RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 1597 OF 1999

ALLAHABAD THIS THE 29th DAY OF November 2007.

Hon'ble Mr. Justice Khem Karan, VC
Hon'ble Mr. K.S Menon, A.M

Sri Shankar Prasad aged about 43 years, son of late Shri Raj Nandan Prasad, Senior Clerk, under the Divisional Railway Manager, North Eastern Railway, Varanasi.

.....Applicant

(By Advocate: Shri O.P Srivastava/Shri K. Pandey)

Versus.

1. Union of India, through the General Manager, N.E. Railway, Gorakhpur.
2. The General Manager(Personnel), N.E. Railway, Gorakhpur.
3. The Senior D.E.N (II), Sonepur, N.E. Railway.
4. The Divisional Railway Manager, Sonepur, N.E Railway.

.....Respondents

(By Advocate: Shri A.V. Srivastava)

O R D E R

By Justice Khem Karan, VC

The applicant has prayed for following relief (s):-

"(a) That a declaration may issue to declare the order of the General Manager dated 14.12.1998 Annexure No. A-1 as null and void.
(b) That a declaration may issue to direct the opposite parties to reinstate the petitioner on the post of the Head Clerk, as dismissal order which merged into appellate order, has already been quashed.
(c) That a declaration may issue to direct the opposite parties to pay the petitioner his arrear, of salary and other consequential benefits with interest.
(d) That a declaration may issue which this Hon'ble Tribunal may deem fit and proper in view of the facts & circumstance of the case.
(e) Award the costs in favour of the petitioner".

2. His case, in brief, is that while being posted as Head Clerk under P.W.I Muzzafarnagar in November 1991, one F.I.R. (Annexure A-2) was lodged on 16.11.1991 by Shri Ajay Kumar, AS-TE against him and others saying that on 15.11.1991 at about 11 a.m, they not only assaulted, abused, intimidated him but also caused obstruction in discharge of duties. He was arrested and bailed out under the orders of D.R.M Sonepur, a preliminary enquiry was held and on receipt of report, Senior Divisional Engineer, the disciplinary Authority passed the dismissal order dated 20.11.1991, after dispensing with the formal

enquiry under Rule 14 of Railway Servant (Discipline and Appeal) Rules, 1968. Aggrieved of this dismissal order dated 20.11.1991, he filed an appeal before the D.R.M which he rejected vide order dated 25.9.1992. Revision to General Manager, North Eastern Railway, Gorakhpur, also remained unsuccessful. Aggrieved of these orders, he filed one O.A. NO. 175 of 1993 before Patna Bench of this Tribunal. The same was disposed of, vide order dated 6.5.1994 (Annexure A-8), The Tribunal quashed the appellate and revisional orders and directed the Revising Authority to decide the revision afresh, after giving opportunity to the applicant to the supplementary revision. It appears, applicant filed Supplementary Revision, bringing the factum of acquittal in the criminal case to the notice of revisional authority but on consideration, the General Manager was not convinced and he again rejected the revision vide order dated 29.4.1994 (Annexure A-9). Applicant filed another O.A. No. 125/95 before Patna Bench of this Tribunal assailing the revisional order dated 29.4.1994. This O.A. was disposed of vide order dated 14.8.1998, directing the General Manager to dispose of revision by passing a fresh order. It appears that the impugned order dated 14.12.1998 (Annexure A-1) has been passed in purported compliance of Tribunal's order dated 14.08.1998. A perusal of impugned order reveals that after considering all the facts and circumstances including factum of acquittal in the criminal case, General Manager concurred with the Disciplinary as well as Appellate Authority in so far as proof of misconduct and quantum of punishment were concerned, but considering the plight of family members of the applicant and his sufferance for 7 years, he reappointed him afresh, as Senior Clerk in the grade of Rs.4500-7000 (5PC grade) at initial stage but deprived him of the benefit of previous service for any purpose. He is assailing this order on the ground inter-alia that once he has honourably been acquitted by the Criminal Court on identical charges, dismissal orders and subsequent orders are not sustainable in the eyes of law and that he has wrongly been denied reasonable opportunity of hearing.

3. Respondents have tried to say that O.A. is time barred and deserves to be dismissed on this ground alone. According to them, acquittal by the Criminal Court is not honourable one but was due to defects in the investigation and non-examination of certain witnesses, so applicant cannot get rid of the punishment order only on the strength of acquittal. It is said in para 11 that since applicant was Union Leader and witnesses were not ready

to cooperate, so after the preliminary inquiry, competent authority rightly dispensed with the formal enquiry in exercise of his powers under Rule 14 of the Rules of 1968.

4. Both the parties have placed on record their written arguments. We have gone through the pleadings as well as through the written arguments.

