

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 344 OF 2008

.....Monday....., this the 12th day of October, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K. Unnikrishnan,
S/o. Nanu Nair,
Residing at Malayath House,
Kanimangalam, Thrissur – 27,
(Removed from while working as Helper,
for Lineman, Kavarathi Island,
Lakshadweep Islands.

... **Applicant**

(By Advocate Mr. R. Sreeraj)

versus

1. Lakshadweep Administration,
rep. by Administrator, Kavarathi
Island, Lakshadweep.
2. The Secretary (Power) & Disciplinary
Authority, Department of Electricity,
Kavarathi Island, Lakshadweep.
3. The Executive Engineer,
Electrical Sub-Division,
Kavarathi, Lakshadweep.

... **Respondents**

(By Advocate Mr. S. Radhakrishnan)

The application having been heard on 05.10.2009, the Tribunal
on12-10-2009.... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The issue is short. After acquittal by the criminal court, whether the
authorities could issue a charge sheet on the same set of charges and in
order circumvent any hurdle in this regard, could the respondents add one
more aspect in the statement of imputations.



2. The facts in brief: The applicant was charged with certain criminal offence which resulted in his conviction and sentence by the Sessions Court, Kavaratti, and as a consequence he was removed from service w.e.f. 29-09-2004 vide Annexure A-1. Appeal preferred by the applicant before the High Court against the judgment of conviction and sentence resulted in his acquittal, vide judgment dated 28th June 2005 (Annexure A-2) wherein it was held as under:-

"In the light of discussions made above, this Court is of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. Hence the impugned judgment is set aside and the appeals are allowed. Accordingly, the appellants are acquitted of the charges levelled against them."

3. On the basis of the above, the respondents had set aside the order of removal but kept the applicant under suspension under the provisions of Rule 10(4) of the CCS (Conduct) Rules, 1965 with retrospective effect from 29-09-2004, i.e. from the date of removal from service. And in addition, it was decided to hold further inquiry under the provisions of the CCS (CC&A) Rules. Annexure A-7 order dated 30th December 2006 refers. Again, vide order dated 8th June 2007, at Annexure A-10, the respondents had continued the suspension order as per the provisions of Rule 10(6) and (7) of the CCS (CC&A) Rules, 1965. This was followed by another order dated 30th May 2008, vide Annexure A-11. The applicant in the meantime appealed to the appellate authority for revocation of suspension, vide appeal dated 6th March 2007 and 10th April 2008 at Annexures A-8 and A-9 respectively. The further order of continuance of suspension vide Annexure A-11 order dated 30th May 2008 confirms the tacit rejection of the appeal preferred. The applicant has

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challenged the order dated 30th December 2006 (Annexure A-7) to the extent it provided for further inquiry, order relating to continuance of suspension, dated 8th June 2007 (Annexure A-10) and Order dated dated 30th May 2008 (Annexure A-11) whereby the suspension had further been extended.

4. Respondents have contested the O.A. They have stated that vide Annexure R(1) (a) order dated 7th March 2002, the applicant was kept under suspension w.e.f. 28-02-2002 as the applicant was detained in police custody on that date. This was revoked vide order dated 22nd June 2004, vide Annexure R1(b). However, on his conviction in the criminal court, the applicant was removed from service under the provisions of Rule 19(1) of the CCS(CC&A) Rules, 1965 vide Annexure R(1)(c) order dated 24-05-2005. It was thereafter that the applicant was acquitted by the criminal court, vide Annexure A-2 judgment dated 28th June, 2005. In pursuance of the same, the impugned Annexure A-7 order has been passed. It has also been stated by the respondents that the applicant, while filing the appeal before the High Court, did not implead the Lakshadweep Administration but impleaded the State of Kerala, vide judgment of the High Court at Annexure A-2. The decision of the High Court has also been challenged in SLP (Diary No. 5028-29/2008), which is pending. The respondents in their counter have justified their decision to hold further inquiry and to keep the applicant in continued suspension.

5. Counsel for the applicant, on the direction of the Tribunal made available a copy of the charge sheet issued by the department as recently as 7th July 2009 i.e. almost a year after the filing of the OA.

