G.M. Tank vs State Of Gujarat & Anr on 10 May, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2129, 2006 AIR SCW 2709, 2006 (3) AIR JHAR R 312, 2006 (4) AIR KANT HCR 641, (2006) 5 ALLMR 6 (SC), (2006) 3 CTC 494 (SC), (2006) 3 JCR 309 (SC), 2006 (6) SRJ 450, 2006 (3) CTC 494, 2006 (5) SCALE 582, 2006 (5) SCC 446, 2006 ALL CJ 3 2151, 2006 (5) ALL MR 6 NOC, (2006) 3 GUJ LR 2348, (2006) 3 LABLJ 1075, (2006) 4 LAB LN 28, (2006) 3 RAJ LW 2480, (2006) 3 SCT 252, (2006) 3 RECCRIR 251, (2006) 4 SCJ 1, (2006) 4 SERVLR 10, (2006) 4 SUPREME 740, (2006) 5 SCALE 582, (2006) 4 ALLCRILR 161, (2006) 2 GUJ LH 533, (2006) 2 ALLCRIR 1555, (2006) 2 GCD 1764 (SC)

Author: Ar. Lakshmanan

Bench: Ar. Lakshmanan, R.V. Raveendran

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           CASE NO.:
Appeal (civil)  2582 of 2006

PETITIONER:
G.M. Tank

RESPONDENT:
State of Gujarat & Anr.

DATE OF JUDGMENT: 10/05/2006

BENCH:
Dr. AR. Lakshmanan & R.V. Raveendran

JUDGMENT:
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J U D G M E N T (Arising out of S.L.P. (Civil) No. 8910 OF 2004) Dr. AR. Lakshmanan, J.

Leave granted.

This appeal is directed against the final judgment and order dated 18.8.2003 in Letters Patent Appeal No. 1085 of 2002 filed by the appellant herein. By its impugned final judgment, the High Court dismissed the L.P.A. filed by the appellant herein. Brief facts:

> The appellant joined the service in 1953 as an Overseer. The appellant was regularly submitting his property return showing all his movable and immovable properties. As per the Department, the movable and immovable properties were disproportionate to his known sources of income. The Anti-Corruption Bureau

carried out an investigation against the appellant and submitted a report and on the basis of the said report, a charge sheet dated 20.2.1979 was issued alleging that the appellant had illegally accumulated the excess income by way of gratification. The appellant submitted his explanation on 15.5.1979 and denied the allegations as well as charges made in the charge sheet. A departmental enquiry was ordered and as per Departmental Enquiry Reported dated 31.3.1980, the appellant was found guilty of the charge. The respondent by order dated 21.10.1982 passed an order of dismissal from the service as punishment.

Against the said dismissal order, the appellant filed a writ petition before the High Court. The learned single Judge concluded that there is sufficient evidence against the appellant and dismissed the petition. Against the order of the learned single Judge, the appellant preferred L.P.A. and raised the relevant contentions. The Division Bench dismissed the L.P.A. by confirming the order of the learned single Judge. The said decision is challenged in this appeal by special leave. The charges made against the appellant in the departmental enquiry is reproduced hereunder:

"That total income from wages, interest, house rent, insurance policy amount etc. of Sh. Tank for the period from the year 1953 till June 1978 comes to Rs.2,75,328.00. Against that, total expenses of Sh. Tank including expenses, saving, movable as well as immovable properties, comes to Rs.5,29,509.14. Thus, an amount of Rs.2,54,180.00 has been found very much in excess than his known and legal source of income and it appears that the said amount has been earned by him through bribe, corruption and illegal gratification and, therefore, he is responsible/liable for the breach of Rule 3(1) of Gujarat Civil Services Conduct Rules, 1971."

CRIMINAL CASE UNDER THE PREVENTION OF CORRUPTION ACT The Director of Anti-Corruption Bureau had entrusted the enquiry to Mr. V.B. Raval, Police Inspector, Anti-Corruption Bureau, Kachchh at Bhuj. Mr. V.B. Raval had enquired into the matter and submitted an Enquiry Report on 8.9.1979. It showed that the total income of the accused out of his salary, interest, rent and insurance policies etc. from April, 1953 to June 1978 was Rs.2,75,328.00. On the other side, the total expenditure, savings and movable and immovable properties of the accused was Rs.5,29,509.14. Thus, the amount of Rs.2,54,180.00 was more than the known source of income of the accused leading to the presumption that the said amount was obtained by him by illegal and corrupt means. On the basis of the said report of Mr. V.B. Raval, his successor (P.I. Mr. H.D. Sharma) lodged the criminal complaint against the appellant in Special Case No. 6 of 1987 before the Special Judge, Kachchh at Bhuj for the alleged offence punishable under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the P.C. Act').

