®

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 29TH DAY OF MAY, 2020

PRESENT

THE HON'BLE MR.JUSTICE G.NARENDAR

AND

THE HON'BLE MR.JUSTICE M.NAGAPRASANNA

WRIT PETITION No.203239 OF 2019 (GM-KLA)

BETWEEN:

AEJAZ HUSSAIN S/O. ASHRAF HUSSAIN
AGE: 58 YEARS, OCC: CHIEF OFFICER, TMC
SHORAPUR, DIST. YADGIRI
R/O. H.NO.5-408, KCT COLLEGE ROAD,
MADINA COLONY, KALABURAGI - 585101

... PETITIONER

(BY SRI BABURAO MANGANE, ADVOCATE FOR
SRI ASHOK B. MULAGE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   DEPARTMENT OF URBAN DEVELOPMENT
   M.S.BUILDING, BENGALURU – 32
   REPRESENTED BY ITS UNDER SECRETARY

2. THE UPA-LOKAYUKTA
   KARNATAKA LOKAYUKTA
   MULTI STORIED BUILDING
   DR. B.R.AMBEDKAR VEEDI
   BENGALURU – 560 001

3. THE REGISTRAR (ENQUIRIES-4)

KARNATAKA LOKAYUKTA
MULTI STORIED BUILDING
DR. B. R. AMBEDKAR VEEDI
BENGALURU – 560 001

4. THE SUPERINTENDENT OF POLICE
KARNATAKA LOKAYUKTA
AIWAN-E-SHAHI
KALABURAGI

5. THE TOWN MUNICIPAL COUNCIL
SHORAPUR, DIST. YADGIRI

6. THE DIRECTOR
MUNICIPAL ADMINISTRATION, 9TH FLOOR
VISHWESHWARAIAH TOWER
DR. B.R.AMBEDKAR VEEDHI
BENGALURU – 560 001

... RESPONDENTS

(BY SMT. ANURADHA M. DESAI, GOVERNMENT ADVOCATE FOR R1, R4 AND R6
SRI SUBHASH MALLAPUR, ADVOCATE FOR R2 AND R3
SRI CHAITANYA KUMAR C.M., ADVOCATE FOR R5)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE ENQUIRY REPORT DATED 11.06.2018 PASSED BY 3RD RESPONDENT, RECOMMENDATION OF THE UPA-LOKAYUKTHA DATED 13.06.2018 OF THE 2ND RESPONDENT AND THE GOVERNMENT ORDER DATED 14.06.2019 PASSED BY 1ST RESPONDENT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.02.2020, THIS DAY ***NAGAPRASANNA J.,*** PRONOUNCED THE FOLLOWING:

ORDER

The petitioner being aggrieved by the report of the Enquiry Officer dated 11.06.2018, recommendation of the Upa-lokayuktha dated 13.06.2018 and the Government Order dated 14.06.2019, by which, the respondent has imposed a composite penalty of compulsory retirement and permanently withholding 40% of the pension on the petitioner, resulting in the instant writ petition.

2. The material facts that are necessary for the appreciation of the issue in this writ petition are as follows:

The petitioner was appointed as a Sanitary Inspector, Grade 2 on 23.02.1983 by the Director of Municipal Administration, Bengaluru and at the relevant point of time, he was working as an in-charge Chief Officer of Town Municipal Council, Shorapur, District, Yadgiri. While discharging his duties as an in-

charge Chief Officer of Town Municipal Council, Sedam, a case came to be registered against him in Crime No.7/2005 under Sections 7, 13(1)(D) read with 13(2) of the Prevention of Corruption Act, 1988, and after filing the charge sheet, the same was registered as Special Case No.150/2006, before the Principal Sessions Judge, Kalaburgi.

3. The Criminal Court after a full fledged trial, acquitted the petitioner off the charges levelled against him under Sections 7, 13(1)(D) read with 13(2) of the Prevention of Corruption Act. The order of acquittal was challenged by the Lokayukta before this Court in Criminal Appeal No.3683/2010 and during the pendency of the said criminal appeal, on the basis of the same set of facts, the Lokayukta prepared a report under Section 12(3) of the Karnataka Lokayukta Act, 1984 (hereinafter referred to as 'the Act, 1984') and furnished the same to the

State Government seeking entrustment of Departmental Enquiry to itself. In turn, the State Government by order dated 22.03.2011, entrusted the conduct of Departmental Enquiry to the hands of the second respondent – Lokayukta. Pursuant to which, a charge sheet was issued against the petitioner on 29.03.2011.

