

2025:PHHC:035830



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-319-2004 (O&M)
Date of Decision: 06.03.2025**

P.K. JAIN

... Petitioner

VERSUS

PUNJAB NATIONAL BANK AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Aryaman Thakur, Advocate
for the petitioner.

Mr. G.S. Bajwa, Advocate for the
respondents, *(Through Video Conference)*.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 19.12.2002 whereby the Disciplinary Authority imposed punishment of bringing down the petitioner to lower stage in the scale of pay by two stages invoking Clause 19.6(e) of the Bipartite Settlement and directing that the petitioner is not entitled to any wages for the period of suspension except for the subsistence allowance already paid to him; as well as to the order dated 04.08.2003 whereby the appeal preferred by the petitioner has been dismissed by the Appellate Authority.

Briefly, the undisputed facts of the present case are that the petitioner was appointed as Clerk-cum-Godown Keeper on 21.02.1977 with the New Bank of India, which was later merged with the Punjab National Bank. During the said time, one person representing himself as Rakesh Garg got

issued four certificates of reinvestment for a sum of Rs.25,000/- each, on 16.01.1990, declaring his address as House No.636, Sector 37, Chandigarh. The said Rakesh Garg thereafter obtained a loan of Rs.75,000/- from the bank on 02.02.1990 against the said certificates of reinvestment and later, closed the account with premature payment of the said re-investment certificates on 12.03.1990. The Manager of Sector 33-A Branch of the Bank at Chandigarh, however, suspected some discrepancy in the Day Book and addressed a communication dated 17.05.1990 to the Senior Superintendent of Police, Chandigarh, accusing the petitioner for the discrepancy and requested the police to register a criminal case and investigate the matter; on the basis whereof, an FIR No.137 dated 14.06.1990 was registered at Police Station South Chandigarh for commission of offences punishable under Sections 420, 468, 471, 380, 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

It is submitted that on completion of the investigation, Charge Sheet under Section 173 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') was filed and the trial commenced. As many as eleven witnesses were examined by the prosecution to prove its charge, which also included the officials of the bank (all of whom were eventually also the witnesses cited in the departmental proceedings). It is submitted that on culmination of the proceedings, the petitioner was acquitted by the trial Court vide judgment dated 07.12.1998.

Learned Counsel for the petitioner submits that prior to registration of the FIR by the police, a show cause notice was also served upon the petitioner on 29.05.1990 to which the petitioner submitted his detailed reply.

The petitioner was also placed under suspension w.e.f. 30.05.1990. After submission of the reply, the respondent-Authorities did not initiate any further action on the said show cause notice. Later on, after the acquittal of the petitioner in the criminal proceedings, he was reinstated in service by the respondents by revoking his suspension but without prejudice to the rights of the respondent-Bank to initiate an appropriate action in the matter. Vide order dated 12.02.1999, the respondent-Bank, while fixing the pay of the petitioner as if the petitioner had not been placed under suspension, granted increments and directed that the salary of the petitioner be regularized. The petitioner, later on, submitted a representation to the respondents to release the arrears of salary and other benefits, whereupon the respondent-Bank served a charge sheet dated 10.04.2001 upon the petitioner after a gap of nearly 11 years. The petitioner submitted his reply once again and besides raising various legal issues, also submitted that he already stood acquitted of the said charges by the trial Court and the said judgment has already attained finality and that the bank could not produce any evidence or material to prove the allegations levelled in the charge sheet against him. In the absence of any evidence having been adduced before the trial Court to link the petitioner with the commission of offence(s), initiation of the departmental proceedings on the same cause and by relying upon same set of witnesses was a travesty of justice.

Be that as it may, the respondent-Authorities did not accept the reply of the petitioner to be satisfactory and appointed an inquiry officer to conduct a regular departmental inquiry vide order dated 09.07.2001. He submits that the petitioner made a request to be represented by an advocate or by some retired bank officer. However, his request was declined by the Inquiry Officer

and a report was submitted by Inquiry Officer wherein three out of four charges were returned as proved against him. A copy of the said inquiry report was served upon the petitioner and a second show cause notice was served upon him on 04.12.2002. A reply to the said show cause notice including the proposed punishment was also submitted by the petitioner, however, vide order dated 19.12.2002, the punishment was imposed upon the petitioner and the appeal preferred by the petitioner was dismissed by the Appellate Authority. Hence, the present writ petition.

