

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

OA No. 217/95 &  
OA No. 218/95

Date of Decision: 25.7.1997

Between:

OA No.217/95

K. Eshwaraiah

AND

1. Director of Postal Services,  
Hyderabad Region, Hyderabad.

2. Superintendent of Railway  
Mail Service, Z-Division,  
Hyderabad

.. Applicant

.. Respondents

OA No.218/95

M. Lakshmaiah

AND

1. Director of Postal Services,  
Hyderabad Region, Hyderabad.

2. Superintendent of Railway  
Mail Service, Z-Division,  
Hyderabad

.. Applicant

.. Respondents

Counsel for the applicant: Mr. S. Ramakrishna Rao

Counsel for the Respondents: Mr. N.V. Raghav Reddy

(Common for both the OAs)

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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ORDER

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER(JUDL.))

Heard Sri S. Ramakrishna Rao, learned counsel for the applicants and Sri N.V. Raghav Reddy, learned standing counsel for <sup>the</sup> respondents in these 2 OAs.

These 2 OAs are filed under Sec.19 of the Administrative Tribunals Act. These applications were filed on 21.11.1994.

These OAs are clubbed and heard together for the following reasons:-

- a) The applicants were subjected to disciplinary action in a joint disciplinary proceedings and were dismissed from service on common charges of misconduct.
- b) The applicants have challenged the orders imposing <sup>the</sup> punishment and order rejecting their appeal on similar grounds.
- b) The respondents have opposed these OAs on similar grounds in their counter affidavit, and
- d) Enquiry records are one and the same.

Thus, they are being disposed of by this common order.

The facts giving rise to these OAs are, in brief, to the following facts:-

During 1984-85 the applicants were working as mail guard and mailman, respectively, in Rail Mail Service (RMS) Z-Division, Hyderabad.

On the intervening night of 6/7-4-84 both the applicants were on duty in Section Z-29 from Hyderabad to Guntakal and on return journey. It is alleged that the applicants while on their duty on the night of 6/7-4-84 they had unauthorisedly allowed a stranger by name Subash Balakar<sup>Thakar</sup> into the mail van and they were found in possession of certain V.P. articles viz. cassettes, cooling glasses, nail cutters, bal-pens etc. of foreign origin which are detailed in the chargememo. It is stated that these articles formed part of V.P. Parcels being transmitted in the mail van.

With respect to the said incident a case in Crime No.74/84 of RBS, Hyderabad was registered against the applicants and Subash Balakar<sup>Thakar</sup>. The case was registered for the offence punishable under Section 420 and 409 of the Indian Penal Code. The case was under investigation.

In the meanwhile the applicants were served with a major penalty charge memo No.K 5/1/84-85 dated 26.2.87. The applicants denied the charges on 10.3.1987. A detailed inquiry was conducted against the applicants in a common proceedings. The enquiry officer by his report dated 29.6.88 recorded the finding that the charges levelled against the applicants were not proved.

The disciplinary Authority disagreed with the findings of the inquiry officer and imposed the penalty of dismissal on the applicants from service, vide proceedings of even No. dated 22.8.88.

Against the said orders of dismissal, the applicants preferred appeals to the appellate authority. The appellate authority considered the appeals of the applicants and by his proceedings No.RDH/ST/21-d/35/88 dt.31.8.89 dismissed the appeals and confirmed the punishment.

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While the disciplinary proceedings were under progress against the applicants, RBS, Hyderabad submitted the charge sheet of in CC No.114 of 88 before the court, XIII Metropolitan Magistrate, (Railways) Secunderabad. After trial, the court by its judgement dt.16.6.93 acquitted the applicants. At this stage, it is to be mentioned here that the applicants were prosecuted for contravention of Section 52 of the Indian Posts Act.

After the acquittal by the competent criminal court, the applicants filed OA 214/94 before this tribunal. The said OA was dismissed holding that when there was no power of review in regard to the appellate authority, the only remedy that was open to the applicants in such a case was only to file a revision dated or against order/31.8.89 in the appeal and to move this Tribunal under Sec.19 of the AT Act. by filing a petition for condonation of appeal- the delay.