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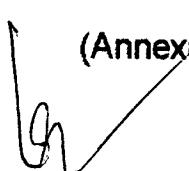
6. Counsel for the applicant submitted the following:-

(a) Once the criminal court has acquitted the applicant on merit, then further inquiry is not permissible under the rules.

(b) The charge sheet would reflect that the same has been issued with the same set of facts, which constituted the basis for the criminal case in the sessions court. In order to stultify the provisions, preventing the department from initiating proceedings on the same set of facts, a new item has been added, that too only in the statement of imputation that the applicant by not impleading the Lakshadweep administration in his appeal against the Trial Court's judgment, misguided the High Court.

7. Counsel for the respondents submitted that there is no bar in initiating the proceedings as the standard of proof in criminal and departmental cases is entirely different.

8. Arguments were heard and documents perused. The initial order of removal from service had been passed invoking the provisions of Rule 19 (1) of the CCS(CC&A) Rules, 1965, which states, "Notwithstanding anything contained in Rule 14 to Rule 18, (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit, provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made." Thus, without holding inquiry, on the basis of the conviction, the applicant was removed from service, when the order dated 24th May 2005 (Annexure R(1)(c) was passed. When in appeal the said conviction and

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sentences are set aside, then G.O.I. No. 8 under the said Rule 19 of the CCS (CC&A) Rules, 1965 would come into play. The same reads as under:-

"(8) Action when appeal/revision against conviction succeeds. -

(a) If an appeal/revision in higher Court against conviction, succeeds and the Government Servant is acquitted, the order imposing a penalty on him on the basis of conviction, which no longer stands, becomes liable to be set aside. A copy of the judgment of the higher Court should, therefore, be immediately procured and examined with a view to decide -

(i) whether the acquittal should be challenged in a still higher Court; or
 (ii) whether, despite the acquittal, the facts and circumstances of the case are such as to call for a departmental enquiry against the Government servant on the basis of the allegations on which he was previously convicted.

(b) If it is decided to take the matter to a still higher Court, action to institute proper proceedings should be taken with the least possible delay and [the penalty imposed shall not be set aside during the pendency of such proceedings].

(c) If, on the other hand, it is decided that a departmental inquiry may be held, a formal order should be made -

(i) setting aside the order imposing the penalty on the basis of the conviction; and
 (ii) ordering such departmental enquiry.

(Standard Form for such order is annexed-Form at the end of this chapter). - In cases where the penalty imposed on the basis of the conviction was dismissal, removal or compulsory retirement from service, the order should also state that

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under Rule 10 (4) of the CCS (CCA) Rules, 1965, the Government servant is deemed to be under suspension with effect from the date of dismissal, removal or compulsory retirement from service.

2. For appreciating properly the scope and implications of the words "on the basis of the allegations on which he was previously convicted" occurring in Paragraph 3 (a) (ii) above, the point to be taken note of is that, one identical set of facts and allegations may be sufficient to constitute a criminal offence as well as misconduct not amounting to criminal offence, but punishable under the CCS (CCA) Rules, or similar other rules. If the facts or allegations had come to be examined by a Court of competent jurisdiction and the Court has given a finding that the allegations are not true, then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations. If, on the other hand, the Court has merely expressed a doubt as to the correctness of the allegation, then there may be no objection to hold a departmental enquiry on the same allegations if better proof than what was produced before the Court or was then available is forthcoming. Then again, if the Court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant is charged, then also there would be no objection to hold a departmental enquiry on the basis of the said allegations if such proved allegations are considered good and sufficient ground for departmental disciplinary action. So also, it is permissible to hold a departmental enquiry after the acquittal, in respect of a charge which is not identical with or similar to the charge in the criminal case, and is not based on any allegations which have been negatived by the Criminal Court. Furthermore, if the allegations had not yet been examined by a Court of Law but are considered good and sufficient grounds for departmental disciplinary action, there is no bar to taking such action.

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[See Proviso under Rule 10 (4) as inserted by Notification, dated the 7th September, 1981.]