Learned Senior Counsel for the petitioner has argued that the action of the respondents in imposing the punishment on the petitioner in the departmental proceedings is unsustainable and should be set aside *inter alia* on the following grounds: -

- I) That the departmental proceedings as well as the criminal proceedings initiated by the respondent-Authorities are on the same set of allegations and same witnesses had been relied upon by the respondent-Authorities to prove their allegations against the petitioner. Having failed to prove the charge against the petitioner in the criminal proceedings, the departmental proceedings were initiated only after the petitioner demanded the arrears of salary. Hence, the initiation of the said proceedings was only to defeat the right of the petitioner to claim arrears of salary, which was wrongfully denied to him on account of the acts that were attributable solely and exclusively to the respondent-Bank itself.
- II) He further submits that the petitioner was acquitted after the trial Court recorded a specific finding that the bank/prosecution has

miserably failed to link the petitioner with the commission of the offence(s) and that any of the alleged acts of tampering with the official record had been carried out at the behest or on account of active involvement of the petitioner. It was also specifically noticed by the trial Court that the prosecution had failed to establish its charges beyond the shadow of all reasonable doubts and also recorded that the petitioner was being made a scapegoat. The Trial Court also noticed that the officials of the bank made strenuous efforts to recover the financial loss so occasioned and to deposit the same with the bank. He thus contends that the specific findings recorded by the trial Court conclusively establish that there was no attribution or participation against the petitioner in the commission of the offence and that he was being made a scapegoat. Notwithstanding the said findings having attained finality, the tirade to hold the petitioner liable to save the skin of the people/officials who were actually involved in the commission of offence, the ruse of the disciplinary proceedings had been created.

He further submits that the law in this regard is well settled that 'where the departmental proceedings are on the same charges and the same set of evidence and witnesses are being relied upon', the departmental proceedings shall not be permitted to continue. In support of his arguments, learned Senior Counsel makes a specific reference to the judgment of the trial Court dated 07.12.1998 acquitting the petitioner of all charges. The relevant part of trial Court judgment reads thus: -

"2. In brief the case of the prosecution is that an application dated 17.5.90 forwarded by the superior officers was received in Economic Offences Wing. It has been reported in the application addressed to the Senior superintendent of Police, Chandigarh, by the Manager of New Bank of India, Sector 33-A, Chandigarh that a person representing himself as Rakesh Garg and giving his address House No 636, Sector 37, Chandigarh got issued from them on 16.1.90 four certificates of Reinvestment Scheme for Rs.25000/- each on the basis of fraudulent credit vouchers. The amount of said credit vouchers was not entered in the Day Book and the said voucher(s) was removed after the issuance of the four CRIS. Said Rakesh Garg obtained a loan of Rs.75000/- from the bank on 2.2.90 against the above mentioned CRISs. This loan account was subsequently closed with the premature payment of the said CRIS on 12.3.90. It was reported that general ledger during the relevant period was being maintained by P K. Jain. While tallying the balance of CRIS ledger with the general ledger, it was noticed on 10.5.90, that there was a difference of Rs.One lac. There were alterations in the amounts mentioned in the general ledger. On further enquiry, it was discovered that this amount of Rs.One Lac (the difference) is due to the issuance of four CRIS's of Rs.25000/- each favouring Rakesh Garg, which was fraudulently obtained by him and the payment received by him. On further enquiry it was found that there was no house having No.636 Sector 37, Chandigarh. Hence, a fraud has been committed with New Bank of India which has been cheated of a sum of Rs.101055/-. On the basis of this complaint, a case was registered. The matter was investigated. During the investigation it was found that it was the duty of PK Jain to write the Day Book and there was no entry either of CRIS or vouchers. The vouchers in question which were fraudulently prepared were also not found. The accused PK Jain was making cuttings in the general ledger and he did not bring it into the notice of the Manager. He also wrote a letter to the Cashier to Sector 17 branch regarding the payment of

the cash to Rakesh Garg. The report of the Expert was obtained and the accused was arrested. After completion of necessary investigation, the police filed the challan in the court for a trial.

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5. The prosecution in order to prove its case has examined Ashok Joshi Clerk as PW1, Arjan Singh Bhandari as PW2, CJ Nayyar Senior Manager as PW3, S.P Gupta as PW4, Bhim Sen Chopra as PW5, Bholi Kaur as PW6, Bishan Dass Garg Cashier as PW7, Hardeep Singh, Head Cashier as PW8, Sawitri Aggi as PW8/A, SI Bishi Ram (IO) as PW9, Om Parkash SHO as PW10 and PS Kailay District Revenue Officer as PW11 and thereafter, the Ld. APP for the state after tendering into evidence the report of the Document Expert as Ex.PY closed the prosecution evidence.

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9. The points for determination in the present case are that whether the accused on 16.1.90 at New Bank of India, Sec. 33 A, Chd. cheated the bank by dishonestly inducing it to deliver an amount of Rs.75000/- (by way of loan) to a person representing himself as Rakesh Garg and whether the accused forged four vouchers in favour of Rakesh Garg intending that it shall be used for cheating with bank and whether on 2.2.90 accused fraudulently used CRIS and took Rs.75000/- on them by way of loan knowing or having reason to believe that the same to be forged one and whether the accused removed four vouchers from the possession of the bank and whether the accused in agreement of Rakesh Garg tempered with entries in the general ledger?

