 Harshal to that place by giving the necessary instructions to them. A trap was laid near that hospital. Accused No.2 was caught red-handed while accepting the tainted currency notes of Rs.32,000/- from PW-2 Swapnil for and on behalf of accused No.1. As per the instructions of PW-15 Dy.SP Chogle, accused No.2 made a WhatsApp call to accused No.1. During that conversation, accused No.1 asked accused No.2 to pay him Rs.10,000/- more. The said conversation was recorded in the Digital Voice Recorder (DVR).

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7. PW-15 Dy. SP Chogle arrested accused No.2 and seized the glass bottles containing the hand washes of accused No.2 and PW-2 Swapnil Panchbhai and the wash of both pockets of the pants of accused no.2, his mobile phone and prepared a post-trap panchanama in the presence of the panch witnesses. PW-18 Vijay Kumar Singh sent the micro-SD cards containing the voice samples of the accused and the mobile phone of accused No.2 to the Central Forensic Science Laboratory, New Delhi (CFSL) for analysis.

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8. *The competent authority accorded sanction under Section 19 of the PC Act for the prosecution of accused No.1. After completion of the investigation, a charge sheet came to be filed against the accused for the offences punishable under Section 120-B of IPC and Section 7 of the PC Act.”*

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11. Based upon the above, the following Charges were framed :

“1. Does the prosecution prove that accused No.1 is a public servant within the meaning of Section 2 (c) of the PC Act ?

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2. Does the prosecution prove that on 27.01.2022 at WCL Umrer, District Nagpur, the accused hatched a criminal conspiracy to demand and accept illegal gratification of Rs.50,000/- from PW-2 Swapnil Panchbhair to release his Dozer and Grader of GMMCO Limited from the Makardhokda-III site of the WCL?

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3. Does the prosecution prove that on 27.01.2022, accused No.1 in pursuance of the criminal conspiracy demanded a bribe of Rs.50,000/- from PW-2 Swapnil Panchbhair through accused No.2 and on 29.01.2022, accused No.2 demanded and accepted a bribe of Rs.30,000/- from him for and on behalf of accused No.1 as a gratification other than legal remuneration as a motive or reward to release his Dozer and Grader of GMMCO Limited from the Makardhokda-III site of the WCL?

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12. The reasons for acquittal as spelt out from the judgment of the learned Special Judge (CBI), Nagpur are as under :

“54. It is well-settled that the demand of illegal gratification is sine qua non to constitute an offence under the PC Act unless it is proved beyond reasonable doubt that the accused accepted money knowing it to be a bribe. So, it is necessary to see whether the prosecution proves that accused No.1 had demanded a bribe either directly or through accused No.2 from PW-2 Swapnil to release the equipment in question from the mining area.

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55. The evidence transpired on record discloses that accused No.1 had asked PW-2 Swapnil to submit documents about the equipment which he claimed to be at the mining area, and therefore, PW-2 Swapnil filed the complaint at Exh.31 against him with the CBI, Nagpur under the apprehension that he would not release his equipment from the mining area without taking a bribe from him. In the complaint at Exh.31, there is no reference to the alleged demand of a bribe. PW-2 Swapnil has unequivocally admitted that accused No.1 had not demanded a bribe from him.

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56. The evidence adduced by the prosecution about the verification of the alleged demand of a bribe is dubious. As stated supra, the complaint at Exh.31 did not disclose the demand of a bribe by accused No.1 from PW-2 Swapnil. The admission given by PW-3 Harshal however shows that PW-17 PI Niraj Kumar Gupta had asked PW-2 Swapnil to talk to accused No.1 about a bribe and negotiate the bribe amount. This fact mars the prosecution case.

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58. Even otherwise, the evidence led by the prosecution reveals that during the verification proceeding also, accused No.1 did not demand a bribe from PW-2 Swapnil. It shows that whenever PW-2 Swapnil requested accused No.1 to release his equipment from the mining area, either in person or over the phone, he asked him to submit documents establishing that his

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machines were inside the mining area and to meet accused No.2, who kept records of the machines deployed by Sainik Mining and Allied Services at the Makardhokda-III site of the WCL.

59. *Admittedly, accused No.2 was an employee of Sainik Mining and Allied Services. The evidence shows that the WCL had no contract with Mech Technic Infra Pvt. Ltd. or Sai Ashirvad Services of PW-2 Swapnil. Mech Technic Infra Pvt. Ltd. supplied the machines that were allegedly hired by it from PW-2 Swapnil and GMMCO Limited to Sainik Mining and Allied Services. Under these circumstances, it cannot be deduced that accused No.1 expected money from PW-2 Swapnil simple because he asked him to contact accused No.2 to have his equipment released.*

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64. *From the evidence transpired on record, it is thus, pellucid that merely on the basis of the telephonic conversation between PW-2 Swapnil and accused No.2, PW-17 PI Niraj Kumar Gupta inferred that accused No.1 demanded a bribe of Rs.50,000/- from PW-2 Swapnil through accused No.2 to release his equipment from the mining area even though there was no evidence about the demand of a bribe by accused No.1 either directly or through accused No.2.*

