

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A..NO.3609 OF 2016

New Delhi, this the 28th day of September, 2017

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE MS.NITA CHOWDHURY, ADMINISTRATIVE MEMBER

.....

Anil Kumar Tyagi,
s/o Chandra Kiran,
Junior Engineer (Civil),
C/o Executive Engineer (South) IV,
OHT, Kalkaji, New Delhi

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Applicant

(By Advocate: Mr.Suresh Tripathy)

Vs.

1. Chief Executive Officer,
Delhi Jal Board,
Varunalaya, Jhandewalan,
New Delhi.

2. Member (Admn.),
Delhi Jal Board,
Varunalaya, Jhandewalan,
New Delhi

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Respondents

(By Advocate: Mr.Rajeev Kumar)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- õa. Set aside the impugned Memorandum dated 5.10.2016 and the Articles of charges contained therein issued by the respondents;

- b. hold that the enquiry and the Memorandum against the Applicant are unwarranted in the facts and circumstances of the case;
- c. pass such order or further order as may be deemed fit.ö

2. Brief facts of the case, which are not in dispute, are as follows:

2.1 The applicant initially joined the service in Delhi Jal Board as a Work Assistant (Civil) in the year 1989. He was promoted to the post of Junior Engineer (Civil) in the year 1993. While he was working as Junior Engineer (Civil), the Central Bureau of Investigation (CBI) registered a crime against him and two others (contractor B.Jaypal Reddy and firm M/s Raghavendra Borewells through proprietor B.Jaypal Reddy) in RC No.DAI 2011-A-0031/CBI/ACB/Delhi under Section 120-B read with Sections 420 and 471 of Indian Penal Code and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. The allegations against the applicant and other accused persons were that Contract Agreement (CA) No.60/2007-08 was entered into between the accused B.Jaypal Reddy (accused no.2) and accused no.3-M/s Raghavendra Borewells (through the sole proprietor B.Jaypal Reddy) and Delhi Jal Board for re-boring of two numbers of tube-wells, the first one at Jonapur Village near Harijan Basti (which was later on shifted to Hargovind Enclave, and the second one at Booster Site Panchayat Ghar. The terms and conditions of the contract regarding bill of quantity stipulated *öproviding 'Johnson' make all welded low carbon galvanized (LCG) cage type V wire would screen for size 150 mm having slot opening 0.75 mm thickness 7.0 mm tensile load 10 ton od 167 mm percentage open are 25% as per IS 8110-2000. Screen will be of continuous trapezoidal wise*

spirally would around fabricated cage....”. The day to day progress of work at the site was entered in the Measurement Book by the applicant as Junior Engineer who was responsible for 100% test check of the work. Entry in Measurement Book dated 5.7.2007 with respect to bore-well near Panchayat Ghar, Jonapur, mentioned *“providing of 150 mm Johnson pipe”* and quantity was written as 75 meters. Thereafter, the bill along with completion statement which was prepared by Junior Engineer and signed by Assistant Engineer and Executive Engineer along with strata chart showing placing of Johnson pipe and other pipe at the relevant strata chart and invoice of purchase of quantity of pipe was submitted by the contractor, and, on the basis of the same, payment was released. Subsequently, the matter was investigated, and the site was got inspected through expert, who vide his report in respect of Booster, Panchayat Ghar, Jonapur Village, stated that *“depth of the well is seen through borehole camera as 148 meter, Top 82 m of the well is covered with 200 mm dia blank pipe followed by approximately 13 mtr. MS slotted pipe and 6 mtr blank pipe. Well diameter reduced from 150 mtr. to about 100 mtr. and from there about 40 mtr heavily damaged MS slotted pipe is seen.”* Meaning thereby, the MS slotted pipe was used against 75 mtr. length of Johnson Pipe, which was found heavily damaged, and thereby Johnson pipe was not used as per contract agreement and for which money was charged, thereby cheating the Department. Besides, Sh.Kamal Agarwal, Managing Director of M/s Bharti Waters (P) Ltd., sole authorized distributor of strainer filter pipe make Johnson in Delhi, who maintains the

regular ledger account of M/s Raghavendra Borewells (Accused No.3) stated that he had not sold Johnson pipe to B.Jaypal Reddy, Proprietor of M/s Raghavendra Borewells, through invoice of purchase of Johnson Pipe, photocopy of which has been placed on record while claiming the bill and, in fact, had sold, vide concerned invoice, to Executive Engineer, Punjab Mandi Board, Ludhiana. Thus, it was alleged that the applicant, Junior Engineer (Civil), who was responsible for 100% checking, by abusing his position as public servant in criminal conspiracy with accused B.Jaypal Reddy, Proprietor of M/s Raghavendra Borewells, had made false entries in the MB No.14508 showing the use of 75 mtrs Johnson Pipe and thereby facilitated the contractor-accused to obtain wrongful gain by causing the corresponding wrongful loss to the Delhi Jal Board. The payment was made to the accused-contractor on the certification of the applicant as JE and the Assistant Engineer causing undue pecuniary advantage to the accused-contractor and corresponding loss to the Government exchequer to the tune of Rs.1,81,128/.

