The Transport Commissioner vs G.Durai on 4 July, 2007

Author: F.M.Ibrahim Kalifulla

Bench: F.M.Ibrahim Kalifulla, S.Tamilvanan

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 4.7.2007
CORAM:
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.19843 of 2001
& W.P.M.P.No.29250 of 2001 & W.V.M.P.No.1339 of 2002

The Transport Commissioner,
Chepauk, Chennai-5. .. Petitioner

vs.

1. G.Durai

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai-104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance

For petitioner : Mr.P.S.Raman,
Addl. Advocate General,

assisted by
Mr.M.Dhandapani,
Spl.G.P.

For respondent-1 : Mr.K.V.Srinivasaraghavan

ORDER

F.M.IBRAHIM KALIFULLA,J The State has come forward with this Writ Petition challenging the order of the Tamil Nadu Administrative Tribunal, dated 20.12.2000 passed in O.A.No.3744 of 1999, in and by which the Tribunal set aside the charge memo issued to the first respondent in Letter No.14057/V.1/90, dated 2.6.1999. The Tribunal held that in respect of the very same charges of

corruption, a criminal case in Special Case NO.22 of 1990 was laid against him before the Chief Judicial Magistrate, Thanjavur, which resulted in his conviction, by judgment dated 28.9.1992, which conviction was set aside by this Court on 20.11.1997 in Crl.A.Nos.633 and 634 of 1992, and therefore, in the light of the fact that such criminal proceedings were initiated under the special procedure which ended in acquittal, the departmental proceedings cannot be allowed to go on. The Tribunal also took the view that since the facts and charges were identical in nature, in the light of the decision of the Supreme Court reported in AIR 1999 SC 1416 (Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. and another), the charge memo had to be set aside. As against the above said order of the Tribunal, the State has come forward with this Writ Petition.

1(a). This Writ Petition is resisted by the first respondent by raising certain contentions based on Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 and on the ground that the first respondent was acquitted by this Court in Crl.A.Nos.633 and 634 of 1992, by judgment dated 20.11.1997.

1(b). At the very outset, we wish to state that the above contentions are covered by the order of the Supreme Court, dated 26.9.2006 passed in Civil Appeal Nos.2674-2676 of 2004, wherein the Regional Transport Officer who was also identically placed like that of the first respondent herein, raised similar contentions which were rejected by the Supreme Court. Though the learned counsel appearing for the first respondent who appeared for the RTO in this Court when the matter came up before a Division Bench of this Court in W.P.Nos.100, 5579 and 19749 of 2001, dated 26.2.2002, reported in 2002 (III) L.L.J. 66 (State of Tamil Nadu vs. H.A.Munaff), the copy of the order of the Supreme Court dated 26.9.2006 in Civil Appeal Nos.2674-2676 of 2004, was not placed before us at the time when the arguments were advanced before us. Therefore, we deal with the contentions raised by the first respondent, which found favour with the Tribunal, in this Writ Petition at length. However, since we were able to secure the copy of the order of the Supreme Court in Civil Appeal Nos.2674-2676 of 2004 from the Registry, we will refer to the same in detail at the appropriate place in the later part of this order.

2. Mr.P.S.Raman, learned Additional Advocate General appearing for the petitioner raised three contentions. According to him, application of Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, (hereinafter referred to as "the 1955 Rules"), in particular, Rules 4 and 5 will kick into operation only if the Government decides to refer the case to the Tribunal and if such a step was not taken by the Government, Rule 5 itself will have no application. The second contention was that the expression "or" used in Rule 5(b) of the 1955 Rules is only an enabling provision and not a disjunctive prohibitive provision and that any other construction of the said expression would render Rule 5 itself unconstitutional, as that would otherwise conflict with the enforcement of legislative enactment. Lastly, it was contended that in any event, the said expression "or" contained in Rule 5(b), can be read by this Court as "and" as between the expressions "Court of Law" and "by the Tribunal" to give life and make the provision a meaningful one. It was also contended that the acquittal by the High Court was only by giving "benefit of doubt" and inasmuch as the degree of proof in the criminal case and the domestic enquiry varies to a very large extent, at the threshold, namely at the stage of issuance of the charge memo, the Tribunal ought not to have interfered with the said disciplinary proceedings. The learned Additional Advocate General relied upon AIR 1976 SC

