

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AMHEDABAD BENCH**

Original Application No. 750/2016 with M.A. No. 603/2016  
Ahmedabad, the 18<sup>th</sup> day of July, 2019.

**CORAM :**

**Hon'ble Ms. Naini Jayaseelan, Member (Administrative)**  
**Hon'ble Sh. M.C.Verma, Member (Judicial)**

Shri Dipakbhai S/o Shri Hirabhai Baraiya, Aged 54 years, working as Peon – Group D employee – in the office of the respondents, residing at Vadhvan, Siyani Pol Bahar, Nr. Bhangi Vas, Mahakali Krupa, Vadhvan, Dist. Surendranagar – 363 030. **... Applicant**

**[By Advocate : Shri M S Trivedi]**

**Versus**

- 1 The Regional Director, O/o. R.D. Employees State Insurance Corporation, Ministry of Labour & Employment, Government of India, Ashram Road, Ahmedabad – 380 009.
- 2 The Deputy Director, O/o. Deputy Director, Employees State Insurance Corporation, Ministry of Labour & Employment, Government of India, Ashram Road, Ahmedabad – 380 009.

**... Respondents**

**[By Advocate : Shri Joy Mathew]**

**O R D E R (ORAL)**  
**[ PER : M C Verma, Judicial Member]**

1. Being aggrieved by denial of promotion to the applicant on the ground that departmental proceedings are pending against him and also by the act of respondents of non completion of departmental proceedings initiated in year 2005, instant OA has been preferred by applicant Shri Dipakbhai for the following reliefs:

*“(A) That the Hon’ble Tribunal be pleased to allow this petition.*

*(B) That the Hon’ble Tribunal further be pleased to hold/declare that the impugned action / decision of the respondents conveyed vide communication No. 37/C/11/15/146.03 Vig. Dated 26.3.2012, issued by the respondents regarding denial of promotion to the applicant as LDC due to pending departmental proceedings / inquiry against him is ex-facie illegal, arbitrary and unjust.*

*(C) That, the Hon’ble Tribunal further be pleased to hold/declare that action on the part of the respondents not completing / finalising the departmental proceeding initiated against the applicant in pursuant to memorandum dated 23.6.2005 (Annexure A/2) even after a period of 11 years from the date of issuance of said memo is illegal, arbitrary and unjust.*

*(D) That, the Hon’ble Tribunal further be pleased to hold / declare that the proceedings initiated against the applicant vide memo dated 23.6.2005 are deemed to be dropped/closed and the respondents may be directed to give / extend his due legal claim without further delay and which are illegal and arbitrary withhold by the respondents with interest and with exemplary costs.*

*(E) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”*

2. Brief facts of applicant’s case, as has been set out in the OA are that he joined services of the respondents as Peon, in year 1991 and was regularised as such in year 2003. That he was placed under suspension on 19.12.2003, which was revoked on 1.7.2005 and he was taken on duly. That against him and against LDC Sh.S.D. Mehta a complaint, before the ACB was instituted by one Shri S.U. Vadodariya. That a trap was arranged by ACB and ACB filed Criminal Case, No. 1/2004 against him and against LDC Sh. S.D. Mehta before the Fast Track Court Surendranagar. That said Criminal Case was for the offence under Prevention of Corruption

Act, 1988 having allegations that he had taken a bribe of Rs. 200/-, from Shri S.U. Vadodariya. That respondents issued a Memo of Charges, dated 23.06.2005 (Annex.A/2) to the applicant stating that on 9.12.2003, he, while working as Peon at B.O., Surendranagar had taken a bribe of Rs. 200/-, from Shri S.U. Vadodariya for releasing Rs. 26,277/-. That he since has been acquitted, on 17.3.2008, in aforesaid criminal case by judgment passed by the Court of Special Judge, Surendranagar. That his juniors were promoted as LDC but due to pendency of departmental & criminal proceedings, he vide communication dated 26.3.2012 (Annex.A/1) was denied his ACP/MACP by respondents. That pursuant to his representation also it has been replied that applicant's name could not be acceded for promotion due to pending departmental inquiry. Applicant pleading himself as aggrieved by the inaction on the part of respondents in not finalising the departmental proceedings and for denial of promotion has preferred this O.A.

3. Respondents filed their reply stating that the departmental inquiry is yet to be finalised and even he might have been acquitted by the Special Judge, Surendranagar in the Criminal case but pending departmental proceedings, levelled against him qua impugned Memo, he is precluded for promotion as LDC. It is also pleaded that after conclusion of departmental inquiry if applicant is exonerated, he will be considered for promotion as per rules and the Department has adopted sealed cover procedure in such like cases. Respondents categorically have pleaded that the delay conclusion of departmental inquiry is not at all deliberate or intentional but was due to administrative exigencies, however, the fact remains that, at present only one or two witnesses remains to be examined. Vide pleading made Respondent-department also sought some reasonable time to

conclude the inquiry. Rejoinder to reply has been filed by applicant stating that though the criminal case has been finalised in 2008 but still the respondents did not have conclude the inquiry.