2.2 After the CBI filed the charge-sheet against the applicant and others, the learned Special Judge (PC Act), CBI-056, New Delhi District, Patiala House Courts, New Delhi, took cognizance and framed charges against the applicant and two other accused persons. The said case was registered as CC No.01/15. The applicant and two others stood trial for offences punishable under Section 120-B read with Sections 420 and 471 IPC and Section 13(2) read with Section 13(1)(d) of P.C.Act. After the full-

fledged trial, the learned Special Judge, vide judgment dated 18.1.2016, acquitted the applicant and two other accused persons of the charges levelled against them.

2.3 While so, respondent no.2 issued to applicant the impugned memorandum dated 5.10.2016 (Annexure A/1 collectively) along with the statement of articles of charges, statement of imputation of misconduct, and lists of documents and of witnesses, proposing to hold an inquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as "CCS(CCA) Rules"] and calling upon him to submit within 10 days of the receipt of the Memorandum a written statement of his defence and also to state whether he desired to be heard in person or otherwise.

2.4 The statement of articles of charges contained the following:

“Article-I

Shri Anil Kumar Tyagi, while working as Junior Engineer-in-Charge of the work of Re-boring of 2 Nos. of Tubewells in R/s at Jonapur Village near Harijan Basti and Booster site Panchayat Ghar under South-IØ under CA No. 60/2007-08, has committed misconduct in as much as he, in collusion with the contractor of work-M/s Raghavendra Borewells, had provided 75m length of MS slotted housing pipe at the specified locations as per Strata/Assembly Chart in place of contractual requirement of Johnson (LCG) pipe/screen in the tube well situated at Jonapur Village near Booster site Panchayat Ghar.

Thus, Sh. Anil Kumar Tyagi, JE-in-charge of the abovesaid work, in collusion with the Contractor, has caused financial loss to Delhi Jal Board, amounting to Rs. 1,81,128/- by way of making bogus payment to the contractor for 75 m length of 150 mm dia. Johnson (LCG) pipe/screen.

This act of Sh. Anil Kumar Tyagi, as Junior Engineer-in-Charge of the said work, amounts to gross misconduct on his part, as he failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. Servant. He, has thereby, contravened Rule 3(I) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964, as amended from time to time and made applicable to the employees of Delhi Jal Board.

Article-2

Shri Anil Kumar Tyagi, while working as Junior Engineer-in-Charge of the work of Reboring of 2 Nos. of Tubewells in R/s at Jonapur Village near Harijan Basti and Booster site Panchayat Ghar under South-I under CA No. 60/2007-08, has committed misconduct in as much as he, in collusion with the contractor of work-M/s Raghavendra Borewells, released the payment to the Contractor for the work on the basis of forged invoice no. BW/171/2007-08 dated 30.07.2007 of M/s Bharti Waters Pvt. Ltd. regarding purported purchase of Johnson pipes.

This act of Sh. Anil Kumar Tyagi, as Junior Engineer-in-Charge of the said work, amounts to gross misconduct on his part as he failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. Servant. He has, thereby, contravened Rule 3(1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964, as amended from time to time and made applicable to the employees of Delhi Jal Board.

2.5 The statement of imputation of misconduct in support of each article of charge reads thus:

Shri Anil Kumar Tyagi S/o Sh. Chandra Kiran, while working as Junior Engineer in the Division of EE (South)-I committed the following acts of omission and commission.

1. The work of Reboring of 2 Nos. of Tubewells in R/s at Jonapur Village near Harijan Basti and Booster site Panchayat Ghar under South-I was awarded to M/s Raghavendra Borewells vide work Order No.95 dated 27.06.07 (CA No. 60/2007-08).

2. The scope of work under execution of Tubewell situated at Jonapur Village near Booster site Panchayat Ghar included providing 75m length of 150 mm Dia. LCG Johnson Screen @ Rs. 1669.00 (plus 44.70% above) per metre, besides other items of work as given in the CA file.

3. In pursuance of the Contract Agreement, the Contractor M/s Raghavendra Borewells installed a tubewell at Jonapur Village near Booster side Panchayat Ghar in South-I Divison. The work of Tube Well was supervised by Sh. Anil Kumar Tyagi, Junior Engineer.

