

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

FMA 1361 of 2025

with

CAN 1 of 2025

Tarak Nath Sarkar

Vs.

Union of India & Others

For the Appellant : Mr. Ashis Kumar Chowdhury,
Mr. Babru Bahan Bera,
Mr. Rohan Paul,
Mr. Sidhartha Roy,

For the U.O.I : Mr. Uttam Basak,

Judgment on : 22.05.2026

Madhuresh Prasad, J.:

1. The appellant was the writ petitioner before the learned Single Judge. The writ petition was dismissed by a judgment dated 25.03.2025. The same is the subject matter of the present intra-court appeal.
2. The writ petitioner was a constable in the Central Industrial Security Force (CISF). On the intervening night on 07.11.2002 and 08.11.2002,

at a time when he was on duty, he allegedly unauthorizedly scaled the boundary wall of the establishment and entered the port area. The petitioner was allegedly apprehended carrying two bundles of raw silk from the NSD Port area. He was taken to the CISF Office, an FIR was lodged with the Officer-in-Charge of the South Post Police Station, Kolkata. He was produced in court on 09.11.2002 and remanded to police custody till 14.11.2002. He was released on bail on 27.12.2002.

3. In respect of the same alleged occurrence a charge memo dated 19.12.2002 was served on the petitioner on 01.01.2003.
4. The writ petitioner requested the commandant of the CISF Unit at Kolkata Port Trust to defer the proceeding till conclusion of the criminal trial. Such a request was pursued by filing a writ petition, WP No.913 (W) of 2003. The writ petition and intra court appeal were dismissed.
5. The commandant thereafter proceeded with the enquiry. The petitioner filed his reply to the charge memo denying the charges. 5 witnesses were examined in the enquiry on behalf of department in support of the charge. 2 witnesses in addition thereto were examined as CW1 and CW2. Documents were also produced before the Enquiry Officer the petitioner participated in the enquiry. He was granted due opportunity for cross-examination of witnesses and to submit a defence statement. He chose not to submit a defence statement, and

relied upon the reply dated 18.11.2003 earlier submitted in response to the charge memo.

6. The Enquiry Officer by an enquiry report dated 12.03.2004 found the charges proved. The disciplinary authority agreed with the enquiry officer and the petitioner was visited with a penalty of removal from service with immediate effect vide an order dated 31.03.2004 issued by his Disciplinary Authority.
7. The punishment order was unsuccessfully challenged in appeal whereafter the writ petition was filed.
8. The learned advocate for the appellant has assailed the order passed by the Hon'ble Single Judge by making two-fold submissions. The first submission is that despite an application made by him before the Enquiry Officer to proceed with the enquiry in his mother tongue, the enquiry proceeded in English language.
9. The second submission is that in respect of the same allegations the petitioner was proceeded against in a criminal trial. The criminal proceeding ended in petitioner's acquittal.
10. Relying upon decisions of the Hon'ble Apex Court in the case of ***Babu Lal -Vs.- State of Haryana and Others*** reported in ***(1991) 2 SCC 335***, ***Capt. M. Paul Anthony -Vs.- Bharat Gold Mines Ltd. And Another*** reported in ***(1999) 3 SCC 679*** and more recent decision of the Hon'ble Apex Court in the case of ***Ram Lal -Vs.- State of***

Rajasthan and Others reported in **(2024) 1 SCC 175** it is submitted that the petitioner should have been extended the benefit of his acquittal in the criminal trial by the authority and the dismissal order should have been revoked/recalled.

11. The learned advocate for the respondents on the other hand submits that the entire departmental proceeding was considered threadbare by the Hon'ble Single Judge in the writ proceeding. An issue of the proceeding being conducted in the petitioner's mother tongue was raised seven months after the petitioner submitted his reply to the charge memo. The petitioner made elaborate complete submissions in his reply in English language. Only when the proceeding was nearing completion in 26.02.2004, the petitioner made an application for proceeding to be conducted in the mother tongue. Under such circumstances no prejudice can be made out from the refusal to proceed against the petitioner in his mother tongue. In absence of any prejudice the belated plea raised by the petitioner is unsustainable. He has availed the opportunity granted to him submitted his written statement of defence, participated in the enquiry and also availed a remedy of appeal all in English language.

12. The second submission regarding extending benefits of the finding in the criminal trial according to the learned advocate for the respondents is equally unsustainable. The law by now is settled and reiterated even in the decision relied upon by the learned advocate for the appellant that there is no bar to simultaneous conduct of

proceeding in the department and in a Criminal Court for the same allegation.

13. It is also trite that the standard of proof in the two proceeding varies substantially. Whereas in the criminal trial the charges are required to be proved beyond reasonable doubt on the strict standard of proof based on the Evidence Act, in the departmental proceeding, the same charges are held proved on a preponderance of probability wherein the standard of proof is not as stringent as in a criminal trial. Therefore, the law does not contemplate *ipso-facto* benefit of an acquittal without considering whether the charges were same, material and witnesses relied upon were the same, and also whether the acquittal in the criminal trial is an honourable acquittal or an acquittal on failure of the procedural aspect in the trial.

14. Therefore, there is no scope for the petitioner to contend that the benefit of the criminal trial is to be extended to him. In the present case only two witnesses were examined in the criminal trial whereas in the departmental proceeding five PWs and two CWs number of witnesses were examined; and the charges stood corroborated on the preponderance of probability. The petitioner was afforded all opportunity and no procedural lapse was pointed out. Therefore, the petitioner is not entitled to benefit of the findings in the criminal trial.