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11. At the outset it must be mentioned that from perusal of the entire record it is clear that no direct evidence is forthcoming against the accused. All the material witnesses examined by the prosecution are somehow connected with the matter and thus are highly interested. Admittedly, Ashok Joshi (PW1) had prepared the CRIS in question Ex.P1 to Plaintiff-4 (sic.) and account opening form Ex.P5 to Ex.P6. In the cross examination he has categorically

admitted that authenticated vouchers and account opening form reached to his hand. As per the witness, the vouchers reached to the day book clerk on the following day. He is not sure that whether the vouchers in question did reach to the accused for making entry in the day book. The witness is not even able to tell the name of the department from which voucher came and about the officer, who had signed the same. Arjan Singh (PW2) had made premature discount of the four FDRs. He is also not able to show any documentary proof regarding the role played by the accused in the matter. Similarly, CJ Nayyar (PW3) complainant was working as Manager in New Bank of India, Sector 33, Chandigarh from 1989 to 1993. He has also admitted that introducer of Rakesh Garg cannot be traced as the record of his introduction i.e. account opening form is not available in the record. He had not fixed the responsibility of any person regarding the loss of the account opening form. Neither any departmental enquiry was held against any of the officials of the Bank regarding the loss of the amount. SP Gupta (PW4) did not support the prosecution case. On the request of the learned APP for the State, he was allowed to cross examine the witness. However, nothing material has come on the record. Bhim Sen Chopra (PW5) had corrected the entry in the General Ledger in May, 1990. Similarly, Bholi Kaur (PW6) had filled up the form Ex.P7. She had also issued cheque Ex PA amounting to Rs.75000/- and made entry and posted the same on other seat and closed the account after making entry Ex. PW6/A. In the cross examination, she has admitted that she does not possess any document to show that the accused had requested her to open the account. Bhim Dass Garg (PW7) was handed over letter Ex.PW4/A by BS Chopra. Hence it is clear that the material witnesses produced by the prosecution are interested witnesses. Accordingly, much reliance cannot be placed on them. No documentary evidence whatsoever is appearing on the record, which could show that the accused had induced the bank to deliver the amount in question to Rakesh Garg. Further the voucher

allegedly forged by the accused has not been proved on record. It is stated that the said vouchers have been lost. In the absence of the vouchers in question, it cannot be said that the accused had forged these vouchers in favour of Rakesh Garg intending that they shall be used for cheating with the Bank. Similarly, there is no cogent evidence on the record either to the effect that on 2.2.90 the accused fraudulently used CRIS and took Rs 75000/- on them by way of loan knowing or having reasons to believe the same to be forged one or that the accused removed the four vouchers and tampered with the entries in the general ledger. This deserves to be mentioned that regarding the cutting in the general ledger, witness CJ Nayyar (PW3) has testified that he cannot tell whom made the over writing and cuttings in the same. He has also admitted that the regular weekly reports for the months of January, February and March 1990 prepared by the accused and signed by an officer were received by him and he did not doubt the same. Hence, when correct weekly statement was sent, there was no cause for making cuttings in General Ledger. If there was any such intention on the part of the accused, the same would have reflected in the weekly statement. It was only much later when checking was done by others that the cuttings appeared in the ledger. Even no expert report has been obtained by the prosecution in this regard. In fact, except the bald statements of the interested witnesses, there is nothing on the record which could show that the cuttings which are alleged to have been made in the General Ledger was in the hand writing of the accused. It is also clear from the testimony of the witnesses that an attempt was made by the bank officials to make the loss good by collection/contribution. This fact also casts doubt in the mind of the court. Had the accused been guilty of the loss of the amount in question, the question of collection by the officials would not have arisen. It appears that the accused have been made a scapegoat. Certainly it is for the prosecution to prove its case against the accused beyond shadow of any reasonable doubt. Even the investigating officer of the case Bishi Ram (PW9)

has admitted in the cross examination that it was only the circumstantial evidence/oral evidence that the investigation was completed against the accused. Taking into account the totality of the facts and circumstances of the case, I consider it highly unsafe to convict the accused solely on the basis of the bald statements of the interested witnesses. Mere writing of a letter Ex. PW4/A by the accused, which was duly signed by SP Gupta (PW4) does not in any way connect the accused with the alleged offences. The writing of such a letter by a bank official at the instance of higher authority is not something very un-common. The upshot of the entire discussion is that the prosecution has miserably failed to bring him guilty against the accused under Sections 420, 468, 471, 380 and 120-B of the Indian Penal Code, beyond shadow of reasonable doubt. Accordingly, accused PK Jain is hereby acquitted of the charges leveled against him. His bail bond and surety bond stand discharged."