4. As per Strata/Assembly Chart and Completion Report of the work, 75 m length of 150 mm dia. Johnson (LCG) pipe/screen from the depth of 107.24 was purportedly provided in the 180m deep tube well at Jonapur Village near Booster site Panchayat Ghar. However, videograph of the tube well has established that Johnson (LCG) pipe/screen was not provided in the tube well. Thus, Sh. Anil Kumar Tyagi, JE-in-charge of the abovesaid work, in collusion with the Contractor, had provided 150 mm dia MS slotted housing pipe in place of Johnson (LCG) pipe/screen in the tube well at the specified locations as per Strata/Assembly Chart, and has thereby caused financial loss to Delhi Jal Board, amounting to Rs. 1,81,128/- by way of making bogus payment to the contractor for 75 m length of 150 mm dia. Johnson (LCG) pipe/screen.

5. Shri Anil Kumar Tyagi, in collusion with the contractor of work-M/s Raghavendra Borewells, released the payment to the Contractor for the work on the basis of forged invoice no. BW/171/2007-8 dated 30.07.2007 of M/s Bharti Waters Pvt. Ltd. regarding purported purchase of Johnson pipes.

The above acts of Sh. Anil Kumar Tyagi, the then Junior Engineer-in-charge, amounts to gross misconduct on his part, and he failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. Servant. He has, thereby, contravened Rule 3(I) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964, as amended from time to time and made applicable to the employees of Delhi Jal Board.ö

2.6 The list of documents by which the articles of charges were proposed to be sustained reads thus:

1. File of CA No. 60/2007-08 for the work of Reboring of 2 Nos. of tubewells in R/s at Jonapur Village near Harijan Basti and Booster site Panchayat Ghar under South-I
2. File regarding completion report of CA No. 60/2007-08 containing First and Final Bill form, completion report, test-check statement, Assembly/Strata Chart, photocopy of invoice no. BW/171/2007-8 dated 30.07.2007 of M/s Bharti Waters, Original invoice no. BW/171/2007-8 dated 13.10.2007 in the name of Executive Engineer, Ludhiana.
3. Measurement Book No. 14508 containing pages 1 to 100.
4. CPWD Manual 2003 and 2007.
5. Ref. No. 168/DWS&SDU dated 2/7/91 in respect of Adoption of Delhi Schedule of Rates, CPWD Specifications, Analysis of Rates, CPWD General Terms & Conditions of Contract and CPWD Manual of Instructions Total 02 pages.
6. Instructional Order Ref. No. DJB/Dir(F&A)/2000/290 dated 06.09.2000 issued by Director (F&A), DJB.
7. Instructional Order Ref. No. DJB/Dir(F&A)PRE-AUDIT/2004/148122 to 148313 dated 02/11/2004 issued by Dir(F&A), DJB.
8. Circular No. DJB/M(WS) B-3/2208/55955 to 56103 dated 28.05.2008 issued by EO to Member (WS)/(DR).
9. Circular No. FS(87) CE I-99-531-52 dated 16.02.2000 issued by Chief Engineer (C)-I and letter no.SE(W)III/2000/1788 dated 11.4.2000 issued by Superintending Engineer (W) III, DJB.
10. Delegation of Powers Circular No.DJB/DIR(F&A)/2004/73318 dated 27.05.2004 issued by Director (F&A), DJB along with Annexure-A.

11. Report No. DVR/CBI/DEL/NGRI/HYD of Dr. D.V. Reddy, Sr. Principal Scientist, NGRI, Hyderabad.
12. Compact Disc containing Videograph titled -Jonapur Village.mp4 in respect of scanning of tubewell at Jonapur village near Booster site Panchayat Ghar.

2.7 In the list of witnesses, the names of two persons, namely, Sh. Shiv Kumar Bhardwaj, Superintending Engineer (South), Delhi Jal Board, and Shri Vikas Rathi, Junior Engineer (Vig.), C/o DOV were cited to be examined as witnesses during the enquiry to prove the charges against the applicant.

2.8 Thus, being aggrieved, the applicant filed the present O.A. on 18.10.2016 seeking the reliefs as aforesaid.

3. It has been asserted by the applicant that after his acquittal in the criminal case by the competent criminal court, he, vide his letter dated 24.2.2016, communicated a copy of the judgment dated 18.1.2016 to the respondents. Due to certain domestic problems, he, vide his letter 7.3.2016, requested the respondents to allow him to voluntarily retire from service and, if possible, to waive the statutory notice period of three months. The respondents, vide letter dated 1.6.2016, arbitrarily rejected his request for voluntary retirement on the ground of his not being cleared from vigilance angle. The applicant, vide his letter dated 22.6.2016, requested the respondents to reconsider their decision dated 1.6.2016 on the grounds that there was no inquiry pending against him, and that he has already been acquitted by the criminal case. The applicant, vide his letter dated 9.8.2016, reiterated his request for allowing him to retire voluntarily. Instead of