3. In cases where neither of the courses mentioned in Paragraph 3 is followed, a formal order should be issued setting aside the previous order imposing the penalty (Standard Form for such order is annexed - *Form at the end of this chapter*). In cases where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowances will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowance will be allowed as directed by the Competent Authority under FR 54 (2) or FR 54 (3) and the period treated as duty or non-duty under FR 54 (4) or FR 54 (5), as the case may be.

4. It has been decided that the Union Public Service Commission should continue to be consulted, wherever such consultation is necessary, in all cases of conviction in Court of Law, including conviction for an offence involving corruption. Although in such cases, departmental action is taken on the ground of conduct which has led to an officer's conviction on a criminal charge, the quantum of punishment to be imposed on the convicted officer has to be considered in consultation with the Commission on the merits of each case.

[G.I., M.H.A., O.M. No. F. 43/57/64-AVD (III), dated the 29th November, 1996, as amended by G.I., C.S. (Dept. of Per.), O.M. No.371/3/74-AVD (III), dated the 19th September, 1975. - Extract.]

9. Rule 10(4) of the CCS(CC&A) Rules, 1965, which is referred to in para 1 of the above order reads as under:-

"(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or

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rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government Servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further order :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case."

10. Counsel for the applicant argued that in view of the decisions in the case of Paul Anthony and G.M. Tank, when the criminal court has acquitted the delinquent, departmental proceedings cannot be initiated.

11. In Capt Paul Anthony vs Bharat Gold Mines Ltd., (1999) 3 SCC 679, the Apex Court has held as under:-

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

12. Referring to Paul Anthony, in the case of G.M. Tank vs State of Gujarat (2006) 5 SCC 446, the Apex Court has held as under:-

"...this Court came to the conclusion that the finding to the contrary on the very same evidence



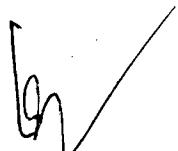
by the domestic enquiry would be unjust, unfair and rather oppressive."

13. The extent of import of the above holding of the Apex Court has been explained in a subsequent case vide ***Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713***, wherein the Apex Court has, after quoting the above para in Capt. M.Paul Anthony, observed as under:-

"41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Manager, Reserve Bank of India v. S. Mani. Each case is, therefore, required to be considered on its own facts."

14. Apart from the above, one more line of decisions has been referred to by the Apex Court in the case of ***Pandiyar Roadways Corp. Ltd. v. N. Balakrishnan,(2007) 9 SCC 755***, wherein the Apex Court has held as under:-

"21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and G.M. Tank v. State of Gujarat . However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. of Police v. Narender Singh), or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (see G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Noida Entrepreneurs' Assn. v. Noida, para 18)."



15. The following decisions in this regard are also relevant:

(a) *Suresh Pathrella v. Oriental Bank of Commerce*, (2006) 10 SCC 572, wherein the Apex Court has held as under:-

"11. In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

(b) *Union of India v. Naman Singh Shekhawat*, (2008) 4 SCC 1 wherein it has been held:

"29. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the Department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair."

16. The above decisions would go to show that where the evidences are based on the same set of facts, holding departmental inquiry is not fair or reasonable. Annexure III to the charge sheet issued by the respondents would go to show that there is absolutely no other material than those considered by the Criminal Court which are relied upon by the prosecution.

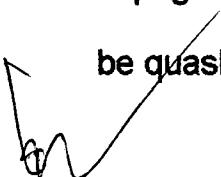
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That the applicant had tried to misguide the Hon'ble High Court by not impleading the Lakshadweep Administration as spelt out in the statement of imputation cannot be directly linked with the charge which is confined to the alleged rape committed by him. Thus, inclusion of the allegation in the statement of imputation that the applicant allegedly misguided the High Court by non-joinder/misjoinder of the parties cannot in any way bring the case of the respondents within that set, where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court referred to in the decision in Pandian Roadways (supra).