4. During the pendency of the proceedings before the Lokayukta on the departmental side, the aforesaid criminal appeal came to be dismissed on 14.07.2016, affirming the findings of the Criminal Court, which had acquitted the petitioner. Even after the acquittal, the disciplinary proceedings continued and the Enquiry Officer on 11.06.2018, submitted his report holding the petitioner guilty of the charges levelled against him in terms of the charge sheet that was issued to the petitioner and contrary to the judgment of the criminal Court and as affirmed by this

Court. Pursuant to the report of the Enquiry Officer, a recommendation was made by the Upa-Lokayukta on 13.06.2019, recommending imposition of penalty of compulsory retirement and also permanently withholding 40% of the pension payable to the petitioner.

5. A second show cause notice, enclosing the report of the Enquiry Officer and the recommendations of the Lokayukta was issued to the petitioner asking him to show cause why he should not be visited with the penalty as recorded by Lokayuktha. The petitioner by reply dated 26.12.2018, submitted that he had been acquitted off the charges levelled against him in the aforesaid criminal case and conducting enquiry on the same set of facts should be closed. The Government, not accepting the reply of the petitioner, imposed penalty of compulsory retirement and permanently

withholding of 40% of his pension. Challenging the report of the Enquiry Officer, recommendation of the second respondent and the order passed by the Government, the petitioner has filed the instant petition.

6. We have heard Sri Baburao Mangane for Sri Ashok B. Mulange, learned counsel for the petitioner, Smt. Anuradha M. Desai, learned Government Advocate for respondent Nos.1, 4 and 6, Sri Subhash Mallapur, learned counsel for respondent Nos.2 and 3 and Sri Chaitanya Kumar C.M., learned counsel for respondent No.5 and perused the papers.

7. Learned counsel for the petitioner would contend that he has been honorably acquitted by the trial Court vide judgment dated 30.03.2010 in Special Case No.150/2006 and the said acquittal is affirmed by this Court vide judgment dated 14.07.2016 and the

Departmental Enquiry being on the same set of facts should not have been continued by the second respondent and the penalty imposed by the Government on such enquiry is vitiated.

8. The learned counsel further contended that the petitioner is an employee of the Department of Municipal Administration and the Disciplinary Authority is the Director of Municipal Administration and therefore, the impugned order dated 14.06.2019 at Annexure 'G' passed by the Secretary, Urban Development Department is incompetent.

9. He further contends that prior to the order of entrustment under Rule 14A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as 'the Rules, 1957'), for departmental enquiry to the 2nd respondent, the matter was never placed before the Disciplinary

Authority namely, the Director of Municipal Administration but the Department of Urban Development has entrusted the enquiry to Lokayukta and the same is *void-ab-initio*. Referring to the definition of '*Government Servant'* under the Act, 1984, he would submit that the petitioner was not a Government Servant and hence, the Government ought not to have referred the matter to the Lokayukta.

10. Lastly, he contends that the imposition of punishment i.e., compulsory retirement and permanently withholding 40% of pension is grossly disproportionate to the charges proved and it is wholly excessive. To buttress his submissions, the learned counsel would place reliance on the following judgments of the Hon'ble Supreme Court, which are as follows:

i. ***M. PAUL ANTHONY Vs. BHARAT GOLD MINES LIMITED*** **reported in (1993) 3 SCC 679;**

ii. ***G.M.TANK Vs. STATE OF GUJARAT [(2006) 5*** **reported in** ***SCC 446 : 2006 SCC (L&S) 1121 : AIR 2006 SC 2129] and***

iii. ***S. BHASKAR REDDY Vs. SUPERINTENDENT OF POLICE*** **reported in** ***(2015) 2 SCC 365.***

11. Per contra, learned Government Advocate for the State would contend that the order of penalty imposed on the petitioner was on independent application of mind and considering the gravity of misconduct committed by the petitioner, the Government in the Department of Urban Development was competent to entrust the enquiry at the outset and has rightly imposed the penalty of compulsory retirement and permanently withholding 40% of the petitioner's pension and she would support the impugned order.