acceding to his request, the respondents, in a clearly motivated and arbitrary manner, issued the impugned Memorandum dated 5.10.2016 initiating a major penalty proceedings under Rule 14 of the CCS (CCA) Rules on the same set of charges/allegations which were sought to be sustained by the same documents and evidence of two of the 14 witnesses examined during trial in the criminal case. After testing the aforesaid documentary and oral evidence, together with other documentary and oral evidence laid by the prosecution and defence, the competent criminal court having already acquitted him of the charges, the initiation of the impugned disciplinary proceeding is unsustainable in law. The alleged act of commission and omission was of the year 2007-08. The impugned disciplinary proceeding has been initiated against him by the respondents after nearly eight years of the alleged act of commission and omission. The delay in initiation of the impugned proceeding has caused great prejudice to him. Non-initiation of disciplinary proceedings against the concerned Assistant Engineer and Executive Engineer clearly goes to show that the respondents have acted *mala fide* and arbitrarily in initiating the impugned proceedings only against him.

4. Resisting the O.A., the respondents have filed a counter reply. It has been stated by the respondents that after examining the matter in the light of the instructions issued by the Government of India, vide DoP&T's O.M. dated 1.8.2007 in which reference has been made to the decisions of the Hon^{ble} Supreme Court in **State of Rajasthan v. B.K.Meena and**

others [1996(6) SCC 417], **Capt. M.Paul Anthony v. Bharat Gold Mines Limited** [1993(3) SCC 679], **Kendriya Vidyalaya Sangathan and othes v. T.Srinivas** [2004 (6) SCALE 467) and **Noida Entrepreneurs' Association v. Noida** [JT 2007 (2) SC 620] and DoP&T's O.M. dated 21.7.2016, in which reference has been made to the decisions of the Honøble Supreme Court in **R.P.Kapur Vs. Union of India and another**, AIR 1964 SC 787, and in **Ajit Kumar Nag Vs. G.M.(PJ), Indian Oil Corporation Ltd.**, (2007)7 SCC 764, the competent authority has decided to initiate the disciplinary proceedings against the applicant. In the present case, the applicant has been acquitted of the charges on technical ground, i.e., absence of certificate under Section 65-B of the Indian Evidence Act, although the criminal court has accepted the expertise and long experience of the expert Dr.D.V.Reddy. The statement and record produced by the Director, M/s Bharti Water (P) Ltd. were not accepted by the criminal court because of want of certificate u/s 65-B of the Indian Evidence Act. The Director, M/s Bharti Water (P) Ltd. submitted before the criminal court the authenticated copy of the statement of accounts of M/s Bharti Water (P) Ltd. in respect of M/s Raghavendra Borewell and stated that Invoice No.BW/171/2007-08 dated 13.10.2007 was issued in the name of Executive Engineer, Punjab Mandi Board, Ludhiana (Paragraphs 72 and 73 of the judgment) and photocopy of Invoice BW/171/2007-08 dated 30.7.2007 was fake. As has been concluded by the criminal court, the prosecution has failed to prove its case against the applicant and others and, therefore, the applicant and others

have been acquitted of the charges. Thus, it cannot be said that the applicant has been honorably acquitted of the charges. In view of all the above, there is no infirmity in the decision taken by the competent authority to initiate the disciplinary proceedings against the applicant, and the O.A. is devoid of merit and liable to be dismissed.

5. In his rejoinder reply, the applicant, besides reiterating more or less the same contentions as in his O.A., has contended that when the criminal court has acquitted him due to lack of evidence to prove the charges, his acquittal is honourable one and, therefore, the contention of the respondents to the contrary is untenable.

6. We have carefully perused the records, and have heard Mr.Suresh Tripathy, the learned counsel appearing for the applicant, and Mr.Rajeev Kumar, the learned counsel appearing for the respondents.

7. Mr.Suresh Tripathy, the learned counsel appearing for the applicant, reiterated the contentions as raised in the O.A., and relied on the decision of the Honøble Supreme Court in **R.P.Kapur Vs. Union of India and another**, Civil Appeal No.647 of 1963 (decided on 19.11.1963) and the decision rendered by the Hyderabad Bench of the Tribunal on 27.7.2007 in **Shri A.A.Laxman Reddy Vs. Commissioner, Customs and Central Excise** in support of the case of the applicant.

7.1 In **R.P.Kapur Vs. Union of India and another** (supra), it has been observed by the Honøble Supreme Court that if the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow

against the public servant so convicted. Even in case of acquittal proceedings may follow where the acquittal is other than honourable.