The Special Judge had honourably acquitted the appellant of the offence punishable under Section 5(1)(e) read with Section 5(2) of the Act by holding that the prosecution has failed to prove the charges levelled against the appellant and thus the appellant cannot be held to be guilty of the said offence. This acquittal is by way of complete exoneration and not by giving benefit of doubt which is

evident from the judgment of the Special Judge. The Division Bench, however, overlooked this fact and the additional fact that on the basis of very report submitted by Mr. V.B. Raval, the Special Judge had acquitted the appellant.

It is also pertinent to notice that the respondents have not challenged the order passed by the Special Judge acquitting the appellant before any forum and that, therefore, the order passed by the Special Judge has reached its finality and has become final and conclusive.

We heard Mr. L. Nageshwara Rao, learned senior counsel, assisted by Mr. Sanjay Kapur, learned counsel, appearing for the appellant and Mr. Maulik Nanavati, learned counsel, appearing for the respondents.

We have been taken through the proceedings in the departmental enquiry, enquiry report submitted and the orders passed thereon and also the proceedings initiated by the respondents before the Special Court under the provisions of the P.C. Act under Section 5(1)(e) read with Section 5(2) of the said Act. We have carefully read the order passed by the learned single Judge in the writ petition and as affirmed by the learned Division Bench and the judgment passed by the learned Special Judge in the Criminal proceedings.

Mr. L. Nageshwara Rao, learned senior counsel, appearing for the appellant, made the following submissions:

> According to him, the appellant being a Government servant submitted his yearly property return regarding his movable and immovable properties. The return for the year 1975 was verified by the Department and being of the view that the appellant had movable and immovable properties worth more than known sources of his income and being dissatisfied with the explanation of the appellant, the Government requested the Director of Anti-Corruption Bureau to enquire into the matter vide its letter dated 11.1.1977 and on the basis of the report of the Investigating Officer, the Department had issued a charge-sheet upon the appellant. On the same material, criminal proceedings were also initiated under Section 5(1)(e) of the P.C. Act, the charge being the same. On the same basis of the same charges and the same evidence, the Department passed the order of dismissal on 21.10.1982 whereas the criminal Court honourably acquitted the appellant vide its order dated 30.1.2002.

Learned senior counsel made the following submissions:

> a) that there is no evidence to hold the appellant guilty or delinquent for the charges framed against him in the departmental enquiry;
>
> b) that the acquittal of the appellant in the special case is a relevant factor, as the appellant has been acquitted on merits and the acquittal is clean and not based on benefit of doubt or any Technical proposition. The same evidence was led in the departmental enquiry and, therefore, the dismissal order is bad in law.

c) that the Enquiry Officer has given finding of fact in favour of the appellant and despite that the Enquiry Officer has found the appellant guilty of the charges;

d) the additional fact was also brought to the notice of the Division Bench that the special Court has honourably acquitted the appellant of the same charge on 30.1.2002 but the Bench has not considered the same. The Division Bench failed to note the difference between an exoneration and acquittal by giving benefit of doubt. It routinely held that the writ court does not re-appreciate or re-examine the evidence led before the Enquiry Officer and that unlike in criminal trial, the degree of proof in the domestic enquiry is restricted to preponderance of probability and not beyond reasonable doubt. The L.P.A. was accordingly dismissed and the order of the learned single Judge was affirmed.

(e) Since the appellant has been exonerated of the charge, the appellant is entitled to reinstatement with full salary, allowance and subsequent promotions. In support of his contention, Mr. L.N. Rao relied on the following judgments:

1. Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. , (1999) 3 SCC 679 (two Judges)

2. Union of India vs. Jaipal Singh, (2004) 1 SCC 121 (two Judges)

3. Commissioner of Police, New Delhi vs. Narender Singh, 2006(4) Scale 161= 2006(4)JT 328 (two Judges)

4. R.P. Kapur vs. Union of India & Anr. AIR 1964 SC 787 (five Judges)

5. Corporation of the City of Nagpur, Civil Lines, Nagpur & anr. Vs. V. Ramachandra G. Modak & Ors., AIR 1984 SC 626 (three Judges) Mr. Maulick Nanavati, learned counsel, appearing for the State submitted that upon the investigation it was found that the total income of the appellant out of the salary, interest, rent etc. could not be sufficient to acquire the property owned by the appellant and that the total value of the movable and immovable and other properties acquired by the appellant had been found more than the known source of income by the appellant. It was further contended that the appellant was prosecuted for the offence punishable under Section 5(1)(e) read with Section 5(2) of the P.C. Act and that the appellant came to be acquitted by the learned Special Judge and that unlike in criminal trial, the degree of proof in the domestic enquiry is restricted to prepondrance of probability and not beyond reasonable doubt and that the acquittal in a criminal trial on the charges of corruption under the P.C. Act ipso facto could not be projected as a weapon to undo the result of a validly held departmental inquiry. Arguing further, the learned counsel submitted that in the present case the enquiry report is not casual, but well-written, balanced and making critical evaluation of all the evidence of the witnesses and documents and it cannot be said that the report is based on no evidence and such a

