

ORDER SHEET

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL – Cum – LABOUR COURT,
JABALPUR (M.P.)

Date of Order of Proceeding	Order Or Proceeding with Signature of Presiding Officer	Remark
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Case No. CGIT/LC/R/03/2016
Ramdeen Dayma V/S State Bank of India

17.10.2024	<p><u>ORDER ON PRELIMINARY ISSUE</u></p> <p>The Preliminary Issue is as follows :-</p> <p><i>Whether, the departmental inquiry conducted against the workman is legal and proper ?</i></p> <p>In his statement of claim, the workman has alleged that the management issued charge-sheet against him on 19.01.2009 with respect to seven charges of alleged misconduct out of which charge no. 2, 3 and 4 in the charge-sheet were adjudicated by Court of Judicial Magistrate in a criminal trial and were held not proved against the workman. These charges were regarding alleged misappropriation of different amounts relating to the different account holders mentioned in the charge-sheet. The management conducted a departmental inquiry, which was a mere formality. The inquiry was conducted illegally without following principles of natural justice and without giving the workman opportunity to cross examine management witnesses, examined during the inquiry. It is also alleged that the Inquiry Officer acted with partiality while conducting inquiry and acted like a prosecutor, he did not grant adequate opportunity to the workman to defend himself during the inquiry, the workman was not given opportunity to lead evidence in his defence by way of examining himself or his witnesses.</p> <p>The case of management, on this issue is that, there is no procedural illegality or material irregularity in conducting the inquiry, the workman was issued a charge-sheet of misconduct. Before that, a show cause notice was issued against the workman with respect to the allegations and the workman had submitted his reply suppressing the material facts. It was after that the charge-sheet levelling charges of misconduct was issued against the workman. The workman was given full opportunity to defend himself during the inquiry. The</p>	
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	<p>workman pleaded not guilty.</p> <p>Both the sides have filed affidavits as examination in chief. They have been cross examined by their adversary. Management has filed the original inquiry papers also.</p> <p>I have heard argument of Shri Akash Choudhary learned Counsel for workman and learned Counsel Shri Pranay Choubey. I have gone through the record as well.</p> <p>Learned Counsel for workman has submitted that, the inquiry conducted was not legal and proper. Charge no.- 2, 3 & 4 were subject matter of a criminal trial based on these charges, before the Court of Judicial Magistrate and on the same evidence, these charges were held not proved against him. The management committed illegality in not dropping these charges. It is further submitted that no opportunity of cross examination of PW/1, examined by management, during the inquiry was given to the workman. Also that, the workman was not given opportunity to produce evidence on his behalf during the inquiry and without giving this opportunity, the inquiry was abruptly closed, resulting in prejudice to him. It is further submitted that no sufficient time was given to defence to engage a new defence assistant, when the earlier defence assistant refused to appear.</p> <p>On the other hand, learned Counsel for management submits that, records will show that the inquiry was conducted according to the rules and procedure. There is no such material irregularity or illegality in the departmental inquiry, resulting into prejudice to the workman. Learned Counsel for management has further submitted that firstly, the acquittal from the charges as mentioned above was not an honourable one rather it was by way of benefit of doubt. Secondly, the workman was given full opportunity to defend himself and cross examine the witnesses produced during the inquiry, but he opted not to cross examine them. Also, it was submitted that, defence itself did not produce any evidence during the inquiry and that proper as well</p>	

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	<p>sufficient opportunity and time was given to the workman.</p> <p>As regards, the first argument from the workman side that, the charge-sheet included those charges also which were subject matter before Criminal Court, in which he was acquitted after trial, learned Counsel for workman has referred to following judgments :-</p> <ol style="list-style-type: none"><li data-bbox="397 728 1203 822">1. <i>Jeevan Prakash Pandurang Mukashe Vs. State Bank of India, (1983) 2 LLN 250 BOM.</i><li data-bbox="397 857 1203 997">2. <i>Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd and Another, (1999) 3 SCC 679 para 34.</i> <p>This extract is taken from <i>M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810 : 1999 SCC OnLine SC 360 at page 694</i></p> <p><i>“31. On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra v. Chandrabhan Tale [(1983) 3 SCC 387 : 1983 SCC (L&S) 391 : 1983 SCC (Cri) 667 : (1983) 3 SCR 337 : AIR 1983 SC 803] struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in Fakirbhai Fulabhai Solanki v. Presiding Officer [(1986) 3 SCC 131 : 1986 SCC (L&S) 411 : (1986) 2 SCR 1059 : AIR 1986 SC 1168] and it was held in that case that if an employee could not attend the</i></p>	

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	<p><i>departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Das Shrivastava v. State of M.P. [(1973) 1 SCC 656 : 1973 SCC (L&S) 289 : AIR 1973 SC 1183]”</i></p> <p>3. G.M. Tank Vs. State of Gujarat, (2006) 5 SCC page 446 para 30.</p> <p>This extract is taken from G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121 : 2006 SCC OnLine SC 569 at page 460</p> <p><i>“30. The judgments relied on by the learned counsel appearing for the respondents are 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 its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that 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.”</i></p> <p>It has been laid down in these referred cases that, when the witnesses are identical and same in the criminal trial and departmental proceedings and were held not reliable by the Criminal Court, charges cannot be proceeded against the workman in the departmental inquiry, on the</p>	

