

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA. 1155 of 2012

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Kailash Chandra Sil, son of late Khagendranath Sil, worked as EDBPM Tekatuli EDBO, aged about 49 years, residing at Village and Post Office- Tekatuli, Maynaguri, District- Jalpaiguri, Pin- 735224.

.....Applicant.

-versus-

1. Union of India, service through the Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi 110001.
2. The Chief Post Master General, South Bengal Region, West Bengal Circle, Yogayog Bhawan, 56, C.R. Avenue, Kolkata 700012.
3. The Senior Superintendent of Post Offices, Jalpaiguri Division, Jalpaiguri – 735101.
4. The Superintendent of Post Offices, Jalpaiguri Division, Jalpaiguri- 735101.

.....Respondents.

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : Mr. L. K. Chatterjee, Counsel
Mr. A. Mondal, Counsel

Heard on : 31.08.2018

Order on : 03.10.18

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

This OA has been preferred to seek the following reliefs:

- "8.(i) An order do issue directing the respondents to quash and set aside the impugned removal order.
- (ii) An order do issue directing the respondent to quash and set aside the charge sheet.
- (iii) An order do issue directing the respondents to quash the appellate order dated 24.5.2012.
- (iv) And such other order/orders as the Hon'ble Tribunal may deem fit and proper."

2. The grievance of the applicant is that on the basis of purported admission of charges he has been removed from service but the said statement admitting the charges has been obtained by coercion.

3. The enquiry officer found the applicant guilty of the charges solely on the basis of his admission. The gravamen of the indictments against the applicant and the conclusion of the Enquiry Officer, on each charge, as evident from the report of Enquiry Officer, is extracted verbatim hereinbelow for clarity(to the extant relevant and germane to the lis)

"Article-I:-

Sri Tapan Dutta, S/o late Girish Chandra Dutta, Tekautuli BO, - DT -Jalpaiguri opened a savings account No. 242171 at Tekatuli BO on 04.02.98 with an initial deposit of Rs. 300/- (Rupees Three hundred only). There after the following deposits were made in the above said a/c per entries in the pass book.

- 20.02.98 – Deposit Rs. 1000/- (One thousand) only
- 09.03.98- Deposit Rs. 400/- (four hundred) only
- 24.03.98- Deposit Rs. 950 (nine hundred fifty) only

The balance in this pass book was struck as Rs. 2650/- (Rupees Two thousand six hundred fifty) only after the transaction dtd. 24.03.98.

Sri Kailash Chandra Sil is in capacity of EDBPM, Tekatuli BO accepted those deposits of Rs. 1000/-, Rs. 400/- and Rs. 950/- on 20.02.98, 09.03.98 and 24.03.98 respectively. He authenticated the above said deposits in the pass book with his initial and date stamp impressions of the BO but did not enter those transactions of those three dates into the Tekatuli BO SB journal and also did not credit the deposit into the BO's account as required under Rule 131(3) and 174(2) of BO Rules.

The S.O. ledger balance remained at Rs. 300/- (Rs. Three hundred) only. Thus a sum of Rs. 2350/- (Rs. Two thousand three hundred fifty) only was defalcated by Sri Kailash Chandra Sil is in capacity of EDBPM/Tekatuli BO from the SB account.

Article- II:-

That the said Shri Kailash Chandra Sil while working in the said office during the above said period did not make necessary entries of transactions on different dated in respect of Tekatuli BO SB a/c no. 240309 standing in the name of Sri Kharu Mohan Roy.

The account was opened on 12.02.92 with Rs. 200/- (two hundred) as first deposit. Thereafter he made 27 (Twenty seven) deposits following amount Rs. 24700/- and 6(six) withdrawals following Rs. 19,100/- detailed below. Sri Kailash Chandra Sil authenticated all the deposits and withdrawals with his initials and date stamps, impressions of Tekatuli EDBO, but did not enter those transactions in the BO. SB journal and also did not account for in the Tekatuli BO's a/c violating Rules 131(3) and 134 and 174(2).

Thus a sum of Rs. 4600/- (four thousand six hundred) only has been defalcated by the said Sri Kailash Chandra Sil in the capacity of EDBPM, Tekatuli BO from the above account.