Accordingly the applicants have filed these 2 OAs.

The applicants have challenged the orders passed by the respondents 1 & 2. Respondent-1 is the disciplinary authority who imposed the penalty disagreeing with the findings recorded by the Enquiry officer. The Respondent-2 is the appellate authority who rejected the appeal and confirmed the punishment.

these on the grounds

The applicants have challenged the orders that the disciplinary proceedings should have been kept pending till the disposal of the criminal case, that under Rule 81 of the P & T Manual Vol. III, the appellate authority should have kept the appeal pending when the criminal case was pending before the court of law. That the orders of dismissal are vitiated for non-supplying the copy of the report of the Enquiry Officer and for not asking their explanation. That the disciplinary authority while disagreeing with the findings of the Enquiry Officer

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has not given cogent reasons in the punishment order, that the disciplinary authority had not given prior notice to them although there <sup>was</sup> disagreement with the findings of the enquiry officer. That the procedure followed in imposing the punishment of dismissal is not ~~a~~ correct, that the disciplinary authority before imposing the punishment had not considered their evidence to remain in service <sup>and</sup> that he had not applied his mind as to the quantum of punishment. That the disciplinary authority has not considered the ~~re~~ reasonings given by the Enquiry Officer in his report, that the persons who were present at the time of preparing panchnama were not examined <sup>and</sup> that the basis of preparing panchnama was doubtful. The inspector <sup>his</sup> and party entered the mail van at Sedam while the Panchnama <sup>a</sup> was prepared at Tandur that the attestors to the Panchnama were outside persons that the TTE who entered the van at Tandur could have taken action against the stranger Shri Subhash Bala <sup>Takar</sup> ~~Takar~~ who was in the mail van. This indicated that the TTE did not enter the mail van at all that the Panchanama was a concocted document that no document was produced to show that the attestors <sup>were</sup> travelling in the mail van that Subash Bala <sup>Takar</sup> ~~Takar~~ was not examined in the enquiry that all the VP Parcels found in the mail were intact that none of the articles referred to in the charge memo did not pertain to any VP parcel conveyed in the <sup>mail</sup> van that they were not in possession <sup>the</sup> of articles detailed in the charge memo that the competent Criminal Court has recorded an acquittal against them and that the impugned orders ~~are~~ not sustainable.

With these grounds, the applicants pray to set <sup>aside the</sup> ~~the~~ orders passed by the respondents 1 & 2 ~~be set aside~~ and consequently, to direct the respondents to reinstate them into service.

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The respondents have filed a counter stating that the applicants were working as mailguard and mailman respectively in RMS Division, that on 6/7th April 1984 they were on duty in Z-29 in Hyderabad to Guntakal and back sorting postal and mail articles that a search party consisting of Inspector, CBCID and Sub-Inspector CBCID, Hyderabad and Panchas entered into the mail van of the said Rayalaseems Express at Tandur point that they noticed the applicants on duty and found an outsider by name Subash Bala Takar inside the mail van that they also found brown, green rexine, and cream coloured bags in their possession that they found Subash Bala Thakar travelling in the mail van unauthorisedly that the applicants had allowed him in the mail van that on inspection of the 3 bags found in the mail van, they revealed to contain the articles viz. <sup>Cassettes</sup> nail cutter, ball pens, clothes of foreign make and detailed in the charge memo that those articles were suspected to have been extracted from the V.P. parcels that they enquired with the applicants as to the presence of Subash Bala Takar in the van and as to the possession of these articles with them, that they seized the same under a Panchnama that the matter was reported to RBS police station, Hyderabad, that a case was registered in crime No.74/84 against the applicants and another for the offences under sections 420 and 409 of the Indian <sup>Penal</sup> ~~Postal~~ Code, that a charge memo was issued to the applicants that a detailed enquiry was held into the charges that the enquiry officer submitted his report on <sup>29.6.88</sup> ~~26.6.88~~ that the Respondent-2 on going through the enquiry records, the evidence placed by the Disciplinary authority and also on behalf of the applicants, disagreed with the findings of the enquiry officer that the Respondent-2 found the charges substantially proved against the applicants that the Respondent-2 accordingly passed the orders of dismissal that against the said orders, the applicants preferred appeals to the Respondent-1

