CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.99/2015

Date of Decision:21.02.2020.

CORAM: R. VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Bhupendra Pal Singh,
Commissioner (Retired),
R/at Flat No.904, 9th Floor,
Bldg. No.3/C, Dhiraj Dreams
Co-operative Housing Society Ltd.,
Dreams Complex LBS Marg,
Bhandup (W), Mumbai 400 078.
Lastly working at ADG (Vig.)
7th Floor, New Customs House,
Ballard Estate, Mumbai 400 001. ... *Applicant*
(By Advocate Shri Ramesh Ramamurthy)

VERSUS

1. Union of India through
The Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi – 110 001.

2. Central Board of Excise & Customs
Ministry of Finance, Department of
Revenue, North Block,
New Delhi – 110 001.

3. Chief Vigilance Officer,
Central Board of Excise & Customs,
6th Floor, Hudco Vishala Bldg.,
Bhikaji Cama Place, New Delhi 110 066. ... *Respondents*
(By Advocate Shri R.R. Shetty)

ORDER (Oral)
Per : R. Vijaykumar, Member (A)

This OA has been filed on 02.02.2015 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following

reliefs:

> *"8.a) That this Hon'ble Tribunal will be graciously pleased to call for the records and proceedings leading to the issuing of impugned Memorandum of Charges dated 23.10.2013 (Annex.A-1 hereto) and after going through the legality or otherwise thereof this Hon'ble Tribunal will be pleased to quash and set aside the same.*
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> *b) That pending the hearing and final disposal of this OA, Respondents, their officers and subordinates be restrained by an Order and Injunction of this Hon'ble Tribunal from proceeding with holding of the departmental enquiry into the Memorandum of Charges dated 23.10.2013 (Annex.A-1).*
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> *c) That the costs of this Application be awarded in favour of the applicant; and*
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> *d) That such other and further reliefs as are expedient be granted in favour of the applicant."*

2. The Applicant, who belongs to the 1979 batch of the Indian Revenue Service (Customs and Central Excise), was working as Additional Commissioner of Customs (Exports and Drawback) in the Export Promotion Commissionerate, Mumbai in the year 1999 up

to 02.01.2001 and after transfer, was promoted as Commissioner of Central Excise & Customs in 2002. He was issued a Charge Memorandum No.24/2013 dated 23.10.2013 under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 imputing misconduct in respect of two Articles of Charge as under:

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI BHUPENDRA PAL SINGH, COMMISSIONER.

Shri Bhupendra Pal Singh, Commissioner, while posted as Additional Commissioner of Customs, Drawback Section, during the year 2000 committed gross misconduct inasmuch as:

Article of Charge -1: *That Shri Bhupendra Pal Singh, while posted as Additional Commissioner of Customs, New Custom House, Mumbai, during the year 2000 conspired with Shri Hemant Kothikar, the then Dy. Commissioner of Customs, Frere Basin, and Private Persons Shri Bhagwan Ramachandra Mane and Shri Dnyaneshwar Pandurang Malik for clearance of a consignment of rayon cotton powerloom readymade garments ladies blouses |of M/s. Pacific International, covered under Shipping Bill No. 5046863 dated 28.04.2000. While acting as such, he overruled the discrepancy raised by the Examiner Shrt Narayan Keshav Paranjpe and Superintendent Shri N. Meyyappan regarding the quality, quantity and FOB value of the goods.*

Thus, Shri Bhupendra Pal Singh, while working as Additional Commissioner of Customs, New Custom House, Mumbai, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravening the provisions of

Rules 3(1) (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.

***Article of Charge – II**: That Shri Bhupendra Pal Singh, was posted as Additional Commissioner of Customs, Drawback Section, New Custom House, Mumbai during the year 2000, sanctioned the payment of an amount of Rs. 5,20,717/- as duty drawback to M/s.Pacific International towards exports made vide Shipping Bill No. 5046863 dated 28.04.2000 vide Orders in manual file no.S/10-52.Misc/2000 EDI(DBK) file No.S/2-(1231)/2000EDI(DBK) over ruling a query for submission of BRC raised by the Appraiser processing the drawback claim, before submission of reply to the query by the Exporter/CHA and thereafter got the manual files destroyed causing wrongful loss of Rs.5,20,717/- to the Government and corresponding gain to himself.*

Thus Shri Bhupendra Pal Singh, while working as Additional Commissioner of Customs, Drawback Section, New Custom House, Mumbai, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravening the provisions of Rule 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964."

3. Briefly, a company, M/s. Pacific International, had presented a consignment of rayon cotton powerloom readymade garments ladies blouses by way of a Shipping Bill dated 28.04.2000 for the purpose of inspection against its declaration of contents and the value of consignment as claimed by them, the latter value being adopted for the purpose of sanction of duty

drawback towards exports made. The Applicant is alleged to have sanctioned and released duty drawback on 10.07.2000 despite entries made in the electronic data system (EDI) and in a manual file created specifically in the case, and despite the fact that in the 66 days period between date of examination and date of release of drawback, the exporter had not produced any BRC (Bank Reconciliation Certificate) relating to the exports as per the value claimed by him in the shipping bill. In fact, nobody is stated to have taken delivery of the consignment at Australia, its purported destination. The detailed Statement of Imputation annexed sets out that when shortage and reduced value of commodity were found in the random examination of the consignment, the Deputy Commissioner allowed shipment while noting that the value appeared to be more than duty drawback claim. The Deputy Commissioner had also returned the document with instructions to place comments in the EDI system that drawback may be given only after submission of BRC and these comments had been forwarded

