

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION 177 OF 2025

Prabhakar Kashiram Sawant
Ex-Superintendent in the office of
Joint Charity Commissioner, Latur,
Age – 62 years,
R/o. Tapasaya, 504, 5th Floor,
Bhawani Shankar Road,
Dadar (W), Mumbai 28.

...Petitioner

Versus

1. The Charity Commissioner
M. S. Mumbai. Having Office at
Charity Commissionerate Bhawan,
3rd floor, 83, Dr. Anie Besant Road,
Worli, Mumbai 18.

2. The State of Maharashtra
Through Principal Secretary and
R.L.A. and the Appellate Authority
Law and Judiciary Department,
Having office of Mantralaya,
Mumbai 400 032.

...Respondents

Mr. Abhijeet A. Desai with Ms. Mohini A. Rehpade, Digvijay S. Kachare, A. Almeida, Vijay Singh, Daksha Punghera, Karan Gajra, Sanchita Sontakke i/by Desai Legal LLP, for the Petitioner.

Mr. N. C. Walimbe, Addl. GP a/w Shri S. P. Kamble, AGP, for the Respondent-State.

**CORAM: SUMAN SHYAM &
S. M. MODAK, JJ.**

RESERVED ON: 16th DECEMBER, 2025.
PRONOUNCED ON: 23rd JANUARY, 2026.

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JUDGMENT : (Per *SUMAN SHYAM, J.*)

1. Rule. Rule made returnable forthwith. By consent of the learned Counsel for the parties, the matter is taken up for final hearing and disposal.

2. This Writ Petition is directed against the Judgment and Order dated 2nd August, 2024, passed by the learned Maharashtra Administrative Tribunal (“MAT”), dismissing the Original Application No. 782 of 2018, instituted by the Petitioner, thereby upholding the order of dismissal from service dated 3rd May, 2017, passed by the Respondent No.1 i.e. the Charity Commissioner.

3. The facts and circumstance of the case, giving rise to the filing of the present Writ Petition, are briefly narrated herein-below:-

(a) The Petitioner herein, who had initially joined service on 1st December, 1982, as a ‘Peon’, was subsequently promoted to various higher posts. The Petitioner eventually held the post of ‘Superintendent’, which was the post held by him till dismissal from service.

(b) While serving as 'Inspector' in the Public Trust Registration Office, under the Respondent No.1, the Petitioner was caught red-handed while accepting illegal gratification of Rs. 2 lakhs, following which, the Anti-Corruption Bureau (ACB) registered a criminal case, leading to the filing of ACB Special Case No. 35 of 2014. On 28th April, 2015, charge was framed against the Petitioner/original Applicant in connection with ACB Special Case No. 35 of 2014, punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 ('PC Act').

(c) During the Pendency of criminal proceeding before the learned Special Judge, a Departmental Enquiry ('DE') was initiated against the Petitioner on charges which were of similar nature. However, before conclusion of the Departmental Enquiry, by the Judgment and Order dated 21st November, 2015, the Petitioner was acquitted by the learned Special Judge by giving him the benefit of doubt. Notwithstanding the same, the Departmental Enquiry proceeded and

the Enquiry Officer has held that the charge brought against the Petitioner stood established.

(d) Meanwhile, the Petitioner was placed under suspension by order dated 30th April, 2012, but after his acquittal in the Criminal Case, he was reinstated in service on 23rd February, 2016. On 20th May, 2016, the Petitioner was also promoted to the post of 'Superintendent' during the time when the Departmental Enquiry was pending against him.

(e) On 7th April, 2017, a Show Cause Notice was issued to the Petitioner, forwarding copy of the Enquiry Report to submit his say. After considering the reply submitted by him, the Disciplinary Authority issued order dated 3rd May, 2017, dismissing the Petitioner from service. The Departmental Appeal preferred by him before the Appellate Authority also came to be dismissed by order dated 25th May, 2018.

(f) Aggrieved thereby, the Petitioner had instituted Original Application No. 782 of 2018 before the

learned MAT, which was also dismissed on 2nd August, 2024. Hence, this Petition.

(g) We are informed that the Petitioner has, in the meantime, attained the age of superannuation from service.