17. Again, the judgment of the High Court in acquitting the applicant is not based on benefit of doubt. It is normally, when the acquittal is based on benefit of doubt or on certain technical considerations, that departmental inquiry is permitted. In this regard, reliance could be placed on the decision of the Apex Court in the case of Reserve Bank of India v. Bhopal Singh Panchal, (1994) 1 SCC 541, wherein the Apex Court has held as under:-

"When the High Court acquitted the respondent-employee by its order of November 21, 1977 giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46(4)."

18. Thus, the decision to hold departmental inquiry is thoroughly illegal in view of the above decisions of the Apex Court. Consequently, the impugned orders to the extent applicant is kept under suspension are liable to be quashed and set aside, which we order so.



19. In so far as the charge sheet is concerned, the applicant is at liberty to make a proper representation and if such a representation for dropping the same is filed, the respondents shall consider the same in the light of the above decisions and pass appropriate orders.

20. It is stated that against the the SLP filed against judgment of the High Court has been admitted. It so, the decision thereof would be considered in reviewing the matter relating to departmental proceedings against the applicant. As on date, the applicant is entitled to be permitted to perform his duties. Due orders shall be passed regarding the treating of the period of suspension in accordance with the provisions of FR 54 B and other attendant rules.

21. This order shall be complied with, within a period of two months from the date of communication of this order.

22. O.A. is disposed of with the above observation. No cost.

(Dated, the 12th October, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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Dr. K.B.S. RAJAN
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.344/2008

Tuesday..... this the 11th day of August 2015

C O R A M :

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

K.Unnikrishnan,
S/o.Nanu Nair,
Residing at Malayath House,
Kanimangalam, Thrissur – 27.
Removed from service while working as Helper for Lineman,
Kavarathi Island, Lakshadweep Islands.Applicant

(By Advocate Mr.R.Sreeraj)

V e r s u s

1. Lakshadweep Administration represented by Administrator,
Kavarathi Island, Lakshadweep.
2. The Secretary (Power) & Disciplinary Authority,
Department of Electricity, Kavarathi Island, Lakshadweep.
3. The Executive Engineer,
Electrical Sub Division,
Kavarathi, Lakshadweep.Respondents

(By Advocate Mr.S.Radhakrishnan)

This application having been heard on 21st July 2015 this Tribunal
on 11th August 2015 delivered the following :

O R D E R

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

This O.A was disposed of by this Tribunal on 12.10.2009 finding that
the decision to hold departmental inquiry is thoroughly illegal in view of the
decisions of the Apex Court and consequently Tribunal quashed and set



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aside the impugned orders to the extent it kept the applicant under suspension. The aforesaid order of this Tribunal was taken up before the Hon'ble High Court in WP(C) No.3759/2010 by the respondents. The Hon'ble High Court vide judgment dated 2.4.2014 set aside the impugned order and remitted the matter for fresh consideration in accordance with law in terms of the following observations :

“5.Under such circumstances, we are of the view that the Tribunal had misdirected itself in deciding the case exclusively on the basis of the precedents and without looking into the real issues as to whether the disciplinary proceedings ought to have been set at naught at the stage in which it has been done.

6. Before parting, we may also indicate that while the establishment says in the memo of charges that the appeal in the High Court was prosecuted without impleading the Union Territory of Lakshadweep or without giving notice to the Public Prosecutor appointed under Section 24 Cr.PC as regards the Union Territory of Lakshadweep, such a plea cannot be, *prima facie*, levelled against the employees, by the establishment in a disciplinary proceedings, when the High Court had, in exercise of its statutory authority and jurisdiction, entertained and decided the lis. Error of jurisdiction, illegality, non-impleadment of the necessary parties etc. are matters entirely within the judicial domain of this Court in relation to that case. That cannot be made the subject matter of an independent disciplinary proceedings at the hands of the executive.

7. Subject to the aforesaid, we are of the view that this case deserves a second look at the hands of the Tribunal after noticing the relevant clause and upon having a comprehensive consideration of the relevant facts to decide on all issues arising for consideration.

In the result, the impugned order is set aside and the learned Tribunal is requested to take back O.A.No.344/2008 and decide it *de novo* in the light of what is stated above. Parties are directed to mark appearance before the Tribunal on 24.5.2014.”

