Central Administrative Tribunal
Principal Bench, New Delhi.

1. **OA-3829/2014**
   MA-3308/2014
2. **OA-3830/2014**
   MA-3307/2014
3. **OA-3894/2014**
4. **OA-3904/2014**
5. **OA-3905/2014**
6. **OA-3909/2014**
7. **OA-3958/2014**
8. **OA-422/2015**
9. **OA-577/2015**
10. **OA-588/2015**
11. **OA-677/2015**

Reserved on : 07.03.2017.

Pronounced on :20.03.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Sh. Raj Vir Sharma, Member (A)

1.OA-3829/2014, MA-3308/2014

Sh. Rishi Pal Tomar, 54 years
S/o Sh. R.S. Tomar,
R/o RZ-20M, Gali No.4,
Palam Road, Sagarpur,
New Delhi. ..... Applicant

2.OA-3830/2014, MA-3307/2014

Sh. Amar Singh, 53 years
S/o Late Sh. Kalu Ram,
R/o WZ-384, Naraina Village,
New Delhi-110028. ..... Applicant

3.OA-3894/2014

Sh. Surender Singh, 48 years,
S/o late Sh. Amar Singh,
R/o WZ-638, Naraina Village,
New Delhi-110028. ..... Applicant

4.OA-3904/2014

Sh. Ravinder Singh, 51 years,
S/o late Sh. Phool Singh,
R/o RZ-126, Gali No. 7,
East Sagar Pur,
New Delhi-110046. ..... Applicant

5.OA-3905/2014

Sh. Rishi Pal Singh, 53 years,
S/o Sh. Ajit Singh,
R/o RZ-32B, New Roshanpura,
Y-Block, Najafgarh,
New Delhi-110046. ..... Applicant

6.OA-3909/2014

Sh. Ramesh Chand, 51 years,
S/o Sh. Phool Singh,
R/o RZ-55A/1, Main Sagarpur,
New Delhi-110046. ..... Applicant

7.OA-3958/2014

Roop Singh, 54 years,
S/o Sh. Jai Singh,
R/o WZ-556, Nangal Rai,
Padam Basti, New Delhi-28. ..... Applicant

8.OA-422/2015

Sh. Surinder Singh Manav, 53 years,
S/o Sh. Kalu Ram,
R/o WZ-299A, Naraina Village,
New Delhi-110028. ..... Applicant

9.OA-577/2015

Sh. Kanwar Singh, 53 years,
S/o Late Sh. Chanda Singh,
R/o WZ-614, Naraina Village,
New Delhi-110028. ..... Applicant

10.OA-588/2015

Sh. Pramod Kumar, 50 years

S/o late Sh. Kalu Ram,
R/o Vill. Bamnoli, P.O. Dhulsars,
Sec.-28, Dwarka, Near Shri Ram
Public School, New Delhi-77. .... Applicant

11.OA-677/2015

Sh. Jai Prakash, 56 years,
S/o late Sh. Bule Ram,
R/o A-15, Rajpur Kurd,
PO-IGNOU, Maidangarhi,
New Delhi-110068. .... Applicant

Versus

1. Union of India through the Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Joint Secretary (Training) and
Chief Administrative Officer,
Govt. of India, Ministry of Defence,
E-Block, New Delhi-110011.

3. The Deputy Chief Administrative Officer(P),
Office of the JS (Training) and Chief Administrative
Officer, C-2, Hutments Govt. of India,
Ministry of Defence, DHQPO,
New Delhi-110011. ..... Respondents in all cases.

Present : Ms. Jyoti Singh, Senior Advocate with Ms. Tinu Bajwa and Sh. Yogesh Sharma, Advocate for applicants.
Sh. Rajinder Nischal, Sh. Satish Kumar, Sh. Vijendra Singh and Sh. A.K. Singh, counsel for respondents.