394 (Delhi Municipality vs. Kacheroo Mal), AIR 1980 SC 360 (Delhi Municipality vs. Tek Chand), AIR 1999 SC 1416 (M.Paul Anthony vs. Bharat Gold Mines Ltd.), AIR 2004 SC 4647 (Management, K.Tea Estates vs. A.B.C.Mazdoor Sangh), 2006 (5) SCC 446 (G.M. Tank vs. State of Gujarat) and 2007 (3) CTC 211 (SC) (NOIDA Enterprises Assn. vs. NOIDA) in support of his submissions.

3. As against the above submissions, Mr.Srinivasaraghavan, learned counsel appearing for the first respondent, by relying upon the decisions reported in 2006 (1) MLJ 146 (Ramasamy,P. vs. Govt. of Tamil Nadu) and 2005 Writ L.R. 314 (State of Tamil Nadu and another vs. M.Jayapal and two others), contended that the issue as to whether the departmental proceedings can be proceeded with after the acquittal in the criminal case, has to be examined still more elaborately by referring to the matter to a larger Bench. The learned counsel, by making reference to the allegations contained in the charge memo and the criminal Court judgment, contended that the facts being one and the same, the disciplinary action cannot be proceeded with. As regards Rule 5(b)(i) of the 1955 Rules, the learned counsel appearing for the first respondent contended that when once the Government took a conscious decision to file a criminal complaint and the said criminal proceedings ended in the acquittal of the first respondent, it cannot proceed against the first respondent by way of disciplinary action. Learned counsel relied upon 1996 (5) SCC 334 (Secretary to Govt. of T.N. vs. D.Subramanyan Rajadevan) in support of his submission. Learned counsel for the first respondent then contended that the first respondent was allowed to retire on attaining the age of superannuation on the afternoon of 31.12.2000 by the order dated 1.6.2001 by specifically stating that no charges were pending against him on the date of superannuation, and therefore, it is not now open for the petitioner to invoke Rule 9(2)(a) of the Tamil Nadu Pension Rules to proceed against the first respondent. According to the learned counsel, as the conditions contained in Rule 9(2)(b) of the Tami Nadu Pension Rules are not specified, the present charge memo cannot be proceeded with.

4. The learned counsel for the first respondent also contended that there is a statutory bar other than Rule 5(b)(i) of the 1955 Rules, in G.O.Ms.No.228, Personnel and Administrative Reforms (Personnel.J) Department, dated 13.4.1989 read along with G.O.Ms.No.544, Personnel and Administrative Reforms (F.R.III) Department, dated 19.6.1987, wherein an amendment to Rule 54 of the Fundamental Rules by way of Ruling No.9 was inserted, which specifically provided that a Government servant who is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving the benefit of doubt or any other technically ground, he should be paid full pay and allowances by deeming as not placed under suspension or dismissal or removal or compulsory retirement from service.

5. Yet another contention of the learned counsel appearing for the first respondent was that under the provision to Rule 17(1)(e)(4) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, there is a statutory bar in proceeding with the disciplinary action. That apart, according to the learned counsel, by applying the principles of "res-judicata" and "promissory estoppel" also, the issuance of charge memo cannot be allowed to stand by invoking Rule 9 of the Tamil Nadu Pension Rules.