2. Applicant while working as Helper for Lineman was convicted and sentenced by Sessions Court, Kavaratti and as a consequence he was removed from service with effect from 29.9.2004 ie. the date of conviction. The conviction and sentence passed against him by Sessions Court,



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Kavaratti was set aside by the Hon'ble High Court of Kerala in Criminal Appeal No.1622/2004 (A) (Annexure A-2). On the basis of Annexure A-2 judgment, applicant vide representations (Annexure A-3 to Annexure A-6) sought reinstatement in service. Finding no response to Annexure A-3 to Annexure A-6 representations the applicant filed O.A.No.648/2006 which was disposed of by this Tribunal on 20.9.2006 directing the 2nd respondent to take a decision in view of Annexure A-2 judgment of the Hon'ble High Court. Thereafter the 2nd respondent passed Annexure A-7 order dated 30.12.2006 setting aside the order of removal of the applicant from service, directing that a Rule 14 enquiry be held against the applicant on the allegations that resulted in his removal from service, and also directing that the applicant be deemed to have been placed under suspension under Rule 10(4) of the CCS (CCA) Rules, 1965 from the date of his removal from service. Thereafter the suspension was extended from time to time. Aggrieved by the refusal of the respondents to reinstate him in service despite Annexure A-2 judgment, he approached this Tribunal seeking the following reliefs :

1. To declare that the refusal of the respondents to reinstate the applicant in service despite Annexure A-2 judgment is highly illegal, arbitrary, unjust, unreasonable, irrational and violative of Articles 14 and 16 of the Constitution of India.
2. To quash Annexure A-7 to the extent it directs that a Rule 14 enquiry be held against the applicant on the allegations that resulted in his removal from service, and that the applicant be deemed to have been placed under suspension under Rule 10(4) of the CCS (CCA) Rules, 1965 from the date of his removal from service.
3. To quash Annexure A-10 and Annexure A-11.



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4. To direct the respondents to reinstate the applicant in service with all consequential benefits including continuity of service and full back wages.

5. Such other relief as may be prayed for and this Tribunal may deem fit to grant.

6. Grant the cost of this Original Application.

3. Respondents in their reply state that the applicant while working as Helper for Lineman, Electrical Sub Division, Minicoy was detained in police custody exceeding 48 hours with effect from 28.2.2002 in connection with a Criminal Case No.Cr.1/2002 of Minicoy Police Station. Accordingly, he was placed under deemed suspension with effect from 28.2.2002 as per Order No.40/1/2002 Estt/515 dated 7.3.2002. The O.A.No.486/2002 filed before this Tribunal challenging the suspension order was rejected under Section 19(3) of the Administrative Tribunal Act, 1985, as a criminal case against the applicant for a grave offence under Section 376 of IPC was under investigation. The Criminal Case was disposed of by order dated 28.9.2004 and the accused was sentenced to undergo 7 years imprisonment with a fine of Rs.5000/- and the accused was taken into judicial custody on the same day and later released on bail as per order dated 5.10.2004 of the Sessions Court. Consequent on his conviction for the criminal offence by the Session Court, Kavaratti, the applicant was removed from service in terms of Rules 19 (i) of the CCS (CCA) Rules, 1965 with effect from 29.9.2004 by order No.40/1/2002 Estt/Ele/1894 dated 24.5.2005. The applicant filed a Criminal Appeal No.1622/2004 before the Hon'ble High Court of Kerala against the conviction and sentence passed by the Session