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that the respondent-1 after considering the impugned order in the appeals rejected the same and confirmed the punishment that the applicants and another who was found in the mail van were prosecuted for the offence punishable under Section 52 of the Indian Posts Act that the court of XIII Metropolitan Magistrate (Railways) found lack of evidence on behalf of the prosecution to attract the ingredients of Section 52 of the Indian Posts Act and gave benefit of doubt, 'thus' the applicants were acquitted by the judgement dt.19.6.93 that, thereafter, on 28.6.93 the applicants submitted a representation to the Respondent-1 for reconsideration in the light of the acquittal by the court of XIII Metropolitan Magistrate (for Railways) that the joint disciplinary proceedings were commenced on 18.5.87 and concluded on 16.2.88 that the applicants participated in the enquiry without any murmur that at the stage of enquiry the applicants never submitted before the enquiry officer for staying the disciplinary proceedings till the conclusion of the trial in the criminal case in CC No.114/88 that Rule 81 of P&T Manual Vol.III was deleted with effect from 16.1.89 that the appellate authority decided the appeals of the applicants on 31.8.89; that therefore there was no violation of any rule in the P&T manual, that during 1988 there was no obligation on the part of the disciplinary authority to furnish a copy of the report of the enquiry officer to the applicants that the decision in the case of Union of India Vs. Mohd. Ramjan Khan is prospective in operation that the disciplinary proceedings were conducted in accordance with the rules and adhering to the principles of natural justice that the disciplinary authority was not satisfied with the findings recorded by the enquiry officer that the appellate authority considered all the grounds urged by the applicants in his order dt.31.8.89 that the acquittal of the applicants on 16.6.93 in the criminal case by the court of XIII Metropolitan Magistrate (Railways), Hyderabad has no impact on the impugned orders that the said acquittal does not in any way alter the course of action taken by the Respondents 1 & 2

that therefore there are no merits in the OAs and that they be dismissed with costs.

The first contention of the learned counsel for the applicant is that the disciplinary authority should have stayed the disciplinary proceedings till the conclusion of criminal trial. It is to be noted that ~~with regard to~~ the incident occurred on 6/7.4.84 in Rayalaseems Express at Tandur point was the subject matter of a case registered in crime No.74/84 by the RBS, Hyderabad against the applicants, and another.

In fact, the investigation was completed and the criminal trial was still under progress when the disciplinary authority imposed the punishment of dismissal. The applicants participated in the enquiry through out. They cross examined the witnesses and the investigating officer. The Investigating officer specifically stated that during the midst of investigation he was transferred and he was not aware of the final out-come of the investigation in the case.

The apex court in the case of State of Rajasthan Vs B.K. Meena (reported in AIR 1997 SC page 13) has laid down guidelines as to when disciplinary proceedings could be stayed till the conclusion of criminal trial. Reiterating the same view, the apex court again in the case of (1997 Supreme Court Cases (L&S) 548) Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and others, explained distinctive features of Criminal trial and the Disciplinary proceedings. The Apex Court has been pleased to observe as follows at para-8 :-

"     xxx                xxx                xxx

The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty.



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The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law, Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under ~~cr~~ criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct of breach of duty of the delinquent officer to ~~punish him for his misconduct~~. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

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The applicants at no point of time had submitted any application before the enquiry officer praying for stay of the disciplinary proceedings till the conclusion of criminal ~~crim~~ trial. In fact, the police submitted the charge sheet before the court during the earlier part of 88. The criminal case was registered in CC 114/88. The court framed the Charge under Sec 52 of the Indian Posts Act.