to the Examining Officer to incorporate in the EDI computerized system after which, the shipment was allowed. It is further alleged that a manual file had also been created on the instructions of the Deputy Commissioner at Frere Basin and which moved up the hierarchy to the Additional Commissioner and that, four officers of the Customs Department at Frere Basin and in Duty Drawback had perused the manual file; that Shri Ashok Chaudhary, the then Deputy Commissioner, Drawback Section had endorsed a comment that drawback has been sanctioned as per Additional Commissioner's order and that he had perused the above file at Customs House which bore the remark for sanction of duty drawback by the Charged Officer and he had incorporated the remark in the EDI system accordingly. The imputation also records the fact that normally in the case of EDI, there is no manual file but in the present case, a manual file had been opened as evidenced by computer printouts but the manual file was found to be thereafter missing and could not

be found despite all efforts. They allege that the circumstantial evidence suggests that after completing the processing of the file and after over-ruling the query on non-submission of BRC raised by the Appraiser, Drawback Section, payment was disbursed and the file in question were destroyed by the Charged Officer. Hence the charge of contravening provisions of Rule 3(1)(i),(ii) & (iii) of the CCS (Conduct) Rules, 1964.

4. The chronology of events is that the shipment occurred on 06.05.2000, the relevant cause of action for the this charge sheet occurred on 10.07.2000 after which FIR was filed in a corruption case by the CBI on 31.12.2004 and the CBI completed its investigation and filed its report recommending prosecution against the applicant (as Accused No.3 and Others) in September 2007. The CBI's report was examined in consultation with the CVC and the report sent to the CVC on 23.01.2008 recommending regular departmental action for major penalty as well as for prosecution and this was agreed by the CVC in its OM dated

04.02.2008 and sanction for prosecution was also accorded by the President, in respect of the applicant, who was a Group 'A' officer, on 16.07.2008. Meanwhile, the Directorate General of Vigilance was requested to furnish a draft charge sheet and after reminders, the respondents received a letter dated 15.10.2009 along with authenticated copies of relevant documents. The respondents state that the CBEC, who had not received the charge sheet, asked for a full set along with the authenticated copies of Relied Upon Documents (RUD) and these were then obtained from the CBI on 09.10.2013 which then led to the issue of a charge sheet to the Applicant on 23.10.2013, a few days prior to his retirement on 31.10.2013. The applicant then filed this OA on 02.02.2015. At this time, the criminal case had still not arrived at a conclusion. He had, therefore, challenged the charge sheet on the grounds of delay and also on the grounds that the FIR was in regard to the same transaction on the basis of same RUD and witnesses and these were the

subject matter before the Special Judge (Criminal Court) and that, by continuing with the departmental proceedings, the applicant would be compelled to disclose his defence which would cause him serious prejudice in the Criminal Court and therefore, he requested to keep the departmental proceedings in abeyance until the conclusion of the criminal trial. Subsequently, while this OA remained pending for hearing and disposal, the criminal case came to a conclusion in orders of the Court of Special Judge for CBI, Greater Mumbai in CBI Special Case No.01/2008 on 04.01.2018 under Section 120-B, 420, 465, 467,468, 471 of Indian Penal Code r/w 13(2), 13(1)(d) of the Prevention of Corruption Act, 1947. The Criminal Court recorded the fact of the consignment shipped, the discrepancies in quantity and value, the fact that the discrepancy had been brought to the notice of Deputy Commissioner recommending and asking for full verification but shipment had been allowed after correcting the quantity of one carton alone. The Criminal

Court noted that the Customs Manual at Chapter-22 does not require prior repatriation of export proceeds as a prerequisite for grant of duty drawback and the existence of provisions for recovery where export value is not realised. In regard to the charged employee, the Court has recorded the following while acquitting all the accused persons:

> *"....18. Now I take up the case against the accused no.3. It is alleged that accused no.3, the then Dy. Commissioner, Duty Drawback was also a conspirator and he had sanctioned the duty drawback. The advocate for the accused no.3 has argued that once the consignment was exported, the duty drawback has to be paid and for sanctioning duty drawback, bank realization certificate is not necessary. In this connection, he has referred to Chapter-22 of CBEC's Customs Manual regarding duty drawbacks. It is provided therein that the prior repatriation of export proceeds is not a pre-requisite for grant of duty drawback. However, the law prescribes that sale proceeds are not received within the period stipulated by RBI, the duty drawback will be recovered as per the procedure laid down in the Drawback Rules, 1995. He also referred to the circular no.25/2000-CUS dated 30.03.2000 issued by the Ministry of Finance (Department of Revenue). As per this circular, the duty drawback claim should be cleared within 3 working days on electronic data interchange (EDI) system and in manual cases, within 5 days, CBEC's Customs Manual, Chapter 22 also provides procedure for paying duty drawback. It recites that the duty drawback on export goods is to be claimed at the time of export and requisite particulars filled in*

prescribed format of the shipping bill. In case of exports under Electronic shipping bill, the shipping bill is itself treated as claim for drawback. Thus, accordingly to the advocate for the accused no.3, even if it is believed that the accused no.3 had sanctioned duty drawback, he did not commit any wrong as he was duty bound to sanction it. However, during the argument, he has denied that the accused no.3 had sanctioned the duty drawback in this case. In statement u/s 313 Cr.P.C., the accused no.3 has denied to have sanctioned the duty drawback.