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Court, Kavaratti. The original respondents who contested the case against the applicant before the Session Court was Police Department of Lakshadweep Administration, whereas the Police Department of Lakshadweep Administration was not made a party in the said Criminal Appeal filed by the applicant before the Hon'ble High Court of Kerala and the respondent was State of Kerala instead of the Public Prosecutor of the Lakshadweep Administation. In the judgment dated 28.6.2005 of High Court the applicant was acquitted of the charges levelled against him. On the basis of Annexure A-2 judgment the applicant submitted several representation for his reinstatement in service based on his acquittal by the High Court of Kerala (Annexures A-3, A-4, A-5 and A-6). Since his request for reinstatement was not conceded he approached the Tribunal by filing O.A.No.648/2006. In the order dated 20.9.2006 the Tribunal directed to dispose of his representation. The applicant was acquitted by the High Court in Criminal Appeal No.1622/2004 from the criminal charge and conviction and sentence ordered by the Session Court, without hearing the actual prosecution side the Lakshadweep Police Department. He had purposefully and willfully made the Govt. of Kerala as respondent instead of Lakshadweep Administration. Hence the competent authority decided to conduct a de novo enquiry against the applicant. Accordingly, in view of his acquittal by the Hon'ble High Court the applicant has been reinstated in service setting aside the penalty of removal from service ordered as per order dated 29.9.2004 and placed under deemed suspension again in terms of Sub Rule (4) of Rule 10 of the CCS (CCA) Rules, 1965 by order

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No.40/1/2002 Estt./Ele (1) dated 30.12.2006 (Annexure A-7) with effect from the date of removal from service ie. 29.9.2004 without prejudice to the departmental enquiry. Charge sheet has not yet been framed and communicated to the individual so far, in the absence of connected records. The connected documents such as copy of FIR, copy of complaint, copy of charge sheet and copies of judgment in Sessions Court and High Court have been furnished by the Police Department on 5.6.2008 and further action in the matter is being pursued. The case was examined in detail and the Administration decided to file appeal before Supreme Court as the offence being one of rape, needs serious examination at high level. Accordingly, the Police Department has filed SLP No.5028-29/2008 (Criminal Appeal). Accordingly, the matter was taken up by the Review Committee and was decided to continue suspension under Rule 10 (6) of CCS (CCA) Rules, 1965. In Annexure A-9 applicant has stated that being an islander one Shri.Ummer, Assistant Engineer (Housing), LPWD, Kavaratti is still in service even after his conviction and sentence order passed by the Hon'ble CBI Court, Ernakulam while being a mainlander the Department has taken a discriminatory attitude against him and he is still under continued suspension. In this connection, it is to be stated that Shri.Ummer was not arrested and detained in police custody since order from CBI Court was stayed by the Hon'ble High Court of Kerala before imposition of any penalties by the Department (Cr.M.A.No.13128/2006 in Crl.A.No.2476/2006). As per Govt. of India, Department of Personnel & Training notification No.11012/5/2001 Estt. (A) dated 1st July 2004



"Provided that where there is a complaint of sexual harassment within the meaning of Rule 3 C of the Central Civil Service (Conduct) Rules, 1964, the complaint committee established in each Ministry or Department or Office for inquiring to such complaints, shall be deemed to be the inquiry authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaint Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these Rules". As such the complaint committee constituted under the Administration/disciplinary authority can function as the inquiry authority in the instant case. As the offence committed by the applicant on which the criminal case was registered, ie. rape case, is grave in nature, involving moral turpitude it is to be decided in terms of Govt. Instructions (8) below rule 19 of the CCS (CCA) Rules, 1965.

4. We have heard the learned counsel for the parties and considered the written submissions made. This is a case wherein Hon'ble High Court of Kerala in Crl. Appeal No.1622 of 2004 (A) has set aside the conviction and sentence passed by the Sessions Court, Lakshadweep in SC No.1/2003 on the ground that the prosecution has failed to prove the case against appellant beyond reasonable doubt.

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5. The first relief sought by the applicant has already been provided by the respondents vide Annexure A-7 clause (iv) which set aside the order of removal from service. Further vide clause (v) of the same Annexure disciplinary proceedings have been instituted under sub rule (4) of Rule 14 of CCS (CCA) Rules, 1965. The respondents in para 8 of the reply also admit that applicant has been reinstated in service setting aside the order of penalty of removal from service vide order dated 29.9.2004.