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In the absence of any application from the applicants there was no obligation <sup>the</sup> on part of the enquiry officer to postpone the disciplinary proceedings till the conclusion of trial in CC No.114/88. They should have brought to the notice of the enquiry officer through an application that they were being prosecuted ~~with~~ <sup>and</sup> criminally on the same set of charges that they would be prejudiced in their defence. The learned counsel for the respondents submitted before us the entire records of the disciplinary proceedings. We find no such application from either of the applicants. More over we feel it <sup>was</sup> ~~is~~ not necessary for the disciplinary authority to wait till the conclusion of criminal trial.

The standard of proof in disciplinary proceedings and criminal trial is quite different. Proof beyond reasonable doubt is the rule applicable to criminal trial. Preponderance of probabilities and adherence to the principles of natural justice are the two fundamental guidelines in the disciplinary proceedings. An employer may not be justified to continue an employee who is under cloud till the conclusion of trial in a criminal case, for, trial in criminal cases <sup>prolong</sup> ~~prolong~~ for years to conclude.

When the police submitted charge sheet in the criminal case No.114/88 before the XIII Metropolitan Magistrate, (Railways), Secunderabad, then the disciplinary proceedings were at the stage of recording the evidences. On going through the records it was disclosed that the enquiry authority had commenced recording the evidence of witnesses on behalf of the disciplinary authority.

There is no legal prohibition for the enquiry authority to proceed with the enquiry.

Hence this contention of the applicants is liable to be rejected.

Likewise there is another contention that can be considered at this stage. The disciplinary authority imposed the punishment on 22.8.88. At that time the criminal case (C.C. No. ) trial in 114/88 was pending. Now the applicants have cited Rule 81 of the P&T Manual Vol. III to contend that the appellate authority was expected to await the decision in the criminal trial. On the other hand, the respondents in para-2 (page-3) of their counter have contended that the said rule 81 of the P&T Manual was withdrawn effective from 16.1.89 and that the appellate authority decided the appeals on 31.8.89. In reply the applicants submit that their appeals being dated 9.9.88 the appeals should have been kept pending awaiting decision of the criminal trial. the Respondents have produced ~~first~~ the copy of the proceedings under which Rule 81 of the P&T manual was withdrawn. It is at Annexure R-III. Therefore, there is no substance in the contention of the applicants that the appellate authority should have waited for the decision in criminal trial.

The learned counsel for the applicants submitted that the disciplinary authority imposed the punishment without furnishing the copy of the report of the enquiry <sup>officer</sup> to the applicants and thereby they have been deprived. It is submitted that they have not been given an opportunity to say against the disagreement of the disciplinary authority with the findings recorded by the enquiry officer. The said controversy has been set at rest by the Hon'ble Supreme Court of India in the case "State Bank of India Vs S.S. Kashal" reported in 1995(5) SLR P.181 honourable Supreme Court. In para-6 the court has been pleased to observe as under:-

" So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered, that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the

same proceeding. It is open to disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a judge of the Andhra Pradesh High Court in Mahendra Kumar Vs. Union of India, 1983(3) SLR 319, 324 and 325 (AP HC). The second contention accordingly stands rejected. "

In view of the above position the contention of the applicants is liable to be rejected. Accordingly it is rejected.

The applicants contend that the Panchnama prepared by the investigating officer is a concocted document. They have taken this contention on the premise that the same does not contain their signatures.

It is an admitted fact that on 6/7.4.84 the applicants were on duty in section Z-29 in Rayalaseema Express, running between Guntakal and Hyderabad. The applicants were then working as Mail Guard and Mailman respectively.

The Inspector CBCID was on duty on the Rayalaseema Express. He boarded the train at Wadi junction. At Sadam the squad noticed a person entering into the mail wagon in which the applicants were on duty. At Tandur Point they entered the mail van. The train reached Tandur point at 5.50 a.m. and it finally reached Begumpet at 9.00 a.m. During this interval the CBCID along with Panchas and a railway official searched the mail van where the applicants were working. They found Subash Bala Takar, unauthorisedly travelling in the mail van. The said Subash Bala Takar was an ex-postal employee of Guntakal Division. The checking party noticed that the applicants and Subash Bala Takar were possessing 3 bags. A brown <sup>flexing</sup> ~~recene~~ bag was in possession of Eswaraiah, the Mailguard. A cream coloured bag was in possession of Lakshmaiah, the Mailman. A red coloured bag was found in possession of Subash Bala Takar. The Inspector

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checked the contents of these bags. The contents of these bags are detailed in the chagememo.