19. In view of the defence taken by the accused no.3, that first question is whether the prosecution has proved that the accused no.3 had sanctioned the duty drawback. In this connection, the evidence of PW-4 Ashok Chaudhary is relevant. He has deposed that before the CBI, he had stated that the accused no.3 had passed order in file no.S-10 and S-2 allowing sanction of drawback and he i.e. PW Ashok Chaudhary had allowed the same after putting the comment in the EDI system. Thus, the accused no.3 had not put any comment in the EDI system himself. According to PW Ashok Chaudhary, accused no.3 had allowed the duty drawback in manual file S-2 and S-10. However, those files are not coming before the Court. Further, PW Ashok Chaudhary has deposed that he does not remember whether file no.S-10 and S-2 are in respect of M/s. Pacific International. In view of this evidence, it cannot be said beyond reasonable doubt that it was accused no.3 who had sanctioned the duty drawback in this case.

20. However, even if it Is assumed that accused no.3 had sanctioned the duty drawback, in view of legal provision regarding the the issuance of duty drawback, he did not commit any wrong. The shipping bill Exh.94 does not state that there was any discrepancy. The drawback authority would have acted on shipping bill generated from EDI. Once the exports were permitted as per the shipping bill,

the duty drawback department was bound to clear the claim within 3 days as per the circular referred above. The same thing appears to have been done in this case which does not amount to offence. Thus, whether the accused no.3 had sanctioned or not sanctioned duty drawback, he did not commit any offence".

The Hon'ble Court concluded judgment as follows:

"31. .... xxx .... xxx ... Thus, he would have got profit of about Rs.1,00,000/-. According to the prosecution, accused Bhagwan Mane had admitted to have received Rs.25,000/- for clearing the shipping bill. The IO Suresh Kumra has deposed that the Bhagwan Mane had offered Rs.50,000/- to accused no.1 and Rs.50,000/- to accused no.3 for clearing the shipment. If that was so, the accused no.2 would not have benefited by the export. Further there was also hanging sword of recovery of duty drawback by the Government as the accused no.2 was not likely to submit BRC as the consignee had not taken the delivery of goods and the accused no.2 was not to receive any payment from the consignee. In fact, the circumstance that nobody had taken the delivery of the consignment in Australia shows absence of mens-rea because in that case, the accused no.2 was not likely to get BRC and would have required to refund the amount of duty drawback to the Government. The procedure is provided for recovery of duty drawback if the BRC is not produced. Thus, in my opinion, in this case, the steps should have been taken for recovery of duty drawback from accused no.2. This situation rules out the possibility of any mens-rea. As stated earlier, the accused no.1 had acted well within his powers in allowing the shipment. There appears no mens-rea on his part in allowing the shipment. Hence, in my opinion, the guilt of the accused persons is not proved beyond reasonable doubt. Hence, I answer these points in the negative and pass the following order."

5. Subsequent to his acquittal, the charged employee has amended his OA by withdrawing the relief claimed in regard to parallel disciplinary and criminal proceedings and now claimed relief of closure of disciplinary proceeding on the grounds that the Criminal Court had acquitted him honourably.

6. Learned counsel for the Applicant and the learned counsel for the Respondents have been heard at length on their respective positions.

7. Learned counsel for the applicant identifies three issues for challenging the initiation and continuance of disciplinary proceedings. These are firstly, the issue of delay in framing charge sheet which has led to the initiation of disciplinary proceedings. The second aspect raised is that the same incident, same facts, the same relied upon documents, and witnesses, are contained in the charge sheet issued in the disciplinary proceedings and there is no difference in his view, between the charge sheet in the disciplinary proceedings and

the charge sheet filed in the criminal case. The disciplinary proceedings also depend entirely on the CBI investigation and there has been no independent investigation. In point of fact, the applicant's name did not find mention in the charge sheet and only appeared as Accused No.3 in charge sheet in the Criminal Court after relevant approvals. Therefore, in view of the fact that the criminal trial has concluded and the applicant, the charged employee, has been honourably acquitted, the respondents are duty bound to close the disciplinary inquiry without any further action especially since the applicant has retired long back.

8. In support of his argument that the inordinate delay of 13 years in filing charge sheet has entitled the applicant to seek relief by way of quashing the charge sheet and setting aside the disciplinary proceedings, he relies on the following judgments:

i) *P.V. Mahadevan Vs. MD, T.N. Housing Board, (2005) 6 SCC 636.*

ii) *State of A.P. Vs. N. Radhakishan, (1998) 4 SCC*

154.

iii) The State of Madhya Pradesh Vs. Bani Singh & Anr., AIR 1990 SC 1308.

9. In ***P.V. Mahadevan (supra)***, the Court was concerned with a Superintending Engineer who had issued a sale deed to a customer in the year 1990 and a Charge Memo was issued to him in the year 2000. The appellant had argued that although the records were very much available with the respondents, no action had been taken for about ten years and no explanation was offered by the respondents for the inordinate delay in initiating disciplinary action. The Hon'ble Apex Court referred to two other judgments now cited by the learned counsel for the applicant of ***Bani Singh (supra)*** and ***N. Radhakishan (supra)***. In ***Bani Singh (supra)*** the Hon'ble Apex Court had observed in the context of a 12 year delay in initiation of departmental proceeding for which, the relevant para reads as follows;

> *"....4. In the first case of Bani Singh, [1990] Supp. SCC 738, an O.A. was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge sheet on 22.04.1987 in respect of certain incidents that*

happened in 1975-76 when the said officer was posted as Commandant, 14th Battalion, SAF Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. The appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. This Court rejected the contention of the learned counsel. While dismissing the appeal this Court observed as follows :

> *"The irregularities which were the subject matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this*

appeal."