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68. *PW-15 DySP Chogle asserted that when accused No.2 made a WhatsApp call to accused No.1 by putting his mobile phone on speaker mode, he switched on the DVR and kept it on the recording mode. He claimed that File No. 220129_1019 was created, but due to technical error, the conversation between accused no.1 and accused No.2 could not be recorded. However, the said fact is not mentioned in the post-trap panchanama at Exh.48.*

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69. *From the admission given by PW18 PI Vijay Kumar Singh, it is evident that PW-17 PI Niraj Kumar Gupta and PI Kalyani Humane were present till the completion of the post trap panchanama at Exh.48, but while recording their statements, they did not state anything about the WhatsApp call or the details of the conversation between accused No.1 and 2. He further admitted that he had not made any query about File No. 220129_1019 to the CFSL, Delhi. These facts render the evidence about the alleged discussion between accused No.1 and accused No.2 about the bribe amount over the phone suspicious and unreliable.*

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75. *Admittedly, accused no.2 is not a Government Servant. The prosecution could not prove that there was a conversation between accused No.1 and accused No.2 about the demand and acceptance of a bribe. The evidence adduced by the prosecution to prove the alleged conspiracy between accused No.1 and accused no.2 is infirm, nebulous and jejune. Not even a scintilla of evidence is available which may indicate that accused No.1 had directly demanded a bribe from PW-2 Swapnil.*

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110. *As demonstrated in the foregoing paras, the prosecution has failed to prove the charges levelled against the accused beyond the shadow of doubt. The evidence led by the prosecution is infirm, nebulous and jejune. Consequently, I answer point No.2 and 3 in the negative."*

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Based upon the above reasoning, the petitioner who was accused No.1 in Special Case No.577/2022, came to be acquitted.

13. The charges against the petitioner in the Disciplinary proceedings are as under :

“That Shri Sudhanshu Shrivastava was posted and functioning in the capacity of a public servant as Chief Manager (Mining)/Colliery Manager since May, 2021 at Makardhokda-III OCM, WCL, Umred Area.

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That, Shri Sudhanshu Shrivastava, while functioning as Colliery Manager, Makardhokda-III OCM, Umrer Area has demanded illegal gratification/bribe and had actively orchestrated the conspiracy to obtain illegal gratification for performance of his official duty.

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That, Shri Sudhanshu Shrivastava for the consent to release from the mine of one grader of M/s GMMCO and one dozer, both deployed by one Shri Swapnil Panchbhai at Makardhokda-III OCM, had accepted illegal gratification/bribe from Shri Swapnil Panchbhai through one Shri Amit Sinha.

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Thus, by the above act of omission/commission Shri Sudhanshu Shrivastava failed to maintain absolute integrity, devotion to duty and contravened the provisions of clause 4.1(i), 4.1 (ii), 4.1 (iii), 4.1 (vi), 4.1 (xv), 4.3, which also amounts to misconduct, as defined under clause 5.1, 5.2, 5.6, 5.22 and 5.27 of ‘Coal India Executives Conduct, Discipline and Appeal Rules’ (as amended till 18.05.2021).”

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14. Annexure-IV the list of witnesses in the disciplinary proceedings cites the following persons as witnesses :

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Sr. No.	Name of Witnesses
1.	Shri Niraj Kumar Gupta, PI, CBI, Nagpur
2.	Shri Harshal Khushal Gedam, Assistant Grade-II (D), FCI, Ajni
3.	Shri Mrunal Kamble, Credit Officer, Bank of Baroda, Nagpur
4.	Shri Swapnil Panchbhai, Proprietor, M/S Sai Ashirvad Services
5.	Shri PH. Nimbalkar, SAM, Umrer Area, WCL
6.	Shri Krushna Sadashio Bhole, Chief Manager, Umrer Area, WCL
7.	Any other persons related to case if required.

What is material to note is that out of these witnesses, in Special Case No.577/2022, Shri Niraj Kumar Gupta has been examined as PW-17; Shri Harshal Khushal Gedam has been examined as P.W.-3; Shri Swapnil Panchbhai has been examined as P.W. 2; Shri 5 PH. Nimbalkar has been examined as P.W. 4 and Shri Krushna Sadashio Bhore as D.W.-1 in Special Case No.577/2022.

15. It would thus be apparent that not only the facts and allegations in Special Case No.577/2022 but also the witnesses are identical to that in the disciplinary proceedings. 10

16. It would thus be apparent that the dictum in ***Ram Lal*** (supra) would be squarely applicable in the instant matter and the continuation of the disciplinary proceedings against the petitioner, would not only be unjust but also not fair and proper. We, therefore,

set aside the impugned communication dated 04/09/2024 (pg.253) and hold that the disciplinary proceedings against the petitioner cannot be continued and be dropped. The writ petition is allowed accordingly. Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

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(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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