6. The second relief in the O.A seeks to quash Annexure A-7 which directs a Rule 14 enquiry to be held against the applicant on the allegation that resulted in his removal from service and the applicant is deemed to have been placed under suspension from the date of his removal from service. The issue herein is whether after acquittal in the appeal filed before the High Court the respondents can proceed against the applicant by issuing a charge sheet on the same set of charges. There is a consensus of judicial opinion that proceedings in a criminal case and disciplinary proceedings can go on simultaneously except where departmental proceedings and criminal case are based on the same set of facts and evidence. But in a departmental proceeding several other factors impinging on the work environment operate in the mind of the disciplinary authority such as enforcement of discipline, respect and good behaviour towards colleagues etc. Maintainence of integrity and the standard of proof required in those proceeding is also different from that required in a criminal case. In a

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departmental proceeding the standard of proof is one of preponderance of probabilities whereas in a criminal case the charge has to be proved by the prosecution beyond reasonable doubt. The acquittal of applicant by the Hon'ble High Court was because prosecution has failed to prove the case against appellant beyond reasonable doubt. It was not a honourable acquittal. Further, respondents in their reply have already averred that Lakshadweep Administration was not made a party by the applicant and Government of Kerala was made a party. But that contention is now not available to the respondents since it was already held by the Hon'ble High Court, while disposing of the WPC No.3759/2010 in paragraph 6 that such a plea cannot be, *prima facie*, levelled against the employee and that it cannot be made the subject matter of an independent disciplinary proceeding at the hands of the executive. Therefore that point which was canvassed by the respondents earlier does not survive. But it may be noted that the applicant was acquitted by the High Court giving benefit of reasonable doubt. It is not a case where there was no evidence at all nor was it held by the High Court that it is a honourable acquittal. In this connection, we would also like to refer some of the decisions cited by the counsel for the respondents in support of his submissions that order of acquittal by a Criminal Court of the charges levelled against the incumbent does not preclude the competent authority from initiating disciplinary proceeding against the incumbent. The Apex Court in (2006) 4 SCC 713 in *Narinder Mohan Arya v. United India Insurance Co. Ltd.* observed as under :



"41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points point that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate V. Akhil Bharatiya Chah Mazdoor Sangh & Anr. and Manager, Reserve Bank of India Bangalore V. S. Mani & Ors. Each case is, therefore, required to be considered on its own facts."

7. In the case of *Pandiyar Roadways Corporation Ltd v. N.Balakrishnan* (2007) 9 SCC 755 the Apex Court has held :

"21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. Paul Anthony v. Bharat Gold Mines Ltd. and Another and G.M. Tank v. State of Gujarat and Others. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, *inter alia*, when : (i) the order of acquittal has not been passed on the same set of fact or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered. [See Commissioner of Police, New Delhi v. Narender Singh, or, where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the Civil Court. [See G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Others and Noida Enterprises Assn. v. Noida & Others, Para 18]"

8. In (2006) 10 SCC 572, *Suresh Pathrela v. Oriental Bank of Commerce* the Apex Court has held as under :

"11. In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

9. The Apex Court in (2008) 4 SCC 1, *Union of India v. Naman Singh Shekhawat* has held :



.11.

“25. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair.”

10. In (2005) 10 SCC 471, *Hindustan Petroleum Corporation v. Sarvesh Berry* the Hon'ble Apex Court held thus :

“ The purposes of departmental enquiry and of prosecution are two different and distinct aspects. 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 a 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.”

11. In (2003) 4 SCC 364, *Chairman and M.D United Commercial Bank v. P.C.Kakkar* the Hon'ble Apex Court has held thus :

“Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceeding, notwithstanding acquittal in the criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment.”

12. Therefore at the most the factum of acquittal may be a circumstance which can be considered at the time of awarding punishment as held by the Supreme Court. In the light of the authoritative pronouncements of the Hon'ble Supreme Court in the decisions cited supra, the respondents are perfectly entitled to proceed with the disciplinary proceeding against the



.12.

applicant. The enquiry shall be conducted in an unbiased manner and after following the procedure prescribed. It is just and proper that the enquiry is completed within six months from the date of receipt of a copy of this order. The O.A is dismissed with no order as to costs.

(Dated this the 11th day of August 2015)


P.GOPINATH
ADMINISTRATIVE MEMBER


JUSTICE N.K.BALAKRISHNAN
JUDICIAL MEMBER

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