The applicants have not given any plausible explanation for the presence of Subash Bala Takar in the Mail van. It is their defence that the said Subash Bala Takar entered the mail van along with the inspector and others. Further the applicants have not given any explanation for the possession of articles found in their respective bags.

During the disciplinary proceedings the disciplinary authority examined K. Appa Rao, H. Nagarajan, Mohammed Rahimuddin and Mir Tahir Ali Nasri the ~~Inspecting~~<sup>Investigating</sup> officer.

The learned counsel for the applicants submitted that material witnesses were not examined in the inquiry that the alleged Subash Bala Takar was not examined in the inquiry that he was a material witness that the TTE who had come to the mail-wagon was also not examined, that the Panchnama has been concocted by the police Inspector that attestors to the Panchanama were not examined in the enquiry <sup>and -</sup> that this is a case of no evidence and therefore, the impugned orders are not sustainable in law.

The learned counsel for the applicants in support of various contentions relied upon the decision of this Bench in

in the case of Ch. Appa Rao Vs Divisional Operating Superintendent (M) and others reported in 1997 All India Services Law Journal Page 355.

The fact that the applicants were on duty in the mail wagon on that particular night of 6/7.4.84 in Rayalaseema Express is not in dispute. The fact that the Inspecting Officer entered the mail wagon for search along with Panchas is borne out by the daily report submitted by K. Eswaraiah, Mail-guard. It is at Exhibit P-1. It is alleged that after the inspector conducted the search the daily report has been altered.

However, the fact remains that the investigating officer entered the mail wagon at Tandur point. The alteration has been made to suggest that the inspector and panchas entered the mail wagon at Wadi. The evidence adduced before the enquiry officer has been perused by us. The Enquiry Officer clearly has stated at Wadi Railway Station they found an unauthorised person entering into mail wagon and that they kept a watch on the mail wagon till it reached Tandur. Since the unauthorised person did not alight from the mail wagon even at Tandur point they suspected entered and made search of the mail wagon.

Now the applicants have come out with a theory that a false base has been foisted against them. They dispute the preparation of Panchnama, they dispute the stranger i.e. Subash Bala Tekar travelling in the mail van unauthorisedly and they dispute each and everything.

When the respondents served articles of charges on the applicants on 26.2.87 i.e. about 2 years 10 months later they submitted an explanation to the charge memo simply denying the allegations made in the charge memo. When certain facts which were within their personal knowledge regarding concoction of Panchnama

and bringing the stranger viz. Subash Bala Takar into the mailvan, we feel that these facts should have been brought out in unambiguous terms in the daily report. The daily report has been prepared by K. Eswaraiah. It contains the first hand information and the immediate version of the incident.

In exhibit P-1 no such details have been incorporated. In exhibit P-1 it is nowhere stated that the police inspector entered the mailvan, threatened him and prepared the panchanama. From the evidence it is disclosed that Panchanama was prepared from 5.50 a.m. to 9 a.m. i.e. till the train reached Begumpet from Tandur point. Even the applicants cross-examined the witnesses suggesting so many versions regarding panchnama and the presence of Subash Bala Takar. We have gone through the evidentiary material placed on record by the disciplinary authority. We feel that the applicants failed to bring to the notice of the higher authorities if any high handed acts were committed by the <sup>CB</sup> CID Inspector. They would not have kept quiet when the police inspector entered the mailvan and prepared a Panchnama.

It is the case of the police Inspector that in the mailvan he noticed 3 bags. Eswaraiah, Mailguard was carrying a brown rexine bag. M. Lakshmaiah, Mailman was carrying a cream coloured bag and Subash Bala Takar was carrying a red coloured bag. If really Subash Bala Takar entered the mailvan along with the inspector of police then in the ordinary course of things there should have been only 2 bags <sup>in the van.</sup> But the police inspector under the panchnama recovered 3 bags. In the 3 bags the inspector noticed certain articles detailed in the Panchnama. It is the case of the Disciplinary Authority that these articles ~~which~~ might have been unauthorisedly extracted from <sup>the</sup> mail bags or VP Parcels. The applicants had not given any satisfactory explanation for possession of the bags as well as the contents in the bags. Hence the inspector seized them under a Panchnama.

