

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.08/2014

Dated this Monday the 24th day of April, 2017

CORAM: HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER (A)
HON'BLE SHRI A.J. ROHEE, MEMBER (J)

Rajesh J. Sonawane
 Ex.Sr. Booking Clerk
 Central Railway, Panvel 410 206.
 R/at 101 Bitul Apartments Sambaji Nagar
 Adharwadi Kalyan (W),
 Dist. Thane 421 301.
(By Advocate Shri G.B. Kamdi)

... ***Applicant***

Versus

1. Union of India,
 Through the Divisional Commercial
 Manager, (COG) Central Railway,
 CSTM Mumbai – 400 001.
2. The Sr. Divisional Commercial Manager,
 Central Railway CSTM Mumbai,
 Mumbai 400 001.
3. The Officer on Special Duty (S)
 Central Railway CSTM Mumbai,
 Mumbai 400 001.
4. The Divisional Railway Manager
 Central Railway CSTM
 Mumbai – 400 001.

... ***Respondents***

(By Advocate Shri R.R. Shetty)

ORDER

Per : Dr. Mrutyunjay Sarangi, Member (A)

The Applicant was removed from the post of Senior Booking Clerk in Central Railway in the year 2004. A criminal case was simultaneously going on against him for the alleged offence of

issuing of fake season tickets. He was acquitted by the Court of Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai by order dated 14.10.2011. After the acquittal he filed a representation with the Respondent No.3 who in his order dated 28.08.2013 rejected the representation on the ground that the acquittal is not on merit but for want of sufficient evidence to prove the guilt and therefore the review was unwarranted. Aggrieved by the said order, the applicant has filed the present OA praying for the following relief;

“8.a This Hon'ble Tribunal will be pleased to call for record of the inquiry and the impugned punishment orders and after going through its propriety and legality be pleased to quash and set aside the impugned charge sheet dated 22.11.96 and also the punishment order dated 17.05.2004 passed by the Disciplinary Authority, the order dated 22.09.2004 passed by the Appellate Authority, order dated 07.04.2005 passed by the Revisionary Authority and order dated 28.08.2013 passed by the Reviewing authority.

8.b This Hon'ble Tribunal will be pleased to direct to the respondents to reinstate the applicant with all consequential benefits of promotion, arrears of pay etc. if any.

8.c Any other and further orders as this Hon'ble may deem fit, proper and necessary in the facts and circumstances of the case.

8.d The OA may please be allowed with the cost.”

2. The brief facts of the case, at they

appear from the OA, are as follows:

- i) The Applicant was working as Senior Booking Clerk in Nerul when a surprise raid was conducted at Nerul Station Booking office on 11.05.1996 under the supervision of DCM(II) CSTM. When the booking window drawers were broken open two full bundles of fake SPT tickets with some loose bundles were found in locker No.9. The total SPT fake tickets numbering 13,898 amounted to Rs.1,89,847.50 ps, Hard cash of Rs.3600/- which was unclaimed and found in the locker indicates that fake SPT tickets worth Rs.3,600/- had already been sold and kept for distribution towards commission to staff who were involved in the racket. In Locker No.1 an SPT machine was also found with a ready ink bottle so that the fake SPT tickets could be printed from the machine. The concerned authorities held the applicant responsible for being involved in the racket for issue and sale of fake SPT tickets to the passengers. Accordingly, a Charge Memo was issued to the applicant on 22.11.1996 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968.
- ii) The inquiry was conducted against the applicant. The Inquiry Officer filed his report

on 14.02.2002 holding the applicant guilty of the charges framed against him. The inquiry report was communicated to the applicant who gave his reply on 28.02.2002. The Disciplinary Authority after going through the reply given by the applicant observed that the Inquiry Officer had relied upon the unsigned statement of witnesses who were not introduced during the inquiry due to which the Charged Officer (the Applicant) did not get the opportunity to defend himself. It was also observed that these statements were not part of the relied upon documents in the Charge-sheet originally issued. The Disciplinary Authority (Divisional Commercial Manager (COG), CST, Mumbai) therefore decided to remit back the case to the Inquiry Officer for conducting a fresh inquiry. The Applicant called for the additional documents in his letter dated 25.10.2002 and a fresh inquiry was conducted on 08.02.2003. The Applicant submitted his written defence brief on 24.02.2003. The Inquiry Officer submitted his second Inquiry Report on 23.09.2003 in which the applicant was found guilty of the charges framed against him. The applicant submitted reply to the second Inquiry Report on 20.03.2004. The Disciplinary Authority after considering the

report of the Inquiry Officer and the reply submitted by the applicant passed the following order on 17.05.2004;

“No.BB.C.DAR.MAJOR/96/30(6)

Date: 17.5.2004

*Speaking order against the major penalty DAR action –
Shri R.J. Sonawane, Sr.BC, NEU now at Panvel.*

...