12. Learned counsel representing the Lokayukta contends that the trial in the criminal case and the departmental enquiry are entirely different. The two can be held and continued simultaneously or departmental enquiry can be conducted even after acquittal of the government servant by the criminal Court. According to him, it is settled principle of law that the findings of the criminal Court will not have any bearing upon the conduct and the result of the departmental enquiry, as the two are independent. Learned counsel places reliance on the judgment of the Hon'ble Supreme Court in the case of ***SHASHI BHUSAN PRASAD VS INSPECTOR GENERAL, CISF*** reported in ***(2019) 7 SCC 797***.

13. Learned counsel for the fifth respondent adopts the submission made by the Government Advocate and supported the impugned order.

14. We have given our anxious consideration to the submissions made by the learned advocates for the parties and have perused the averments and material on record.

15. In furtherance of which, the following the points arise for our consideration:

(i) *Whether the government in the Department of Urban Development is competent to entrust the Departmental Enquiry against the petitioner to the 2nd respondent Upa-Lokayukta?*

(ii) *Whether the acquittal of the petitioner by the criminal Court would have any bearing on the departmental enquiry and the resultant penalty imposed?*

16. ***Re. Point No.1***:

The contention of the petitioner is that, the entrustment of the Departmental Enquiry under Rule 14A of the Rules, 1957, by the Department of Urban Development is wholly without jurisdiction as the petitioner is an employee of Department of Municipal Administration. The enquiry was entrusted under Rule 14A of the Rules, 1957 by the Department of Urban Development. To consider this contention of the petitioner, the relevant Section 2(4) of the Act, 1984 is required to be extracted. Section 2(4) of the Act, 1984, which reads thus;

> *"Section 2(4): "Competent authority" in relation to a public servant means, -*
>
> *(a) Xxxx*
> *(b) Xxxx*
> *(c) Xxxx*

> *(d) in the case of any other public servant, such authority as may be prescribed;"*

Section 2(4)(d) as extracted herein above depicts that in case of any other public servant would be the competent authority and on such prescription as may be made under the Karnataka Lokayukta Rules, 1985 (hereinafter referred to as 'the Rules, 1985). Rule 3 of the Rules, 1985, reads thus:

> *"3. Competent Authority – In respect of the public servants referred to in sub-clause (d) of clause (4) of section 2, the Government of Karnataka shall be the Competent Authority."*

It is in terms of Rule 3 as extracted above, in respect of public servants referred to in Section 2(4) of the Act, 1984, the Government of Karnataka would be the competent authority. In the instant case, the order of entrustment is by the Department of Urban

Development. Thus, the Government in the Department of Urban Development under which the Director of Municipal Administration also functions, is the competent authority to entrust the enquiry pertaining to an employee of the Department of Municipal Administration to the Lokayukta. Thus, the contention of the petitioner that the Government is not competent to entrust the enquiry to the Upa-Lokayukta is unacceptable to us. Hence, we hold point No.1 against the petitioner.

17. ***Re. Point No.2***:

Before embarking upon the facts obtaining in the case on hand, it is germane to notice the judgments of the Hon'ble Supreme Court with regard to the order of acquittal having a bearing on the Departmental Enquiry. The Hon'ble Supreme Court in the case of ***M. PAUL ANTHONY V. BHARAT GOLD MINES LTD.***

reported in ***(1999) 3 SCC 679***, at paragraph Nos.34 and 35 has held as follows:

> *"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.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden

of proof, would not be applicable to the instant case. "

18. This principle was again considered by the Hon'ble Supreme Court in the case of ***G.M. TANK Vs. STATE OF GUJARAT,*** reported in ***(2006) 5 SCC 446,*** wherein at paragraph Nos.30 and 31, which was held thus:

"30. The judgments relied on by the learned counsel appearing for the respondents are 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 its judicial pronouncement with the finding that the charge has not

been proved. It is also to be noticed that 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.