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In the disciplinary proceedings the standard of proof is the preponderance of probabilities. In the disciplinary proceedings there <sup>is</sup> nothing like burden of proving beyond doubt. It all depends upon the nature of the charges made against the delinquent servant. In certain proceedings <sup>the</sup> burden of proof may fall on the delinquent employee to establish his innocence. We feel it proper to recall ~~the~~ the observations of the Hon'ble Supreme Court of India in the case of Orissa Mining Corporation Vs. Anand Chandra Prusthi, reported in 1997 (1) SLR P.287. In paras 5 & 6 the Lorsships have observed as follows:-

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In a disciplinary or a departmental inquiry, the question of burden of proof depends upon the nature of charges and the nature of explanation put forward by the delinquent officer. In this sense, the learned counsel for the applicant may be justified in complaining that the standard of proof stipulated by the High Court in this case sounds inappropriate to a disciplinary inquiry. At the same time we must say that certain observations made by the inquiry officer in his report do lend themselves to the criticism offered by the High Court.

On a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us hereinabove viz. that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those notings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondent.

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In view of the principles enunciated above we feel that there must have been some kind of explanation from the applicants and that explanation is not forthcoming. When the applicants admitted themselves to be on duty on the night of 6/7.4.84, that certain incident took place in the mailvan then if the incident was as per the version put forth now <sup>by the applicants</sup> then K. Eswaraiah, Mailguard should have reported to the higher authorities then itself and should have mentioned the said facts in detail in his daily report. The incident has taken place between 5.50 a.m. and 9. a.m. <sup>on 8.4.84</sup> while the Rayalaseema Express was moving between Tandur point and Begumpet. The applicants did not whisper a word at any time between 8.4.84 and 10.3.87. The daily report furnished by the Eswaraiah the mailguard do not disclose anything which the applicants have now taken as a kind of defence in their efforts to prove their innocence. Non-examination of the TTE on duty who visited the mailvan and non-examination of Subash Bala Takar did not in any way affect the credibility of the evidence relied upon by the disciplinary authority. The evidence relied upon by the disciplinary authority is sufficient enough to prove the misconduct on part of the applicants. Even to this day, they have not explained the presence of the bags and their contents in the mailvan. It is not their case, <sup>that the</sup> Investigating officer and the <sup>investigating</sup> party themselves brought these three bags and planted the bags in the mail van to implicate them. We find no reasons to disbelieve the evidence relied upon by the disciplinary authority.

The Disciplinary Authority and the appellate authority have clearly analysed the <sup>evidence</sup> findings and rightly disagreed with the findings recorded by the enquiry officer in his report.

Further as already observed the employer is not required to await till the decision in the criminal trial before

initiating the disciplinary proceedings. Even the registration of the FIR by the police does not debar the disciplinary authority to proceed with the disciplinary action against the delinquent employee.

The CC 114/88 ended in acquittal on 16.6.93. By then both the disciplinary authority and the appellate authority had concluded the disciplinary proceedings.

In our humble view finding of guilty in departmental proceedings is not obliterated by the subsequent acquittal of the applicants on the same charge in the criminal trial. (See K.P. Gour Vs Union of India (1991) 15 A.T.C. 190 (Jabalpur Bench.)

We find no reasons to interfere with the impugned orders. In the result there are no merits in this OA.

The OAs are accordingly dismissed.

No order as to costs.

(A copy of the order be kept in the records of the O.A. No. 218/95)

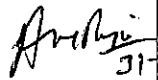
(Enquiry proceedings consisting of 4 files have been perused by us and returned to the learned counsel for the respondents.)

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)  
25.7.97

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

Date: 25<sup>th</sup> July 1997

KSM

  
31-7-97.  
D.R.(J)