Article – III:-

Smt. Dipali Dey, W/o Sri Subodh Chandra Dey of Tekatuli BO in the District of Jalpaiguri found a SB a/c n. 240948 with initial deposit of Rs. 100/- (Rs. One hundred) only on 28.03.94. The depositor thereafter made deposit Rs. 2000/- (two thousand) Rs. 700/- (Rs. Seven hundred) only on 05.12.96 and 30.07.97 and Rs. 5000/- (Rs. Five thousand) only on 02.08.97 respectively, in this SB account Sri Kailash Chandra Sil in his capacity of EDBPM, Tekatuli BO accepted those deposits

and entered them in the passbooks but did neither enter those deposits in the B O SB journal nor credited the amount into the Tekatuli BO's account as required under Rule 131(3) and 174(2). The depositor also made withdrawals of Rs. 2000/- (two thousand) and Rs. 1500/- (Rs. One thousand five hundred) only on 20.06.17 and 15.10.97 respectively but the said Sri Kailash Chandra Sil did not account for those withdrawals either in BO SB Journal or in the BO account violating Rule 134 of BO Rules (six edition) 2nd re point (connected up to 31.03.82).

Thus a sum of Rs. 4200/- (four thousand two hundred) only have been defalcated by the said Sri Kailash Chandra Sil in his capacity of EDBPM, Tekatuli EDBO from the above SB account.

Article IV:-

Sri Jil Mohan Mandal, S/o Tenu Mandal of Tekatuli in the district of Jalpaiguri opened SB a/c n. 240733 with initial deposit of Rs. 2700/- (two thousand seven hundred) only on 12.07.93. He made subsequent deposit of Rs. 5000/- (Rupees five thousand) only in his SB a/c n. 240733 on 15.09.97. The said Sri Kailash Chandra Sil in his capacity of EDBPM accepted the said deposit and entered into the passbook, authenticated it with his initial and date stamp impression at the Tekatuli BO, but did not enter it into the BO's SB journal and also did not credit the said amount of deposit in the BO's account in clear violation of Rule 131(3) and 174(2) of BO Rules.

Thus a sum of Rs. 5000/- (Rs. Five thousand) only was defalcated by the said Sri Kailash Chandra Sil in his capacity of EDBPM Tekatuli BO from the above account.

Article V:-

Sri Ramani Das , S/o Bhabani Das vill +post Tekatuli opened as RD a/c no. 33676 in the Tekatuli BO on 04.11.93 with initial deposit of Rs. 200/- as it denomination. The balance in the account up to Rs. 2200/- with deposit last made on 12.11.94 tallied with ledger balance of the SO. Thereafter the depositor made 24 (twenty four) deposits total amount being Rs. 8618 including default of Rs. 218/- on different date starting from 07.03.95 and last being on 27.03.98.

The said Sri Kailash Chandra Sil in the capacity of EDBPM, Tekatuli BO accepted those deposits and entered them in to the related passbook, authenticated the passbook the passbook entries with his hand initials and date stamp impression of the BO but did neither enter those depsts in the BO RD Journal nor did he credit those amounts in the BO account n the relative dates. Clearly he violated the BO Rules 131 (3) and 174(2) and defalcated a sum of Rs. 3682/-(Rs. Three thousand six hundred eighty two) only from the above said RD account and used the money for his personal gain.

The said Sri Kailash Chandra Sil is alleged to have omitted grave misconduct, failed to maintain absolute integrity and shown lack of devotion to duty and clearly acted in the manner of unbecoming of an ED Agent contravening the provision of Rule 17 of ED Agent (Conduct and Service) Rules, 1964.

Sri A.I. Momin CI (P) Jalpaiguri Div worked as P.O. and the SPs did not nominate any defence assistant except a state govt. retired employee who is not permissible to defend the case as per rule.

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The enquiry was conducted by the undersigned on 03.03.99 at Maynaguri S.O. (Account office of the BO). All the listed documents were produced before the Board of enquiry by the P.O. First the C.O was asked some questions by the u/s as I.O as under:

Q(1) : Did you receipt the Charge Sheet issued by the SSPOs, Jalpaiguri Div, vide memo no. F1-9/G/1/98 dated 18.11.98

Ans : Yes, date of receipt of the letter is 21.11.98

(2) Do you understand in meaning of the contests in the said charge sheets?

Ans : Yes

(3) Do you admit the charges brought against you in the said charge sheet issued by the SSPOs, Jalpaiguri Div.

Ans : Yes, I do admit all the charges brought against me in the said letter. At the same time I beg pardon to excuse me for committing such mistakes.