31. In our opinion, such facts and evidence in the departmental 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 the 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 case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

19. Both the afore extracted judgments were again reiterated by the Hon'ble Supreme Court in the case of ***S. BHASKAR REDDY Vs. SUPT. OF POLICE*** reported in ***(2015) 2 SCC 365*** and the relevant paragraph Nos.21 to 26, which are as under:

21. It is an undisputed fact that the charges in the criminal case and the disciplinary proceedings conducted against the appellants by the first respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offences of IPC and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Our attention was drawn to the said judgment which is produced at Ext. P-7, to evidence the fact that the

charges in both the proceedings of the criminal case and the disciplinary proceeding are similar. From perusal of the charge-sheet issued in the disciplinary proceedings and the enquiry report submitted by the enquiry officer and the judgment in the criminal case, it is clear that they are almost similar and one and the same. In the criminal trial, the appellants have been acquitted honourably for want of evidence on record. The trial Judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the offences punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Sections 307 and 302 read with Section 34 IPC. The law declared by this Court with regard to honourable acquittal of the accused for

criminal offences means that they are acquitted for want of evidence to prove the charges.

22. The meaning of the expression "honourable acquittal" was discussed by this Court in detail in Inspector General of Police v. S. Samuthiram [(2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , the relevant paragraph from the said case reads as under: (SCC p. 609, para 24)

> *"24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions*

> *'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."*
>
> *(emphasis supplied)*

After examining the principles laid down in the abovesaid case, the same was reiterated by this Court in a recent decision in Joginder Singh v. UT of Chandigarh [(2015) 2 SCC 377] .

23. Further, in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. [Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810 :

(1999) 2 SCR 257] this Court has held as under: (SCC p. 695, paras 34-35)

> *"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.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

(emphasis supplied)

24. Further, in G.M. Tank v. State of Gujarat [(2006) 5 SCC 446 : 2006 SCC (L&S) 1121 : AIR 2006 SC 2129] this Court held as under: (SCC pp. 456 & 460-61, paras 20 & 30-31)

"20. … Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of the PC 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 the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

***

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. … 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 its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that 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.

31. In our opinion, such facts and evidence in the departmental 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 the 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 case [Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810 : (1999) 2 SCR 257] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

25. The High Court has not considered and examined this legal aspect

of the matter while setting aside the impugned judgment and order of the Tribunal. The Tribunal has also not considered the same. We have examined this important factual and legal aspect of the case which was brought to our notice in these proceedings and we hold that both the High Court and Tribunal have erred in not considering this important undisputed fact regarding honourable acquittal of the appellants on the charges in the criminal case which are similar in the disciplinary proceedings.

26. We have answered the alternative legal contention urged on behalf of the appellants by accepting the judgment and order of the Sessions Judge, in which case they have been acquitted honourably from the charges which are more or less similar to the charges levelled against the appellants in the disciplinary proceedings by applying the decisions of this Court referred to supra. Therefore, we have to

set aside the orders of dismissal passed against the appellants by accepting the alternative legal plea as urged above having regard to the facts and circumstances of the case.

20. Based upon the bedrock of the law declared by the Hon'ble Supreme Court in the aforementioned judgments, the facts obtaining in the case on hand will have to be considered.

21. The alleged acts of the petitioner gave rise to two proceedings. One, setting the criminal law in motion and the other a Departmental Enquiry. Both of them were on the same set of facts. The competent criminal Court after a full fledged trial, acquitted the petitioner off the charges levelled against him in the criminal case. The relevant paragraphs of the order of the criminal Court which deals with acquittal, reads as follows:

"10. xxxxxxxxxxxxx PW-2 who is pancha to the mahazars at Ex.P.4 and P.3 has deposed in his evidence in corroboration with the evidence given by PW-1 regarding the mahazar conducted on 15.11.2005 and 16.11.2005 and also deposed in his evidence in detail regarding the demonstration conducted in the Lokayukta office and also regarding seizure of the money from the accused in his office. He has further deposed in his evidence stating hat the statement of accused was written by one Phalaksh wherein he has stated that he has received a sum of Rs.1,000/- from the complainant as a late fee and road cutting fee. During the course of the cross-examination it is elicited from the mouth of this witness that he had not entered the Meeting Hall and he do not know who were all present in the Meeting Hall.

11. xxxxx

12. xxxxx

13. xxxxx

14. After due and anxious consideration of the entire evidence obtaining in the case, I have no hesitation to hold that the prosecution has not succeeded in providing beyond all reasonable doubt the charges leveled against the accused. Though the prosecution has produced some evidence as regards the allegation and charges, such evidence in my considered view is not at all sufficient to find the accused guilty positively and conclusively. A reasonable doubt arises in the mind of the court about the credibility and acceptability of the case of the prosecution as spoken by PW-1, PW-2 and PW-4 with slander support from the witnesses like PW-6, PW-7 and PW-8. The evidence given by PW-1 appears to be only an after thought and it cannot be relied upon.