10. Further, the Hon'ble Apex Court referred to its judgment in ***N. Radhakishan (supra)*** wherein two Charge Memos had been issued for certain irregularities in construction on 12.11.1987 but even Articles of Charge had not been served until 31.07.1995. The Court observed as follows;

> *"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that*

an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

11. In ***P.V. Mahadevan (supra)***, the Hon'ble Apex Court noted that after the irregularity occurred in 1990, an Audit report in the second half of 1994-95 brought out the facts of irregularity in accordance with the State Housing Board Act. However, even after these facts came to the knowledge of the respondents although belatedly in 1994-95 through an Audit report that should actually have been prepared and submitted every year, there was no acceptable explanation on the side of the respondents to explain the inordinate delay in initiating the disciplinary proceedings. On this basis, the Court held as follows:

"...11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be

very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer".

12. In regard to the fact that the charge sheet and the FIR related to the same incident and relied on the same documents and witnesses and therefore, an acquittal in the criminal case should necessarily lead to a withdrawal of the disciplinary proceedings, the learned counsel for the applicant relied on the judgments of the Hon'ble Apex Court in ***G.M. Tank Vs. State of Gujarat & Anr. in Civil Appeal No.2582/2006, Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679, Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia & Ors. (2005) 7 SCC (three Judges)***

and the judgment of the Hon'ble High Court of Calcutta in ***Gautam Bhattacharjee Vs. Kolkata Municipal Corporation & Ors. in WP No.420/2014 decided on 31.03.2016.*** This last case took into consideration, the principles laid down by the Hon'ble Apex Court in all the three cases relied on by the learned counsel as above. The learned counsel relies on its conclusion as follows:

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

13. In this case, the applicant had been charged with possessing property disproportionate to his known sources of income and before the Special Court, he had claimed that his in-laws were very rich and they had given gifts and further, had also

gifted cash to his wife and paid gift tax as recorded by the Income Tax Department. The Court had noted the facts of the case in the context of this observation:

> *"...20. The provisions contained in* Section 5(1)(e) *is self-contained provision. The first part of the Section casts a burden on the prosecution and the second on the accused as stated above. From the words used in clause (e) of* Section 5(1) *of the P.C. Act it is implied that the burden is on the accused to account for the sources for the acquisition of disproportionate assets. As in all other criminal cases wherein the accused is charged with an offence, the prosecution is required to discharge the burden of establishing the charge beyond reasonable doubt. The Special Court scrutinized the evidence led by the prosecution and after an elaborate discussion, the Court held that the witness Mr. V.B. Raval has categorically admitted that the accused had stated in his statement about the amounts having been gifted to his wife by his in-laws. It is pertinent to note that this witness has categorically admitted in his examination-in-chief itself that he had enquired about the gifts given to other daughters and it was revealed that those gifts were worth less than what was gifted to the wife of the accused. He has also admitted during the course of his cross-examination that the father-in-law of the accused would not have gifted this much amount as shown by the accused to the wife of the accused. The Court held that such a presumption could not and should not have been raised by the witness in the absence of concrete evidence. The witness, Mr, V.B. Raval, has also admitted that the accused has explained that an amount of Rs.25,000/- was given by his father-in-law. The witness was shown the assessment order regarding the gift tax issued by the Income Tax Department in respect of the assessee, the father-in-law of the accused, for the year 1969-70. He was also shown the challan regarding the payment of gift tax and also other documents. He has admitted that there is no*

contradiction in the entries appearing in the pass book and the oral statement made by the accused as well as his wife as having received those amounts as gifts. The Court has held that from the evidence, it is clear that the accused had not suppressed any acquisition of immovable property from his department and therefore, under these circumstances, it is difficult to believe that the accused has not satisfactorily accounted for the said property. The Court also, in conclusion, said that the Enquiry Officer had conducted the enquiry only one way and had not tried to get the evidence regarding the explanations furnished by the accused. The Court further held that the case put forward by the accused was fully supported by his relations and there was no contradiction in the statements made by them. It is useful to reproduce the conclusion reached by the Special Court in this case which is as follows:

> *"In view of this, it becomes clear that the investigation appears to have been carried or conducted only with the idea in the mind to charge sheet the accused for this offence. The account given by the accused regarding his alleged disproportionate property though is satisfactorily explained, is wrongly not accepted by the Investigating Officer and on the contrary the evidence on record categorically shows that the accused has given satisfactory account of his alleged disproportionate property.*
>
> *In this view of the matter, the learned advocate, Mr. Antani, has rightly argued that there is no evidence to show that the accused had misused his office or position and that there is ample evidence to show that the accused had satisfactorily accounted for the alleged disproportionate property. He has also rightly argued that the Court should accept the say of the accused and acquit him. This Court is unable to accept the submission made by the learned prosecutor. Mr. Buch, that everything was managed by the accused by stating the transactions as the transactions of gift. On*

the contrary, from the fact that the accused had mentioned all these acquisition of property in his returns, of property submitted to the department it becomes clear that he has not suppressed anything, and, therefore, the transactions were quite true and correct. In view of this, point No.3 is answered in the negative."