4. The case, on request of counsel for parties to lis was taken up today for final hearing. Mr. M.S.Trivedi, Advocate, appearing for applicant urged to drop/close the departmental proceedings initiated against the applicant vide Memo dated 23.6.2005. He vehemently contended that Memorandum of Charge was issued in year 2005 and we are in the year 2019 now, that respondents have not made any progress in the departmental inquiry and keeping in view the inordinate delay, lethargic attitude of respondents and considering the fact that applicant has faced trial on the same set of facts and the Trial had ended into acquittal 13.07.2008, it needs that departmental inquiry be quashed. Learned Counsel to buttress his submission has placed reliance on decisions of this Tribunal, of Hon'ble High Court of Madras and of Hon'ble the Supreme Court, namely, (i) *Yogesh Ochhaval Shah Vs. UOI and Ors, Dated 11/10/2006 of CAT Ahmedabad Bench* (ii) *A.A.Laxma Reddy Vs. Commissioner, Customs, Dt. 27/7/2007 of CAT, Hyderabad Bench* (iii) *G.M. Tank Vs. State of Gujarat and Anr. Dated 10.4.2006 of Hon'ble Supreme Court, delivered in Appeal (C) 2582/2006, and (IV) Parameswaran V. Vs. Presiding Officer, CGIT, Chennai, dated 4.12.2009 of Madras High Court.*
5. Learned counsel Shri Joy Mathew rebutted the submissions of applicant that there is no progress in the inquiry proceedings and submits that only one or two witnesses remain to be examined in the Inquiry. He, to apprise regarding chronological events of inquiry proceedings drew our attention to page nos. 39 and 48 of O.A. and to proceedings order dated 12.11.2010 of the inquiry proceedings

and added that previously due to criminal trial and for other reasons, the matter could not be concluded. He argued that it is correct that applicant has been acquitted but the acquittal in criminal trial can alone not be a ground for quashing the departmental proceedings. He also drew our attention to statement made at Bar, during hearing of this OA on 24.4.2019, by learned counsel for applicant that applicant does not want to take any benefit from the judgment. Learned counsel placed reliance upon decisions (1)*Uttaranchal Road Transport Corporation and Ors. Vs. Mansaram Nainwal*, dated 28.07.2006 delivered by Hon'ble Supreme Court in C.A. No. 3179/2006. (2)*Govt. of Andhra Pradesh & Ors. Vs. V. Appala Swamy* (2007) 14 SCC 49.

6. Have gone through the record and the decisions relied upon by adversary parties. The Hon'ble Supreme Court has held in *Dalbir Singh Vs State* AIR 1979 SC 1384 that every decision has three basic ingredients, i) the finding of material facts, direct and inferential; 2) the principles of law applicable to the problems disclosed by the facts, and 3) the judgment based on the combined effect of 1 & 2. For the precedents, ingredient 2 is the vital element. It needed in the ratio decidendi. We did find that the ratio decidendi in decisions relied upon by the parties to lis does not thoroughly cover the issue that has erupted in instant OA. Regarding the parameters that govern the exercise of judicial review in disciplinary matters it is recent decision, dated 11/07/2019 of Hon'ble Supreme Court in case titled *UOI & Ors. Vs. Sitaram Mishra and Anr.* passed in Civil Appeal Nos. 6183 of 2010, which hold the field.
7. In said case of *Sitaram Mishra (cited ibid)* the first respondent was a Head Constable deployed at Ractiacherra, Police Station Jirania, West Tripura, he was tried in criminal trial for the offence u/s 304 IPC

on the basis of allegations that while he was cleaning the barrel of his loaded 9 MM carbine in the barracks, he did not remove the magazine and proceeded to clean the carbine carelessly and as a result, eight rounds were fired and one of the bullets hit a co-constable who was present in the barracks & he died as a result of the injuries which were sustained. A disciplinary proceeding against the first respondent was also initiated and the charge in disciplinary proceeding was in following terms: “That, No.710170325 HC *Sita Ram Mishra*, while serving as a Head Constable (GD) in “B” Coy, duct and remissness in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949, punishable under Rule 27(a) of CRPF Rules, 1955, in that he on 18.02.1998 at about 0945 hours, started cleaning barrel of his loaded 92 MM Carbine (No.15356032, Butt no.13) in men barrack of B/41 Bn.CRPF, carelessly without removing its magazine on his bed. In this process of cleaning, 08 Rounds got fired automatically and one of these bullet hit No.901310271 Ct. Sailesh Kumar Tiwari who was present therein the barrack. No.901310271 Ct. Sailesh Kumar Tiwari subsequently succumbed to his injuries at about 1020 hours same day in Civil Hospital, Jirania, Agartala.