submission made by the learned senior counsel appearing for the appellant cannot be accepted when one gets into the reality of the factual profile so meticulously propounded in the Enquiry report by the Enquiry Officer which is based on evidence and it is rightly accepted by the disciplinary authority and justifiably affirmed by the learned single Judge and again accepted by the Division Bench. He, therefore, submitted that the acquittal in 2002 will have no bearing on the punishment imposed as per Rules and the appeal on hand is totally merit-less and deserves to be dismissed at the threshold. In concluding, he also submitted that the scope of interference by the High Court is very limited and that the writ court does not re-appreciate or re-examine the evidence led before the Enquiry Officer for the simple reason that this Court while sitting and entertaining a petition under Article 226 of the Constitution of India is not an appellate authority.

In support of his contention, Mr. Maulick Nanavati placed reliance on the following decisions:

1. Anil Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia & Ors., (2005) 7 SCC 764 (three Judges)

2. Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699 (three Judges)

3. State of Andhra Pradesh & Ors. vs. S. Sree Rama Rao, AIR 1963 SC 1723 (three Judges)

4. Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangh & Anr., (2004) 8 SCC 200 (three Judges) On the above pleadings and the arguments advanced by the counsel appearing on either side, the following questions of law arise for consideration for this Court:

1. Whether in the case of no evidence, the employee can be dismissed from service?

2. Whether acquittal, absolutely on merits amounting to clear exoneration of the appellant by the Special Court under the P.C. Act does ipso facto absolve the appellant from the liability under the disciplinary jurisdiction when the charges leveled against the appellant in the departmental proceedings and the criminal proceedings are grounded on the same set of facts, charges, circumstances and evidence.

We have given our anxious and thoughtful consideration to the rival submissions made by the counsel on either side. We have also carefully considered the judgments impugned in this case and also of the order of acquittal passed by the Special Judge in the proceedings initiated against the appellant under the P.C. Act. We have already reproduced the charge framed in the disciplinary proceedings and charge framed in the criminal proceedings. A reading of both the charges would clearly go to show that both the charges are grounded upon the same set of facts and evidence and

also pertains to the known source of income of the accused and the presumption raised that that the said amount was obtained by him by illegal and corrupt means. In the departmental enquiry, the Government appointed Mr. V.B. Raval, who was the Investigating Officer in the Anti Corruption Bureau as the Presenting Officer. In the Enquiry proceedings, the Department examined the relatives of the appellant, namely, the wife, father-in-law, brother-in-law and the brother of the appellant. The Enquiry Officer submitted his report at the end of the enquiry and held that the appellant had property disproportionate to the known source of income which, according to the Enquiry Officer, shows that the appellant has received illegal gratification and the charge against the appellant about the illegal possession was proved. Thereafter, the Deputy Secretary, Irrigation Department issued a show cause notice dated 4.6.1980 to the appellant to show cause against the proposed dismissal. The appellant replied to the show cause notice by his letter dated 27.9.1980. Thereafter, the Government ordered appellant's dismissal from service w.e.f. 15.10.1982. Though the Enquiry Officer submitted his report and recorded some findings in favour of the appellant, the finding rendered that the appellant was guilty for the alleged charges. It was submitted on behalf of the appellant before the learned single Judge and the Division Bench that there is no warrant for any action against the appellant and all the proceedings are contrary to the principles of natural justice and so is null and void and that the order of the dismissal is passed without any material basis, application of mind and is arbitrarily on suspicion. It was submitted that the conclusion is incompatible with facts and that no reasonable man can arrive at such a conclusion in the fact of the findings referred to in this behalf. It was further submitted that this is a case of no evidence and, therefore, the High Court ought to have entertained this petition under Art. 226/227 of the Constitution of India. Before the learned single Judge, the learned counsel for the appellant has also relied on the Administrative Law, 5th Edn. by Prof. H.W.R. Wade as an authority wherein under the Heading "findings, evidence and jurisdiction", the author has discussed finding of fact-no evidence principle. However, the High Court rejected the submission made by the learned counsel for the appellant on the ground that the witnesses examined by the appellant are not independent witnesses of having no interest and that they are very interested witnesses as they are very close relatives and in-laws of the appellant and, therefore, the Enquiry Officer has rightly examined the version of those witnesses with care and caution and has rightly not accepted the same as unimpeachable evidence in the absence of concrete documentary evidence. In the result, the learned single Judge rejected the writ petition and on the same principle, the learned Judges of the Division Bench have also affirmed the view expressed by the learned single Judge.

