Supreme Court of India Capt.M. Paul Anthony vs Bharat Gold Mines Ltd. & Anr on 30 March, 1999 Author: S Ahmad Bench: S. Saghir Ahmad, V N Khare. PETITIONER: CAPT.M. PAUL ANTHONY ..

Vs.

RESPONDENT: BHARAT GOLD MINES LTD. & ANR.

DATE OF JUDGMENT: 30/03/1999

BENCH: S. Saghir Ahmad, & V N Khare.

JUDGMENT: S. SAGHIR AHMAD, J. Leave granted. Whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously is a question which crops up perennially in service matters and has once again arisen in this case in the following cirucmstances. Bharat Gold Mines Ltd. (Respondent No. 1) is a Govt. undertaking at Kolar Gold Fields in Karnataka, where the appellant was appointed as a Security Officer on 31.10.1983. On 2nd of June, 1985, a raid was conducted by the Superintendent of Police at the house of the appellant from where a mining sponge gold ball weighing 4.5 grams and 1276 grams of 'gold bearing sand' were recovered. Thereafter, on the same day, a First Information Report was lodged at the Police Station and a criminal case was registered against the appellant, who was placed under suspension on 3.6.1985. The next day, namely, on 4th of June, 1985, a charge-sheet was issued proposing a regular departmental inquiry with regard to the recovery of the above articles from his house. On 11th of June, 1985, the appellant made a representation to the Disciplinary Authority denying the allegations made against him in the charge sheet and pleaded that the entire episode was a concoction. He prayed that the departmental proceedings initiated against him may be dropped or may, in the alternative, be postponed till the conclusion of the criminal proceedings against him on the basis of the First Information Report lodged against him at the Police Station on 2.6.1985. The representation was rejected on 19.6.1985 and the appellant was informed that the disciplinary proceedings would be held against him on 1.7.1985. In the meantime, the appellant filed Writ Petition No. 10842 of 1985 in the Karnataka High Court for a direction to restrain the respondents from proceeding with the disciplinary inquiry till the conclusion of the criminal case as the appellant's defence was likely to be prejudiced. This Writ Petition was disposed of by the High Court on 19.8.1985 and a direction was issued to the respondents to consider and dispose of the appellant's appeal filed against the order of suspension but liberty was given to the respondents to defer the disciplinary proceedings if it was found expedient so to do. The respondents did not defer the departmental proceedings and continued the proceedings which the appellant could not attend on account of his ill-health and financial difficulties which compelled him to shift to his home-town in Kerala. The respondents were informed by a number of letters supported by medical certificates about his illness with a request for staying the departmental proceedings and await the result of the criminal case. But the Inquiry Officer

rejected the request and recorded his findings on 10.5.1986 holding the appellant guilty. These findings were accepted by the Disciplinary Authority and by order dated 7th June 1986, the appellant was dismissed from service. On 3rd of February, 1987, judgment in the criminal case was pronounced and the appellant was acquitted with the categorical findings that the prosecution had failed to establish its case. This judgment was communicated by the appellant to the respondents on 12.2.1987 with a request that he may be reinstated, but respondents, by their letter dated 3.3.1987, rejected the request on the ground that the appellant had already been dismissed from service on the completion of the departmental inquiry which was conducted independently of the criminal case and, therefore, the judgment passed by the Magistrate was of no consequence. The order of dismissal passed by the respondents was challenged in a departmental appeal which was rejected by the Appellate Authority on 22.7.1987. It was, at this stage, that the appellant approached the High Court through a Writ Petition under Article 226 of the Constitution challenging the validity of the order of dismissal on various grounds, including that the departmental proceedings based on the same set of facts on which the criminal case was launched against him, ought to have been stayed awaiting the result of the criminal case. It was also pointed out that since the appellant had already been acquitted and the prosecution case against the appellant based on the "raid and recovery" which also constituted the basis of the departmental proceedings, had not been found to be true, he was entitled to be reinstated in service. The Writ Petition was allowed by a Single Judge of the High Court on 26.9.1995 with the finding that the departmental proceedings and the criminal case being based on the same set of facts, departmental proceedings should have been stayed till the result of the criminal case and since in the criminal case the appellant had already been acquitted and the prosecution case was not found established, the respondents could not legally refuse reinstatement or the consequent back-wages to the appellant. While directing reinstatement of the appellant, the High Court gave liberty to respondents to initiate fresh proceedings against the appellant after perusing the judgment passed in the criminal case. This judgment was, however, set aside by the Division Bench on 17th September, 1997 in a letters patent appeal filed by the respondents. It is this judgment which is under appeal before us. Learned counsel for the appellant has contended that the respondents having themselves launched the criminal case were not justified in proceeding with the departmental inquiry which was based on the same set of facts and ought to have stayed those proceedings till the conclusion of the criminal case. Since the basis of action in both the cases, namely, the departmental proceedings and the criminal case, was the raid conducted by the Superintendent of Police at the residence of the appellant from where a recovery was also allegedly made, the departmental proceedings were liable to be stayed as the facts and the evidence in both the proceedings were common. In these circumstances, the appellant, it is contended, was justified in requesting the respondents to stay the departmental proceedings and on the refusal of the respondents to stay the proceedings, the appellant was justified in not participating in those proceedings as his defence was likely to be prejudiced. It is also contended that the appellant was