O R D E R

Mr. Shekhar Agarwal, Member (A)

All these OAs are similar and are, therefore, being disposed of by this common order. For the sake of convenience, facts of OA-

3829/2014 (Rishi Pal Tomar Vs. M/o Defence) are being discussed herein:-

2. The applicant was appointed as a peon in Armed Forces Head Quarters (AFHQ) w.e.f. 29.01.1984. He worked there continuously till the year 1992. According to him, in the year 1992, the respondents started an investigation into his appointment and appointment of some other similarly placed persons. The SAO/Vigilance called the applicant to explain the circumstances under which he had been appointed. The applicant gave a written statement dated 11.05.1992 stating therein that there was nothing irregular in his appointment and that he had been appointed based on his service as a casual labourer. The respondents did not proceed further for almost 07 years. However, on 02.11.1999, the applicant was issued a charge sheet. The Article of Charge read as under:-

> "Sh. Rishipal Tomar, Peon, (under suspension) secured employment as a peon w.e.f. 29.01.1984 in Armed Forces HQ by resorting to irregular means."

The applicant denied the charge memo vide his reply dated 19.11.1999. The respondents, however, appointed an Enquiry Officer (EO) on 30.11.1999 and proceeded to hold an enquiry under Rule-14(5)(g) of the CCS (CCA) Rules, 1965. The EO gave his report on 22.01.2002 in which the charges were found to have been proved. A copy of the report was supplied to the applicant vide Memo

dated 14.02.2002. The applicant gave a written representation against the report on 28.03.2002. The Disciplinary Authority (DA), however, agreed with the report of the EO and vide order dated 31.05.1992 imposed punishment of dismissal on the applicant. The applicant filed OA-2994/2002 before this Tribunal against the dismissal order but on 18.11.2002 this was withdrawn with liberty to first avail of departmental remedy of filing an appeal against the order of DA. The applicant preferred an appeal to the AA, which was rejected vide order dated 15.07.2003.

2.1 Separately, a criminal case was filed against the applicant along with some other accused on the charge of forgery, cheating etc. This was decided on 13.09.2013 by Learned Chief Metropolitan Magistrate, New Delhi in which the applicant was acquitted. Pursuant to his acquittal, the applicant filed a Review Petition dated 25.04.2014 before the respondent No.2 praying for review of the dismissal order. The aforesaid Review Petition was rejected by the respondents vide impugned order dated 26.09.2014. This O.A. has been filed challenging the aforesaid order and praying for the following relief:-

> "(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 26.09.2014 (**Annex.A/1**) declaring to the effect the same is illegal, arbitrary and against the law of the land and consequently pass an order of quashing/set asiding the impugned order dated 31.05.2002 (**Annex.A/2**), order dated 15.07.2003 (**Annex.A/3**), charge sheet dated

02.11.1999 (**Annex.A/6**), inquiry officer report (**Annex.A/8**) and entire disciplinary proceedings with all consequential benefits.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to reinstate the applicant in service with all consequential benefits deeming no charge sheet was issued to the applicant with all consequential benefits along with the arrears of difference of pay and allowances from back date.

(iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."

3. In their reply, the respondents while not disputing the facts of the case mentioned above have opposed the relief claimed by the applicant. They have elaborated in their reply the circumstances under which punishment of dismissal was meted out to the applicant. They have also stated that simultaneously a criminal case was registered by the Anti Corruption Branch (ACB) of CBI, Delhi against the applicant and some other accused under Sections 420, 467, 471 IPC read with Section 120B on 18.02.1993. They have further stated that the act of securing employment through irregular means was committed by the applicant during 1983-86. However, it was only in 1992 that this came to the notice of the DA. It was then that the case was handed over to the ACB of CBI after preliminary investigation. The disciplinary proceedings were initiated in 1999 after receipt of certified copies of the document from CBI. They have denied that there was any delay in instituting departmental

proceedings against the applicant. The respondents have further stated that in his written statement dated 11.05.1992, the applicant had denied that he had ever worked as a casual labourer in any Government office. During enquiry proceedings also he had failed to furnish any document to support this contention. The charge against the applicant was that he secured employment through irregular means and not that he paid bribe to secure employment. As such, payment of bribe was not a subject of disciplinary proceedings. According to the respondents, mere acquittal in a criminal case was no ground for exoneration in disciplinary proceedings as criminal case and departmental proceedings were two independent proceedings.