7.2 In **Shri A.A.Laxman Reddy Vs. Commissioner, Customs and Central Excise** (supra), the applicant was an Inspector, Central Excise. The Central Bureau of Investigation (CBI) registered a crime and filed charge sheet against him and another private person for the alleged offence of demand and acceptance of bribe by the applicant from one B. Ramaswamy, punishable under Section 120-B of IPC and Sections 7 and 13 (2) read with 13 (1)(d) of Prevention of Corruption Act. After the full-fledged trial, the learned Special Judge acquitted both the accused including the applicant on 30.6.2004. While so, the second respondent Authority issued the impugned charge memorandum dated 28.10.2005 for initiation of disciplinary proceedings against the applicant for imposition of major penalty on the same allegation that he demanded and accepted the bribe from B. Ramaswamy. Aggrieved by the same, the applicant filed an application under Section 19 of the Administrative Tribunals Act, contending that the decision to initiate departmental proceedings against him was taken by the first respondent after consultation with the CBI and the second respondent-disciplinary authority did not take the decision independently, but implemented the decision of his superior officer and the CBI which lost their case in the court of law. He further contended in the application that the cumulative reading of the charge sheet filed by the CBI before the Court of Special Judge for CBI cases and the impugned charge

sheet issued by the department would show that the list of documents and list of witnesses cited in both the charge sheets are one and the same and the department has proposed to lead the same evidence that was already laid before Special Judge in the criminal proceedings which ended up in acquittal against the applicant. The applicant submitted a representation dated 28.11.2005 to the second respondent stating that there is absolutely no truth in the charge levelled against him and requesting him to withdraw the charge memo considering various facts and circumstances relating to the case, but the second respondent appointed the third respondent as inquiry officer vide his order dated 18.1.2006. He further pleaded in the application that the Hon'ble Supreme Court in the case of **G.M. Tank v. the State of Gujarat**, (2006) 5 SCC 446, set aside the penalty imposed on the appellant in that case in disciplinary proceedings after the acquittal in a criminal proceeding in respect of the allegations containing same set of facts and evidence, holding that when there was an honorable acquittal of the employee in the criminal proceedings, the dismissal awarded in the disciplinary proceeding does not sustain under the law and in view of the principle laid down in **Paul Anthony's** case. The applicant pleaded that in view of the said decision of the Hon'ble Supreme Court which enunciated a legal proposition that on identical facts and on the same evidence, the departmental action shall not survive after failure of prosecution in the criminal proceedings, he submitted representations dated 20.10.2006 and 30.10.2006 to the second respondent to drop the charge sheet by giving suitable direction to the third respondent to

stop disciplinary proceedings so as to save time of the department and also to avoid unnecessary hardship to the applicant. But the second respondent by his order dated 7.11.2006 informed the applicant that his request to drop the proceedings could not be acceded to since the CBI had preferred an appeal before the Hon'ble High Court of A.P. against the acquittal order dated 30.6.2004, that the trial court looks into criminal misconduct whereas the departmental proceedings look into simple misconduct, and that the charges are different in criminal proceedings and the departmental proceedings. The respondents contested the application and filed reply pleading that basing on the suggestions from the CBI or DG (Vigilance) or CVO and considering all the material facts and evidence, the charge memorandum dated 28.10.2005 was issued by the disciplinary authority. The directions or approval from the higher officers are clarificatory in nature. Just because the disciplinary authority exchanged some correspondence with the CBI or superior officers, it is not correct to say that the disciplinary authority did not take decision independently. It is further pleaded that the CBI filed the case under the provisions of Prevention of Corruption Act whereas the disciplinary proceedings of the department are initiated under CCS (CCA) Rules and further in the criminal trial charges need to be proved beyond reasonable doubt whereas in the departmental proceedings, preponderance of probability is the yardstick. The articles of charges were framed against the applicant for his having contravened Rule 3(1) (i), (ii) and (iii) of the CCS (Conduct) Rules in as much as he demanded and accepted an amount of Rs.

8,000/- on 7.5.2002 as illegal gratification from Shri B. Ramaswamy to issue fresh registration certificate to the firm of Shri Ramaswamy. It is further pleaded that the case-laws cited by the applicant were not applicable to his case, and that exoneration from criminal misconduct may not be construed as exoneration from simple misconduct relevant for the departmental proceedings. It was further pleaded that the standard of proof required in departmental proceedings is not the same as required to prove in criminal case, and that even if there was an acquittal in criminal proceedings, the same does not bar departmental proceedings as per Supreme Court's judgment in **Noida Enterprises Association v. Noida and Ors.**, 2007 (51) AIC 37 (SC). After considering the facts and circumstances of the case and the rival contentions, the Tribunal formulated the following points for consideration:

- õ(i) Whether the article of charge framed against the applicant in the impugned departmental proceedings and the charge framed against the applicant by the Special Judge for CBI cases are one and the same as contended by the applicant in the application or different as contended by the respondents in their reply statement?
- (ii) If so, whether the Special Judge, CBI cases acquitted the applicant after going into the merits of the case?
- (iii) Whether the acquittal in criminal case of the applicant in C.C. No. 33/2002 on the file of Special Judge, CBI Case, Hyderabad is an honorable acquittal?
- (iv) If so, whether the department can initiate departmental proceedings in respect of the same charge which is found not proved by the Special Judge, CBI Cases?
- (v) Whether the impugned disciplinary proceedings are liable to be quashed?