5. Though a plea in para 4 of the reply is that O.A. is time barred, but nothing in support of it, has been said in written arguments of Shri A.V. Srivastava, the learned counsel for the respondents. We have not been able to appreciate as to how this OA filed on 20.12.1999, against order dated 14/18.12.1998 of General Manager, can be said to be time barred, so the plea that O.A is time barred, is rejected

6. Relying on G.M Tank Vs. State of Gujarat and Anr. 2006 (4) SLR page 10, Shri B.P. Srivastava, learned counsel for the applicant has argued that once applicant has been honourably acquitted by the Competent Criminal Court after trial on the same facts, impugned order including the orders passed by the Disciplinary and Appellate Authorities become unsustainable and deserves to be quashed. On the other hand, Shri A.V. Srivastava, the learned counsel for the respondents has tried to say in his written argument that acquittal of the applicant in a Criminal Case was not honourable and so he cannot get rid of impugned or punishment orders solely on that basis. He has also tried to say that the object behind the Departmental proceedings and the object behind the criminal prosecution are different and likewise standard of proof required in both the proceedings is not the same. The learned counsel goes on to submit that while in criminal case, prosecution has to establish, the charge beyond all reasonable doubts, in the departmental proceedings, the conclusion is to be drawn on the probability of the departmental version. To support his above submission, Shri A.V. Srivastava, learned counsel for the respondents has cited Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. 1999 (SCC) L&S 2 page 810, Ajit Kumar Nag Vs. G.M (P), I,O Corporation Ltd. 2005 (SCC) L&S page 1020. He however states on page 7 of the written argument that both the proceedings were on identical facts and circumstances. The sum and substance of the law laid down by the Apex Court in series of decisions including one in Captain M. Paul Anthony (supra) and in G.M Tank (supra) case if delinquent employee has been

honourably acquitted by the Competent Criminal Court after trial in accordance with law, departmental action such as punishment and dismissal, removal etc. will not be sustainable, the question is as to whether, applicant's acquittal was honourable or not.

7. Annexure III, a Photostat copy of the judgment and order dated 15.6.1993 delivered by the Judicial Magistrate, Muzzafarpur in State Vs. C.N Pandey and others, under section 147, 323, 448 and 353 IPC. A close perusal of this judgment would reveal that prosecution examined several witnesses including, the victim Ajay Kumar (PW-6), who tried to support the prosecution version after violating the entire material on record. The learned Magistrate concluded "from every natural corner prosecution suffers from serious cracks and as such prosecution has measurably failed to prove its case. Thus, I find the accused person C.K. Pandey and Shankar Prasad not guilty under section 147/323/448/353 IPC and accordingly they are acquitted therefor.

8. It is true that learned Magistrate made certain observations to the effect that investigation was tainted and prosecution withheld important witnesses including the Doctor who examined the injuries of the victims but we have not been able to persuade ourselves to agree with Shri A.V. Srivastava to say that acquittal of the applicant was not honourable one. Which acquittal will be honourable and which will not be honourable, has perhaps not been elaborated in any of the judicial pronouncement, so cited. We may, however, refer to the observations of the Apex Court in Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh & Anr, Judgment Today 2004 (7) Supreme Court page 333 (three judges case) as referred to and quoted in para 27.1 in G.M Tank's case (supra), where Hon'ble Judges state that acquittal for want of sufficient material will remain honourable one. Otherwise also, this is not a case where applicant was acquitted on any technical ground or on any legal ground only. It was a case where applicant was clearly acquitted on provision of entire material, so placed before the Trial Court. It is also difficult to say that witnesses so examined by the prosecution turned hostile due to any undue pressure put on them by the accused, so in our view acquittal of the applicant in a criminal Court on identical case was honourable one and it was not because applicant was given benefit of any doubt etc.

9. The dictum of law as propounded by the Ape Court in G.M Tank's case (supra) and M. Paul Anthony's case(supra), to our view is to allow that after the clear cut acquittal by Competent Criminal Court, on identical facts, will make the departmental action unsustainable in law. In **case on identical facts,** a person is acquitted **by the Court and punished or held guilty on the departmental side, there may be anomalous situation and people** may think **how these contradictory** conclusion and result may prevail simultaneously. We think if such an anomalous situation is left to survive, faith of people in the administration of justice may be eroded in the long run.