4. We have heard both sides and have perused the material placed on record. At the very outset, learned counsel for respondents Sh. Satish Kumar submitted that the applicant cannot challenge orders passed in the disciplinary proceedings as that is time barred. We agree with him and reject all the averments made by the applicant with regard to the order of the DA, Appellate Authority, EO's report and the charge sheet. This is because these orders were passed during the period 02.11.1999 to 15.07.2003. The applicant did not challenge them before this Tribunal within the limitation period. Now, they have attained finality with passage of time and cannot be challenged at this belated stage.

4.1 However, pursuant to the acquittal in criminal case, the applicant filed a Review Petition under Section-29(1) of the CCS (CCA) Rules. This was rejected by the respondents vide impugned order dated 26.09.2014 on merits. This has furnished a fresh cause of action to the applicant and we have heard this OA only with respect to the challenge made to the impugned order dated 26.09.2014 by which the Review Petition of the applicant was rejected.

4.2 It was argued by Learned Senior Counsel Ms. Jyoti Singh on behalf of the applicant that the applicant has been acquitted by a Competent Court in the criminal case, which was registered on the same set of charges on which departmental proceedings were instituted against him. The applicant was thus entitled to reinstatement. According to her, the respondents had erred when they rejected the Review Petition on the ground that the acquittal of the applicant was not a clean acquittal but was a result of benefit of doubt given to him by the Learned Chief Metropolitan Magistrate. She submitted that in law acquittal was acquittal and there was no such term as clean acquittal or honourable acquittal or acquittal based on benefit of doubt.

4.3 Further, the applicant has relied on the judgment of Apex Court in the case of **G.M. Tank** Vs. **State of Gujarat**, 2006 SCC (L&S) 1121. The relevant paras of the judgment are as hereunder:-

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

30. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the

examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

4.4 He has also relied on Full Bench judgment of this Tribunal in the case of **Sukhdev Singh** Vs. **GNCT of Delhi** (OA-2816/2008) dated 18.02.2011 in which the following has been observed:-

"6. From the discussion as made above, we are of the view that there is no difficulty if the employer may proceed only criminally against an employee. In that case, departmental proceedings may be held or not, the field is absolutely covered under rules 11 and 12 of the Rules of 1980. The difficulty will arise only in case, the order of punishment in departmental proceedings is earlier to the order passed by the criminal court, and that too when the verdict of the criminal court is that of acquittal and the circumstances are such as envisaged in rule 12 that no departmental enquiry can be held. In such a situation, as mentioned above, we are of the view that since a judicial order takes precedence over an order passed in departmental proceedings, it is that judicial verdict which has to be given effect, and, therefore, in that situation the order passed in departmental proceedings shall have to be revisited and changed, modified or set at naught, as per the judicial verdict. This is the only way that appears to us to reconcile the situation which may arise only in the circumstances as mentioned above. This course to be adopted otherwise also appears to be one which will advance the cause of justice. It may be recalled that as per provisions contained in rule 11 of the Rules of 1980, a subordinate rank on his conviction can be dismissed or removed from service of course, as mentioned above, the result of the appeal that he may have filed shall have to be awaited. Once, he is acquitted in a second appeal or revision filed b him, he has to be reinstated, meaning thereby, if the order of his dismissal or removal from service has already been passed, the same has to be set at naught. Once, an order of dismissal or removal passed on conviction of

> the subordinate rank has to be reviewed on his acquittal later in point of time, we find no reason as to why the same procedure cannot be adopted in a case where the subordinate rank may have been held guilty of the charges framed against him, but later acquitted by the criminal court. We are conscious that as regards the first situation as mentioned above, the rules take care of it, whereas, for the situation in hand, the rules are silent, but since the settled law on the issue is that, rule or no rule, if on clean acquittal the order of punishment passed in departmental proceedings has to be re-visited or set at naught, why this provision cannot be read into the rules."

5. On the other hand, the respondents have relied on the judgment of Apex Court in the case of **Divisional Controller, KSRTC** Vs. **M.G. Vittal Rao**, (2012) 1 SCC 442 wherein it has been held that in cases where disciplinary enquiry has been held independently of the criminal proceedings, acquittal in Criminal Court is of no help. Apex Court has further stated that the standard of proof required in an enquiry and that in a criminal case was all together different. Thus, in a criminal case standard of proof required was beyond reasonable doubt whereas in domestic enquiry it was preponderance of probabilities. The relevant part of the judgment reads as follows:-

> "11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of Article 311 (2) (b) of the Constitution of India, 1950, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal

case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.