(vi) To what result?

Following the decision of the Honøble Supreme Court in **G.M. Tank v. State of Gujarat and Anr.** (supra), the Tribunal decided all the points in favour of the applicant. It was held by the Tribunal that the alleged incident in respect of which the CBI filed charge sheet before the Special Judge against the applicant and the alleged incident in respect of which the department initiated disciplinary proceedings against the applicant are exactly one and the same and there is no iota of difference. As the acquittal was recorded after going into the merits and after appreciation of evidence adduced in support of the prosecution, it shall be taken as an honorable acquittal.

8. *Per contra*, it was submitted by Mr.Rajeev Kumar, the learned counsel appearing for the respondents that it is now well settled principle of law that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt, but in the departmental proceeding, such a strict proof of misconduct is not required. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. It was also submitted by Mr.Rajeev Kumar that considering the findings arrived at by the learned Special Judge in its judgment passed in the criminal case initiated by the

CBI against the applicant and others and the materials available on record, the Disciplinary Authority has taken decision to initiate disciplinary proceedings against the applicant, and, therefore, the allegation made by the applicant that the Disciplinary Authority has acted mala fide and arbitrarily in initiating the disciplinary proceedings against the applicant is untenable. Mr. Rajeev Kumar also took us through different parts of the judgment passed by the learned Special Judge and submitted that the applicant was acquitted of the charges in the criminal case mainly because of want of certificate under Section 65-B of the Evidence Act; although there were strong reliable and clinching evidence laid by the prosecution during the trial that the MS slotted housing pipe was used against Johnson pipe, that the concerned firm from which the contractor-accused claimed to have purchased Johnson make pipe did not sell the same to the contractor-accused, that through the said invoice Johnson pipe was sold to the Executive Engineer, Punjab Mandi Board(Ludhiana), that the invoice through which the contractor-accused claimed to have purchased Johnson pipe was fake, and that on the basis of fake invoice payment was released to the contractor-accused on the basis of certificate given by the applicant as JE and others on the bill. Therefore, it cannot be said that there was not an iota of evidence against the applicant to hold that he was guilty, and that acquittal of the applicant in the criminal case was honourable. It has, thus, been rightly decided by the disciplinary authority to initiate the disciplinary proceedings against the applicant.

9. After going through the judgment of acquittal passed by the learned Special Judge and after giving our thoughtful consideration to the rival contentions, we have found no substance in the contentions of the applicant.

10. In **State of Karnataka & Anr. Vs T. Venkataramanappa**, (1996) 6 SCC 455, the Honøble Apex Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt, but in the departmental proceeding, such a strict proof of misconduct is not required. In the said case, the departmental proceedings had been quashed by the Tribunal as the delinquent had been acquitted by the criminal court of the same charges. The Honøble Apex Court reversed the Tribunal's decision and observed as under:-

"It was, thus, beyond the ken of the Tribunal to have scuttled the departmental proceedings against the respondent on the footing that such question of bigamy should normally not be taken up for decision in departmental inquiries, as the decision of competent courts tending to be decision in rem would stand at the highest pedestal. There was clear fallacy in such view because for purposes of Rule 28, such strict standards, as would warrant a conviction for bigamy under Section 494 IPC, may not, to begin with, be necessary. We, therefore, explain away the orders of the Tribunal to the fore extent that Rule 28 can be invoked.... Let the inquiry be held."

11. Similarly, in **Senior Superintendent of Post Offices Vs. A. Gopalan**, (1997) 11 SCC 239, the Honøble Supreme Court held that in a

criminal case the charge has to be proved by standard of proof beyond reasonable doubt, while in departmental proceeding, the standard of proof for proving the charge is preponderance of probabilities. The Tribunal was, therefore, in error in holding that in view of the acquittal of the respondent by the criminal court on the charges, the finding on the charge in the departmental proceedings cannot be upheld and must be set aside.

12. **In State of Rajasthan Vs. B.K. Meena & Ors., AIR 1997 SC**

13, the Hon'ble Supreme Court, while dealing with the issue, observed as under:

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges.....The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.....One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion.....If a criminal case is unduly delayed that may itself be a good ground for

going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest....."