I have gone through the charge sheet, relevant documents, enquiry report and representation of CE dated 20.03.2004.

It is noticed that as per DA's order dated 19.07.02, remitting the case back to E.O in order to provide an opportunity to CE to defend himself against the documents mentioned in the enquiry report E.O. conducted enquiry on 8.2.2003. However, as per proceedings, CE is not interested in obtaining the copy of such documents which were not included in Annexure III and further he is not keen to hear the evidences of those witness. CE has also stated and agreed that EO may amend the enquiry report on the basis of fresh sitting of EO on 08.2.2003.

From the above, it is clear that CE do not want to challenge the evidences, documents mentioned by EO in his report. Though these documents were not part of the charge sheet at the time of issue, in his sitting on 8.2.03 these documents are placed in the enquiry and CE do not want to challenge it.

The Statements of Shri Bane, P.I. Recorded before EO is valid and the unsigned statements recorded before the police which were taken into account on 8.2.03 was not challenged or questioned by CE and hence they are also valid.

From these statements and from the statement of Investigation officer, Shri Bane, PI (now retired) before EO clearly indicate that CE had a major role in the entire episode. No leniency can be shown against such fraudulent activities.

In view of the above, I accept the findings of EO and impose the penalty of removal from service.

Sd/-

(John Varkey)

DCM(Cog.) CST Mumbai”

iii) Against this order of the Disciplinary Authority, the applicant filed an appeal before the Sr. Divisional Commercial Manager, CSTM, who rejected the appeal of the applicant and passed the following orders;

“Speaking Order

No.BB/C/DAR/Major/96/30(6) Date:14.09.2004.

Sub: Major Penalty DAR action against Shri J. Sonawane, SR. BC, Nerul.

I have carefully gone through the entire DAR case. A personal hearing also was given to the CE. The statement of Investigation Officer, Shri V.G. Bane, PI, GRP Kurla (now retd.) before enquiry officer indicate that CE had a major role in fake SPT ticket cases at Nerul. All the circumstantial evidence proved that CE was part of conspiracy in selling the fake tickets. No leniency can be shown against such fraudulent activity.

In view of the above, I accept the findings of EO and confirm the penalty imposed by D.A.

*Sd/-
(S C Mudgerikar)
Sr.DCM, CSTM”*

iv) The Revision Application filed by the applicant before the ADRM(S), CSTM, was also rejected by order dated 07.04.2005.

v) When fake SPT tickets were seized from the locker at Nerul Station, the Police also investigated the matter and a criminal case was filed against the applicant and seven others in the Court of the Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai in C.C. No.1076/RP/96. The order of the Metropolitan Magistrate, 49th

Court, Vikhroli, Mumbai dated 14.10.2011 acquitting all the accused (except accused no.5 who had died during the pendency of the case) is as follows:-

“Reasons

The accused are prosecuted for the offence punishable under section 468, 471, 409, 420, 34 of IPC.

2. *Prosecution story in brief is that the accused prepared counterfeit railway tickets with the help of S.P.T. machine during the course of their employment as booking clerks, Chief Booking Supervisor and sold it to various passengers and thereby made money in lakhs and committed the offence of forgery.*

3. *The accused denied to the charge levelled against them and claimed to be tried. After framing of the charge, accused no.5 is dead. Therefore case against accused no.5 is abated.*

4. *In order to prove the guilt of the accused, prosecution has examined only one witness.*

Statement of the accused no.1 to 4 and 6 to 8 under section 313 of Criminal Procedure Code has been recorded. Their defence is of total denial and filing of false case against them.