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	<p>basis of statements of same witnesses in the inquiry.</p> <p>Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. See: T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255 3.4.</p> <p>Disciplinary proceedings, however, being quasi-criminal in nature, there should be <i>some evidence</i> 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, we cannot lose sight of the fact that the enquiry officer performs a quasi judicial function, who upon analyzing 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. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. See: (i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10 , 11, 12 & 13). (ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25) 3.5.</p> <p>In the cases noted below, it has been repeatedly ruled by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that if the same set of facts gives rise to both civil and criminal liability, both the proceedings i.e. civil and criminal may go on simultaneously. See: (i) Medchi Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd., 2000 (2) JIC 13 (SC) (ii) Lalmani Devi vs. State of Bihar, 2001 (1) JIC 717 (SC) (iii) Amar Pal Singh vs. State of U.P., 2002 (1) JIC 798 (All) (iv) Atique Ahmad vs. State of U.P., 2002 (2) JIC 844 (All) (v) Ajeet Singh vs. State of U.P., 2006 (6) ALJ 110 (All-F.B.) 3.6. Difference between disciplinary & criminal proceedings: In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B.</p>	

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	<p>Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously.":</p> <p>In the case of T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255, it has been ruled by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.</p> <p>Furthermore, it is settled proposition of law that, the department may proceed in departmental inquiry if the acquittal is by way of giving benefit of doubt because the standard of proof required in a criminal trial and departmental proceedings is different</p> <p>In the cases of Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425, the distinction between departmental enquiry and</p>	

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	<p>criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules 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 accused beyond reasonable doubts, 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. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "</p> <p>Acquittal in criminal trial has no bearing or relevance on disciplinary proceeding as the standard of proof in both the cases are different : In the case noted below, the accused was a Deputy Manage (cash) of the State Bank of India in Bangalore. He was prosecuted for embezzlement and was acquitted by Court by giving benefit of doubt but was held guilty in departmental proceeding and dismissed from service. The Supreme Court held that so far as the submission on behalf of the respondent delinquent officer that as he has been</p>	

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	<p>acquired in a criminal court and therefore, he cannot be held guilty in a disciplinary proceeding is concerned, the aforesaid has no substance. From the judgment and order passed by the criminal court, it appears that he has been given the benefit of doubt. Even otherwise the standard of proof which is required in a criminal case and that of the disciplinary proceedings is different. The fact the criminal court acquitted the respondent by giving him the benefit of doubt will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. As held by this Court in a catena of decisions the standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. See: (i) Judgment dated 20.05.2022 of the Supreme Court in Civil Appeal No. 3490/2022, State Bank of India Vs. K.S. Vishwanath. (ii) Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jaya Bhay, 2022 LiveLaw (SC).</p> <p>Acquittal in criminal case not to have any impact on disciplinary proceedings in the absence of any service Rules: Mere acquittal of an employee by a criminal Court has no impact on the disciplinary proceeding initiated by the Department. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal Court acquits an employee honorably, he could be reinstated. The issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Acquittal of delinquent even if honorable as such does not in absence of any provision in service rules for reinstatement, confer right on delinquent 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</p>	

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	<p>disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and 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. See: Deputy Inspector General of Police and Anothers Vs. S. Samuthiram, AIR 2013 SC 14 (paras 20, 23 & 24). 3.11. Departmental proceeding can go on despite acquittal: Departmental proceeding can proceed even though person is acquitted when the acquittal is other than honorable because very often criminal cases end in acquittal for want of proof beyond reasonable doubt. See: SBI Vs. R. Periyasamy, (2015) 3 SCC 101.</p> <p>In the case in hand, since the charges were held not proved beyond reasonable doubt, the department is justified in holding inquiry with respect to such charges. Hence, this argument of learned Counsel for workman fails.</p> <p>As regards the second argument from the workman side, perusal of inquiry proceedings substantiate the argument that defence was not given opportunity to cross examine management witnesses. It further comes out from perusal of inquiry proceedings that, the defence was deprived of opportunity to cross examine PW/1 examined by management.</p> <p>Learned Counsel for workman has referred to following judgments in this respect :-</p> <ol style="list-style-type: none">1. <i>P. Erajan Vs. DIG Police, (2005) 4 CTC 202.</i>2. <i>Phool Bai Vs. State of M.P., ILR 2009 MP 1631.</i> <p>In these cases, it has been held not giving opportunity to defence to cross examine management witnesses examined during the inquiry vitiates the inquiry.</p> <p>Regarding the third leg of argument from the side of workman, that no sufficient opportunity was given to</p>	

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	<p>him to lead his evidence in defence, the inquiry proceedings reveal that after the management completed its evidence the defence sought time to get documents from his defence assistant and have his side in the inquiry, this prayer was refused and the inquiry was concluded without asking the defence, whether he proposed any evidence from his side. No doubt, this action on the part of the Inquiry Officer has resulted in prejudice to the defence.</p> <p>On the basis of above discussion, the inquiry against the workman held vitiated in law. Preliminary issue is answered accordingly.</p> <p>Management is given opportunity to prove the charges before this Tribunal.</p> <p>List on 17.01.2025 for evidence of management, if any, in form of affidavits/documents on charges.</p> <p>Upload this order.</p> <p style="text-align: right;">Presiding Officer</p>	