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

14. The learned counsel also refers to the case of ***Gautam Bhattacharjee (supra)*** in which the criminal case on misappropriation of wages required to be paid to lorry mazdoors led to an acquittal and which case had included a

consideration of the principles laid down by the Hon'ble Apex Court in ***Captain M. Paul Anthony (supra)*** and ***G.M. Tank (supra)*** and observed as follows:

> *"...Therefore, the law on the subject is this. If the alleged facts on which a criminal proceeding has been started are the same as those on the basis of which a departmental disciplinary proceeding is also commenced, the evidence in the criminal proceeding and in the disciplinary proceeding is more or less the same and the criminal proceeding is terminated by an honourable acquittal of the accused employee, then the departmental proceedings cannot be continued. The employee has to be exonerated. In this case, there is no dispute whatsoever that the facts which gave rise to departmental proceedings were the same as those which gave rise to the criminal proceeding against the accused employee. The charges which were framed in the criminal trial arose out of those facts. The evidence which was led in the criminal court was substantially the same as that which was before the disciplinary authority. The learned Judge First Special Court, Alipore came to inter alia the following findings.*
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> > *"My eyes struck to page-4 of his cross-examination when this witness deposed that it was not possible for him to say as to the exact amount of misappropriated money out of the total disbursement. The said witness proceeded further to say that the clerical staff by rotation usually pay and disburse the money to the Majdoor. On scrutiny of his examination in chief it appears that the said witness candidly deposed that no one of his office staff raised any complaint to him against the accused persons.*
> >
> > *Witness No. 2, 4 & 7 have not supported*

the prosecution story that they got less amount as arrear. They were the best person to say as to whether less amount was paid. Moreover, PW-2 deposed in his cross examination that he got the entire arrear payment and he failed to show who made the payment.

PW-3 is the formal witness being the s/o accused Dulal Chand Kayal and this son allegedly went to Lal Bazar to deposit some money and on oath he deposed that he paid to the IO Rs. 10000/- on 16.3. 1995 as per seizure list but this witness has not supported the prosecution story regarding the recovery of Rs. 4350/- from the house of Dulal Chand Kayal when this witness deposed that the said amount was seized from his raid repairing shop and not from the residence of his father. This witness was not declared hostile by the prosecution.

This was all regarding substantive evidence. The evidence of the second I.O. cannot improve the prosecution story when the prosecution has failed to make out any case through substantive evidence.

Thus I am at one that the Ld. Prosecutor and the Defence that the prosecution has failed to prove the charge against the accused persons and they are fit to be acquitted and I do that u/s 248 (1) of the Cr.P.C. *Simply because some money was seized from the accused persons or that some documents was recovered from their houses are not enough to show that the prosecution has been able to prove the charge against accused persons.*

Hence, it is ordered that the accused persons as noted in the heading of the judgement are found not guilty in respect of the charge punishable u/s 409, 120B, 420 & 468 of the I.P.C. *They are acquitted therefrom u/s 248 (1) of the* Cr.P.C.*"*

> *It is quite plain that on the self-same facts, after consideration of the same evidence, as in the departmental proceeding, in detail, the learned Judge came to the finding that the prosecution had failed to prove its case. In my opinion, the acquittal of the accused was honourable. Therefore, the disciplinary authority, before which the proceeding had been concluded, had the duty to exonerate the petitioner. Even if I consider the argument that the departmental rules gave power to the disciplinary authority to consider whether to proceed with the disciplinary proceedings, it could only proceed with it following the dicta of the Supreme Court. Otherwise, this part of the rule would be against the law of our land. Therefore, the consideration which the disciplinary authority had to take into account was whether the facts which constituted the criminal case were identical to those which constituted the departmental proceedings, the evidence was the same and the accused had been acquitted honourably.*

15. The Court noted that the Disciplinary Authority had merely observed that there was a difference in standard of proof in a civil and criminal court and had therefore, continued the disciplinary proceedings without considering further aspects involved as required by various judgments.

16. Learned counsel for the Respondents argued at the outset that in his initial OA, the applicant had sought to delay the continuance of disciplinary proceedings even in the year 2013 solely on the ground that the criminal proceedings, on identical

facts, relied upon documents, and witnesses, was pending and therefore, had cited ***Captain M. Paul Anthony (supra)*** in support, to postpone the disciplinary proceedings. He argued that the applicant was now taking a contradictory stand by claiming that since the criminal proceedings had ended in acquittal, he was entitled to ask for termination of disciplinary proceedings which, he claimed had been delayed by respondents. Moreover, the delay in this case accrued solely to the benefit of the applicant. He argued that in ***State of Punjab Vs. Chaman Lal Goyal, 1995 STPL(LE) 20521 SC,*** the Hon'ble Apex Court has distinguished the judgment in ***Bani Singh (supra)*** and had observed by reference to its judgment in ***A.R. Antulay Vs. R.S. Nayak;***

> *"11. ... xxx ....xxx .... xxx ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process - and determine in each case whether the right to speedy trial has been denied in a given case". It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be*

quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of Justice.. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case".