5. *P. W.1 Onkarsingh Mohansingh narrated about the raid conducted by him alongwith his senior and associates. He lodged FIR against the accused. In his evidence he agreed that at the time of affecting raid, fake ticket was not on the counter for selling the passenger. To corroborate his evidence, prosecution has not examined any other witness from the raiding party. Prosecution has not examined any panch and I.O through sufficient opportunities given. Hence evidence on record is not sufficient to prove the guilt of the accused. Hence accused are acquitted by passing following order.*

ORDER

1) *Accused 1. Rajesh Jagannath Sonawane, 2. Mohammed Faijal Siddiqui, 3. Brijeshkumar Bhagwatprasad Dubey, 4. Shatrughna Vishwanath Dubey, 6. Nitin Balasaheb Degwekar, 7. Avinash Kamlakar Ghule and 8. Sudhakar Ramchandra Kamble are hereby acquitted u/sec.248(i) of Criminal Procedure Code of the offence punishable under section 468,471,409,420,34 of Indian Penal Code.*

2) *Their bail bonds stand cancelled.*

- 3) *Muddemal i.e. bogus tickets be destroyed after appeal period is over.*
- 4) *Judgment declared and pronounced in the open court.*

Sd/-
(S.S. Gulhane)
Metropolitan Magistrate,
49 Court, Vikhroli, Mumbai”

vi) After the acquittal in the criminal case, the applicant filed a Review Petition before the ADRM(S), CST, Mumbai praying that he should be reinstated with all consequential benefits including continuity in service and back wages/salary. This representation was rejected by the impugned order dated 28.08.2013 by the Reviewing Authority which reads as follows;

“No.BB.C.DAR.MAJOR.1996.30(06) Dt.28.8.2013

Shri R.J. Sonawane
Ex.Sr. BC PNVL

Resi Address:

MS/RB-I/1006/40
Waldhuni. At & Post Kalyan.

Sub: *Review of decision taken in the departmental Major Penlaty DAR proceedings on acquittal in criminal case on identical charges.*

Ref: *Your representation dated 23.01.12 & 08.7.13.*

In view of Railway Board's letter No.E(D&A)95.RG.6-4 dated 07.06.95 if the facts, circumstances and the charges in the departmental proceedings are exactly identical to those in the criminal case ON MERIT (without benefit of doubt or on technical grounds) then the departmental case may be reviewed if the employee concerned makes a representation in this regard.

I have examined the order of Hon'ble Metropolitan Magistrate, 49th Court, Vikhroli,

Mumbai. The acquittal is not on merit but for want of sufficient evidence to prove the guilt and therefore the review is unwarranted.

*Sd/-
(Rajeev Tyagi)
OSD (S) CSTM"*

3. The Applicant has based his prayer on the following grounds as mentioned in para 5 of the OA and reproduced herein below;-

"5.a As the facts and evidences involved in the departmental inquiry and criminal case are same, the order of the Disciplinary authority is required to be set aside since the applicant has been acquitted from criminal charges as decided by Supreme Court of India in the case No.Appeal(Civil) 2582 of 2006 G.M. Tank VS. State of Gujarath & Anr.

5.b The Hon'ble Central Administrative Tribunal Chandigarh in OA 209 of 2010 decided on 6th April 2011 has also decided the matter as per the law laid down by the Apex Court in G.M. Tank Vs. State of Gujarath (supra) the acquittal earned by the applicant from the criminal court would forbid departmental action, particularly because of the identical character of allegation and the witnesses to be examined in support thereof the finding recorded by the Inquiry Authority is cryptic in character and unacceptable in law. No equivalence is negative can be proved on point of fact, there were two other similar instances in which the departmental authority had itself held the incompetence of the departmental proceeding in the light of the verdict of acquittal by the criminal court. The order of the removal is set aside and directed to reinstate to the applicant in service.

In view of the above cited judgment the applicant in the present case also is required to be reinstated in service.

5.c It is well settled law that where the acquittal is substantially on merits, on identical facts and charges it will not be proper for a disciplinary Tribunal to record a finding of guilt, and to punish thereon. This is a basic principle of jurisprudence. It cannot make any difference that the departmental authority acts before the criminal proceeding, or after

it.