15. The learned advocate for the respondents has relied upon the decision of the Hon'ble Apex Court in the case of ***The State of Rajasthan & Ors -Vs.- Phool Singh*** reported in ***(2022) 11 S.C.R 140*** also reported in ***(2022) 19 SCC 713***.

16. We have considered the submissions advanced by the learned Advocates representing the parties, perused the records of the writ proceedings and the order under appeal. In so far as the petitioner's request conducting the departmental proceeding in his mother tongue, we find that the Charge Memo was issued on 19.12.2002. The petitioner submitted his written statement of defence, during examination of total 7 witnesses, he participated in the enquiry and availed the opportunity granted to him by the Enquiry Officer. After conclusion of the proceedings, the Enquiry Officer submitted an Enquiry Report dated 12.03.2004. that request for conducting the proceedings in the appellant's mother tongue was submitted before the Enquiry Officer at the fag end of the proceedings that is on 26.02.2004. The significance of events leaves no room for doubt that such application was submitted by the appellant, when the enquiry was nearing completion, as an afterthought. Our view is further fortified by the fact that the petitioner after submission of the Enquiry Report also filed before the appellate authority in English. We, therefore, find no substance in the plea that the petitioner was deprived of effective opportunity in the proceedings since the proceeding was not conducted in his mother tongue.

17. We have also given our anxious consideration to the second submission that in view of the petitioner's acquittal in the criminal trial for the same charges, the petitioner was required to be exonerated in the departmental proceedings also. The learned Advocate relied upon three decisions relied upon by the learned Advocate for the petitioner in support of such contention in the case of **Babu Lal** (*supra*) relied upon by the learned Advocate for the appellant we find that the petitioner therein was an *ad-hoc* employee who was placed under suspension on the grounds of criminal proceedings pending against him for alleged offence under Section 420 of the Indian Penal Code. During pendency of the criminal trial the petitioner therein was terminated. Thereafter criminal prosecution resulted in acquittal of the petitioner. In the case of **Babu Lal** (*supra*) the petitioner was not terminated based on findings in departmental enquiry, as in the present case. In fact his termination was neither based on finding of departmental proceeding, nor post-conviction in a criminal trial. His termination was during pendency of the criminal trial. It is under such circumstances that the apex Court directed the petitioner/appellant therein to be reinstated in service. The judgment in the case of **Babu Lal** (*supra*) has no application to the facts and circumstances of the present case.

18. We find that decision in the case of **Capt. M. Paul Anthony** (*supra*) relied upon by the learned Advocate for the petitioner was rendered considering the facts that the departmental proceedings in

the criminal trial were based on identical sets of facts, arising out of the raid conducted at the appellant's residence wherein incriminating articles were recovered. In the criminal trial as well as in the departmental enquiry, the very same witnesses, being the Police Officers, panchnama witnesses who participated in the raid were examined. The same witnesses were examined in the criminal case. Which came to a conclusion that no search was conducted nor any recovery made from the appellant's residence.

19. It is in these facts and circumstances that the apex Court held that it would be unjust, unfair and rather oppressive in law if the findings recorded in the *ex-parte* departmental proceeding were allowed to stand. In the present case we find that 7 witnesses deposed in support of the allegation in the departmental enquiry. In the criminal trial, however only two witnesses were examined. In the present case the conclusions in the departmental enquiry are not founded on the same set of evidence and witnesses. The petitioner, therefore, is not in a position to claim the benefit of acquittal in the criminal trial wherein the charges were considered applying the strict rules of evidence, and where only two witnesses were produced. The judgment of the apex Court in the case of **Capt. M. Paul Anthony** (*supra*), therefore, does not come to the aid of the petitioner/appellant.

20. The decision of **Ram Lal** (*supra*) is also on the same lines as the decision in the case of **Capt. M. Paul Anthony** (*supra*) here also the apex Court held that the charges were not only similar, but identical;

and evidence, witnesses and circumstances were same in both the criminal trial as well as the departmental proceeding. Under such circumstances benefit of the appellant's acquittal in the criminal trial was extended to the petitioner and termination order passed in the departmental proceedings was set aside. Therefore, this decision also does not support the petitioner's claim for benefit of the acquittal in the criminal trial, for exonerating him in the departmental proceeding.

21. We would further take into consideration the decision of the apex in the case of **Phool Singh** (*supra*) relied upon by the learned Advocate for the respondent. Wherein the apex court considered the earlier decision rendered by it in the case **Capt. M. Paul Anthony** (*supra*) which we have considered above. Thereafter the apex Court took into consideration the fact that acquittal of the respondents therein was not an honourable acquittal, but an acquittal given due to "*benefit of doubt*". In the present case also, we find from the order of the Chief Metropolitan Magistrate dated 15.09.2005 passed in GR Case NO. 2558 of 2002, TR No. 25 of 2003 that the Court acquitted the appellant on the following terms:

"Therefore the accused person should get the benefit of 25.03.2025 doubt and should be acquitted accordingly"

22. We, therefore, find no substance in the submission advanced by the petitioner in support of the appeal. The order of the learned Single Judge dated 25.03.2025 passed in WP No. 913 (W) of 2023 in our opinion requires no interference. Pending Stay Application CAN 1 of

2025 is also disposed of. Interim order, if any stands vacated. The appeal is dismissed.

23. Urgent certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)