7.1 The first respondent of said case was acquitted in criminal trial on 5th January 2002 but he was held to be guilty of misconduct by the disciplinary authority, as a result of which the penalty of dismissal from service was imposed. The appeal as well as the revision petition filed by the first respondent was dismissed. The writ petition filed by the first respondent under Article 226 of the Constitution to challenge his dismissal from service was dismissed by a learned Single Judge, however, in a writ

appeal; the Division Bench interfered with the judgment of the learned Single Judge on the ground that the charge of misconduct was not established. The order of DB was impugned by UOI before Hon'ble Supreme court and Hon'ble Supreme while setting aside the impugned order also observed as under :-

*“ 9. The disciplinary authority found that the charge of misconduct was sustainable on the basis of the evidence on the record. The Division Bench of the High Court reversed the judgment of the learned Single Judge primarily on the basis of the depositions of PW 5 and PW 6 to the effect that the 9MM carbine was disassembled. The High Court was manifestly in error in re-appreciating the evidence which was adduced during the disciplinary enquiry. The issue, in the exercise of judicial review against a finding of misconduct in a disciplinary enquiry, is whether the finding is sustainable with reference to some evidence on the record. The High Court can, it is well-settled, interfere only in a situation where the finding is based on no evidence. In such a situation, the finding is rendered perverse. In the present case, the impugned judgment of the Division Bench adverts to the statement of the first respondent of the circumstances in which the death of his colleague occurred. The relevant extract is thus:-----.*

*12. The second ground, which has weighed with the High Court, is equally specious. A disciplinary enquiry is governed by a different standard of proof than that which applies to a criminal case. In a criminal trial, the burden lies on the prosecution to establish the charge beyond reasonable doubt. The purpose of a disciplinary enquiry is to enable the employer to determine as to whether an employee has committed a breach of the service rules.-----.*

*The fact that the first respondent was acquitted in the course of the criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings.---*”

8. In case in hand the applicant is seeking quashing of departmental proceedings pending against him, on the ground that respondents could not complete the same even though period of 11-12 year has passed after

its initiation and that on same set of allegation applicant has been acquitted by court in criminal trial. As far first ground relates the delay cannot exclusively be attributed to the respondent, moreover at present only one or two witnesses' remains to be examined in. departmental proceedings.

9. It is settled proposition of law that criminal trial and departmental inquiry can proceed on same set of allegations. In case in hand the departmental proceedings and the criminal case may be based on the same set of facts but it can't be said at this stage that the evidence in both the proceedings is common without there being a variance and whether the acquittal is on merit or otherwise also remains a factor to be taken note of by the inquiry officer and by the disciplinary authority. In present case applicant did place on record operative portion of judgment of acquittal only, he was directed to place copy of entire judgment on record but it was submitted that when applicant does not want to derive any benefit from the said judgment, it would not be right to direct the applicant to place the judgment on record. The statement made by counsel for applicant, at Bar on 24/4/19 reads “ *that applicant does not want to take any benefit from the said judgment and therefore it is not necessary to place copy of entire judgment on record. He argued that OA based on plea that DE was initiated in year 2005 and has not yet been concluded. He also submits that when he does not want to derive any benefit from the said judgment, it would not be right to direct the applicant to place the judgment on record.*”

10. No doubt in present case applicant had been acquitted and the acquittal in criminal trial, if the trial is on the basis of same set of allegation on which departmental proceedings is there, have some bearing but it cannot be the sole consideration to quash the departmental proceedings or to exonerate the delinquent. The Hon'ble Supreme Court has reiterated in catena of decisions that the acquittal in the course of the criminal trial by



itself is not a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. A disciplinary enquiry is governed by a different standard of proof than that which applies to a criminal case. In a criminal trial, the burden lies on the prosecution to establish the charge beyond reasonable doubt. The purpose of a disciplinary enquiry is to enable the employer to determine as to whether an employee has committed a breach of the service rules.

11. Having taken note of entirety we, in facts and circumstances of the case in hand, are not inclined to quash the departmental proceeding, however, we want to dispose of the OA with direction to the respondents. The respondent's authorities are directed to complete expeditiously, the whole exercise qua departmental proceeding and in any case within four months after receipt of copy of this order. By final decision we meant conclusion of departmental inquiry and final decision of Disciplinary Authority. It is hoped that every cooperation shall be rendered by the applicant for conclusion of the inquiry and if the applicant does not cooperate, department may proceed in his absence as per rules to complete the inquiry and if needed, may conduct the inquiry on day to day basis. After final decision on departmental proceeding necessary order qua Promotion case of the applicant shall be passed as expeditiously as possible.

12. O.A. stands disposed of with above directions. Pending MA No. 331/2018 & MA No. 603/2016 also stand disposed of. No order as to cost.

(M C Verma)  
Member(J)

(Naini Jayaseelan)  
Member(A)

mehta