At this stage the undersigned thought that there is no need hold further proceedings. All the listed documents were examined in the board of enquiry and marked ext 1 to 15.

As the Charged official admitted all the charges framed against him by the Divisional authority, so the undersigned do not think it wise to examine the listed witness.

Both the PO and CO were asked to submit their brief. They submitted their briefs and considering all aspects the charges framed against the SPS by the Disciplinary authority are proved beyond reasonable doubt.

Sd/-
(S. N. Paul)
I.O & former ASPOS
1st Sub Div/Jalpaiguri"

4. The SSPO, Jalpaiguri Division as the Disciplinary Authority penalized the applicant with removal from service with the following order extracted infra, on 23.09.1999.

"O R D E R

I find that the charged EDBPM Shri Sil has not refuted the charges at any stage and his categorically admitted the charges levelled against him. Even in his representation dated 28.7.99 submitted against the findings of the Inquiring Authority after receipt of the Inquiry report by him, he has not stated anything except that he was not bound to reply to the communication and that whatever he has to say he would say in the court of law only as the department has lodged an FIR against him. This goes without saying that he has nothing to say against the charges as well as findings of the I.O. arrived at in the Inquiry report supplied to him. All the article of charges are therefore taken to be proved to the hilt.

I find that the said Shri Sil, the charged ED Employees has committed a series of mis-appropriation of govt. money in several SB and RD Accounts during the period from July, 94 to March, 98 in respect of both deposits and withdrawals. He has made series of deposits and withdrawals in the Pass Books of several SB and RD Accounts but he did not account for these in the govt. account and misappropriated a huge amount thereby. It is thus considered not fit to retain such a person with fractured integrity in Govt. service in the department.

I Shri P.N. PODDAR, Sr. Supdt. Of Post offices, Jalpaiguri Division, Jalpaiguri under the powers conferred upon me by the P&T ED Agents (conduct and service) Rules, 1964 hereby punish the said Shri Kailash Ch. Sil, EDBPM, Tekatoli EDBO in account with Mayaguri S. O (under put off duty) with removal from service with immediate effect.

(P.N. Poddar)
Sr. Supdt. of Post Offices
Jalpaiguri Division
Jalpaiguri 735101"

5. The applicant was simultaneously booked under criminal charges arising out of Maynaguri P.S. Case No. 73/99 dated 22.06.1999, G. R. Case No. 787/99 under Section 409 of the IPC which lead to Special Case No. 7/2000 ordered on 14.02.2012. The relevant extract of the said judgment by the Special Judge, Second Court, Jalpaiguri is as under:

"The case of the prosecution, in short, is that in between 1.2.93 to 28.3.98 the accused person, being the Extra Department Branch Post Master at Tekatuli Post Office under P.S. Maynaguri District Jalpaiguri, committed criminal breach of trust in respect of Rs 1,87,209/- belonging to the account holders. Hence this case.

After investigation chargesheet has been submitted against the accused person u/s 409 of the I.P.C.

In court charge has been framed u/s 409 of the I.P.C against the accused person and read over and explained to him and he has pleaded not guilty to the charge and claimed to be tried. Hence this trial.

The defence case is a plea of innocence and denial of the prosecution case.

DECISION WITH REASONS

In order to prove the case against the accused persons the prosecution has examined 09 witnesses and proved some documents. The defence has examined none.

The PWI Nirmal Sharma has stated in court that at the relevant time that accd person was the extra departmental branch post master of the Tekatuli Post Office and he has identified the accd person in court and he has stated that the accd person was suspended but he does not know the reason for his suspension and he was not interrogated by the police and he has been declared hostile by the prosecution and he has stated nothing in court against the accd person in respect of the prosecution allegations.

The PW 5 Biswanath Nandi has stated in court that he used to distribute letters every day till 16.00 hours and come back to the post office and hand over the unserved letters as peon and he does not know any incident in respect of the accd person.

The PW 6 Kakali Das has stated in court that she had one recurring deposit account in 1998 in the Tekatuli post office and the accd person was the post master of that post office and she did not find any abnormality in her account and she did not hear about any irregularity in any account of that post office.