12. In Nelson Motis v. Union of India & Anr., AIR 1992 SC 1981, this Court held :

> "5...The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

13. In State of Karnataka & Anr. v. T. Venkataramanappa, (1996) 6 SCC 455, this 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.

14. In State of Andhra Pradesh v. K. Allabaksh, (2000) 10 SCC 177, while dismissing the appeal against acquittal by the High Court, this Court observed as under:-

> "That acquittal of the respondent shall not be construed as a clear exoneration of the respondent, for the allegations call for departmental proceedings, if not already initiated, against him."

15. While dealing with a similar issue, a three-Judges Bench of this Court in Ajit Kumar Nag v. General Manager (PJ) Indian Oil Corporation Ltd., (2005) 7 SCC 764, held as under:-

> "In our judgment, the law is fairly well settled. Acquittal by a criminal Court would not debar an employer from exercising power in accordance with the 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 the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the 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 a 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."

16. The issue as to whether disciplinary proceedings can be held at the time when the delinquent employee is facing the criminal trial, has also been considered from time to time. In State of Rajasthan v. B.K. Meena & Ors., AIR 1997 SC 13, this Court while dealing with the issue observed as under:-

> "14. 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....."
>
> (Emphasis added)

5.1 On the same issue, the respondents have relied on the judgment of Apex Court in the case of **General Manager (Operations) State Bank of India and Anr.** Vs. **R. Periyasamy,** (2015) 3 SCC 101, the relevant portion of which are as follows:-

> "11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur[(1972) 4 SCC 618], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in State Bank of India & ors. Vs. Ramesh Dinkar Punde[(2006) 7 SCC 212]. More recently, in State Bank of India Vs. Narendra Kumar Pandey[(2013) 2 SCC 740], this Court observed that a disciplinary authority is expected to prove the charges leveled

against a bank-officer on the preponderance of probabilities and not on proof beyond reasonable doubt.

12. Further, in Union Bank of India Vs. Vishwa Mohan[(1998) 4 SCC 310], this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus in that case the Court set-aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

13. While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a Government Department, this Court in Commissioner of Police New Delhi & Anr. Vs. Mehar Singh[(2013) 7 SCC 685], held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long standing view on this subject was settled by this Court in R.P. Kapur Vs. Union of India[AIR 1964 SC 787], whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view."

5.2 Further, the respondents have relied on the judgment of Hon'ble Supreme Court in the case of **Samar Bahadur Singh** Vs. **State of Uttar Pradesh & Ors.,** (2011) 9 SCC 94, in para-7 of which the

following has been held:-

> "Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit."

5.3 The respondents have also relied on the judgment of Hon'ble Supreme Court in the case of **Ajit Kumar Nag** Vs. **General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.,** 2005(7) SCC 764, in para-11 of this judgment the following has been held:-

> "11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal 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. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

5.4 Respondents have further relied on the judgment of Apex Court in the case of **Lalit Popli** Vs. **Canara Bank & Ors.,** (2003) 3 SCC 583. Para-16 of this judgment is relevant and the same is reproduced as hereunder:-

> "5. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him: whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. [See State of Rajasthan v. B.K. Meena and Ors. (1996) 6 SCC 417)]. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

6. Arguing for respondents Sh. Vijendra Singh, learned counsel relied on extracts from Swmay's Manual on Disciplinary Proceedings, Edition-2015, page-305 where under the caption **Exoneration on Merits,** the following is written:-

> "It has been observed that the criminal Courts are not concerned to find the innocence of the accused. The concept of 'honourable acquittal' and 'full exoneration'are unknown to criminal law. Courts are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused. As in Court judgments, the use of expression "exoneration on merits" and the like may not be found, it is left to the authority ordering reinstatement to determine from the circumstances of each case whether the acquittal by a Court of Law should be taken to mean exoneration on merits or not. In cases where the Court after due consideration of the entire available evidence placed before it came to the conclusion that the Government servant concerned was not proved to be guilty of the charge made against him, he should ordinarily be deemed to have been acquitted of blame and fully exonerated. On the other hand, if the order of acquittal of the Government servant is recorded on ground of technical flaw in the prosecution or if the available evidence could not be produced before the Court for assessment and for that reason the guilt of the Government servant could not be brought home, the acquittal cannot be regarded as honourable and the Government servant cannot be said to have been exonerated on merits."

