

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## R/SPECIAL CIVIL APPLICATION NO.13017 of 2007

**FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE A.S. SUPEHIA **Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

MAHENDARSINH .N. JADEJA

Versus

DISTRICT DEVELOPMENT OFICER &amp; 1 other(s)

## Appearance:

MR HASIT H JOSHI(2480) for the Petitioner(s) No. 1

MS KHYATI P HATHI(346) for the Respondent(s) No. 1,2

**CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 28/02/2022

**ORAL JUDGMENT**

1. In the present writ petition, the petitioner has assailed the judgement dated 06.03.2006 passed by the Gujarat Civil Services Tribunal, Gandhinagar rejecting Appeal No.90 of 2005 preferred by the petitioner, wherein and whereby the Tribunal has confirmed the order of dismissal dated 01.06.2004 passed by the Deputy District Development officer (Revenue), Jamnagar District Panchayat, and the appellate order dated 16.12.2004 passed by the District Development Officer, Jamnagar. A further prayer is also made to quash and set aside the

order dated 11.04.2019 passed by District Development Officer, Jamnagar.

2. The petitioner was appointed as Godown Keeper-cum-clerk from 20.09.1980 for the stock meant for Integrated Child Development Scheme (ICDS) from 27.07.1985 to 16.09.1997. The Programme Officer in charge of ICDS drew the notice of the panchayat authorities to certain defaults in respect of the management of the Godown at Kalavad. The internal auditors of Jamnagar District Panchayat brought out certain serious irregularities and suspected defalcation in respect of the food articles meant for ICDS.

2.1 It was alleged against the petitioner that he sold away 328 bags of wheat and 150 kgs. of Grams unauthorizedly and retained the sale proceeds thereof amounting to Rs.1,99,050/-. In the year 1997, initial notice was issued to the petitioner for showing cause for the aforesaid irregularity. The petitioner was again asked on 03.08.1998 to explain the matter. Thereafter, the officer in charge of ICDS was authorized to file a criminal complaint against the petitioner. Accordingly, two criminal complaints were filed for the one and the same offence.

2.2 The petitioner was charge-sheeted on 30.10.1998 and inquiry proceedings were initiated

against the petitioner. The inquiry officer has found that the charges have been established. Respondent No.2 accepted the report of the inquiry officer and after giving the petitioner final show-cause notice, the impugned order of dismissal dated 01.06.2004 was passed by the Deputy District Development Officer (Revenue), Jamnagar District Panchayat.

2.3 Aggrieved by the aforesaid dismissal order, the petitioner filed an appeal before respondent-District Development Officer, Jamnagar on 05.07.2004, who, after hearing the appeal on 18.10.2004 passed the impugned order dated 16.12.2004 rejecting the appeal.

2.4 Aggrieved by the aforesaid order dated 16.12.2004, the petitioner preferred Appeal No.90 of 2005 before the Gujarat Civil Services Tribunal, Gandhinagar (the Tribunal), which was rejected by the impugned order dated 06.03.2006. Hence, the present petition.

3. Learned advocate for the petitioner submits that the order of punishment of dismissal passed by the disciplinary authority under Rule 6 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 is highly disproportionate to the guilt established and, therefore, not tenable in law. It is submitted that while the criminal proceedings

were pending against the petitioner for the same allegation and charge leveled against him, the respondent authorities have chosen to conduct disciplinary action and before conclusion of the criminal proceedings, the disciplinary authority has passed order of removal from service disqualifying him for future employment under Rule 6 of the Rules, 1997. It is submitted that thereafter, the criminal court had decided on 26.05.2005 giving clean acquittal to the petitioner for the same allegation and charge. It is submitted that since the order of clean acquittal was not available during the disciplinary proceedings it was pointed out before the Tribunal at the time of deciding the appeal.

3.1 Learned advocate for the petitioner submits that bare perusal of the order passed by the Tribunal would make it explicitly clear that this has not been considered while deciding the appeal of the petitioner against the order of removal under Rule 6 of the Rules, 1997. It is submitted that this Court had passed an order dated 30.01.2014 that in light of the order of the criminal court dated 26.05.2005, it would be appropriate that the respondent authority to consider his case for compulsory / premature substituting the order of dismissal by the said order. It is submitted that thereafter vide order dated 11.04.2019, the respondent-District

Development Officer, Jamnagar has maintained the order of dismissal.