6. Learned counsel for the first respondent relied upon the following decisions:

> Mode of citation Name of the parties 2005 Writ L.R. 314 (Madras High Court) State of Tamil Nadu and another vs. M.Jayapal and 2 others AIR 1965 Madras 502 Shaik Kasim vs. Supdt., Post Offices 1971 SLR 743 (Gujarat High Court) Ramsinhji Viraji vs.State of Gujarat 1972 SLR 44 (Supreme Court) State of Assam vs. Raghava Rajagopalachari 1984 Maharashtra Law Journal 406 (Bombay High Court) Dattatraya vs. Director of Agriculture 2006 (1) MLJ 146 (Madras High Court) Ramasamy.P. vs. Govt. of Tamil Nadu

7. Having heard learned counsel for the respective parties, at the outset, we wish to deal with the first objection raised on behalf of the first respondent based on the Division Bench decisions of this Court reported in 2006 (1) MLJ 146 and 2005 Writ L.R. 314 (both cited supra). In the decision reported in 2005 Writ L.R. 314, the Division Bench of this Court took the view that the judgment of criminal Court acquitting the accused by giving the benefit of doubt cannot be equated to the judgment of acquittal on technical grounds, namely for want of sanction or the sanction accorded did not fulfil the requirement of law or the prosecution was barred by limitation and it cannot be said that the criminal Court's verdict was on technical grounds and therefore, the charge memo can be proceeded with. The Division Bench held that only in such cases, where acquittal was on technical grounds, the authorities are entitled to conduct the departmental enquiry on the self-same allegations and even in the case of acquittal by giving the benefit of doubt based on suspicious circumstances brought out in evidence, such acquittal cannot be held to be on technical ground and therefore, the departmental proceedings cannot be proceeded with. On the other hand, in the decision reported in 2006 (1) MLJ 146, another Division Bench of this Court held that unless the acquittal in the criminal proceedings is an honourable one, it is always open for the department to proceed with the disciplinary proceedings even after the acquittal by the criminal Court. In the latter decision (2006 (1) MLJ 146), the Division Bench went on to hold that the honourable acquittal would only mean acquittal which is free from any doubt.

8. In the above context, we wish to be guided by the decision of the Supreme Court reported in 2006 (5) SCC 446 (cited supra), wherein the only distinction now drawn by the Supreme Court as between a departmental action and criminal Court proceedings is that the departmental action would not lie only if there was honourable acquittal of an employee by the criminal Court. In other words, if the facts and evidence in the departmental action as well as criminal proceedings are one and the same, and the criminal proceedings ended in a clear-cut acquittal, leaving no scope for any doubt, then and then only the departmental action cannot be proceeded with. In fact, in that decision, a reference has been made to an earlier decision of the Supreme Court reported in 2005 (7) SCC 764 (Ajit Kumar Nag vs. GM (PJ), Indian Oil Corporation Limited), wherein the Supreme Court has clearly set out the distinction between criminal proceedings and the departmental action by stating as under in paragraph 11 :

> " .... 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 the 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 rule 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 a 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."

In fact, in the above said decision reported in 2006 (5) SCC 446, the Supreme Court framed two questions of law, which reads under:

> "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 PC Act does ipso facto absolve the appellant from the liability under the disciplinary jurisdiction when the charges levelled against the appellant in the departmental proceedings and the criminal proceedings are grounded on the same set of facts, charges, circumstances and evidence."

(emphasis added) In fact, the Supreme Court went into the evidence at length and ultimately held in paragraph 20 of its judgment that, that was a case of no evidence in the criminal case as well as in the departmental action. In that decision, the Supreme Court also referred to other decisions reported in AIR 1964 SC 787 (R.P.Kapur vs. Union of India), 1981 (2) SCC 714 (Corpn. Of the City of Nagpur vs. Ramachandra) and 2004 (8) SCC 200 (Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangh), wherein the Supreme Court reiterated the principle that only in a case where there was an honourable acquittal, the departmental proceedings on the very same set of charges cannot be allowed to go on.