17. The Respondents have given their detailed explanation for the manner in which they have handled both the criminal proceedings from detection in 2004 to investigation, filing of FIR and the criminal proceedings, upto 2015 when this OA was filed and interim orders granted by this Tribunal during the hearing held on 05.05.2015 which continue till date. No suspension has been made of the individual and the delinquent even got his promotion as Commissioner in the year 2002 before the delinquency came to light. Further, he also superannuated in the year 2013 without affecting his career or his retirement. Learned counsel also refers to ***Chaman Lal Goyal (supra)*** to argue that the delinquency

is being argued with the help of documentary evidence, which can be referred and recollected easily. Therefore, it is necessary for the applicant to show what prejudice has been caused to him on account of delay but he has not made any averments or suggested any such reason that could occasion a claim for termination of proceedings especially since the charges involved in the present case are corruption and are very serious. The learned counsel also refers to the judgment of the Hon'ble Apex Court in ***Deputy Registrar, Co-operative Societies, Faizabad Vs. Sachindra Nath Pandey & Ors., 1995 SCC (3) 134 (three Judges)*** where the delinquents had absconded with the records of society. The Hon'ble Apex Court had held that they were not inclined to close the matter only on the ground that about 16 years had elapsed from the date of commencement of disciplinary proceedings more particularly when the appellant alone cannot be held responsible for this delay and where, despite a number of opportunities granted to the respondents,

he had failed to avail of them.

18. Learned counsel for the respondents further argues that it would be incorrect to say that the substance of the charge in the FIR for the criminal proceedings and the charge sheet for the disciplinary proceeding are identical. The criminal proceedings are in respect of various Sections of the IPC and the PC Act and allege criminal offences for criminality in the acts committed by the applicant, who is the charged officer in the disciplinary proceedings. However, in the disciplinary proceedings, the imputation is that he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant, thereby violating the Conduct Rules and the disciplinary proceedings accordingly, look into the issue of misconduct. Therefore, he contends that merely because the place of incident, the nature of incident, the conduct of investigation only by the CBI and list of witnesses and documents being identical cannot lead to the presumption that both the proceedings are identical as

argued by the applicant.

19. Learned counsel argues that in the present case the applicant has not obtained an honourable acquittal from the criminal court. He refers to the observation in para 19 and 31 (conclusion) of the judgment of the Criminal Court extracted at the foregoing para 4.

20. In the analysis made in both these paragraphs, the Special Court has clearly indicated that the guilt of the accused persons has not been proved beyond reasonable doubt. Therefore, it cannot be then concluded that such an acquittal is an honourable acquittal and that this kind of acquittal would automatically require the termination of the disciplinary proceedings. He, therefore, argues by reference to the above circumstances, that the judgment of the Hon'ble Apex Court in ***G.M. Tank (supra)*** cannot apply to the present case. He then relies on his compilation of the following judgments to argue that the peculiar circumstances here do not warrant a closure of the departmental proceedings and that

this Tribunal should instead direct the respondents to complete the proceedings in a time-bound manner:

> *1) Nelson Motis Vs. Union of India & Anr., (1992) 4 SCC 711 decided on 02.02.1992.*
>
> *2) Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao, (2012) SCC (L&S) 171 decided on 18.11.2011.*
>
> *3) Noida Entrepreneurs Association Vs. Noida & Ors., (2008) 1 SCC 9L&S) 672 decided on 15.01.2007.*
>
> *4) Corporation of the City of Nagpur, Civil Lines, Nagpur and Anr. Vs. Ramchandra & Ors., (1981) 2 SCC 714 decided on 26.02.1981.*
>
> *5) Secretary, Ministry of Home Affairs & Anr. Vs. Tahir Ali Khan Tyagi, 2002 (2) SCSLJ, 230 decided on 22.04.2002.*

21. In ***Nelson Motis (supra)***, the Hon'ble Court was considering the provisions of Rule 10(4) of CCS(CCA) Rules, 1965 on the aspect of the submission that disciplinary proceedings had been continued in the face of acquittal of the appellant in the criminal case. The Hon'ble Court held that the plea had no substance whatsoever and does not merit a detailed consideration. The Hon'ble Court accordingly observed as follows:

> *"5.* xxx ... xxx ... *The nature and scope of a criminal case are very different from those*

of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceedings were not exactly the same which were the subject matter of the criminal case.

22. The learned counsel argues that in the present case, the charge sheet speaks of gross misconduct committed by the applicant in respect of a consignment whose quality, quantity and FOB value had been questioned and observations recorded in the EDI system for paying duty drawback only after submission of BRC. Further, that the applicant had destroyed the manual file created additionally in the case and therefore caused a considerable loss to exchequer by not performing an act in a particular manner which he was duty bound to do that is, by referring to the EDI notings in addition to manual file entries. Therefore, the charges in the disciplinary proceedings were of having failed in integrity, serious procedural lapses and destruction of original files. Further,

evidence that could be considered in a departmental proceeding required only the preponderance of probabilities in contrast to a criminal trial where the standard of proof was required to be shown beyond reasonable doubt. The same aspect was also reiterated by the Hon'ble Apex Court in ***M.G. Vittal Rao (supra)***. In ***Noida Entrepreneurs Association (supra)***, the Hon'ble Apex Court held on this aspect of comparison of departmental inquiry and criminal proceedings as follows:

> *"11. ... xxx ..... The conceptual difference between a departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442, Hindustan Petroleum Corporation Ltd. and Others v. Sarvesh Berry (2005) 10 SCC 471 and Uttaranchal Road Transport Corpn. v. Mansaram Nainwal ,(2006) 6 SCC 366.*
>
> > *"8. ... The purpose of departmental enquiry and of prosecution is 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 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 Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings 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. .... Under these circumstances, what is required to be seen is whether the department 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.

A three-judge Bench of this Court in Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Ors. (1997) (2) SCC 699 analysed the legal position in great detail on the above lines.