4. The submissions of Mr. Desai, learned Counsel for the Petitioner, reduced to its essence, are primarily two fold: (i) Firstly, the charge brought against the Petitioner in the criminal case as well as departmental proceeding, are one and the same and the witnesses examined by the prosecution/department in both the proceedings are also substantially the same. Therefore, after the acquittal of the Petitioner in the criminal case, the departmental proceeding ought to have been closed. To that effect, the order of dismissal from service is bad in law, (ii) Secondly, the prayer made by the petitioner for allowing him to be represented by a lawyer was illegally declined by the Enquiry Officer, thereby, depriving him of the right to effectively defend his interest. As such, the impugned order of dismissal from service is bad on account of violation of procedural safeguards and the principle of natural justice.

5. Assailing the impugned Judgment and Order of the learned MAT, the learned Counsel Mr. Desai has argued that after the decision of the Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Ors.**¹, law is well settled that, when a criminal case and departmental proceeding are based on identical charges and are sought to be proved by examining the same witnesses, on acquittal in the criminal trial, the departmental proceeding is required to be dropped. The learned Counsel submits that similar view has been expressed by the Supreme Court in the case of **G.M. Tank vs. State of Gujarat & Ors.**² as well.

6. By placing reliance on another decision of the Supreme Court in the case of **Ram Lal vs. State of Rajasthan & Ors.**³, the learned Counsel Mr. Desai has argued that the law laid down in the case of **Capt. M. Paul Anthony (supra)** and **G.M. Tank (supra)** have been quoted with approval in a subsequent decision of the Supreme Court in the case of **Ram Lal (supra)** whereby, the effect of acquittal in a criminal proceeding has been considered by the Supreme Court. He submits that in **Ram Lal (supra)**, the Hon'ble

1 (1999) 3 Supreme Court Cases 679

2 (2006) 5 Supreme Court Cases 446

3 (2024) 1 Supreme Court Cases 175

Supreme Court has held that, where the charges in the departmental enquiry and the criminal court are identical and the evidence, witnesses, and circumstances are also the same, the Court can interfere with the order passed by the Disciplinary Authority if findings contrary to those in the criminal case are recorded; in such a case, the order is liable to be held to be unjust, unfair and oppressive.

7. Mr. Desai, learned Counsel for the Petitioner, has made elaborate arguments to convince this Court that this is a case where charges framed against the Petitioner in the Criminal Proceeding as well as the Departmental Enquiry was one and the same and the witnesses examined to prove the charge were also the same. As such, in view of the law laid down in the case of **Capt. M. Paul Anthony (supra)**, **G.M. Tank (supra)** as well as **Ram Lal (supra)**, the continuance of the Departmental Proceeding leading to the issuance of order of penalty was wholly impermissible in the eyes of law.

8. By referring to a decision rendered in the case of **Maharana Pratap Singh vs. State of Bihar and Ors.**⁴, learned Counsel for the

4 2025 SCC Online SC 890

Petitioner has further submitted that the test laid down in para 25 of the said decision, if applied to the facts of this case, would lead to the irresistible conclusion that the order of penalty is unsustainable in law.

9. Mr. Walimbe, learned Additional G. P., on the other hand, has submitted that the mere fact that the Petitioner was acquitted in a Criminal Case would not automatically lead to his discharge in Departmental Proceeding, if the facts and circumstances of the case does not justify the same.

10. The Respondent-State has opposed the Writ Petition by, *inter alia*, contending that although there was similarity of charges brought against the Writ Petitioner in the Criminal Proceeding as well as in the Departmental Proceeding, yet, there was some differences between the two. Moreover, the Witnesses examined so as to establish the charge in the Departmental Proceeding are also not the same, although, there were some common witnesses. Contending that, the scope of Criminal Proceeding under Section 7 of the PC Act is different from the Departmental Proceeding held to establish misconduct, it has been contended that once misconduct

on the part of the delinquent official is established in Departmental Proceeding, imposing penalty would be permissible under the law.

11. We have considered the rival submissions made at the bar and have also gone through the materials available on record. Since elaborate arguments have been advanced by the Petitioner's Counsel to contend that after the acquittal of his client in the Criminal Proceeding, the Departmental Proceeding was not maintainable, we deem it necessary to make a brief survey of judicial pronouncements of the Hon'ble Supreme Court on the above subject.