15. The prosecution has also led the evidence of PW-3 who has deposed in his evidence stating that on 20.02.2006 he received requisition from the Lokayukta, Bangalore for sanction of prosecution.

After going through the file he has issued the sanction as per Ex.P.9. On careful examination of the evidence of PW-3 it appears that PW-3 without properly verifying the materials on record has mechanically issued sanction as requested by the Lokayukta police to prosecute the accused. The prosecution has also led the evidence of PW-5 who has produced the documents such as Inward, Outward Registers, Attendance Registers and other documents as per Ex.P.13, P.18, P.19. Hence, the evidence of PW-5 is also not much material. The prosecution has also led the evidence of PW-6, the Head Constable, Lokayukta Police Station, PW-7 PI, Karnataka Lokayukta, PW-8 Police Inspector, Lokayukta who have deposed in detail regarding the demonstration mahazar conducted at Ex.P.4 and also deposed regarding the seizure mahazar at Ex.P.3. During the course of the cross-examination of PW-8 he has admitted that he has not conducted any investigation to

know whether the accused demanded the bribe money from the complainant prior to 15.11.2005. ***On assessing the overall evidence adduced by the prosecution on all the aspects of the matter and due appreciation of the entire evidence and attending circumstances, I am of the considered view that the prosecution has filed to bring home the guilt of the accused. The benefit of reasonable doubt is to be extended to the accused and consequently the benefit of exoneration to him. Accordingly, I answer the point under consideration in the negative****."*

(emphasis supplied)

If a cumulative analysis of the afore extracted paragraphs from the judgment of the criminal Court is made, it is clear that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt. It is in this context, the criminal Court has used the words "*the benefit of reasonable*

doubt". It is a clear case of acquittal on merits. The Hon'ble Supreme Court in the case of ***DEPUTY INSPECTOR GENERAL OF POLICE Vs. S. SAMUTHIRAM*** reported in ***(2013) 1 SCC 598***, at paragraph No.24 has held as follows:

> *"24. The meaning of the expression 'honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to*

> *define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."*

It is in terms of the law declared by the Hon'ble Supreme Court in the above extracted judgment, the acquittal of the petitioner can be held as an acquittal on merits and honourable.

22. On the same set of facts, a Departmental Enquiry was held long after the order of the acquittal dated 30.03.2010. The Departmental Enquiry was continued and the Enquiry Officer submitted his report on 11.06.2018, after about 13 years of the incident and 8 years after the order of the acquittal. It is germane to notice the evidence that was placed

before the Enquiry Officer, the list of witnesses and exhibits, which are as follows:

"***ANNEXURE***

LIST OF WITNESSES EXAMINED ON BEHALF OF DISCIPLINARY AUTHORITY:

PW-1 :- Sri Rajendra (complainant) - (PW.1 in the special case No.150/2006)

PW-2 :- Sri Shankaragowda (pancha witness) - (PW.2 in the special case No.150/2006)

PW-3 :- Sri Palakshaiah (shadow panch witness) - (PW.4 in the special case No.150/2006)

PW-4 :- Sri Ramappa Patil (I.O.) - (PW.8 in the special case No.150/2006)

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:

NIL

LIST OF EXHIBITS MARKED ON BEHALF OF DISCIPLINARY AUTHORITY

Ex.P-1: Certified copy of the complaint
Ex.P-2: Certified copy of the Entrustment Mahazar
Ex.P-3: Certified copy of the explanation of DGO
Ex.P-4: Certified copy of the Trap Mahazar
Ex.P-5: Certified copy of the file of the complainant (containing 8 sheets)
Ex.P-6: Certified copy of the FIR
Ex.P-7: Xerox copy of the notes denomination and

numbers mentioned sheet
Ex.P-8: Xerox copy of the photos on the white sheet (total three sheets)
Ex.P-9: Xerox copy of the photos on the white sheet at the time of trap mahazar (total three sheets)
Ex.P-10: Certified copy of the rough sketch
Ex.P-11: Certified copy of the chemical examination report

LIST OF EXHIBITS MARKED ON BEHALF OF DGO:

Ex.D-1: Certified copy of the deposition of Sri Ramappa Patil in Special case No.150/2006

Dated this the 11th day of June, 2018

(Somaraju)
Additional Registrar Enquiries-4,
Karnataka Lokayukta,
Bangalore."