The PW 7, Kanailal Banerjee has stated in court that on 17.11.99 police came to the office of the Senior Superintendent of post office Jalpaiguri and seized some documents from the said office under a seizure list and he has proved his signature on the seizure list as Ext. 9 and the signature of Bishnupada Kundu as Ext. 9/1 and he has identified the accd person in court and he has stated that police did not show him the documents seized by them and they asked him to sign and he signed and police did not examine him in this case.

The PW 9, Achinta Gupta has stated in court that on 22.6.99 he received one written complaint from the P.W. 3 and started this case and filled up the formal F.I.R. and he has proved the formal F.I.R. filled up and signed by him as Ext. 11 and his endorsement and signature on the written complaint as Ext. 3/1 and he has stated that he himself took up investigation of this case and he visited the place of occurrence and recoded the statements of the available witnesses.

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In his cross-examination the P.W. 9 has stated that in case of deposit and withdrawal of money from the pass book, one has to submit the deposit slip or the withdrawal slip and this case he did not seize any withdrawal or deposit slip of the account holders and he did not seize any receipt issued by the postal department to the P.W. 2 and he did not collect any

signature of the accd. person for comparison and he did not make any prayer before the court for recording the statement of the accd person u/s 164 of the Cr.P.C. So it is clear that the P.W.9 did not investigate the case properly.

The PW,8 Agamananda Mukherjee has stated in court that on 28.3.98 he visited the Tekatuli Post Office of inspection as the Senior Superintendent of post office Jalpaiguri and at the time the accd person was the post master of the post office and he has identified the accd person in court and he has stated that on inspection he found some gross irregularities in his work and he placed the accd person under suspension and he has proved the order of suspension written by him and his signature on it as Ext. 10 and 10/1 and in his cross-examination he has stated that no reason was shown when the accd person was suspended.

The PW3 has stated in court that during inspection the P.W. 2 made a statement in the post office and the P.W. 8 recorded the same in his own hand writing and again the P.W. 3 has stated that the said writing probably is not of the P.W. 8. However, the P.W. 8 has not whispered anything in this matter and the Ext. 1. This circumstance is suspicious and against the prosecution case.

The PW 2, Anulekha Dey, the main witness of this case, has stated in court that she had one savings account bearing no. 240058 in the Tejkatuli post office in 1999 and the accd person was the post master of that post office at that time and she had identified the accd person in court.

The P.W.2 has further stated that she had no dispute in her pass book and one day police informed her to come to the post office and then she came to the post office and some Superior officer took her pass book and gave her fresh pass book and as per the order of one postal officer she signed on a written document without knowing the contents thereof and she has proved her signature on a writing as Ext. 1 and she has proved her previous pass book as Ext. 2".

In regard to the alleged confessional statement of the applicant the Ld.

Court recorded the following:

"The P.W. 3 has stated in court that the accd person handed over before him a recorded confessional statement regarding defalcation and the accd person himself wrote the said statement in his presence and in presence of the P.W. 4, and the accd person signed on all the pages and he (P.W. 3) and the P.W. 4 also signed on all the pages and he has proved

the said signatures as Ext. 6 collectively. The P.W. 4 has stated in court that the P.W. 3 recorded one confessional statement of the accd person in his presence and as per the order of the P.W. 3, he (P.W. 4) signed on all the pages and he has proved his signatures as Ext. 6/1 collectively.

So as per the statements of the P.W. 3 and the P.W. 4, both of them were present when the accd person made the said confessional statement before them but the P.W. 3 has stated that the accd person himself wrote the same whereas the P.W. 4 has stated that the P.W. 3 himself wrote the same. So the above statements of the P.W. 3 and the P.W. 4 are contradictory to each other on a vital point and suspicious and accordingly the said statements cannot be legally used as the written confessional statements of the accd person and it is clear that actually the prosecution does not know as to who wrote the said statement. "Hence, I hold that this statement has not legal value as the extra judicial confession of the accd person. Moreover, the P.W. has stated nothing against the accd person in this case. So the said alleged extra judicial confession of the accd person does not find any corroboration from any other source."

In regard to regularisation of account of one (PW-2) it is recorded:

"The P.W. 3 has stated that they regularized the account of the P.W. 2 by giving her a compensation of Rs. 5,500/- but the prosecution has not produced any document in this respect and the F.I.R. lodged by the P.W. 3 also does not mention it and the P.W. 2 has not whispered anything in this matter. Hence, I hold that the prosecution has failed to prove payment of this compensation."