He also refers to the charges contained in the initial charge sheet dated 29.05.1990 as well as the charges contained in the subsequent charge sheet dated 10.04.2001 served upon the petitioner. The same are extracted as under: -

Charge Sheet dated 29.05.1990	Charge Sheet dated 10.04.2001
It is reported that a person purported to be Mr Rakesh Garg, resident of H. No. 606, Sector 37, Chandigarh as per the record of the Branch, managed to get issued in his name four CRIS bearing No. 9018:87:90 to 9021:90:90 valuing Rs.25,000/- each for a period of one year @9% from Br Office, 33-A, Chandigarh without any consideration i.e. without depositing /paying the	On 16.1.1990, a person purported to be Mr. Rakesh Garg, resident of H. No.636, Sector 37, Chandigarh managed to get issued in his name four CRIS bearing No.9018:87:90 to 9021:90:90 valuing Rs.25,000/- each for a period of one year @ 9% from Br. Office, 33-A, Chandigarh (ENBI) without any consideration i.e. without depositing/paying the money to the

money to the branch. Subsequently on 02.02.90 Mr Garg got a current O/D limit of Rs.75000/- set up against the security of the above said CRIS and withdrew Rs. 75000/-from the current a/c by way of loose cheque No.748588. On 12.03.90 Mr. Garg got the above CRIS discounted and withdrew the balance amount of Rs.25,196.10 by way of loose cheque No.844490 after adjusting the balance outstanding in the current a/c. The aforesaid transactions ultimately proved to be fraudulent ones. During the course of aforesaid transactions the following irregular features and other serious acts of omission and commission have been committed by Mr. Jain. 5. That while tallying the day book for 16.01.90 the entries made in the CRIS ledgers have not been called with the relevant vouchers/long books. 6. The interest voucher in respect of interest charged in the current A/c (overdraft limit) was prepared by Sh. Jain despite the fact that neither he was (as per the duty sheet of the Branch in force at that time)entrusted with the current seat nor he had any instructions in writing to work on the current seat. The contradictory statement dated 17.05.90 given by Sh.	branch and subsequently on 02.02.90 Mr. Garg got a current O/D limit of Rs.75000/- set up against the security of the above said CRIS and withdrew Rs.85000/- from the account by way of loose cheque No.748588. On 12.03.90 Mr. Garg got the above CRIS discounted and withdrew the balance amount of Rs.25,196.10 by way of loose cheque No.844490 after adjusting the balance outstanding in the current account. The aforesaid transaction ultimately proved to be fraudulent ones. You while performing your duties have committed the following lapses: CHARGE-1 A You did not call the entries made in the CRIS ledgers with the relevant vouchers long books while tallying the day book on 16.1.90. B You(CE) materially altered the balance outstanding under the head CRIS in the general ledger as on 25.1.90, 9.3.90, 16.3.90 and 31.3.90 after submitting the respective weekly statements to the Regional office/Head Office without bringing it to the notice of the concerned officer as the said alterations have not been got
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Jain that on 12.03.1990 he did not work on the current seat inspite of the documentary evidence available, leads to the inference that Sh. Jain showed extra interest and accommodated the party beyond the delegated purview of his duty. 7. On 02.09.90 Sh Jain wrote the letter addressed to the Branch office, 17-B, Chandigarh, for requisitioning the cash from the branch and also entered the IBT No. in the IBT Registered despite the fact that he was in no way concerned with the said seat. This act of Sh. Jain leads to the inference that Sh. Jain showed interest and accommodated the party beyond the delegated purview of his duties. 8. The balance outstanding under the Head CRIS in the general ledger as on 25.01.90, 09.03.90, 16.03.90 and 31.03.90 have been materially altered by Sh. Jain after submitting the respective weekly statements to the regional office/Head Office without bringing it to the notice of the concerned officer as the said alterations have not been got authenticated from the concerned officer. This arbitrary act of Sh. Jain arouses suspicion as to his intentions.	authenticated from the concerned officer. CHARGE-II A You prepared the interest voucher in respect of interest charged in the current account (overdraft limit) despite the fact that neither your entrusted with the current seat nor had any instructions in writing to work on the current seat. You gave contradictory statement dated 17.05.90 that on 12.03.1990 he did not work on the current seat inspite of the documentary evidence available, leads to the inference that you showed extra interest and accommodated the party beyond the delegated purview of his duty. B You wrote letter addressed to the Branch office, 17-B, Chandigarh (ENBI) for requisitioning the cash from the branch and also entered the IBT No. in the IBT Registered despite the fact that you were in no way concerned with the said seat. This act of yours also showed extra interest and accommodated the party beyond the delegated purview of your duties. Your aforesaid acts are major
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	misconduct in terms of paras 19.5(d) & (i) of bipartite settlement as amended. Due to above said acts of omission and commission a fraud amounting to Rs.101055.00 has been committed by Shri Rakesh Garg in connivance with you.
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Referring to the above, he contends that the charges levelled against the petitioner vide abovementioned charge sheets are identical to the allegations as set out by the respondents and forming the basis of FIR registered against the petitioner. He places reliance also on the list of witnesses cited by the department during the course of departmental inquiry and the details of the witnesses in the criminal proceedings reads thus:

Witnesses Sr. No.	Name of witness	Marked as	Crl. Trial
1.	Sarvsh. C.J. Nayyar Sr. Mgr. BO: Sec. 22/B, Chd.	MW-1	PW3
2.	B.S. Chhabra, Manager, Morni Hills	MW-2	
3.	Smt. Bholi Kaur, Clerk, BO: Sector 22-D, Chandigarh.	MW-3	PW6
4.	Arjun Singh Bhandari, BO: Marrahwala	MW-4	PW2
5.	Savitri Agi, Clerk BO Sec. 27, Chd.	MW-5	PW3/A
6.	Ashok Joshi, Clerk, R.O. Chd.	MW-6	PW1
7.	S.P. Gupta, Mgr. BO Sec.17-C Chd.	MW-7	PW4

He thus submits that not only the allegations but also the departmental witnesses are all the same who had been deputed by the respondent-Bank, during the course of criminal proceedings except to an addition of the Manager, who is a formal witness. So far as S.P. Gupta,

Manager, Branch Office, Sector 17-C, Chandigarh is concerned, he turned hostile and all other witnesses were held to be interested witnesses by the trial Court, however, despite the same, testimonies of the said witnesses, who failed to prove the allegations against the petitioner during the criminal trial, have now been made the basis for imposition of penalty/punishment against the petitioner.

He places reliance on the judgment of the Hon'ble Supreme Court in the matter of '**G.M. Tank Versus State of Gujarat and Another**' reported as **(2006) 5 SCC 446** to buttress his argument that where the criminal proceedings result in acquittal of an accused and once the witnesses in the departmental inquiry and in the criminal case are same, the order of dismissal from service passed in the departmental proceedings was held to be bad and had been set aside. The relevant extract of the same is reproduced hereinafter below: -

"21. It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges leveled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court

on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

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23. *In the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. (supra), the question before this Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. In Paragraph 34, this Court held as under:*

"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."

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31. *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.*

32. *In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."*

He further submits that the judgment of the Hon'ble Supreme Court in the matter of '**Capt. M. Paul Anthony Versus Bharat Gold Mines Ltd.**' reported as (1999) 3 SCC 679 was also considered, and its principles were followed in the judgment of **G.M. Tank (Supra)**.

He further places reliance on the judgment of a Division Bench of this Court in the matter of '**Vijay Kumar Sharma (Dr.) Versus Chief Secretary and Secretary to Government, Punjab and Others**' reported as (1996) 2 SCT 84. The relevant extract of the same is reproduced hereinafter below:

"10. On the question as to the scope of interference by the Court in the departmental proceedings there is no controversy that in considering whether a public servant is guilty of misconduct charged against him, the rule followed in criminal trial that it must be proved beyond all reasonable doubt does not apply and that the High Court has not constituted any proceedings under Article 226 of the Constitution, as the court of appeal over the decision of the authorities holding or contemplating a departmental action. It is concerned to determine whether the enquiry is held by the authority competent in that behalf and according to the procedure

prescribed following the normal rules including that of natural justice. To the same effect is the decision of the Supreme Court in the case of **State of Andhra Pradesh and others v. S. Sree Rama Rao, AIR 1963 Supreme Court 1723**. Strictly speaking, if after a person is acquitted, there is no statutory bar and it may be open to the disciplinary authority to continue with the departmental proceedings but a rule of caution has to be adverted. The same would be to the effect that the order passed acquitting the person concerned cannot be ignored and must invariably be adverted to. The Supreme Court again had the occasion to consider this controversy in the case of **Corporation of the City of Nagpur, Civil Lines, Nagpur and another v. Ramchandra G. Modak and others, AIR 1984 Supreme Court 626**. It was held that where accused is acquitted honourably, it would not be expedient to conduct departmental enquiry. In paragraph 6, it was concluded:-

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered.