ill and for that reason also the departmental proceedings ought to have been stayed till he had completely recovered. It is also submitted that the appellant who had been placed under suspension was not being paid the Subsistence Allowance with the result that he fell into serious financial difficulties and could not undertake any journey from his home-town in Kerala to Kolar Gold Fields in Karnataka for participating in the departmental proceedings. The Division Bench, it is contended, was not justified in interfering with the judgment passed by the Single Judge who had found it as a positive fact that the departmental proceedings and the criminal case were based on the same set of facts and the evidence in both the cases was common. Learned counsel for the respondents has, however, contended that the respondents were under no obligation to stay the departmental proceedings and await the result of the criminal case as there was no legal bar in holding the departmental proceedings simultaneously with the proceedings in the criminal case, particularly as the level of proof in both the proceedings is different and the purpose with which the departmental proceedings are conducted is also not identical with the purpose with which the criminal case is prosecuted for an offence committed by the employee. This question, as observed earlier, is of a perennial nature and has arisen more often than not in spite of the judicial pronouncements, specially by this Court, having settled the question and provided the answer. Still, the problem is raised either by the employer or by the employee in one or the other form. In the instant case, the order of dismissal had already been passed before the decision of the criminal case which ultimately resulted in the acquittal of the appellant. Whether the acquittal coupled with other circumstances, specially ex-parte proceedings, of the case, will have the effect of vitiating the departmental proccedings or the order of dismissal passed against the appellant, is the question which is to be considered in this appeal. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental procedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance. The first decision of this Court on the question was rendered in Delhi Cloth & General Mills Ltd. vs. Kushal Bhan 1960 (3) SCR 227 = AIR 1960 SC 806 = 1960 LLJ 520 (SC),

in which it was observed as under : "It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Bimal Kanta Mukherjee vs. M/s Newsman's Printing Works 1956 LAC 188, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced." This was followed by Tata Oil Mills Company Ltd. vs. Workmen 1964(7) SCR 555 = AIR 1965 SC 155, in which it was, inter alia, laid down as under : "There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in the Delhi Cloth and General Mills Ltd. vs. Kushal Bhan, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case." The question cropped up again with a new angle in Jang Bahadur Singh vs. Baij Nath Tiwari 1969 (1) SCR 134 = AIR 1969 SC 30, as it was contended that initiation of disciplinary proceedings during the pendency of a criminal case on the same facts amounted to contempt of court. This plea was rejected and the Court observed as under: "The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers." These decisions indicate that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a charge framed against the employee in a domestic inquiry is being tried in a criminal court. The case law was reviewed by this Court in Kusheshwar Dubey vs. M/s Bharat Coking Coal Ltd. & Ors. 1988 (4) SCC 319 = 1988 Supp. (2) SCR 821 = AIR 1988 SC 2118 and it was laid down as under : "The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the

criminal case. In the latter class of cases, it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline." The Court further observed as under : "In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal." Then came the decision in Nelson Motis vs. Union of India & Ors. (1992) 4 SCC 711 = 1992 Supp.(1) SCR 325 = AIR 1992 SC 1981, which laid down that the disciplinary proceedings can be legally continued even where the employee is acquitted in a criminal case as the nature and proof required in a criminal case are different from those in the departmental proceedings. Besides, the Court found that the acts which led to the initiation of departmental proceedings were not exactly the same which were the subject matter of the criminal case. The question was not considered in detail. The Court observed : "So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceedings. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmenal disciplinary proceeding were not exactly the same which were the subject matter of the criminal case. (Emphasis supplied) The entire case law was reviewed once again by this Court in State of Rajasthan vs. B.K. Meena & Ors. (1996) 6 SCC 417 = AIR 1997 SC 13 = 1997 (1) LLJ 746 (SC), wherein it was laid down as under :"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situation, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced.' This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving

questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be "determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. (AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earlist possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necesasry to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view of the various principles laid down in the decisions referred to above." This decision has gone two steps further to the earlier decisions by providing : 1. The 'advisability', 'desirability' or 'propriety' of staying the departmental proceedings "go into the scales while judging the advisability or desirability of staying the disciplinary proceedings" merely as one of the factors which cannot be considered in isolation of other circumstances of the case. But the charges in the criminal case must, in any case, be of a grave and serious nature involving complicated questions of fact and law. (2) One of the contending considerations would be that the disciplinary enquiry cannot – and should not be – delayed unduly. If the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry even though the disciplinary proceedings were held over at an earlier