5.d *The Inquiry Officer did not follow the correct and legal procedure while recording the evidence, all statements of the co-accused and inspector was taken on record which was taken before the Police Authority and thus there is clear violation of natural justice.*

5.e *The documents which were produced during the course of inquiry were not in original or attested but unsigned copies were produced and hence the validity and genuineness of the document is doubtful.*

5.f *The Disciplinary authority had not provided documents which were demanded by the applicant as the said documents was not available, then question remained whether the surprise check was conducted or not or whether the fake tickets were found or not. The said evidences were not produced before the Metropolitan Magistrate. Therefore, there is violation of natural justice in departmental inquiry since no document was supplied to the applicant to defend the case and without evidence the inquiry was conducted and charge is proved.*

5.g *The punishment of removal from service was given to the applicant but the other co-accused which were present on the day of surprised checked were given a minor punishment just to held up increment etc. This shows that the Disciplinary Authority has discriminated amongst the applicant and other co-accused. This is a case of discrimination as decided by the Hon'ble Supreme Court's order in the case of **Tata Engg. & Locomotive Co. Ltd. V.s Jitendra Pd Singh & Anr (2000 III CLR 853)**. Further the **Hon'ble Principal Bench CAT New Delhi in OA No.1079 of 1994 judgment dated 05.12.1997 Pooran Lal Vs. Union of India and Another**, it is held that when two officers are subjected to departmental enquiry on a common charge and the charge is found proved by the disciplinary authority both, we cannot uphold two different type of punishment to the officers fro no reasons or rhyme.*

5.h *The impugned orders are absolutely illegal, wrong and arbitrary.*

5.i *The impugned orders are violation of the provisions of Article 14 & 21 of the Constitution of*

India.

5.j The inquiry officer has relied on the statement of only one witness out of 7 and no documentary evidence were produced legally during the inquiry and hence as per Hon. Supreme Judgment in the case AIR 1958 Supreme Court 300 AIR 1963 supreme Court 779 the order of dismissal based on only one finding, which was given in violation of natural justice.

5.k The impugned orders are capriciously and maliciously passed.

5.l There is no evidence that applicant did said act for personal gain or advantage of any nature.

5.m There is no evidence to prove the allegation and charges against the applicant. Thus it is case of no evidence. The Hon'ble Supreme Court in case of Central Bank of India Vs. P.C. Jain, AIR 1969 SC 983 has held that finding of domestic Tribunal would be perverse it is not supported by legal evidence.

5.n The impugned orders have passed without any application of mind.

5.o The defence of the applicant has neither been taken into account by the punishing authorities have considered the same.

5.p No reasonable opportunity was given to the applicant during the course of inquiry.

5.q Changing the inquiry officers frequently without any reason and without communication to the applicant is the case of bias and hence the punishment order is issued on the basis of no inquiry.

5.r There was no evidence to show that the applicant was selling the fake tickets because he was on leave on the day of surprise check.

5.s The impugned orders and departmental proceedings are illegal, unconstitutional, vindictive, unsustainable, malafide, and are required to be set aside with all consequential benefits.

5.t) The fresh inquiry was not conducted as per

directives given by D.A. vide order dated 08.08.2002 but a further inquiry was conducted and hence the inquiry conducted by inquiry officer is illegal and not accordingly to rules.

5.u The Appellate Authority has not passed the reasons order and rejected the appeal without considering grounds submitted by the applicant in appeal. Hence the appeal is not decided as provision of rules and law."

4. The Respondents in their reply filed on 11.06.2014 have contested the claim of the applicant on the ground that there is no merit on the applicant's claim. It is their contention that the applicant ought to have challenged his punishment order within the limitation period after the passing of the Revisionary Authority's order on 07.04.2005. After the rejection of the Revision Petition filed by the applicant the disciplinary proceedings attained finality and the present OA filed after a lapse of more than eight years from the date of disposal of the Revision Petition suffers from delay and laches and therefore is liable to be dismissed. Repeated representations (petitions) do not extend the period of limitation as held by the Hon'ble Supreme Court in the case of **Bhoop Singh Vs. Union of India** **[AIR 1992 SC 1414]**. The applicant's representation dated 23.01.2012 has been examined as per the guidelines issued by the Railway Board