13. In **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.**, AIR 1999 SC 1416, the Hon'ble Supreme Court held that there can be no bar for continuing both the proceedings simultaneously. The Hon'ble Apex Court placed reliance upon large number of its earlier judgments, including **Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan**, AIR 1960 SC 806; **Tata Oil Mills Co. Ltd. Vs. The Workmen**, AIR 1965 SC 155; **Jang Bahadur Singh Vs. Baij Nath Tiwari**, AIR 1969 SC 30; **Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. & Ors.**, AIR 1988 SC 2118; and **State of Rajasthan Vs. B.K. Meena & Ors.**, AIR 1997 SC 13, and held that proceedings in a criminal case and departmental proceedings can go on simultaneously except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common. In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline or to investigate

level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Where the charge against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case. Where the nature of charge in a criminal case is grave and wherein complicated questions of fact and law are involved, will depend upon the nature of the defence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet. In case the criminal case does not proceed expeditiously, the departmental proceedings cannot be kept in abeyance for ever and may be resumed and proceeded with so as to conclude the same at the early date. The purpose is that if the employee is found not guilty his cause may be vindictive, and in case he is found guilty, administration may get rid of him at the earliest.

14. In **State Bank of India & Ors. Vs. R.B. Sharma**, AIR 2004 SC 4144, the Honøble Supreme Court observed that the purpose of departmental inquiry and of prosecution are to put a distinct aspect. Criminal prosecution is launched for an offence for violation of 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 a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service.

15. A similar view has been reiterated by the Honøble Apex Court in **Kendriya Vidyalaya Sangathan & Ors. Vs. T. Srinivas**, AIR 2004 SC 4127. A Three-Judge Bench of the Hon'ble Supreme Court in **Krishnakali Tea Estate Vs. Akhil Bhartiya Chah Mazdoor Sangh & Anr.**, (2004) 8 SCC 200, reconsidered all earlier judgments and reiterated the same view, as the approach and the objective of the criminal proceedings, and the disciplinary proceedings are distinct and different.

16. In **Ajit Kumar Nag Vs. G.M. (PJ), Indian Oil Corporation Ltd.**, (2005) 7SCC 764, the issue was explained in the following words by the Honøble Supreme Court:

õAcquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding

recorded on the basis of preponderance of probability. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.

17. In **G.M.,Tank Vs. State of Gujarat**, (2006) 5 SCC 446, the Honøble Supreme Court has reaffirmed the principles laid down in **R.P.Kapur** (supra). In **G.M.Tank's case** (supra), the Honøble Supreme Court observed that there was not an iota of evidence against the appellant to hold that he was guilty. As the criminal case and the departmental proceedings were based on identical set of facts and evidence, the Honøble Court set aside the penalty imposed in the departmental enquiry also. Therefore, the ratio of the judgment in **G.M.Tank's case** (supra) should not be misconstrued to mean that no departmental proceedings are permissible in all cases of acquittal. What the Honøble Apex Court has held is that no departmental inquiry would be permissible when the evidence clearly establishes that no charge against the Government servant may be made out. In the instant case, it has been asserted by the respondents that the Disciplinary Authority, after going through the judgment passed by the learned Special Judge and the evidence available on record, was of the opinion that there are grounds for inquiring into the truth of the imputation of misconduct against the applicant. Accordingly, the Disciplinary Authority issued the impugned charge memo. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority

after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Tribunal/Court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It would be erroneous to think that the Tribunal sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

18. After examining the facts and circumstances of the case and the materials available on record in the light of the principles of law laid down by the Honøble Supreme Court in the decisions referred to above, we do not perceive any illegality or infirmity to have been committed by the Disciplinary Authority in initiating the impugned disciplinary proceedings against the applicant.

19. In **Union of India vs. Upendra Singh**, (1994)3 SCC 357, the Honøble Supreme Court has held that in the case of charges framed in a disciplinary enquiry, the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of their disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the

truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

20. In **District Forest Officer Vs. R. Rajamanickam and another**, 2000 SCC (L&S)1100, the Hon'ble Supreme Court, after placing reliance on the judgment of **Upendra Singh (Supra)** annulled the Tribunal's decision which quashed the charge-sheet, and held that the interference with the charge sheet is possible only where the charge-sheet read with its supporting imputations does not disclose any misconduct, and not on the ground that the alleged misconduct is not probable to have been committed by the delinquent. Truth or falsity of the charges does not give jurisdiction to interfere.

21. In **H.B.Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal vs. M/s Gopinath & Sons**, 1992 Supp.(2)SCC312, the Hon'ble Supreme Court highlighted the scope of judicial review of charge-sheet and held as under:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

22. **In State of Punjab vs. V.K.Khana**, AIR 2001 SC 343: (2001)

2 SCC 33, the Hon'ble Apex Court, in paragraph-33 of the judgment, held as follows:

"While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings".