PW.1 – Sri Rajendra who was examined in the Departmental Enquiry was also examined as PW.1 in the criminal case. Likewise, PW.2 was examined as PW.2 in the criminal case as well. PW.3 who was a shadow witness was examined as PW.4 in the criminal

case. PW.4 – Sri Ramappa Patil, the Investigating Officer was common witness in both the Departmental Enquiry and criminal case. Based upon the very same evidence before the Criminal Court which was reiterated in the Departmental Enquiry, the Enquiry Officer holds it differently in his report at para Nos.18 and 19, which reads as follows:

> *"18. PW1 to PW3 have been cross-examined at length and except some minor discrepancies there is no major discrepancy to discard their evidence stated above. PW1 to PW3 have no ill-will of any kind against the DGO and there is absolutely no reasons to discard their evidence.*
>
> *19. In Ex.P3 is the coy of the statement of the DGO immediately after trap in which the DGO was admitted that he has received two notes of denomination of Rs.500/- from PW1. In the same it is stated that PW1 instead of paying road cutting charges asked by him has given him two notes of the*

denomination for Rs.500/- as bribe. It is pertinent to note that even the receipt of the bribe amount without demand also amounts to misconduct. In Ex.P3 it is not stated that the DGO refused to receive the said amount. On the and he has received the amount and kept the same in his pant pocket and went to the meeting hall which clearly shows that the DGO has received the amount from PW1 knowing that it is the illegal gratification only."

The Enquiry Officer strangely holds that even if there is no demand the receipt of money amounts to misconduct. The defence of the petitioner is completely ignored by the Enquiry Officer as it was clear that two notes of Rs.500/- were taken towards payment of road cutting charges. Deliberately ignoring the evidence that was in favour of the petitioner which the Criminal Court had considered to acquit the petitioner, the Enquiry Officer holds the

petitioner guilty of the allegations. No other evidence was placed before the Enquiry Officer by the second respondent. The Enquiry Officer considers the very same evidence of the very same witnesses which was earlier considered by the criminal Court and examines the very same documents, but comes to a different conclusion on the ground that the Evidence Act is not applicable to departmental proceedings and in a Departmental Enquiry, the guilt has to be proved on preponderance of probability and in the case of the petitioner, the probabilities of his demand and acceptance of the bribe amount were preponderant and hence, on that ground the Enquiry Officer holds the petitioner has failed to maintain absolute integrity and has acted in a manner unbecoming of a government servant.

23. Thus, the criminal case and the Departmental Enquiry in the instant case were not

only based upon same set of facts but the charges in Departmental Enquiry were sought to be proved with the same set of documents and witnesses. It is in this context, the acquittal of the petitioner assumes significance. In our considered view, in the facts of this case, the order of acquittal passed by the criminal Court and its affirmation by this Court will have a bearing on the Departmental Enquiry and the resultant penalty.

24. In terms of the law laid down by the Hon'ble Supreme Court in the afore extracted judgments, it becomes clear that if both the proceedings namely, the criminal trial and the Departmental Enquiry are based upon the same set of facts, circumstances, documents and witnesses, the order of penalty imposed in the Departmental Enquiry would get effaced.

25. Insofar as the judgment of the larger Bench of the Hon'ble Supreme Court relied by the 2nd respondent in the case of ***SHASHI BHUSAN PRASAD VS. INSPECTOR GENERAL, CISF*** reported in ***(2019) 7 SCC 797***, at paragraph Nos.16 to 22, which read thus:

> *"16. The facts noticed by us which have been inquired in a disciplinary inquiry and in the judicial proceedings undisputedly are based on different allegations and the set of evidence not based on the same facts and circumstances and in the given situation, the very submission made by the appellant of taking the benefit of acquittal in a judicial proceedings instituted against him on the plea of having nexus with the disciplinary inquiry loses its foundation.*
>
> *17. The scope of departmental enquiry and judicial proceedings and the effect of acquittal by a criminal court has been examined by a three-Judge Bench of this Court in A.P. SRTC v. Mohd. Yousuf*

Miya [A.P. SRTC v. Mohd. Yousuf Miya, (1997) 2 SCC 699 : 1997 SCC (L&S) 548] . The relevant paragraph is as under: (SCC pp. 704-05, para 8)

> *"8. … The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the*

departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the

delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental

proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

(emphasis supplied)

18. The exposition has been further affirmed by a three-Judge Bench of this Court in Ajit Kumar Nag v. Indian Oil Corpn. Ltd. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] This Court held as under: (SCC p. 776, para 11)

> *"11. 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 the 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 the*

offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the 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 a

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 [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., 2004 SCC OnLine Cal 59 : (2004) 4 LLN 512] dismissing him from service deserves to be quashed and set aside."