12. The decision in the case of **Capt. M. Paul Anthony (supra)** is one of the early decisions of the Apex Court dealing with the issue of maintainability of parallel criminal and disciplinary proceedings against the same delinquent where the charges were identical. In **Capt. M. Paul Anthony (supra)**, the Supreme Court has held that when the facts and the evidence in both the proceedings, the Departmental Proceeding and the Criminal Case, are the same, without there being any iota of difference, the distinction between the Departmental Proceeding and the Criminal Case on the basis of approach and burden of proof would not be applicable. In that

case, the Criminal Case as well as the Departmental Proceedings were based on identical set of facts, i.e., the raid conducted at the Appellant's residence and recovery of incriminating articles therefrom. The Police Officer and the Panch witnesses, who had raided the house of the appellant were the only witnesses examined by the Enquiry Officer in the Departmental Proceeding and by relying upon their statements, the Enquiry Officer came to the conclusion that the charge was established against the Appellant. The said witnesses were also examined in the Criminal Case and on consideration of the entire evidence, the Court came to the conclusion that the prosecution case was not established and accordingly, acquitted the Appellant. It is in these circumstances, the Supreme Court has held in **Capt. M. Paul Anthony (supra)** that in view of the judicial pronouncement in the Criminal Proceeding, it would be unjust and unfair and rather, oppressive to allow the findings recorded in the Departmental Proceeding to stand. It deserves mention herein that in that case the Departmental Proceeding was conducted ex-parte against the delinquent.

13. In the case of **G.M. Tank (supra)**, the Appellant was honourably acquitted by a Competent Court but following the report of the Enquiry Officer in a Departmental Proceeding, he was dismissed from service. The Departmental Proceeding was conducted on the same set of facts, evidence and witnesses. It was in such a situation that the Hon'ble Supreme Court has held that with the acquittal of the Appellant in the criminal trial, the Departmental Enquiry on the same set of facts was not maintainable.

14. However, it will be significant to note herein that in a later decision in the case of **Karnataka Power Transmission Corporation Limited, represented by Managing Director (Administration & HR) vs. C. Nagaraju and Anr.**⁵, the Supreme Court had interfered with the judgment of the High Court setting aside the order of dismissal on the basis of acquittal by the Criminal Court by holding that acquittal by a Criminal Court would not debar an employer from exercising the power to conduct departmental proceeding in accordance with the rules and regulations. It has been held that the two proceedings, Criminal and Departmental, are entirely

5 (2019) 10 Supreme Court Cases 367

different, they operate in different fields and have different objectives.

15. Explaining the law laid down in the case of **Capt. M. Paul Anthony (supra)** and **G. M. Tank (Supra)**, the Supreme Court has further held in **Karnataka Power Transmission Corporation Limited (supra)** that in **Capt. M. Paul Anthony (supra)**, simultaneous continuance of Departmental Proceeding and Criminal case on the same set of facts was the point of consideration by the Court wherein, an opinion was expressed that Departmental Proceeding and Criminal Case can proceed simultaneously as there is no bar. However, it is desirable to stay the Departmental Enquiry till conclusion of the Criminal Case, if the Departmental Proceeding and Criminal Case are based on identical and similar set of facts and the charge in the Criminal Case against the delinquent employee is of a grave nature, which involves complicated questions of law and fact.

16. In para 13 of the decision in a case of **Karnataka Power Transmission Corporation Limited (supra)**, the following observations have been made, which are reproduced herein-below:

“13. Having considered the submissions made on behalf of the appellant and the Respondent No. 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court.”

17. By interpreting the law laid down in **Capt. M. Paul Anthony (supra)**, the Supreme Court has further observed in the case of **Union of India & Ors. vs. Sitaram Mishra & Anr.**⁶ that the mere fact that the employee was acquitted in the course of the criminal trial cannot operate *ipso facto* as a ground for vitiating the finding of

6 (2019) 20 SCC 588

misconduct which has been arrived at during the course of the disciplinary proceedings.

18. In the case of **G. M. Tank (Supra)**, the evidence before the Criminal Court and the Departmental Proceeding, being exactly the same, the Supreme Court has held that acquittal of the employee by a Criminal Court has to be given due weight by the Disciplinary Authority, since the evidence in both, the Criminal Trial and a Departmental Enquiry, is the same. Therefore, the order of dismissal of the Appellant after his acquittal in the Criminal Proceeding was set aside.