To the same effect was the view expressed by the Calcutta High Court in the case of **Rajendra Kumar Paul v. Union of India, 1976(2) S.L.R. 296**, Herein the charge-sheet issued to the petitioner concerned rested on the same allegations and charges in the criminal case. It was held that the said disciplinary

proceedings could not be initiated nor any punishment could be awarded. The conclusion drawn in paragraph 18 was: -

"The position therefore, in the present case appears to be as follows:

"The charge-sheet dated 16th December, 1970, issued against the petitioner initiating a disciplinary proceeding rests on the same allegations and charges which were also the subject matter of the criminal trial in which the petitioner has been honourably acquitted. Accordingly the said disciplinary proceeding could not be initiated nor any punishment could be awarded on the basis of the same."

*The view point of the Rajasthan High Court was also identical in the case of **Mohammad Umar v. The Rajasthan State Electricity Board and another**, 1992(3) SLR 598. Herein the petitioner had been prosecuted for an offence punishable under section 379 Indian Penal Code on the charge that he had committed a theft of 800 metres wire. The Judicial Magistrate acquitted him. Thereafter, a charge sheet was issued on the same fact that he had taken away 800 metres wire as such. The Single Judge of the Rajasthan High Court held that departmental action would be permissible only where acquittal is based on technical ground like lack of jurisdiction, want of sanction or bar of limitation etc. The relevant extract of the decision drawn would make the position clear:*

"I am clearly of the opinion that once a competent court records a finding of not guilty against an employee in respect of an act involving criminal offence, it is not open to the disciplinary authority to proceed against the employee departmentally on the same facts and pass an order of punishment by holding the employee guilty. This principle will of course be not applicable where the employer proceeds against an employee on some different charge after a finding of not guilty has been recorded by the

competent court or where the acquittal is based on technical grounds like lack of jurisdiction, want of sanction or bar of limitation etc."

*This is in consonance with the decision of the Supreme Court in the case of **Sulekh Chand and Salek Chand v. Commissioner of Police, 1995(2) SCT 411(SC): JT 1995(1) S.C. 23**. It was held as under:-*

"It is not in dispute that the proposed departmental enquiry also is related to the self same offence under Section 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge under section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated." (emphasis added).

After scanning through various precedents, the position is clear and established to the effect that once the acquittal is on merit and not on a technical ground, then on the same facts departmental proceedings cannot be initiated. The Supreme Court has set at rest this controversy in the case of Sulekh Chand and Salek Chand (supra) and it is in consonance with the decision of the Supreme Court and also the case of Mohammad Umar (supra). If the acquittal is on the ground other than merit, only in that event, it may be permissible for the department to proceed against the said official.

11. Learned counsel appearing on behalf of the State urged that here the evidence had not been proved and, therefore, the acquittal must be taken on a technical ground. But a clear distinction must be drawn between a decision on merit and on a technical ground. If the State does not produce evidence despite innumerable opportunities, then it would be a decision on merit rather than on a technical ground. It would be an acquittal on technical ground if as pointed out above and rementioned for the sake of repetition, it

*flows for want of a valid sanction if required, limitation or any other such technical flaw that may emerge. When evidence is not produced, then it must be taken as a decision on merit. We find ourselves in an agreement with the decision of this Court in the case of **Balwant Singh v. The Inspector General of Police and others, 1983(1) AISLJ 176.**"*

A similar proposition of law has also been laid down by this Court in the matter of '**Ramesh Kumar Versus Punjab State**' reported as **(2002) 4 S.C.T. 579.**

Counsel for the respondents on the other hand contends that the present petition deserves to be dismissed since interference by a Writ Court, while exercising the power of judicial review with respect to departmental proceedings, is limited to the extent of procedural impropriety, illegality or perversity in the departmental proceedings. The petitioner was granted benefit of doubt in the criminal proceedings and it was not an honourable acquittal. It has also been emphatically submitted that departmental and criminal proceedings rest on different pedestals. While there is a higher onus on the prosecution to prove its charge beyond reasonable doubt in criminal proceedings, departmental proceedings are based on preponderance of probabilities; and that notwithstanding acquittal of a person in the criminal proceedings, the departmental proceedings can still continue further and the same may culminate in imposition of punishment.

Reliance is placed by the counsel for the respondents on the judgment of **Ajit Kumar Nag Versus G.M. (P.J.) Indian Oil Corporation Ltd. Haldia & Ors.** reported as **(2005) 4 SCT 241**. The relevant extract of the same is reproduced hereinafter below:

"12. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings - criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

He further submits that the order of acquittal by the trial Court went in favour of the petitioner on account of the non-production of the original

record in which the cutting had been made, however, the said record had been produced during the departmental proceedings and the same was proved against the petitioner. Hence, the evidence led during the departmental proceedings is at a better footing than the evidence led before the trial Court. It is accordingly prayed that the writ petition be dismissed.