stage. It would not be in the interests of administration that persons accused of serious misdemeanour should be continued in office indefinitely awaiting the result of criminal proceedings. In another case, namely, Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan (1997) 2 SCC 699 = AIR 1997 SC 2232, again it was held that there is no bar to proceed simultaneously with the departmental inquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of fact and law. The conclusions which are deducible from various decisions of this Court referred to above are : (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet. (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed. (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest. In the instant case, the Superintendent of Police had raided the residential premises of the appellant and had recovered a mining sponge gold ball weighing 4.5 grams and 1276 grams of 'gold bearing sand'. It was on this basis that criminal case was launched against him. On the same set of facts, constituting the raid and recovery, departmental proceedings were initiated against the apellant as the "recovery" was treated to be a 'misconduct.' On the service of the charge sheet, the appellant raised an objection that the departmental proceedings may be stayed as the basis of these proceedings was the raid conducted at his residence on which basis a criminal case had already been launched against him. He requested that the decision of the criminal case may be awaited, but his request was turned down. The request made a second time for that purpose also met the same fate. When the appellant approached the High Court, liberty was given to the respondents to stay the departmental proceedings if they considered it appropriate but they were directed to dispose of the appellant's appeal against the order by which he was placed under suspension. The order of the High Court had no effect on the respondents and they decided to continue with the departmental proceedings which could not be attended by the appellant as he informed the Inquiry Officer that he was ill. His request for adjournment of

the departmental proceedings on that ground was not acceded to and the proceedings continued ex-parte against him. He was ultimately found guilty of the charges and was dismissed from service. Learned counsel for the appellant also contended that during the period of suspension the respondents had not paid him the Subsistence Allowance with the result that he could not undertake a journey from his home-town in Kerala to Kolar Gold Fields in Karnataka where the departmental proceedings were being held. This plea has not been accepted by the High Court on the ground that it was not raised before the Inquiry Officer and it was not pleaded before him that it was on account of non- payment of Subsistence Allowance that the appellant could not go to Kolar Gold Fields for participating in the disciplinary proceedings. Before us, it is not disputed on behalf of the respondents nor was it disputed by them before the High Court, that Subsistence Allowance was not paid to the appellant while the proceedings against him were being conducted at the departmental level. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including Govt. of India and the State Governments. (See: for example, Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules. Even under the General Clauses Act, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss. The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only Subsistence Allowance which is less than his salary. (See: State of M.P. vs. State of Maharashtra, 1977 (2) SCR 555 = (1977) 2 SCC 288 = AIR 1977 SC 1466). Service Rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53). This constitutes the "Subsistence Allowance". If there is no provision in the Rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension. Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of Subsistence Allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nick name of 'Subsistence Allowance', so that the employee may sustain himself. This Court, in O.P. Gupta vs. Union of India & Ors. (1987) 4 SCC 328 made the following observations with regard to Subsistence Allowance : "An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand v. Union of India is that he continues to be a member of the government service but is not permitted

to work and further during the period of suspension he is paid only some allowance – generally called subsistence allowance – which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol.II at p. 2171 is"to remain alive as on food; to continue to exist"."Subsistence" means – means of supporting life, especially a minimum livelihood." (Emphasis supplied) If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of Subsistence Allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of Subsistence Allowance, would gradually starve himself to death. On joining Govt. service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt. The Govt., only because it has the power to appoint does not become the master of the body and soul of the employee. The Govt. by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of the 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 Govt. 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 Govt. 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 vs. Chanderbhan 1983(3) SCR 337 = 1983 (3) SCC 387 = 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 vs. Presiding Officer & Anr. (1986) 3 SCC 131 = 1986(2) SCR 1059 = AIR 1986 SC 1168 and it was held in that case that if an employee could not attend the 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 Dass Shrivastva vs. State of Madhya Pradesh (1973) 1 SCC 656 = AIR 1973 SC 1183. The question whether the appellant was unable to go to Kolar Gold Fields to participate in the inquiry proceedings on account of non-payment of Subsistence Allowance may not have been raised before the Inquiry Officer, but it was positively raised before the

High Court and has also been raised before us. Since it is not disputed that the Subsistence Allowance was not paid to the appellant during the pendency of the departmental proceedings, we have to take strong notice of it, particularly as it is not suggested by the respondents that the appellant had any other source of income. Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex-parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex-parte, stand vitiated. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, in so far as it purports to allow the Writ Petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar citcumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental inquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post

of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs.15,000/-.