19. In the case of **Ram Lal (supra)**, it was held that although mere acquittal in Criminal Proceeding would not confer any right to the employee to claim benefit, including reinstatement, yet, where the charge in Departmental Proceeding and Criminal Court are identical, the evidence, witnesses and circumstances are also the same and where the Court, in exercise of judicial review, finds that acquittal in Criminal Proceeding was done after full consideration of prosecution evidence, wherein the prosecution has miserably failed to prove charge, in such a case, the Court can interfere with the order of the Disciplinary Authority, where the

findings of the Disciplinary Authority are also found to be unjust, unfair and oppressive.

20. By emphasizing on the expressions such as, “benefit of doubt” and “honourably acquitted”, the Supreme Court has further observed in **Ram Lal (supra)** that these expressions cannot be understood as magic incantations. The Court, in exercise of its power of judicial review, is obliged to examine the substance of the judgment and not go by the form of expression used.

21. In another recent decision of the Supreme Court rendered in the case of **Maharana Pratap Singh (supra)**, similar observations have been made to the effect that while an acquittal in a Criminal Case would not automatically entitle the accused to have an order of setting aside the order of dismissal from public service following the disciplinary proceedings, yet, when the charges, evidence, witnesses as well as the circumstances in both, the Departmental Enquiry and Criminal Proceeding are identical or substantially similar, it would assume a different context. In such cases, upholding the findings in the disciplinary proceeding would be unjust, unfair and oppressive.

22. From a careful survey of aforementioned decisions of the Supreme Court what follows is that, while reinstatement in service would not be automatic upon acquittal of an employee in a criminal case, yet, the situation would be entirely different, if the charge in the Criminal Proceeding as well as Departmental Proceeding are identical and the witnesses, evidence and circumstances of both proceedings are also to similar effect. It is in such cases, when the prosecution fails to establish the charge against the accused/ delinquent in the Criminal trial that the same would have a bearing on the Departmental Enquiry.

23. From the judicial pronouncements referred to above, it is also apparent that the correct course of action to be adopted in a particular case would depend on the facts and circumstances of each case. In the light of the aforementioned discussion, let us now examine as to whether, the charges framed in the Criminal Proceeding as well as Departmental Enquiry against the Petitioner, the witnesses, evidence and circumstances were identical and if so, whether the Petitioner was honourably acquitted in the Criminal Proceeding.

24. In the Criminal Proceeding, the following charges were framed against the Petitioner.

POINTS

1. Whether prosecution proves that on 26/03/2012 at the office of Charity Commissioner at Worli, Mumbai, demanded and attempted to obtain a sum of Rs.6,00,00/- for himself from the complainant as an illegal gratification other than legal remuneration as a motive or reward for showing favour to the complainant for his appointment and appointment of Smt. Nanda Raut as trustees of Martand Devasthan?

2. Whether prosecution proves that as a part of the said transaction accused demanded an amount of Rs.5,00,000/- with the informant and out of that have agreed to accept first installment of Rs.2,00,000/- for the aforesaid reason?

3. Whether prosecution proves that on or about 18/04/2012 at 3:45 pm accused demanded and accepted Rs.2,00,000/- as an illegal gratification other than legal remuneration as a motive or reward for the reasons stated earlier?

4. Whether prosecution proves that on 18/04/2012 at about 3:45 pm in the course of same transaction accused committed criminal misconduct by accepting Rs.2,00,000/- as aforesaid?

5. What order?

FINDINGS

1. In the negative.
2. In the negative.
3. In the negative.

4. In the negative.
5. As per final order.”

25. The following seven (7) witnesses were examined by the prosecution during the trial.

“PW-1 Surendra Kadam (Informant)
PW-2 Kiran Wagal (Panch)
PW-3 Nilesh Shrirang Sawant (Technician)
PW-4 Nitin Pawar (Another Technician)
PW-5 Ravindra Avhad (Another Panch)
PW-6 Mrs. Shobha Tendulkar (colleague)
PW-7 Lokesh Kanse (Investigating Officer)”

On conclusion of trial, the Petitioner was acquitted by giving him the benefit of doubt.

26. Insofar as the Departmental Proceeding is concerned, the following two charges were brought against him.

जोडपत्र-एक

श्री. प्रभाकर काशिराम सावंत, निरीक्षक, सार्वजनिक न्यास नोंदणी कार्यालय बृहन्मुंबई विभाग, मुंबई यांचेविरुद्ध तयार करण्यात आलेल्या दोषारोपातील बाबींचे विवरणपत्र.