7. Sh. Satish Kumar, learned counsel appearing on behalf of the respondents submitted that acquittal in a criminal case was not a ground for review of orders passed in disciplinary proceeding. Thus, no cause of action had accrued to the applicant. He also submitted that clean acquittal or technical acquittal were terms followed only in terms of Delhi Police (Punishment & Appeal) Rules, 1980 and had no applicability under the CCS (CCA) Rules.

8. Sh. Rajinder Nischal, learned counsel appearing for respondents drew our attention to para-35 of the judgment passed

by Learned Chief Metropolitan Magistrate in the case of the applicant. The aforesaid para reads as follows:-

> "I have heard Shri Ratandeep Singh, Ld. APP for the CBI as well as Sh. F.A. Khan, Ld. Defence counsel and have also gone through the material available on record and after going through the same, I have no hesitation in holding that the investigating agency has miserably failed to prove the guild of either of the accused persons beyond any reasonable doubt, on record. In view of contradictions appearing in the depositions and statements of witnesses as discussed above in the proceeding para, I have no hesitation in holding that it raises a serious shadow of doubt and suspicion on the story of prosecution in respect of its authenticity and genuineness and as such in the given facts and circumstances of the present case, the accused persons are entitled to all the benefits of doubts arising out of the lacunas appearing in the prosecution case which has miserably failed to bring about their acts within the ambit and four corners of the definition of such offences as defined in the books of Statute with which they have been charged, warranting their conviction and sentence in the present case."

He submitted that it is evident from a mere reading of this para that the accused persons were given benefit of doubts arising out of lacuna in the prosecution case. He further submitted that the applicant had made confessional statement in the disciplinary proceedings and stated that he had paid Rs.6000/- to Sh. V.P. Verma for securing employment. However, these statements have not been taken into account by Learned Chief Metropolitan Magistrate as is evident from the following extracts of para-7 of the judgment:-

> "....During the investigation of this case, CBI Inspector Mr. R.S. Jaggi had contracted him and seized the statements given by the accused persons and other relevant papers vide seizure

> memo Ex. PW-2/A from the office. During enquiry, Mr. Ishwar Singh, Jai Parkash, Rishi Pal Sing, Roop Singh, Ranbir Singh, Ravinder Singh. Rishipal Tomar, Gopi, Nathu, Parmod Kumar, Surinder Singh Manav, Ramesh Chand, Om Prakash, V.P. Verma, Vijay Kumar Sharma had given written statements vide Ex. PW2-B-1 to B-19. All these statements had been recorded in his presence and he had also made endorsement showing given before him and had put his signatures on all such statements. However, it is pertinent to mention here itself that all such statements allegedly made by accused persons before the IO were inadmissible in evidence by virtue of bar created under Section 25 of Evidence Act."

9. We have considered the submissions of both sides and have also gone through the various judgments relied upon by the parties. We find that the settled position of law as is evident from the Apex Court's judgments cited upon by the respondents is that the disciplinary proceedings and criminal proceedings are independent of each other. The standard of proof required is different in both of them. Thus, while in criminal proceedings the guilt has to be proved beyond reasonable doubt, in domestic enquiry punishment can be awarded based on preponderance of probabilities. It has also been observed by the Apex Court that disciplinary proceedings are not really meant to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. In the case of **Commissioner of Police New Delhi & Anr.** Vs. **Mehar Singh**, [(2013) 7 SCC 685] Apex Court has observed that in criminal cases witnesses turn hostile resulting in acquittal. Such acquittal cannot be regarded as clean acquittal on merit after a full fledged trial where there is no indication of witnesses being won over. It was further observed that