3.2 He has submitted that since it is not disputed by the respondents that the criminal proceedings and the departmental inquiry are based on the same set of facts, charges and evidence, on his clean acquittal, the Tribunal should have applied its mind. However, it is submitted that the Tribunal has, in fact, examined the judgment as if it is seeking in the criminal appeal. Thus, it is submitted that the matter may be remanded. As noticed herein above, the respondents have not disputed the clean acquittal of the petitioner and in fact it is admitted that the petitioner has been acquitted on merits. It is also not in dispute that both the criminal proceedings and departmental proceedings, are premised and based on the same set of facts and charges.

4. Learned advocate Mr.Joshi appearing for the petitioner has placed reliance upon the judgment of the Supreme Court rendered in the case of G.M. Tank vs. State of Gujarat & Ors., 2006 Supreme Court Cases (L&S) 1121. It is submitted that the impugned order of the Tribunal may be set aside, and the matter may be remanded back to the Tribunal.

5. *Per Contra*, learned Advocate Ms.Khyati Hathi has submitted that the impugned orders do not require interference since they are passed after holding a regular departmental inquiry. She has submitted that the orders are also confirmed by the Tribunal in appeal, after considering the order passed in criminal proceedings. Hence, the writ petition may not be entertained. No further submissions are advanced.

6. I have heard the learned advocates appearing for the respective parties to the *lis*.

7. On a specific query raised by this Court whether the criminal proceedings and the disciplinary proceedings are premised on the same facts and incidents, it is not disputed by the learned advocate appearing for the respondents that both arise from the same incident and same facts. It is also not disputed by the learned advocate for the respondents that vide judgment and order dated 26.05.2005 passed by Chief Judicial Magistrate Court, Kalavad in Criminal Case No.116 of 1998, the petitioner has been acquitted honourably.

8. Though, there cannot be any cavil on the proposition of law that the standard of proof in both the proceedings, i.e criminal and departmental are different, but at the same time a honorable acquittal of an employee in the criminal proceedings cannot be ignored when both are

premised on same facts and evidence. A clean acquittal in criminal proceedings may not have direct impact on the findings of the disciplinary proceedings, but the findings of the disciplinary proceedings and the impugned orders based on such findings are required to be re-examined in view of the such acquittal. In the case of **G.M.Tank (supra)**, the Apex Court in a similar issue has observed thus:

*"28. 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 and 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 been noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.*

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

Thus, the Supreme Court has held that when the departmental proceedings and the criminal proceedings are premised on the same set of facts; the evidence and the witnesses are also same and there is an honourable acquittal of an employee, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. It is held that honorable acquittal is required to be taken note.

9. In the present case, the judgment of acquittal in the criminal case was pointed out by the petitioner before the Tribunal. It is noticed by this Court that in fact while considering the judgment in the criminal case, the Tribunal has endeavored to give its own finding on the judgment as if it was sitting in appeal. Such a procedure adopted by the Tribunal is uncalled for in wake of the fact that the respondents have not disputed

that the petitioner has been acquitted on merits and it is a clean acquittal and both the criminal proceedings and the departmental proceedings are based on same set of facts. The only issue which could have been examined by the Tribunal is whether in both the proceedings, i.e. in criminal and departmental, the facts, evidence and witnesses are common and acquittal is honourable or not.

10. Under the circumstances, the impugned judgment and order dated 06.03.2006 passed by the Gujarat Civil Services Tribunal, Gandhinagar rejecting Appeal No.90 of 2005, is hereby quashed and set aside.

11. The matter is remanded to the Gujarat Civil Services Tribunal, Gandhinagar, as suggested by the learned advocate appearing for the petitioner for its fresh consideration. Since the appeal is of 2006, and the petitioner has already retired on 28.02.2015, it is expected that the Gujarat Civil Services Tribunal, Gandhinagar shall decide Appeal No.90 of 2005 within 06 (six) months, after giving opportunity to both sides. Liberty is reserved in favour of the petitioner to challenge the order dated 11.04.2019 passed by District Development Officer, Jamnagar by appropriately amending the appeal filed before the Tribunal.

12. It is clarified that this Court has not opined anything on merits. Appeal No.90 of 2005 is ordered to be restored on its original file.

13. The present petition is allowed. RULE is made absolute to the aforesaid extent.

Sd/-  
**(A. S. SUPEHIA, J)**

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*Bhavesh-[PPS]*