बाब- एक

तुम्ही श्री. प्रभाकर काशिराम सावंत, निरीक्षक, सार्वजनिक न्यास नोंदणी कार्यालय, बृहन्मुंबई विभाग, मुंबई कार्यालयात कार्यरत असतांना दि.१८/०४/२०१२ रोजी कार्यालयीन वेळेत तक्रारदार श्री सुरेन्द्र केशव कदम यांचेकडून रु.२,००,०००/- (अक्षरी रुपये दोन लाख) ची लाच स्विकारतांना अॅन्टी करप्शन ब्यूरो, मुंबई यांचेकडून

लाचेच्या रकमेसह पकडण्यात आले असल्याने तुम्ही शासकीय कर्मचा-यांना न शोभणारे असे कृत्य केले आहे.

करिता तुम्ही महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ चे नियम ३(१) (३) चे उल्लंघन केल्याने महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ अन्वये विभागीय चौकशीसाठी पात्र ठरत आहात.

सही / -
धर्मादाय आयुक्त,
महाराष्ट्र राज्य, मुंबई.

Translation of Charge-1 in English reads as follows:

Addendum - One

Statement of the fact of the charge against Shri Prabhakar Kashiram Sawant, Inspector, Public Trust Registration Office, Brihanmumbai Division, Mumbai.

Item One

You, Shri. Prabhakar Kashiram Sawant, Inspector, Public Trust Registration Office, Brihanmumbai Division, Mumbai Office, were caught by the Anti- Corruption Bureau, Mumbai while accepting a bribe of Rs.2,00,000/- (Rupees Two Lakhs in words) from the complainant Shri Surendra Keshav Kadam during office hours on 18/04/2012, along with the bribe amount, and you have committed an act unbecoming of a Government employee.

You are liable to a departmental inquiry under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, for violating Rule 3(1)(3) of the Maharashtra Civil Services (Conduct) Rules, 1979.

Sd/-
Charity Commissioner,
State of Maharashtra, Mumbai.

जोडपत्र - दोन

श्री प्रभाकर काशिराम सावंत, निरीक्षक, सार्वजनिक न्यास

नोंदणी कार्यालय, बृहन्मुंबई विभाग, मुंबई यांचेविरुद्ध तयार करण्यात आलेल्या दोषारोपातील बाबींच्या पृष्ठयर्थ असलेल्या गैरशिस्तीच्या किंवा गैरवर्तणुकीच्या आरोपांचे विवरणपत्र.

बाब एक

तुम्ही श्री प्रभाकर काशिराम सावंत, निरीक्षक, सार्वजनिक न्यास नोंदणी कार्यालय, बृहन्मुंबई विभाग, मुंबई येथे कार्यरत असतांना, तक्रारदार श्री सुरेन्द्र केशव कदम यांच्याकडे त्यांची मार्तंड देवस्थान, जेजुरी विश्वस्तपदी निवडीचे ऑर्डर मिळवून देण्याची जबाबदारी व हमी देऊन त्यांचेकडून कायदेशीर परिश्रमाखेरीज बेकायदेशीर मार्गाने लाचेची मागणी करून रुपये २,००,०००/- (अक्षरी रुपये दोन लाख) इतकी रक्कम कार्यालयातच तक्रारदार यांचेकडून लाच स्विकारतांना अॅन्टी करप्शन ब्युरो, मुंबई यांचेकडून दि.१८/०४/२०१२ रोजी रंगेहाथ पकडले गेल्यामुळे तुम्ही शासकीय कर्मचा-यांना न शोभणारे असे कृत्य केले आहे.

करिता तुम्ही श्री प्रभाकर काशिराम सावंत, निरीक्षक महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ चे नियम ३ (१) (३) चे उल्लंघन केल्याने महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ अन्वये विभागीय चौकशीसाठी चौकशीसाठी पात्र ठरत आहात.

सही /—

धर्मादाय आयुक्त,
महाराष्ट्र राज्य, मुंबई.

Translation of Charge-2 in English reads as follows:

Addendum - Two

Statement of allegations of misconduct in the chargesheet prepared against Shri Prabhakar Kashiram Sawant, Inspector, Public Trust Registration Office, Brihanmumbai Division, Mumbai.