12. The aforesaid position was also noted in State of Rajasthan v. B.K. Meena and Ors. (1996) (6) SCC 417."

23. In ***Ramchandra & Ors. (supra)***, a three Judge Bench of the Hon'ble Apex Court, it was held that the authority concerned in the departmental enquiry had to take into consideration, the factor of acquittal in the criminal case but the power of this authority to continue the departmental enquiry was not taken away by such a situation nor was its powers fettered. The Hon'ble Court observed as below:

> *"..6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will taken into consideration this factor in coming to the conclusion if it is really worth while to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so. In case the respondents are acquitted we direct that the order of suspension shall be revoked and the*

respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry. Mr. Sanghi states that if it is decided to continue the inquiry, as only arguments have to be heard and orders to be passed, he will see that the inquiry is concluded within two months from the date of the decision of the criminal court. If the respondents are convicted, then the legal consequences under the rules will automatically follow".

24. In ***Tahir Ali Khan Tyagi (supra)***, the Hon'ble Apex Court has also held as under:

"5. The question for consideration is, whether a departmental proceeding could be initiated after acquittal in the criminal proceeding and; whether Rule 12 of the Delhi police (Punishment and Appeal) Rules, 1980 (for short "the Rules") would stand as a bar of initiation of such a proceeding.

6. Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.

7. That apart, the second part of Rule 12 of the rules, unequivocally indicates that a departmental proceeding could be initiated if in the opinion of the court, the prosecution witnesses are found to be won over. In the case in hand, the prosecution witnesses did not support the prosecution in the criminal proceeding on account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of Rule 12, a departmental proceeding could be initiated. In this view of the matter, we are of the considered

opinion that the tribunal committed error in interfering with initiation of a departmental proceeding and the High Court committed error in dismissing the writ petition filed. We, therefore, set aside the impugned judgment of the High Court as well as that of the tribunal and direct that the departmental proceeding be concluded as expeditiously as possible".

25. In rebuttal, the learned counsel for the applicant submits that the disciplinary proceedings have themselves been badly delayed at every stage from issue of charge sheet to appointment of Inquiry Officer and Presenting Officer which was not the case in ***Chaman Lal Goyal (supra)***. He also disagreed with the reference to the concluding para 31 of the judgment in the criminal case which, he argued, does not concern the applicant and only paras 18-20 related to the applicant's involvement wherein it was held that there was no evidence against the applicant. He emphasizes that the applicant has been promoted as far back as in the year 2002 and had not been promoted subsequently until he retired in 2013.

26. We have heard Shri Ramesh Ramamurthy, learned counsel for the Applicant and Shri R.R. Shetty, learned counsel for the

Respondents at length and have carefully considered the facts, circumstances, law points and rival contentions in the case. We have carefully examined the pleadings and annexures filed by the parties.

27. On the first aspect of the charge of delay in issuing the charge sheet, the Hon'ble Apex Court has held as above in ***Chaman Lal Goyal (supra)*** that it is necessary to look into the nature of the offence and the other circumstances which here include several officers and private individuals who were engaged in a matter where considerable loss has been caused to the exchequer. As held by the Hon'ble Apex Court in ***N. Radhakishan (supra)***, there are no predetermined principles and each case has to be considered in the relevant facts and circumstances. The Court had also held in that case as below:

> *"...19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the*

relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations .

28. We also note that in ***Government of A.P. & Ors. Vs. V. Appala Swamy, 2007 (14) SCC 49 decided on 24.01.2007*** the Hon'ble Apex Court set out the principles and the manner in which such a claim of delay had to be considered in departmental proceedings as

below:

> *"...12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its our facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:*
>
> *(1) Where by reason of the delay, the employer condoned the lapse on the part of the employee;*
>
> *(2) where the delay caused prejudice to the employee.*
>
> *Such a case of prejudice, however, is to be made out by the employee before the Inquiry officer."*

In the present case, the first aspect does not arise. Further the delinquent has chosen not to appear before the Inquiry Officer in the present case and has instead placed the matter before this Tribunal and obtained interim orders against the continuance of the disciplinary proceedings.

29. In the present case, the respondents have given a detailed explanation of the manner in which they have handled both the criminal proceedings which ensued from the

detection done in 2004, four years later to the incident in 2000 to investigation, filing of FIR in 2004, approval of charge sheet even while criminal case was going on and then, after the Inquiry Officer and Presenting Officers were appointed in December 2014, when the applicant filed this OA in February 2015 and thereafter obtained interim orders on 05.05.2015 which continue till today. They submit they have been taking prompt action in the matter. Further, they point out that the applicant himself had argued in the present case while obtaining interim orders and as contained in his pleadings, that when the criminal proceedings were on identical facts, documents and witnesses, the disciplinary proceedings should be postponed. Therefore, it is quite plain that the applicant cannot be permitted to stand on both stools by arguing on the one hand, that the disciplinary proceedings should be stayed and then claiming the benefits of quashing the disciplinary proceedings on the ground of delay. The Applicant has not, at any

stage of the proceedings, explained how he has been prejudiced in the matter. An argument could be made that he had undergone mental agony but all the matters, as he himself submits, the facts, documents and witnesses were all materials before the Criminal Court which disposed of the matter as late as in 2018. As also argued by the respondents, it is only the applicant who has benefited by the long delay of 20 years from the date of incident to this date by way of a promotion in 2002 prior to detection of the offence and unhindered retirement in 2013. Therefore, in light of the Hon'ble Apex Court ruling in ***N. Radhakishan (supra)*** that the norm is to allow continuation of the disciplinary proceeding, the only recourse is the burden which falls on the applicant to prove convincingly that such continuance and the delay had caused him grave prejudice but there is no such evidence placed before us in the present matter and the applicant has not fulfilled the onerous burden that he assumed.