in the case of **R.P. Kapur** Vs. **UOI,** AIR 1964 SC 787 it was held by Apex Court that departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. In the case of **Ajit Kumar Nag** (supra) it has been observed that disciplinary proceedings and criminal proceedings operate in different fields and have different objectives. Thus, in a criminal trial the objective is to inflict appropriate punishment on the offender in disciplinary proceedings, the objective is to deal with the delinquent departmentally and impose a penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. However, such strict rules of evidence and procedure would not apply to departmental proceedings. The Apex Court has gone on to state that acquittal of the appellant by Judicial Magistrate in that case does not ipso facto absolve him from liability under the disciplinary jurisdiction. On this ground, the appellant's contention that after acquittal by a Criminal Court, the order dismissing him from service deserves to be quashed was rejected by the Apex Court. In the caset of **Lalit Popli** (supra) the Apex Court has held that not only the standard of proof but also the mode of enquiry and the rules governing the enquiry and trial are completely different. Thus, in disciplinary enquiry, the technical Rules of Evidence have no application.

9.1 From the above, it is clear that mere acquittal in a criminal case does not entitle a government servant for exoneration in disciplinary proceedings. Prima facie, it would appear that the Apex Court has taken a different view in the case of **G.M. Tank** (supra). However, on going through this judgment carefully, it can be seen that in the aforesaid case, Apex Court has found that not only the charges in the disciplinary proceedings and the criminal case were same but also same witnesses had been examined in both and same evidence adduced. Moreover, Apex Court noted that trial in criminal case was regular and hotly contested. In that context, the Apex Court has ruled that it would be oppressive to let the order passed in the disciplinary proceedings prevail in the face of a judicial pronouncement.

9.2 We have to examine whether the circumstances envisaged in the case of **G.M. Tank** (supra) by the Apex Court are present in the instant case or not. In this regard, Sh. Rajinder Nishal, learned counsel had pointed out that a reading of the impugned order itself would suggest that confession of the petitioner coupled with supporting evidence like his name missing from the nominal rolls and seniority weighed heavily on the mind of the Disciplinary Authority when that Authority awarded the punishment to the applicant. On the other hand, these confessional statements have not been read

as evidence in the criminal case as is evident from the extracts of para-7 of the judgment of Learned Chief Metropolitan Magistrate quoted above. Thus, it is evident that evidence placed before Criminal Court and Disciplinary Authority was not the same. Further, we notice that in the instant case witnesses had given contradictory statements and some had even turned hostile during criminal trial. This was not the situation in **G.M. Tank's** case. In this view of the matter, the judgment in the case of **G.M. Tank** (supra) cannot be applied to the instant case.

9.3 Further, we find that the judgment of Full Bench of this Tribunal relied upon by the applicant in the case of **Sukhdev Singh** (supra) was passed in the context of Delhi Police (Punishment & Appeal) Rules, 1980 where Rules 11 & 12 specifically deal with the situations arising out of judicial conviction and acquittal. However, in the instant case, these Delhi Police Rules have no applicability. The case of the applicant has independently and indisputably been dealt with under the CCS (CCA) Rules in which there was no provision analogous to Rules 11 & 12 of Delhi Police Rules.

9.4 The applicant had also argued that the respondents have erred in rejecting the Review Petition of the applicant on the ground that the acquittal obtained by him was not a clean acquittal whereas criminal jurisprudence does not recognise words, such as,

clean acquittal, honourable acquittal etc. In this regard, the respondents had submitted that the Apex Court in CA-4842/2013 in its order dated 02.07.2013 had observed that even though these words are unknown to the Criminal Procedure Code, they have been coined by judicial pronouncements. Further, we notice that the Apex Court in the case of **R.P. Kapur** (supra) had observed that departmental proceedings can proceed against a person even after acquittal in a criminal case when the acquittal is other than honourable. In the case of **Mehar Singh** (supra) it was observed that an acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after full-fledged trial where there is no indication of witnesses being won over. In the instant case even Learned Chief Metropolitan Magistrate has issued the words "benefit of doubt" in para-35 of the judgment extracted above.

9.5 Thus, it is clear that even though Criminal Procedure Code does not recognise words, such as, honourable acquittal, fully exonerated etc., these words have been coined by judicial pronouncements and have been widely used by Courts to make a distinction between cases in which acquittal is obtained on merits and those in which acquittal has been obtained on technical grounds or flaws in prosecution.

10. Thus, none of the grounds espoused by the applicant is tenable. We are of the opinion that this O.A. is devoid of merit and is dismissed as such. No costs.

11. A copy of this order be placed in each OA file.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/vinita/