Responding to the above, learned Sr. Counsel for the petitioner contends that it was not a case where the benefit of doubt has been given to the petitioner and rather, the substratum of the discussion clearly shows that the prosecution failed to prove its case against the petitioner. All the bank officers/officials, who deposed as witnesses against the petitioner in the departmental proceedings, had stepped into the witness box during the criminal trial and their creditworthiness was impeached by the trial Court and a finding was specifically recorded that the said witnesses were interested witnesses. Notwithstanding the said finding having attained finality, the same set of witnesses has now been relied upon by the respondent-Bank while imposing the punishment in question. He further submitted that the initiation of departmental proceedings being an outcome of malice and where the position in law is well settled, the petitioner cannot be incarcerated for the commission of the same act/offence, despite having gained an honourable acquittal.

He further submits that the reliance on the judgment of **Ajit Kumar Nag (supra)** is misconceived since the said judgment was considered by the Hon'ble Supreme Court in the judgment of **G.M. Tank (supra)** and it was still held by the Hon'ble Supreme Court that where the allegations and the witnesses are same, the department would be precluded from initiating departmental proceedings once the criminal proceedings have failed.

No other argument has been addressed or judgment cited by counsel for the respective parties.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

While adverting to the first argument as to whether the acquittal of the petitioner was an honourable acquittal on merits or on account of extension of benefit of doubt, it needs to be understood that as per the settled criminal jurisprudence, the burden lies on the prosecution to establish its case beyond shadow of all reasonable doubts. The failure of the prosecution to establish its case beyond all doubts does not *ipso facto* mean that acquittal is given by extending benefit of doubt. When an acquittal is based on giving benefit of doubt, the Court has to record a finding that there is evidence available on record to link the accused with the commission of offence, however, the evidence itself has not been proved or that the admissibility or credibility of such evidence has not been safeguarded. It is in such circumstances that an acquittal can be said to have been given on the basis of benefit of doubt. However, where the prosecution fails to prove its case beyond all reasonable doubts by leading cogent and convincing evidence, the general expression that the required standard of proving a charge having not been fulfilled cannot be equated with extension of benefit of doubt. Besides, judicial pronouncements have gone to an extent that such artificial distinction is immaterial as law does not take note of type of acquittal.

Further, the Hon'ble Supreme Court has held in the matter of '**Ram Lal Versus State of Rajasthan and Others**' reported as **2023 INSC 1047** that a

Court is duty bound to examine the judgment in entirety by going through the same in order to ascertain whether it was a judgment based on extension of benefit of doubt or it was based on the failure of prosecution to prove its charge.

The relevant extract of the same is reproduced hereinafter below:

“20. In the operative part of the enquiry report under the head, ‘conclusions’, there is no reference to the 8th class marksheet, (which was part of the enclosed documents sent by Constable Raj Singh with the chargesheet) or to Exh.D-3 [the original 8th class marksheet] exhibited by the defence. There is also no reference to the statement of Raj Singh PW-5 in the enquiry, who had acknowledged that there was no alteration in the marksheet of the 8th class. What is referred to in the chart of exhibits are letter of Jagdish Chand (Ex.P1); the duplicate marksheet of 8th class issued by Jagdish Chand (Ex.P2); the statement of Shravan Lal (Ex-P3); 10th class marksheet of Secondary Education Board Rajasthan, Ajmer, (Ex.P4); preliminary enquiry dated 16.10.2002 by Circle Officer, Kishangarh (Ex.P5); FIR No. 183/2000, (Ex.P6); application submitted by Ram Lal for recruitment to the post of constable (Ex.P-7); letter of appointment dated 08.11.1991 (ExP-8); verification letter filed by Ramlal (Ex.P9); appointment order dated 16.12.1991, (Ex-P-10); letter of Government School Tiloniya, Ex.P-11; and chargesheet dated 24.04.2003, Ex.P-12.

21. It is very clear that relevant and material evidence being, the deposition of PW-5/Raj Singh; the marksheet of 8th class of the appellant [enclosed to the chargesheet] and the original marksheet independently marked as Ex. D3 by the defence have been completely left out in the discussion and consideration. Inference has been drawn about the proof of the charges by ignoring crucial, relevant and material evidence which had come on record. The evidence of PW-5 Raj Singh and the marksheet enclosed in the documents annexed to the chargesheet and the original marksheet

marked as Ex. D-3, were materials having a direct bearing on the charge. The Disciplinary Authority has merely reiterated the reasoning in the enquiry report. Equally so are the findings of the appellate authority. It is well settled that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material the court in judicial review can interfere. It is only to satisfy ourselves to this extent, that we have scrutinized the material to see as to what was reflected in the record. We are satisfied that the disciplinary proceedings are vitiated and deserves to be quashed.

22. In this scenario, we are inclined to accept the explanation given by the appellant that overwriting in the application form was only due to correction of an inadvertent error. As long as the original 8th standard marksheet reflected his date of birth as 21.04.1972 and there is no correction or manipulation in that document, the appellant cannot be penalised.