9. In the case on hand, the basic allegation against the first respondent was that while he was functioning as Personal Assistant to the Regional Transport Officer, Nagapattinam, on 6.7.1989 at about 11.30 a.m., he demanded a sum of Rs.50/- by way of bribe from one Thiru.Rajaraman and that he accepted the said sum on 7.7.1989 between 12.15 p.m. and 12.30 p.m. at the RTO Office, Nagapattinam for releasing an impounded tractor-trailer belonging to him. According to the petitioner, by virtue of the said conduct, the first respondent failed to maintain absolute integrity and devotion to duty and thereby contravened the provisions of Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973. The charge memo issued to the first respondent was stated to be on 2.6.1999. In the criminal Court, it was alleged that the above conduct of the first

respondent was an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and that he indulged in corrupt and illegal means, abusing his official position as a public servant by having pecuniary advantage and thereby also committed an offence under Section 13(1)(d) of the Prevention of Corruption Act, punishable under Section 13(2) of the said Act. In the criminal Court, along with the first respondent, the Regional Transport Officer and the Office Assistant were also tried together in S.C.No.22 of 1990. The trial Court convicted the R.T.O. as well as the first respondent herein by imposing punishment of two years' rigorous imprisonment, apart from a fine of Rs.1,000/- each, in default, to undergo six months' rigorous imprisonment. The Office Assistant was also convicted and imposed punishment of six months' rigorous imprisonment, apart from a fine of Rs.1,000/-, in default to undergo one month rigorous imprisonment. In the appeal preferred by the first respondent in Crl.A.No.634 of 1992, which was disposed of along with the appeal preferred by the RTO and the Office Assistant in Crl.A.No.633 of 1992, a learned single Judge of this Court has held as under in paragraph 21 of the judgment:

> "21. .... Taking into consideration of all the above said facts, I come to the conclusion that the Prosecution has not proved its case against Accused No.2 beyond all reasonable doubt and hence he has got to be acquitted against the charges levelled against him."

Again, in paragraph 23, the learned single Judge has held as under:

> "23. In view of the discussions made above I come to the conclusion that the charges levelled against the appellants were not proved beyond reasonable doubts and the findings of the Trial court are not satisfactory to punish the accused and that therefore, I set aside the order passed by the trial Court."

The said judgment of the learned single Judge in Crl.A.Nos.633 and 634 of 1992, was rendered on 20.11.1997.

10. A perusal of the appellate judgment of this Court in Crl.A.Nos.633 and 634 of 1992 discloses that the learned Judge wanted to give the benefit of doubt in favour of the first respondent, as according to the learned Judge, the charges levelled against him were not proved to the hilt, in spite of the evidence placed before the Court. The learned Judge has not concluded in the judgment to the effect that the evidence did not support the charges levelled against the first respondent. It was only held that in spite of the evidence available on record, it will have to be held that the benefit of doubt should be extended to the first respondent and he be held not guilty of the charges. Therefore, the case on hand does not fall under the category of "honourable acquittal", as has been laid down by the Supreme Court in the recent decisions.

11. In the above context, our attention was drawn to an earliest decision of a Division Bench of this Court reported in AIR 1960 Madras 325 (Union of India vs. Jayaram), wherein, His Lordship Chief Justice P.V.Rajamannar, speaking for the Bench, while interpreting Article 193(b) of the Civil Service Regulations, which used the expression "honourable acquittal", was pleased to observe as under in paragraph 3 of the judgment:

> "3. ... It is only in this sense that it was urged that he was not honourably acquitted. In the first place, we are unable to understand the legal significance of an expression like "Honourably acquitted". Certainly, the Code of Criminal Procedure does not support this conception. The onus of establishing the guilt of accused is on the prosecution, and, if it failed to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted."

12. The above said Division Bench judgment (AIR 1960 Madras 325) of this Court was followed by a Division Bench of the Gujarat High Court in the decision reported in 1971 SLR 743, wherein the learned Judges of the Gujarat High Court have reiterated in paragraph 7 as under:

> "7. ... With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of 'honourable acquittal' or full exoneration so far as the judgment of the Criminal Court is concerned. In a criminal trial the accused is only called upon to meet the charge levelled against him and he may meet the charge--(a) by showing that the prosecution case against him is not true or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any one of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J., in Jayaram's case, AIR 1960 Mad 325."