vide their letter dated 07.06.1995 and the representation was rejected by OSD(S) (Respondent No.3) in his order dated 28.08.2013. The Hon'ble Supreme Court in their judgment dated 20.04.2013 in the case of **State of West Bengal & Ors., Vs. Shankar Ghosh (CA No.10729/2013)** has held that there is no bar to award punishment in a departmental case even after the charged employee is acquitted in a criminal case. In the present OA, since the acquittal was not on merit but for want of sufficient evidence to prove the guilt, the Review Petition filed by the applicant was rightly rejected by the OSD(S) in his order dated 28.08.2015. The standard of proof required in a departmental inquiry is only that of Preponderance of Probability whereas the standard of proof in a criminal case is proof beyond reasonable doubt which is much harsher, stricter and rigorous. In the present OA, the charge has come to be conclusively proved against the applicant in the departmental proceedings and therefore, the penalty imposed on the applicant does not call for any interference by this Tribunal. The inquiry proceedings have been conducted against the applicant as per rules and the penalty imposed is commensurate with the

gravity of his misconduct. The respondents have submitted that the statements of Shri Hariharan Narayan Iyer, CBS at Nerul Railway Station and Shri Omkar Singh, Chief Ticket Inspector produced by the applicant as Annexures A-18 and A-19 have clearly mentioned that the applicant was involved in the production and sale of bogus tickets which has effectively established the guilt of the applicant and warranting the punishment imposed on him. The Respondents have argued that the OA filed by the applicant lacks merit and therefore should be dismissed.

5. The Applicant filed a Rejoinder on 24.07.2013 in which he reiterated his earlier stand that consequent to his acquittal in the criminal case, his Review Petition should have been agreed to and he should have been reinstated in service. He has availed the statutory remedy provided under order No.E(D&A)95 RG 6-4 dated 07.06.1995 RBE 54/95 which provides that if the facts, circumstances and the charges in the Departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/acquitted in the criminal case on merit (without benefit of doubt or on technical grounds), then the departmental case may be

reviewed if the employee concerned makes representation in this regard.

It is the applicant's contention that as he was acquitted by the Metropolitan Magistrate's Court vide order dated 14.10.2011 on merit without benefit of doubt or on technical grounds, he is entitled to file the Review Petition dated 23.01.2012 and the respondents should have reinstated him in service. The cause of action has arisen on 28.08.2013 when his Review Petition was rejected by the ADRM(S) and therefore, the present OA filed in November 2013 is within the limitation period. The Applicant has also claimed that the judgment of the Hon'ble Supreme Court in **Bhoop Singh Vs. Union of India (supra)** cited by the respondents is not applicable in his case since the facts of the case are different. In his rejoinder, the applicant has cited the judgments of the Hon'ble Supreme Court in **A. Sagayanathan Vs. DPO S.B.C. Division, Southern Railway, AIR 1991 SC 424** to support his argument that his OA should not be thrown out on the sole ground of limitation but should be considered on merit in the interest of justice. The Applicant has reiterated that some of the vital documents such as the SPT Tickets/Season tickets were not

produced during the course of the inquiry or in the Metropolitan Magistrate's Court and there were many discrepancies in the statement of witnesses which have not been taken into account while passing the punishment orders against him. He has also submitted that all other accused in the case of production and sale of fake SPT tickets have been acquitted and exonerated and the applicant has been singled out for punishment. No fake tickets were produced during the course of the inquiry and the facts about who had open the broken lockers have also not been proved in the inquiry. The Applicant was on leave on the day the check was conducted. Under the circumstance, the punishment imposed on the applicant is not justified and in view of the acquittal in the criminal case, the applicant's OA deserves to be allowed. The Applicant has also quoted para 28 of the CVC Manual which reads as follows;

"If the case is of a grave nature or involves question of fact or law, which are not simple it would be advisable for the employer to wait the decision of the trial Court, so that the defence of the employee in the criminal case may not be prejudiced."

It is his contention that the departmental inquiry against him should have been kept pending till the completion of the criminal trial.

However, after his acquittal in the criminal trial, he deserves to be reinstated in service. It is also his contention that the Disciplinary Authority in his order dated 08.08.2002 had directed a fresh inquiry to be conducted whereas the Inquiry Officer conducted only a further inquiry. There is no provision for conducting a fresh inquiry and therefore the said order was illegal and void. Inasmuch as there are many deficiencies in the departmental inquiry and the applicant has been acquitted in the criminal trial, he has prayed for allowing the OA and a direction to the respondents to reinstate him in service with all consequential benefits.