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25. Expressions like “benefit of doubt” and “honorably 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 Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 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.

26. 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 and Others v. State of U.P. (1990) 3 SCC 190**].*

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28. *Apart from the above, one other aspect is to be noted. The Enquiry Officer’s report makes a reference to the appellant passing 10th standard, and to a 10th standard marksheet exhibited as Exh. P-4 referring to the date of birth as 24.07.1974. Jagdish Chandra-PW1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10th standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10th class certificate of Ram Lal produced before the Enquiry Officer, is of some other Ram Lal.*

29. *This issue need not detain us any further because it is not the case of department that the appellant sought employment based on 10th standard marksheet. It is their positive case that the appellant sought employment on the basis of his 8th standard marksheet. Shravan Lal-PW-4 in the departmental enquiry had also furnished the 10th standard marksheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8th standard marksheet, and he admitted that there was no alteration in the 8th standard marksheet”.*

Indubitably, the tenor of the judgment of the trial Court as also its plain reading suggests that there was miserable failure on the part of the prosecution in proving its charge against the petitioner and a specific finding of fact has been recorded by the trial Court that the petitioner has been made as a

scapegoat. It is also seen by this Court that the witnesses that have been cited by the respondent Bank in the departmental proceedings are the same as those who were cited by the prosecution before the trial Court. The set of allegations culled out in the first charge sheet dated 29.05.1990 as well as subsequent charge sheet of 10.04.2001, when seen in the context of the allegations levelled at the stage of registration of FIR, clearly show that similar set of allegations had been levelled by the respondent-Bank which were examined and inquired into by the trial Court. Subsequently, by their own act and conduct, the respondents accepted the order of acquittal of the petitioner and reinstated the petitioner in service. The salary and other benefits were also regularized and the initiation of the fresh charge sheet was undertaken after nearly four years of acquittal of the petitioner and 11 years from the serving of first charge sheet upon the petitioner. Apparently, the respondent-Bank has tried to overcome the judgment passed by the trial Court so as to retain the service benefits to which the petitioner became entitled to on his acquittal, since prosecution/incarceration was at the behest and on a direct initiation of action by the respondent-Bank itself. While not disputing the fact that the civil and criminal proceedings are on different pedestals and notwithstanding the criminal proceedings, the department may still initiate the disciplinary proceedings, the said position in law has been applied indifferently, when the allegations set out in the criminal proceedings as well as in the civil proceeding are same and even the witnesses are same. In such circumstances, the general principles of law stand overruled by the subsequent judgment of the Hon'ble Supreme Court in the matter of *G.M. Tank (Supra)*.

I am, thus, of the opinion that in the present set of circumstances, the case of the petitioner would rather be more akin to the ratio laid down by the Hon'ble Supreme Court in the matter of *G.M. Tank (supra)* after duly considering the judgment of *Ajit Kumar Nag (supra)* relied upon by the counsel for the respondents. Hence, the impugned order imposing punishment deserves to be set aside.

Additionally, this Court also delves into the objection raised by the counsel for the respondents-Bank as regards the scope of Constitutional Court while exercising the power of judicial review in the matter of departmental proceedings. Even though the position in law is well established and needs no reiteration that the scope of judicial review in disciplinary proceedings is limited to illegality, perversity, impropriety and/or violation of principles of natural justice, however, when the aforesaid principles are applied to the present case, the same clearly come in force. The judgment of the Hon'ble Supreme Court specifically lays down the law that when the departmental proceedings and the criminal proceedings are on same set of allegations and the same witnesses are being relied upon, the departmental proceedings cannot be continued. Notwithstanding the said position in law, not only the punishment has been imposed upon the petitioner but also the appeal preferred by the petitioner was dismissed. The orders concurrently passed by the departmental authorities are thus contrary to the law as laid down by the Hon'ble Supreme Court through a catena of judgments referred to above.

For the foregoing reasons, I find that the present writ petition deserves to be allowed and the impugned orders dated 19.12.2002 and the subsequent order of Appellate Authority dated 04.08.2003 are hereby set aside.

The petitioner is held entitled to all consequential benefits that may accrue in his favour. The Competent Authority of respondents-Bank is directed to carry out the exercise of re-ascertaining the admissible benefits to the petitioner in a time bound manner and preferably within a period of three months of receipt of certified copy of this order. All admissible benefits regarding revision of pay scale and arrears of pay as well as revision of pension and other pensionary benefits shall be disbursed in favour of the petitioner within a further period of two months. In the event of failure on the part of the Competent Authority of the respondent-Bank to do the needful, the petitioner shall be entitled to interest on such delayed payment of arrears at the rate of 6% per annum from the date of filing of the present writ petition till actual disbursement.

Petition stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

06.03.2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No