In regard to the defalcated amount it is recorded:

"As per this F.I.R., the P.W. 3 made allegations of defalcation for Rs. 41,834/- in all but the charge has been framed for defalcation of Rs. 1,87,209/-. This circumstances is against the prosecution case."

In regard to inspection it has been recorded as under:

"The P.W. 3 has stated in court that the P.W. 8 held inspection in the Tekatuli post office and he (P.W. 3) assisted him but the P.W. 3 and the inspection report prepared by the P.W. 8 has not been produced in court by the prosecution and the P.W. 3 has stated that on the basis of the said inspection report he lodged the F.I.R. but he did not annex that report in the F.I.R. This circumstance is against the prosecution case."

In regard to withdrawal of Rs. 5500/- from on account it has been recorded:

"The P.W. 3 has further stated that the accd person being the post master, maintained the daily account and he (P.W.3) has proved the said daily account as the Ext. 4 and as per this Ext. 4, Rs. 5,500/- was withdrawn from the account no. 240058 of the P.W. 2 but it was not mentioned in the pass book of the P.W. 2. The P.W. 2 has not stated in court that Rs. 5,500/- was withdrawn from her said account and the prosecution has not produced any withdrawal slip in this respect. The P.W. 3 has stated that in the entry no. 8 of the branch office journal the accd person mentioned the said withdrawal and he (P.W. 3) has proved the said entry no. 8 as Ext. 5. The P.W. 2 has not supported the prosecution case at all."

In regard to proof of the allegation of defulcation the order records:

"So the circumstance is suspicious as the P.W. 2, being the best person to say anything about the account no. 240058, has not stated about the above withdrawal from her account by the accd person and she has also not stated that she received Rs. 5,500/- from the postal department as compensation for the above withdrawal by the accd person and the prosecution has proved the Ext. 4 and 5 to show that the above withdrawal has been mentioned by the accd person therein but the prosecution has not produced any document to show payment of Rs. 5,500/- as compensation to the P.W. 2 for the above withdrawal and the prosecution has not produced the inquiry report prepared by the P.W. 8 in court during trial. The prosecution has also failed to prove that the accd person himself wrote extra Judicial confession, and the name of the person who wrote the Ext. 1/1. So the above circumstances are not cogent and trustworthy to hold that the accd person made the above defalcation as per the allegation of the prosecution."

The order further goes thus:

"EXAMINATION U/S 313 OF THE CR.P.C.

In his examination under section 313 of the Cr. P. C. The accd person has denied the statements of the witnesses made by them against him in court and he has stated nothing about the prosecution case and he has not adduced any evidence on his behalf in this case.

CONCLUSION

So considering the entire materials on record I hold that the prosecution case is full of suspicion and the prosecution has failed to prove the case beyond all sorts of reasonable doubts against the accused person and accordingly he is entitled to be acquitted from this case.

Hence, it is

ORDERED

that the accused person namely Kailash Chandra Sil is found not guilty u/s 409 of the I.P.C. and he is acquitted of the said charge.

The accused person is acquitted from this case and discharged from his bail bond.

Let the seized articles be returned to the person from whom seized after the expiry of the period of appeal.

This case is disposed of u/s 235 of the Cr. P.C."

6. Ld. Counsel for the applicant would strenuously urge that although the respondent authorities relied upon the confessional statement/admission of the charges of the applicant, the said admission has been found unworthy to be taken into cognizance by the Criminal Court. The offence under Section 409 of IPC is about the criminal breach of trust which requires fulfilment of the ingredients namely, "entrustment of property" and "misuse of official position to misappropriate of govt. money" which was not proved in the criminal proceedings yet when the applicant approached the disciplinary authority who removed him from service without discussing on the evidence available, his application was turned down. Such rejection of the prayer is in the following manner:

"Sub: Prayer for reinstatement in service.

With reference to your prayer No. Nil dated 24.05.2012, it is for your information that, after issuing charge sheet under Rule-8 of EDAs (Service & Conduct) Rules, 1965 against you and after conducting the Inquiry proceedings, the punishment of "Removal from Service" was awarded by

the punishing authority vide this office memo. Of even no. dated 23.9.99 which has no relevancy with the Judgment dated 14.02.2012 of the Hon'ble Special Court, Jalpaiguri in respect of Jalpaiguri Special Court Case No. 7/2000 (Arising out of Maynaguri P.S. Case No. 73/99 dated 22.6.99 U/s 409 IPC). Moreover, there is no direction or order to reinstate you in the said Judgment passed by the Hon'ble Special Court, Jalpaiguri dated 14.02.2012. Hence, at this stage, there is no possibility to re-instate you.