Item One

You, Shri. Prabhakar Kashiram Sawant, Inspector, Public Trust Registration Office, Brihanmumbai Division, Mumbai Office, have committed an act unbecoming of a government

servant by demanding a bribe of Rs.2,00,000/- (Rupees Two Lakhs in words) from the complainant Shri Surendra Keshav Kadam by giving him the responsibility and guarantee to obtain an order for his selection as a Trustee of Martand Devasthan, Jejuri, without due diligence and by illegally accepting bribe of Rs.2,00,000/- (Rupees Two Lakh in words) from the complainant in the office itself. You have committed an act unbecoming of a Government servant by being caught red-handed by the Anti-Corruption Bureau, Mumbai on 18/04/2012.

You, Shri. Prabhakar Kashiram Sawant, Inspector are hereby directed to take disciplinary action against you under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, for violating Rule 3(1)(3) of the Maharashtra Civil Services (Conduct) Rules, 1979.

Sd/-

Charity Commissioner,
State of Maharashtra, Mumbai.

27. As many as three witnesses were examined during the departmental proceeding. The Enquiry Officer found that both the charges brought against the Petitioner stood established.

28. What would be significant to note herein is that, it is not the case of the Petitioner that the Departmental Proceeding was dehors the rule or that the findings recorded by the Enquiry Officer were perverse. The Petitioner has also not assailed the Enquiry Report on the ground that the findings recorded therein were

unsustainable in the eyes of law on any other count. If that be so, it cannot be denied that the charge of misconduct brought against the Petitioner has been duly proved.

29. It is no doubt correct that the Petitioner was not allowed to avail the services of a lawyer during the Enquiry Proceeding. However, it appears that no such grievance was raised by the Petitioner before the Competent Forum during the currency of the Enquiry Proceeding. The learned MAT, while taking note of such grievance of the Petitioner, has declined relief to him on this ground by observing that since the Presenting Officer was not a lawyer, hence, denial of service of a lawyer to the Petitioner before the Enquiry Officer would not, in any manner, vitiate the Enquiry Report. We do not find any good ground to disagree with such finding recorded by the MAT.

30. From a reading of the charges brought against the Petitioner in the Departmental Proceeding as well as the Criminal Proceeding, we are unable to agree with the submissions of learned Counsel for the Petitioner that the charges are the same, although, there is substantial similarity of charges brought against

the Petitioner in both the Proceedings. It is no doubt correct that both the proceedings involved charges, the genesis of which lies in the same transaction. However, it must be borne in mind that the approach and perspective of both the proceedings are entirely different. In the Criminal Case, the endeavour of the prosecution would be to prove the charge of corruption brought against the Petitioner/Accused beyond reasonable doubt, whereas, in the Departmental Proceeding, the object is to prove the charge of misconduct on the part of the delinquent official, within the meaning of Section 3(1) of the Maharashtra Civil Services (Conduct) Rules, 1979. Therefore, in the Departmental Proceeding, what would be of utmost significance is the fact as to whether, the allegation of misconduct has been established in accordance with law and not the fact that the delinquent has been acquitted in the Criminal Case, although the factum of acquittal may have a relevant bearing in the Departmental Proceeding, depending on the peculiar facts and circumstances of the case.

31. As has been noted herein-above, in the present case, during the Departmental Proceeding, only three witnesses had been examined. Although, two of them are common witnesses in

the Departmental Proceeding as well as the Criminal Proceeding, yet, atleast one witness examined during the departmental proceeding was not produced as a witness in the criminal trail. Even if the witnesses turn out to be the same in both the proceedings, even then, the projection made by these witnesses in both the proceedings may differ in perspective. Therefore, even if the same witnesses were examined in the Criminal Proceeding, what effect the testimony of those witnesses would have in the departmental proceeding is not open for speculation by the Court. It would be incumbent upon the delinquent to plead and establish that not only in form but in substance also evidence available before the Criminal Case was identical to that before the Enquiry Proceeding, which the Petitioner in this case has failed to demonstrate before the Court. Suffice it to note herein that in the present case, the witnesses examined in both the proceedings are also not exactly the same. If that be so, can it be said that merely because of his acquittal in the criminal case, the Petitioner was automatically entitled to discharge in the Departmental Proceeding. The answer to the above question, in the facts of this case, in our considered opinion, has to be in the negative.