23. **In Union of India and another Vrs. Kunisetty**

Satyanarayana, A.I.R. 2007 SC 906, the Hon'ble Supreme Court, in paragraphs 14 and 15 of the judgment, held as follows:

õ14. The reason by ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge- sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the

show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause or charge sheet".

24. **In Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha**, AIR 2012 SC 2250, after having a survey of its earlier decisions, the Honøble Supreme Court has held thus:

õ9. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issued by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstances (Vide: **The State of Madhya Pradesh v. Bani Singh & Anr.**, AIR 1990 SC 1308; **State of Punjab & Ors. V. Chaman Lal Goyal**, (1995) 2 SCC 570; **Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey & Ors.**, (1995) 3 SCC 134: (1995 AIR SCW 3028); **Union of India & Anr. V. Ashok Kacker**, 1995 Supp(1) SCC 180; **Secretary to Government, Prohibition & Excise Department v. L. Srinivasan**, (1996) 3 SCC 157; **State of Andhra Pradesh v. N. Radhakishan**, AIR 1998 SC 1833; **Food Corporation of India & Anr. v. V.P.Bhatia**, (1998) 9 SCC 131; **Additional Supdt. Of Police v. T.Natarajan**, 1999 SCC (L & S) 646; **M.V.Bijlani v. Union**

of India & Ors., AIR 2006 SC 3475; **P.D.Agrawal v. State Bank of India & Ors.**, AIR 2006 SC 2064; and **Government of A.P. & Ors. v. V. Appala Swamy**, (2007) 14 SCC 49) : (AIR 2007 SC (Supp) 587).

10. In **Secretary, Forest Department & Ors. v. Abdur Rasul Chowdhury**, (2009) 7 SCC 305 : (AIR 2009 SC 2925), this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue.

11. Ordinarily, a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : **State of U.P. v. Brahm Datt Sharma**, AIR 1987 SC 943; **Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & ors.** (1996) 1 SCC 327 : (AIR 1996 SC 691) ; **Ulagappa & Ors. v. Div. Commr., Mysore & Ors.**, AIR 2000 SC 3603 (2); **Special Director & Anr. v. Modh. Ghulam Ghouse & Anr.**, AIR 2004 SC 1467; and **Union of India & Anr. v. Kunisetty Satyanarayana**, AIR 2007 SC 906).

12. In **State of Orissa & Anr. v. Sangram Keshari Mishra & Anr.**, (2010) 13 SCC 311: (2010 AIR SCW 6948), this Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also: **Union of India & Ors. v. Upendra Singh**, (1994) 3 SCC 357) : (1994 AIR SCW 2777).

13. Thus, the law on the issue can be summarized to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.ö

25. In the instant case, after considering the materials available on record, including the judgment of acquittal passed by the learned Special Judge, we do not find that there was not an iota of evidence pointing to the guilt of the applicant. We also do not find that the charge-sheet read with its supporting imputations does not disclose any misconduct on the part of the applicant, or that the alleged misconduct is not probable to have been committed by the applicant. Considering the gravity of the charges levelled against the applicant, we are also not inclined to accept the applicant's contention that initiation of the present disciplinary proceedings after more than eight years of the alleged act of omission and commission, that too after his acquittal in the criminal case, is bad and illegal. The applicant's contention that non-initiation of disciplinary proceedings against the concerned Assistant Engineer and Executive Engineer, who were involved in the alleged incident, goes to show that the respondents have acted mala fide and arbitrarily in initiating the impugned disciplinary proceedings against him is untenable inasmuch as it is the concerned departmental

authority who has to consider the materials available on record and take a decision as to whether or not the disciplinary proceedings have to be initiated against any or all of them involved in an incident. If the respondents, after considering the materials available on record, decided not to proceed against the concerned Assistant Engineer and Executive Engineer by instituting departmental proceedings, the applicant cannot be allowed to term the initiation of the departmental proceedings against him by the respondents as mala fide or arbitrary and seek quashing of the same by the Tribunal, nor can the Tribunal quash the charge memo by accepting such plea of the applicant. In the departmental enquiry/disciplinary proceedings, the applicant is free to put forth his case/defence and raise all contentions, as now raised by him, before the Inquiry Officer, Disciplinary Authority, Appellate Authority, etc., who are authorized and competent under the rules to deal with the same and take appropriate view while discharging their respective functions/duties in disciplinary matters.

26. In the light of our above discussions, we have no hesitation in holding that the applicant has not been able to make out a case for the reliefs claimed by him, and that the O.A., being devoid of merit, is liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(NITA CHOWDHURY)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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