This is for your information."

However, Id. Counsel for applicant admitted that he has not preferred any appeal against the said order as same would have been a futile exercise.

7. Ld. Counsel for respondents vociferously submitted that the applicant deserved no mercy in view of admission of the charges levelled against him, vide letter dated 26.11.1998 and such admission did not require holding of a full-fledged inquiry to prove the charges against the applicant and therefore the authorities have rightly proceeded to remove him from service.

8. Ld. Counsel for respondents brought on record the letter dated 26.11.1998 and the inquiry report against the applicant.

9. During the course of hearing Id. Counsel for the applicant would submit that the purported statement as in letter dated 26.11.98 was obtained by coercion and threat and therefore it was inadmissible in evidence. The authorities were bound to hold proceedings to unearth the true facts. The penalty of dismissal on the basis of purported statement was in violation of principles of natural justice and fair play.

10. The legal lacunae in the conduct of the proceedings have been highlighted by the applicant in the following manner:

- (i) unfortunately due to some mental disbursement he was making some mistake but that was not intentional, which the authorities failed to consider;
- (ii) inquiry report issued to the applicant is a non speaking one and therefore bad in law;
- (iii) punishment of removal order issued 23.09.99 was not only arbitrary but also biased. Authority concerned has given harsh punishment inspite of honourable acquittal from the Court of Law for the self same charges;
- (iv) the appeal was rejected by the Senior Superintendent of Posts on 24.5.2012 without assigning any reasons;
- (v) the order of the removal from the service before decision of the criminal case is bad in law, in the light of the decision of the Hon'ble Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. Reported in AIR 1999 SC 1416 and G. M. Tank -vs- State of Gujrat and others, the case of the applicant is required to be reconsidered.

11. The applicant has further alleged that the proceedings were held in a slip shod manner, without obtaining and recording statement/deposition of the individual depositors on whether they were actually defrauded, and if so on the role of the applicant as alleged in the charge sheet.

The recording of the Criminal Court of law which explicitly says that the confessional statement of the applicant produced by the prosecution "has no legal value as it does not find any corroboration from any other source", could not be brushed aside, yet the disciplinary authority has solely banked upon such statement.

Despite admission of the applicant, (alleged to have been obtained by coercion) the authorities ought to have taken some pain to get the allegation of defalcation proved.

The authorities have proceeded with pre-determined mind due to use of the word thereby "misappropriated" in each and every article of charge.

However, no appeal has been preferred by the applicant till date.

12. We heard Id. Counsels of both the sides and perused the materials placed on record.

13. We noticed the authorities have banked not only upon the alleged letter of 26.11.98 but also the deposition of the applicant before the Enquiry Officer on 3.2.99 as under:

"Q(3): Do you admit his charges brought against you in the said charge sheet issued by the SSPOs, Jalpaiguri DN?

Ans : Yes, I do admit all the charges brought against me in the said letter. At the same time I beg pardon to excuse me for committing such mistakes."

14. The decision of **G. M. Tank reported in (2006) SCC (L&S) 1121** was relied upon where Hon'ble Apex Court delved into the sustainability of dismissal of employee concerned in case of acquittal in criminal trial which ratio squarely applies to the present case.

The relevant extract whereof is infra:

"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.

This is a case of no evidence. There is not a iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The investigating officer 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 its judicial pronouncement with the finding that the charge has not been proved. 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.

Thus, as the facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case, (1999) 3 SCC 679 will apply."

It was held that "until such acquittal, there was no reason to hold the dismissal to be erroneous".

15. In view of the fact that the dismissal was ordered before acquittal and the prayer of reinstatement subsequent to acquittal has been turned down by the Disciplinary Authority and in view of the judgment supra, we dispose of the OA with a direction upon the applicant to prefer a statutory appeal to the Appellate Authority within 4 weeks from the date of receipt of a copy of this order which if preferred shall be disposed of by the appropriate Appellate Authority within 4 weeks thereafter delving into the charges, the judgments of the Criminal Court as well as the observations and judgment supra.

16. OA would thus stand disposed of. No costs.

Nandita Chatterjee
Member (A)
pd

Bidisha Banerjee
Member (J)