32. There is yet another aspect of the matter, which deserves consideration. Unlike, in any of the decisions relied upon by the Petitioner, in the present case, para 4.7 of the Departmental Enquiry Rule Book, 4th Edition, 1991 (G.A.D.) permitted the Departmental Authorities to continue with the Departmental Enquiry even after acquittal in the Criminal Case. Para 4.7 is reproduced herein-below :-

४.७. दोषमुक्तीनंतरची कारवाई -- (१) न्यायनिर्णय दोषमुक्तीबाबत असेल तेव्हा सक्षम प्राधिकाऱ्यास न्यायनिर्णयाचे व काही पुरावा असल्यास त्याचे काळजीपूर्वक अवलोकन केल्यानंतर विभागीय चौकशी चालू ठेवण्याची आवश्यकता आहे किंवा काय, याविषयी विचार करता येईल. दोषमुक्ती समर्थनीय आहे या विषयी सक्षम प्राधिकारी सहमत झाला तर त्यास फौजदारी न्यायालयाच्या निष्कर्षाशी आपण सहमत आहोत, असे प्रमाणित करून चौकशी बंद करता येईल.

(२) दोषमुक्ती समर्थनीय होती या विषयी सक्षम प्राधिकारी सहमत झाला नाही तर त्यास आरोपीविरुद्ध विभागीय चौकशी चालू ठेवता येईल बाणि योग्य ती शिक्षा ठोठावता येईल. जर प्राधिकाऱ्याने शासकीय कर्मचाऱ्यास शिक्षा देण्याचा निर्णय घेतला तर अशा प्रत्येक प्रकरणात लोकहित लक्षात घेऊन विशिष्ट गैरवर्तणुकीबद्दल ठोठावण्याच्या शिक्षेचे स्वरूप व प्रमाण या विषयी निर्णय घेणे ही अशा प्राधिकाऱ्याची जबाबदारी असेल.

(३) मोठी शिक्षा लादण्यासाठी न्यायालयातील प्रत्येक दोषसिद्धी पुरेशी होईलच असे नाही, तसेच अपचारी मोठ्या शिक्षेस पात्र

असेल तेव्हा, दोषमुक्ती ही मोठ्या शिक्षेच्या आड येता कामा नये, या गोष्टीची नोंद घेण्यात यावी.

Translation of Para 4.7 of Departmental Enquiry Rule Book, 4th Edition, 1991 (G.A.D)

4.7. Action after Acquittal -

(1) Where the judgment is one of acquittal, the competent authority may, after carefully examining the judgment and, if any, the evidence, consider whether it is necessary to continue the departmental inquiry. If the competent authority agrees that the acquittal is justified, the inquiry may be closed by certifying that it agrees with the findings of the criminal court.

(2) If the competent authority does not agree that the acquittal was justified, it may continue with the departmental inquiry against the accused and impose an appropriate penalty. If the authority decides to impose a penalty on the Government servant, in every such case, it shall be the responsibility of such authority to decide, keeping public interest in view, the nature and quantum of the penalty to be imposed for the specific misconduct.

(3) It should be noted that every conviction by a court may not necessarily be sufficient for imposing a major penalty, and likewise, where the delinquent is liable for a major penalty, an acquittal should not stand in the way of imposing a major penalty.

33. It is the admitted position of fact that after his acquittal in the Criminal Case, the Petitioner did not raise any objection as to the continuance of the Departmental Proceeding but continued to participate in the same without any objection. It was only after the Disciplinary Authority has issued the order of penalty that the Petitioner had taken the plea of non-maintainability of the Departmental Proceeding. However, in view of para 4.7 of Departmental Enquiry Rule Book, as referred to above, we are of the view that the Department was entitled to continue with the Disciplinary Proceeding against the Petitioner notwithstanding his acquittal of the Criminal Case. Therefore, by not raising any objection to the continuance of the Departmental Proceeding and by participating in the said proceeding, the Petitioner has, in our opinion, acquiesced to the continuance of the Departmental Proceeding. He cannot, therefore, now turn around and make a complain that the Departmental Proceeding ought to have been closed upon his acquittal in the Criminal Case.

34. For the reasons stated herein-above, we are of the view that there is no justifiable ground for this Court to interfere with the impugned order of dismissal from service or the subsequent order

dated 25th May, 2018 passed by the Appellate Authority and the Judgment and Order dated 2nd August, 2024 passed by the learned MAT dismissing the Original Application No. 782 of 2018 preferred by the Petitioner on the grounds and reasons mentioned therein.

35. The Writ Petition is, therefore, held to be without any merit. The same is, accordingly, dismissed. Rule is discharged. No order as to costs.

(S. M. MODAK , J.)

(SUMAN SHYAM, J.)