6. During the arguments, the applicant has cited the judgment of the Hon'ble Supreme Court in ***G.M. Tank Vs. State of Gujarat & Anr. in Civil Appeal No.2582/2006*** in which the Hon'ble Apex Court held that facts and evidence in the departmental as well as criminal proceedings being the same without there being any iota of difference, the appellant should succeed and 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. When there was

an honourable acquittal of the applicant during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in **Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679** will apply. The Applicant has also cited the order of the **Central Administraive Tribunal, Candigarh Bench in OA No.209/2010 in the case of Dalip Chand Vs. Union Territory Chandigarh dated 30.03.2011, Union of India & Ors. Vs. Naman Singh Sekhawat in Appeal Civil No.140/2007 dated 14.03.2008** and Madras High Court judgment in **Shaikh Kasim Vs. Superintendent of Post, AIR 1965 Mad 502** to support his argument that once he is acquitted by the criminal court on the facts and evidence being similar, he should also be exonerated in the disciplinary proceedings. The Applicant has cited the judgment of the Hon'ble Supreme Court in **Union of India Vs. H.C. Goel, (1964) AIR 364** to advance his argument that mere suspicion should not be allowed to take the place of proof in the departmental inquiry. In **Roop Singh Negi Vs. Punjab National Bank in Civil Appeal No.7431/2008 dated 19.12.2008** the Hon'ble Supreme Court had held that suspicion, however high may be, can under no circumstances be held to be a substitute for legal proof. In **M.V. Bijlani Vs. Union of India in Civil**

Appeal No.8267/2004 the Hon'ble Supreme Court had held that disciplinary proceedings, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, it should not be lost sight that the Inquiry Officer performs a quasi-judicial function, who, upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. In **Makhan Singh Vs. Narainpura Co-operative ...,(1987) SCR (3) 527** **decided on 17.07.1987** it was held by the Hon'ble Apex Court that the Labour Court accepted the evidence placed before it by the management without going into question of whether the photostat copies, Exhibits M 1 to M 3 could be accepted as evidence in the absence of the originals. In **Life Insurance Corporation of India & Ors. Vs. Triveni Sharan Mishra, (2015) 1 SCC (L&S) 49** the Hon'ble Supreme Court held that awarding punishment of stoppage of increments for two years to another similarly situated employee whereas removing the respondents is a discrimination. The Applicant in the present OA has cited this judgment to support his argument

that other charged officials who were on duty on the day of raid were awarded minor punishment whereas the applicant who was on leave was given a major penalty of removal from service on the basis of statement given by the co-accused before the Police authority. The Applicant has cited the judgment of the Hon'ble Supreme Court in **Tata Engineering & Locomotive Co. Vs. Jitender PD Singh & Anr., (2001) 10 SCC 530 decided on 20.09.2000** to support the above mentioned argument.

The Applicant has also cited the judgment of the Hon'ble High Court of Judicature at Bombay in **WP No.3226/2005 in B.B. Shirsat Vs. Union of India & Ors.,** in which the principle laid down in **G.M. Tank (supra)** was reiterated and it was held that in criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond all reasonable doubt, he cannot be convicted by Court of law. On the other hand, in the departmental inquiry the penalty can be imposed on the delinquent officer on the finding recorded on the basis of 'Preponderance of Probability'.

7. Learned counsel for the respondents during the arguments cited the judgment of the Hon'ble

Supreme Court of India in **Ajay Kumar Nigam (dead) through Lrs. Vs. State of MP and Ors. In Civil Appeal No.2564/1980 decided on 06.11.1996** wherein it was held that statement of a co-accused also forms a part of the record which can be taken into account in adjudging the misconduct against the delinquent employee. In a departmental inquiry, the question, whether or not any delinquent officer is co-accused with other does not arise. In **Deputy Inspector General of Police & Anr. Vs. S. Samuthiram, (2013) 1 SCC 598** the Hon'ble Supreme Court had held that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the department.