30. On the aspect that the criminal case and the disciplinary case rest on the same incident, facts, documents and witnesses, and that the criminal case has led to an honourable acquittal, it is undoubtedly clear from the Annexures 3 & 4 of the charge sheet in the disciplinary case and the charge sheet filed against the applicant and others in the criminal case (Annex. A-10 - page 214) that these are undoubtedly the same. The inclusion of the applicant in the final charge sheet before the Criminal Court was made after receipt of approval from the competent authority. It is the first fundamental principle of financial propriety that an expenditure should not be *prima facie* more than the occasion demands. Every Government Servant is expected to exercise the same diligence and care in respect of all expenditure from public moneys under his control as a person of ordinary prudence would exercise in respect of the expenditure of his own money. This principle has to be weighed against the powers exercised by a public official. It is seen from the

judgment of the Criminal Court that the learned Sessions Judge had relied on the fact that the concerned manual file had not been placed before the Court and that the comments on quantity, quality and FOB value of goods and on deferment of duty drawback until receipt of BRC was not put on the EDI system by the applicant himself. Further, he has accepted the argument that the accused has accorded with the strict provisions of the rules in issue of duty drawback by reference to a shipping bill and when the duty drawback could well be claimed within three days of shipment, it could not be argued that the applicant had committed any offence for which he could be held criminally liable.

31. Further, the learned Court also referred to the fact that even if any duty drawback was granted, the rules provided that in case export value was not duly remitted, required refund or recovery. In para 25 of the judgment of the learned Criminal Court, the learned Court has discussed the nature of the interdiction

placed in the EDI to not pay duty drawback until submission of BRC in the context that the final authority for determining value of goods was the Deputy Commissioner (Accused no.1) and no independent valuer had been involved which valuation could have superseded the view of the Deputy Commissioner which had therefore, become final. Therefore, perusal of the nature of pleadings and the discussions in the judgment clearly suggest that these are interpretations and applications of the Evidence Act and consequent adjudication peculiar to criminal jurisprudence and may constitute misconduct from the aspect of financial propriety in disciplinary proceedings. If the responsibility has been conferred on the Additional Commissioner (the applicant), then he had the concomitant duty to exercise it as held in ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji, 1952 AIR 16 decided on 23.11.1951*** which needs to be read with the principles of financial propriety discussed above. Similarly, the claim of the respondents in

the charge sheet that several officers had seen the manual file at various stages/offices and the imputation that it was the applicant who destroyed the manual file, is an issue that was not considered in the criminal case as acceptable evidence possibly due to its hearsay nature but may well be relevant to the imputations in the disciplinary case. It is perhaps in the face of such evidence that the learned Criminal Court came to the conclusion that the applicant who was Accused No.3 "could not be said beyond reasonable doubt to have sanctioned the duty drawback in the case" in para 19 of the judgment. Learned counsel for the applicant has argued that para 31 does not deal with Accused No.3. However, while discussing the aspect of *mens rea* from paras 30-31, the last para records the claim of the prosecution that the Inquiry Officer Suresh Kumra had offered Rs.50,000/- to Accused No.3, the applicant, and in conclusion, the Court holds that since there is a provision for recovery of duty drawback when BRC is not submitted, there cannot be

any imputation of *mens rea* and accordingly held this charge of *mens rea* against accused persons not proved beyond reasonable doubt. This aspect definitely includes Accused No.3 and would, in fact, evidently be a point for consideration during the disciplinary inquiry when viewed against the aspect of comments placed on the EDI system by the subordinate officers while passing the shipment. Comparing the criminal trial with the disciplinary proceeding is therefore fraught with all the differences in content and differences of approach pointed out above and also dependent upon the standard of proof required for the respective proceedings and which are supported by the relevant rulings of the Hon'ble Apex Court relied on by respondents as considered earlier in these orders. It is also necessary to point out that the charge sheet in the disciplinary proceedings refers to absolute integrity, devotion to duty and conduct unbecoming of a Government Servant for which the weighment of evidence will have to be done in an appropriate manner and

the applicant will evidently receive such an opportunity in accordance with the principles of natural justice in the course of the disciplinary proceedings.

32. For the reasons discussed above, it is also quite apparent that the prosecution never managed to prove the case against the applicant (Accused No.3) on both the aspects of his involvement by way of *mens rea* and by way of his actions, the charges of criminal conspiracy etc could not hold and the Court had accordingly discharged the accused on the ground that the prosecution had failed to establish their case beyond reasonable doubt. This cannot be considered an honourable acquittal by any circumstance.

33. By virtue of the above discussion, it is quite apparent that none of the grounds of challenge argued by applicant in this OA have any useful merits and the OA is ***accordingly dismissed.*** It is however directed that the respondents, as they have themselves submitted, shall expedite the process of conduct of the inquiry from the point at which it has stopped including by

appointing new Inquiry Officers/Preventing Officers as may be required and obtain orders of the Competent Authority within a period of six months. The Applicant is also directed to co-operate in the expeditious conduct of this inquiry. Parties shall bear their respective costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

dm.

03/03/2020