(emphasis supplied)

19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that 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 an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. 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. Even 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 whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the

authority. This what has been considered by the High Court in the impugned judgment [Shashi Bhusan Prasad v. CISF, 2008 SCC OnLine Ori 544 : 2008 Lab IC 3733] in detail and needs no interference by this Court.

20. The judgment in M. Paul Anthony case [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under: (SCC p. 691)

> *"22. The conclusions which are deducible from various decisions of this Court referred to above are:*
>
> > *(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*

(ii) If the departmental proceedings and the 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, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered

in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

21. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different

sets of facts and evidence having no nexus/co-relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the enquiry officer had held him guilty, he was punished with the penalty of dismissal from service.

22. The judgment in G.M. Tank case [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] on which the learned counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the charge in the criminal case and departmental enquiry were different having no nexus/co-relationship based on different

sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service."

If the above extracted paragraphs of the judgment in the case of ***SHASHI BHUSHAN*** (supra) are noticed, it becomes clear that the Hon'ble Supreme Court was considering a case were the charges levelled against the appellant therein in the criminal case and the department proceedings were based on different set of facts having no nexus / co-relationship and the other circumstance before the Hon'ble Supreme Court was that the penalty in the Departmental Enquiry has been imposed upon the appellant therein, which was before the judgment of

the criminal case could be pronounced. Both these factors would render the judgment in the case of ***SHASHI BHUSHAN*** (supra) inapplicable with the facts of the case on hand. As observed hereinabove, in the instant case, both the criminal case and the Departmental Enquiry were based upon same set of facts, same witnesses and documents. Thus, it was on the basis of the same evidence. The other factor that is distinguishable is that, the order of acquittal in the instant case was in the year 2010 and the order of penalty in the Departmental Enquiry was imposed in the year 2019 long after the order of acquittal and its affirmation by this Court. Thus, the judgment in the case of ***SHASHI BHUSHAN*** (supra) would not be applicable to the facts of the case but the judgments in the cases of ***M. PAUL ANTHONY***, ***G.M.TANK*** *and* ***BHASKAR REDDY*** would be applicable to the case on hand.

26. We are acutely aware of the fact that there would be no bar to continue the disciplinary proceedings even after acquittal but the facts and circumstances of the each case will have to be taken into consideration. In the instant case, though there was no bar to continue the Departmental Enquiry, the fact remains that both the criminal case and the Departmental Enquiry were based upon same circumstances, same set of facts and same witnesses and documents. There was not an iota of difference between the facts and evidence in the criminal case and the Departmental Enquiry. Thus, the law laid down in the cases of ***M. PAUL ANTHONY***, ***G.M.TANK*** *and* ***BHASKAR REDDY,*** covers the instant case on all fours and as a result of which the petitioner is entitled to succeed in the Departmental Enquiry. Hence, we hold point No.2 in favour of the petitioner.

27. For the aforementioned reasons, in our considered view, the order of the penalty passed by the State Government which is based upon the report of the Enquiry Officer dated 11.06.2018 and the recommendation of the 2nd respondent Upa-Lokayuktha dated 13.06.2018 warrants appropriate interference.

28. Hence, we pass the following order;

(i) The writ petition is allowed.

(ii). (a) The report of the Enquiry Officer dated 11.06.2018 at Annexure 'C', (b) The recommendation of the 2nd respondent dated 13.06.2018 at Annexure 'D' and (c) The Government Order dated 14.06.2019 at Annexure 'G', are all set aside.

(iii) The petitioner shall be reinstated into service with all consequential benefits that would flow from such reinstatement, within a period of three months from the date of receipt of the copy of this order.

Sd/-
JUDGE

Sd/-
JUDGE

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