In this context, it is useful to refer to the judgment of the Special Court. An offence was registered under Section 5(1)(e) read with Section 5(2) of the P.C. Act against the appellant. We have already noticed the charge framed by the criminal Court. The appellant explained before the Court that his father-in-law and brother-in- law are very much rich and at the time of his marriage, they have given ornaments, furniture etc. to his wife but it could not be swallowed by the Anti-Corruption Department and, therefore, a complaint was lodged by the appellant before the police. The plea of the appellant-accused was recorded as Ex.17 . The appellant pleaded not guilty of the charge and claimed to be tried. After the prosecution completed, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 whereby he has given an opportunity to explain each piece of evidence appearing against him in the prosecution evidence. The explanation furnished by the accused in the open Court were recorded and placed along with his original

statement, Ex.17. The appellant has stated that he has submitted the written explanation and that should be taken into consideration. He has further submitted that the departmental proceedings were held against him on the allegation that he has acquired the property worth more than his known source of income and that he was serving as an Engineer in the Irrigation Department of the Government of Gujarat and that he has also served as Executive Engineer at Bhuj and that the explanation furnished by the appellant should have been accepted by the Department. The appellant did not examine any defence witnesses. The prosecution adduced oral evidence by examining the wife of the accused, the Investigating Officer, one Deputy Secretary of the Irrigation Department and the Investigating Officer, Mr. Punwar and Mr. V.B. Rawal and relied upon certain documents. As already noticed, the accused has been charged for the offence under Section 5(1)(e) of the P.C. Act which reads as follows:

> "Section 5 : Criminal Misconduct:-
>
> (1) A public servant is said to commit the offence of criminal misconduct:
>
> (a) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> (b) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> (c) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> (d) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> (e) If he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

This provision speaks about public servant. The Special Court after holding that the appellant was a public servant at the relevant time proceeded to discuss about the prosecution case that the accused has disproportionate income to his known source of income. It is seen from the proceedings of the special Court that the main defence of the accused from the course of his first statement before the department as well as before the Enquiry Officer Mr. V.B. Raval appears to be that his father-in-law was extensively rich having huge business, two hotels at Rajkot and huge property and he has four brothers-in-law who are very affectionate towards the wife of the accused and, therefore, had gifted cash money as well as articles to her during the course of their married life. Elaborate discussion was made by the Special Court. The Court held that the burden of explaining or giving the account of such excess property lies on the accused but once that burden is discharged, again the prosecution has to prove that the explanation furnished by him is not satisfactory.

The provisions contained in Section 5(1)(e) is self-contained provision. The first part of the Section casts a burden on the prosecution and the second on the accused as stated above. From the words used in clause (e) of Section 5(1) of the P.C. Act it is implied that the burden is on the accused to

account for the sources for the acquisition of disproportionate assets. As in all other criminal cases wherein the accused is charged with an offence, the prosecution is required to discharge the burden of establishing the charge beyond reasonable doubt. The Special Court scrutinized the evidence led by the prosecution and after an elaborate discussion, the Court held that the witness Mr. V.B. Raval has categorically admitted that the accused had stated in his statement about the amounts having been gifted to his wife by his in-laws. It is pertinent to note that this witness has categorically admitted in his examination-in-chief itself that he had enquired about the gifts given to other daughters and it was revealed that those gifts were worth less than what was gifted to the wife of the accused. He has also admitted during the course of his cross-examination that the father-in-law of the accused would not have gifted this much amount as shown by the accused to the wife of the accused. The Court held that such a presumption could not and should not have been raised by the witness in the absence of concrete evidence. The witness, Mr, V.B. Raval, has also admitted that the accused has explained that an amount of Rs.25,000/- was given by his father-in-law. The witness was shown the assessment order regarding the gift tax issued by the Income Tax Department in respect of the assessee, the father-in-law of the accused, for the year 1969-70. He was also shown the challan regarding the payment of gift tax and also other documents. He has admitted that there is no contradiction in the entries appearing in the pass book and the oral statement made by the accused as well as his wife as having received those amounts as gifts. The Court has held that from the evidence, it is clear that the accused had not suppressed any acquisition of immovable property from his department and therefore, under these circumstances, it is difficult to believe that the accused has not satisfactorily accounted for the said property. The Court also, in conclusion, said that the Enquiry Officer had conducted the enquiry only one way and had not tried to get the evidence regarding the explanations furnished by the accused. The Court further held that the case put forward by the accused was fully supported by his relations and there was no contradiction in the statements made by them. It is useful to reproduce the conclusion reached by the Special Court in this case which is as follows:

> "In view of this, it becomes clear that the investigation appears to have been carried or conducted only with the idea in the mind to charge-sheet the accused for this offence. The account given by the accused regarding his alleged disproportionate property though is satisfactorily explained, is wrongly not accepted by the Investigating Officer and on the contrary the evidence on record categorically shows that the accused has given satisfactory account of his alleged disproportionate property.
>
> In this view of the matter, the learned advocate, Mr. Antani, has rightly argued that there is no evidence to show that the accused had misused his office or position and that there is ample evidence to show that the accused had satisfactorily accounted for the alleged disproportionate property. He has also rightly argued that the Court should accept the say of the accused and acquit him. This Court is unable to accept the submission made by the learned prosecutor. Mr. Buch, that everything was managed by the accused by stating the transactions as the transactions of gift. On the contrary, from the fact that the accused had mentioned all these acquisition of property in his returns, of property submitted to the department it becomes clear that

> he has not suppressed anything, and, therefore, the transactions were quite true and correct. In view of this, point No.3 is answered in the negative."

It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges leveled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant.. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

We shall now scan through the judgments on this issue.

In the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.(supra), the question before this Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. In Paragraph 34, this Court held as under :

> "34. 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 enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to the 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 enquiry officer and the enquiry 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."

In R.P. Kapur vs. Union of India (supra), a Constitution Bench of this Court observed:

> "If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow, where the acquittal is other than honourable." (emphasis supplied) In the case of Corporation of the City of Nagpur, Civil Lines, Nagpur & Anr. Vs. Ramchandra G. Modak & Ors. (supra), the same question arose before this Court. This Court, in paragraph 6, held as under:
>
> "6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honorably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. "

(emphasis supplied) The rulings cited by the learned counsel appearing for the respondent are:

> In the case of Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangh & Anr. , (Supra), it was argued before this Court on behalf of the respondent Sangh that the Labour Court ought not to have brushed aside the finding of the criminal Court which according to the learned single Judge "honourably" acquitted the accused workmen of the offence before it. The learned Judges were taken through the judgment of the Criminal Court. The Bench was of the opinion that the acquittal by the Criminal Court was `honourable' as it was based on the fact that the prosecution did not produce sufficient material to establish its charge which was clear from the following observations found in the judgment of the criminal Court :
>
> "Absolutely in the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC."

Before the learned Judges, Paul Anthony's case (supra) was relied on in regard to the above contentions. The learned Judges held that the decision in Paul Anthony's case (supra) would not support the respondent therein because in Paul anthony's case (supra) the evidence led in the criminal case as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence and this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. The Bench further held as follows:

" ..It is to be noted that in that case the finding by the Tribunal was arrived at in an ex parte departmental proceeding. In the case in hand, we have noticed that before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal court and the Labour Court were entirely different. Therefore, it was open to the Labour Court to have come to an independent conclusion de hors the findings of the criminal court. But at this stage, it should be noted that it is not as if the Labour Court in the instant case was totally oblivious of the proceedings before the criminal court. The Labour Court has in fact perused the order of the Judicial Magistrate and the exhibits produced therein and come to an independent conclusion that the order of the criminal court has no bearing on the proceedings before it; which finding of the Labour Court, in our opinion, is justified."

In the case of Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corpn. Limited, Haldia & Ors., (supra) , this Court in paragraph 11 held as under:

"As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. 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 the accused 'beyond reasonable doubt', 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'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

This Court in the case of Depot Manager, A.P. State Road Transport Corpn. Vs. Mohd. Yousuf Miya & Ors., (supra), in paragraph 8 held as under:

> "The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The 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. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

The Judgment in the case of State of A.P. & Ors. Vs. S. Sree Rama Rao (supra), was cited for the purpose that the High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant, it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated.

The judgments relied on by the learned counsel appearing for the respondents are not 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 his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed 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.

In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension . For the foregoing reasons, we set aside the judgment and order dated 28.1.2002 passed by the learned single Judge in Special Civil appln. No. 948 of 1983 as affirmed by the Division Bench in L.P.A. No. 1085 of 2002 and allow this appeal. However, there shall be no order as to costs.