10. Here in the instant case, the Authority concerned dispensed with the regular formal enquiry. Here there is no chargesheet, no written statement or reply of the applicant to the charges, no examination of witnesses in support of formal charges and no opportunity of cross-examination, so as to test the veracity of evidences of such witnesses and above all here applicant has no opportunity to lead the evidence in his defence. Had finding of guilt been recorded by the enquiry Officer or by the Disciplinary Authority after holding full-fledged enquiry as envisaged under the Rule of 1968, there could have been some room for argument that departmental conclusion will not be interfered with, solely on the ground of acquittal by the Criminal Court. For all legal and practical purposes, there were no proceedings of enquiry, in which applicant could have defended himself in a reasonable manner. In such a case, arguments such as different standard of proof or different object behind the two proceedings cannot be successfully pressed into. Acquittal of the applicant after regular Trial by the Competent Criminal Court in accordance with procedure established by the law, must supersede the conclusion drawn behind the back of the applicant or without holding formal enquiry. We cannot rule out that had enquiry been held into the allegations in accordance with Rules, applicant might have proved himself to be innocent. He had no occasion to prove his innocence on the departmental side. So without going further, we would conclude that departmental action deserves to be set-at-naught in view of honourable acquittal of the applicant on the same facts.

11. Shri A.V. Srivastava, the learned counsel for the respondents has said in h is written argument that initial order passed by Disciplinary Authority and subsequent order passed by Appellate Authority have attained finality, so

even if revisional order is interfered with, applicant does not get rid of the punishment. According to him, doctrine of merger will not apply.

12. On the other hand, Shri B.P. Srivastava, learned counsel for the applicant has tried to say that initial punishment order as well as subsequent appellate order stood merged in a final revisional order dated 14/18.12.1998, so if revisional order is quashed, order of Disciplinary Authority as well as Appellate Authority will automatically stand quashed. This argument of learned counsel for the applicant finds place in para 12 of his written reply to the Written Argument of learned counsel for the respondents. Although none of the learned counsels could cite any judicial pronouncement touching the point of merger of the original or appellate orders into revisional order, but we have been able to find out view the Judicial pronouncement on the point. One of such pronouncement was in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattaraya Bapat 1970 (1) SCR page 322 and others, Nalakath Sainuddin Vs. Koorikadan Sulaiman JT 2002 (5) Supreme Court cases page 411, where the Apex Court has ruled that revisional jurisdiction involved exercise of appellate jurisdiction. In Kunhayammed and others Vs. State of Kerala and othersand others JT 2000 (9) page 110, it has been held an order of Disciplinary Authority merges with the order of Appellate Authority. So these are the judicial pronouncements in support of the view that orders of Disciplinary Authority and Appellate Authority will merge in the order of revisional. In the case in hand impugned order dated 14/18.12.1998 passed in revision is unique one in the sense that applicant was reappointed, without benefit of previous service. If orders of Disciplinary Authority and Appellate Authority will not be treated to have been merged in this order of December 1998, a peculiar situation may crop up in regard to that part of the order, thereby applicant has been appointed a fresh, without benefit of previous service for any purpose. So we find no difficulty in concluding that orders of disciplinary and appellate Authority have no independent existence, after the revisional order dated 14/18.12.1998. Once this revisional order goes, orders of disciplinary authority as well as Appellate Authority will go with it.

13. Learned counsel for the respondents has tried to say in his written argument that vide order dated 6.5.1994 in O.A. No.175/93 Patna Bench of this Tribunal negatived, the contention of the applicant that dispensing with the enquiry under Rule 14 of Rule 1968 was not justified and not only this

order of the Disciplinary Authority was also upheld. He wants to say if the order of Disciplinary Authority was earlier upheld by Patna Bench in OA No. 175/93, the applicant cannot be permitted to assail the same or to challenge the same in this O.A. He says that it is for this reason that the said order has not expressly been challenged in this O.A. After having gone through the order dated 6.5.1994 of Patna Bench in O.A. No.175/93, we have not been able to find that the Tribunal expressed any final view as regards the sufficiency or insufficiency of the reasons for dispensing with the enquiry. Decision dated 19.8.1998 in subsequent O.A. NO.125/95 also reveals that the Tribunal wanted the revisional authority to look into all the aspects of the case, including factum of honourable acquittal of the applicant in the criminal case.

14. Though Shri B.P Srivastava, learned counsel for the applicant has cited Union of India Vs. Smt. Vidhata and Anr. Reported in 2007 (3) SLR page 285 to say that dispensing with of regular enquiry without any material will not be justified but in view of what we have stated above, we need not enter into this aspect of the order.

15. In the result, the OA deserves to be allowed. So OA is allowed. Order dated 14/18.12.1998 passed by General Manager is quashed with a direction to the respondents to re-instate the applicant on his original post of Head Clerk as if initial punishment order dated 20.11.1991 and 25.9.1992 were never in existence, with all consequential benefits.

No order as to costs.

Member-A

29.11.07

Vice-Chairman.

Manish/-