In **R.P. Kapur Vs. Union of India & Anr., AIR 1964 SC 787**, the Hon'ble Supreme Court had held that even in case of acquittal proceedings may follow where the acquittal is other than honourable. In **G.M. Tank Vs. State of Gujarat (supra)** the principle of standard of proof of Preponderance of Probability vis-a-vis Proof beyond all reasonable doubt was reiterated and the effect of honourable acquittal was discussed. The Respondents have also cited the judgments in **Kamaladevi Agarwal Vs. State of W.B. And Ors., (2002)1 SCC 555, Nelson Motis Vs. Union of India & Anr.,**

(1992) 4 SCC 711, Commissioner of Police, New Delhi Vs. Narender Singh, (2006) 4 SCC 265= AUR 2006 SC 1800 to oppose the applicant's claim that acquittal in criminal proceedings should lead to exoneration in disciplinary proceedings.

FINDINGS:

8. We have heard the learned counsels for both the parties and perused the documents submitted by them. We have also gone through the case law cited by both the sides. The issue to be decided in the present OA is whether the applicant is entitled to reinstatement and other benefits consequent to his acquittal in the Criminal Case No.1076/RP/96 in Metropolitan Magistrate 49th Court, Vikhroli, Mumbai.

9. The charges against the applicant were that he was involved in the printing and selling of fake SPT tickets. The disciplinary proceedings have been concluded in the year 2005 with the passing of the order of the Revisionary Authority rejecting the Revision Petition of the applicant against the order passed by the Appellate Authority. The applicant had not chosen to file appeal against this order at the appropriate judicial forum challenging the decision of the Disciplinary Authority, Appellate Authority and

Revisionary Authority. In other words, the applicant accepted the punishment imposed upon him. So far as the challenge to the order passed in the disciplinary proceedings, the applicant has forfeited his claim for relief by keeping quiet for more than eight years and we are of the view that the OA seriously suffers from limitation and does not deserve to be considered. The applicant has pointed out to deficiencies in the conduct of the disciplinary proceedings, but he should have approached the appropriate forum within the limitation period to agitate on the orders passed by the Disciplinary Authority, Appellate Authority and Revisionary Authority.

10. In numerous judicial pronouncements in the matter of limitation, it has been held that a person who chooses to sleep over his rights is not entitled to relief at a belated stage.

[Chairman, U.P. Jal Nigam & Anr. Vs. Jaswant Singh & Anr., (2006) 11 SCC 464, Bhoop Singh Vs. Union of India (supra), Ratan Chandra Samanta Vs. Union of India & Ors., 1993 (1) SC SLJ 410, Union of India & others Vs. M. K. Sarkar reported in 2010 (2) SCC 59, Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass (2) & Others [2011 (4) SCC 374, Jagdish Lal Vs. State of Haryana [1977 (6) SCC 538, Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others [2014 (1) AI SLJ 20].

11. We are, therefore, not inclined to consider the issue of illegality and validity of the order passed by the Disciplinary Authority, Appellate Authority and Revisionary Authority. We have examined the case laws cited by the applicant pertaining to illegality and validity of the disciplinary proceedings. (*Union of India Vs. H.C. Goel (supra), Roop Singh Negi (supra), Kuldeep Singh Vs. The Commissioner of Police dated 17.12.1998, Makhan Singh (supra), M.V. Bijlani (supra) and Tata Engineering & Locomotive Co.(supra)* But they are not applicable in the present case since the applicant has not filed his appeal at the appropriate judicial forum within the period of limitation. The Applicant's reliance on *A. Sagayanathan & Ors. Vs. Divisional Officers, AIR 1991 SC 424* is also not acceptable in view of the numerous judicial pronouncements that those who sleep over their rights are not entitled to knock at the doors of justice in a belated manner.

12. The applicant had filed a representation with the Revisioning Authority after his acquittal in the criminal court praying for reinstatement of service with all consequential benefits. It is the applicant's contention that since the facts and evidence in the departmental

proceedings as well as criminal case were similar, acquittal in the criminal case will entitle him to relief in the departmental proceedings. The Applicant has cited **G.M. Tank (Supra), Dalip Chand (Supra) and Union of India & Ors. Vs. Naman Singh Sekhawat (supra)** to support his argument. However, the respondents have rightly cited the judgment in **Kamaladevi Agarwal Vs. State of W.B. (supra), Nelson Motis Vs. Union of India & Anr., (supra), Commissioner of Police, New Delhi Vs. Narender Singh, (supra), R.P. Kapur Vs. Union of India (supra), Deputy Inspector General of Police & Anr. Vs. S. Samuthiram (supra) and G.M. Tank Vs. State of Gujarat (supra)** to reinforce the position that acquittal in a criminal case need not necessarily lead to exoneration in disciplinary proceedings.

13. The overriding principle in such matters, where a person is acquitted in the criminal case to claim relief in the departmental proceedings is that the acquittal in the criminal case should be an honourable acquittal. The question on what is an honourable acquittal has been comprehensively and succinctly dealt with in **S. Samuthiram (supra)**. Relevant paras of the said judgment are quoted herein below:

"20. This Court in Sourthern Railway Officers Assn. Vs. Union of India, (2009) 9 SCC 24 held that acquittal

in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The Court reiterated that the order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge.

21. XXX XXX XXX

22. *In a later judgment of this Court in Karnataka SRTC Vs. M.G. Vittal Rao, (2012) 1 SCC 442 this Court after a detailed survey of various judgments rendered by this Court on the issue with regard to the effect of criminal proceedings on the departmental enquiry, held that the disciplinary authority imposing the punishment of dismissal from service cannot be held to be disproportionate or non-commensurate to the delinquency.*

23. *We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non-examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the prosecution. Considering the facts and circumstances of the case, the possibility of winning over PWs 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the prosecution had not examined Head Constable Adiyodi (No.1368) and Peter (No.1079) of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with PWs 1 and 2, husband and wife, to Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW 1 (complainant husband) is found in Ext. P-1 complaint. Further, the doctor, PW 8 has also clearly stated before the enquiry officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.*

24. *The meaning of the expression "honourable acquittal" came up for consideration before this Court*

in RBI Vs. Bhopal Singh Panchal, (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. *In R.P. Kapur Vs. Union of India, AIR 1964 SC 787 it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam Vs. Raghava Rajgopalchari, 1972 SLR 44 (SC) this Court quoted with approval the views expressed by Lord Williams. J. in Robert Stuart Wauchope Vs Emperor, which is as follows: (Raghava case, SLR 47, Para 8)*

"8. ... The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted". (Robert Stuart case, ILR pp. 188-89).

26. *As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim*

any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

14. In the present OA, acquittal of the applicant by criminal court cannot be treated as an honourable acquittal. The Metropolitan Magistrate in 49th Court, Vikhroli, Mumbai has simply stated that the prosecution had examined only one witness. The PW 1 had narrated about the raid conducted by him along with his senior and associates and he had lodged FIR against the accused. In his evidence, he agreed that at the time of affecting raid, fake tickets were not on the counter for selling to the passenger. To corroborate his evidence, prosecution has not examined any other witness from the raiding

party.

15. It is quite clear from the above mentioned judgment of the Metropolitan Magistrate that the acquittal was because of reluctance on the part of the prosecution to examine the relevant witnesses from the raiding parties and the Metropolitan Magistrate Court held that evidence on record was not sufficient to prove the guilt of the accused. The fact that although fake tickets were not available in the counter, but were found in the locker along with a Ticket Printing machine was overlooked by the Metropolitan Magistrate.

16. No detailed examination of the case was done against the accused nor was the case filed by the prosecution decided on merits. Going by the touchstone of the principle laid down by the Hon'ble Apex Court in ***S. Samuthiram*** case, it is difficult to conclude that the accused (the applicant in the present OA) was acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the applicant. The Hon'ble Supreme Court is quite strict in interpreting the effect of honourable acquittal.

In ***Reserve Bank of India Vs. Bhopal Singh Panchal, (1994) 1 SCC***

541. the Hon'ble Apex Court has held as under:

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

17. Therefore, considering the facts and points of law involved as well as judicial pronouncements, we are of the view that mere acquittal in the criminal case has not conferred any right on the applicant to claim exoneration in the disciplinary proceedings. The attempt of the applicant to reopen his case consequent to his acquittal has no legal foundation. As mentioned in para 9 above by us, the applicant has already forfeited his right to challenge the orders of the Disciplinary Authority, Appellate Authority and the Revisionary Authority by his delay in filing the case in this Tribunal or any other appropriate judicial forum immediately after the conclusion of the disciplinary proceedings against him.

18. The Original Application is accordingly dismissed as devoid of merits. No order as to costs.

(A.J. Rohee)
Member (J)

(Dr. Mrutyunjay Sarangi)
Member (A)

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