13. In 1972 SLR 44 (SC) (cited supra), the Supreme Court had occasion to consider Fundamental Rule 54 as it stood then, wherein the expression "honourably acquitted" has been used. While dealing with F.R.54(a), the Supreme Court has held as under in paragraph 8:

> "8. ... The Note and the Administrative Instructions appearing under the Rule seem to show that the words 'honourably acquitted' mean 'acquitted' of blame or that the Government servant has been fully exonerated. This also seem to be the meaning which has been ascribed to this expression in some reported cases. In Robert Stuart Wauchope v. Emperor (1934) 61 ILR Cal. 168, Lord Williams, J, observed:-
>
> "The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by

> the Government authorities and by the magistrate. Further we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgement was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term "honourably acquitted".

In R.P.Kapur V. Union of India, AIR 1964 SC 787, Wanchoo,J. as he then was, used the expression thus:-

> "Even in case of acquittal, proceedings may follow where the acquittal is other than honourable." "

14. Again, in the decision reported in 1984 Maharashtra Law Journal, page 406 (cited supra), the Division Bench of the Bombay High Court, observed that the concept of "honourable acquittal" or "full exoneration" may be inappropriate qua the result of a criminal prosecution.

15. In yet another decision of this Court reported in AIR 1965 Madras 502 (cited supra), His Lordship Hon'ble Mr.Justice M.Anantanarayanan, Officiating Chief Justice, has held as under in paragraph 8:

> "8. ...
>
> Secondly there could be no rigid or inflexible rule that the finding of a criminal court is conclusive, in every sense, upon Administrative Authorities. If the finding is purely a technical acquittal, the Administrative Authority may conceivably punish, on the same facts. It can certainly punish where the acquittal is solely based on lack of sanction or some technical defect in procedure. It could punish, on the same facts, for some lesser charge, which may not amount to a criminal offence, but may well amount to grave dereliction of duty, entitling disciplinary action. For instance, a school-master may be acquitted of a charge of rape alleged to have been committed against a girl-student in his care. But that cannot preclude the departmental authority, upon those very facts, from punishing him for grave impropriety in his relationships with the girl-students, which disentitles him to that office.
>
> .... "

16. Learned counsel for the first respondent also contended that the Black's Law Dictionary (abridged Fifth Edition) meaning of "acquittal", is "judicial discharge of an accused from the accusation". Similarly, the extract of the Law Lexicon by Ramanatha Iyer as to the expression "reasonable doubt" states that such doubt would justify and require an acquittal, must be as to the guilt of the accused when the whole of the evidence is considered, and not as to any particular fact in the case.

17. Learned counsel for the first respondent submitted that applying the above principles, it should be held that when the first respondent was acquitted by this Court in the Criminal Appeal, by holding that the guilt was not proved beyond all reasonable doubt, it would only mean a full-fledged acquittal, free from any doubt. Learned counsel therefore contended that after such acquittal in the criminal case, the petitioner cannot be permitted to proceed against the first respondent by way of disciplinary action.

18. When we consider the above submissions of the learned counsel for the first respondent, in the first instance, in the earlier decision of this Court reported in AIR 1960 Madras 325 (cited supra), a Division Bench of this Court held that there is no legal significance of the expression "honourable acquittal", which principle was applied and re-stated by the various High Courts and the Supreme Court in the decisions reported in 1971 SLR 743 (Gujarat High Court), 1972 SLR 44 (Supreme Court) and 1984 Maharashtra Law Journal page 406 (Bombay High Court). Since even in the recent decision of the Supreme Court reported in 2006 (5) SCC 446 (cited supra), the Supreme Court itself has chosen to use the expression "honourable acquittal" and bound as we are by the decision of the Supreme Court, we feel that a distinction has to be necessarily drawn as between the case where the acquittal was due to insufficient or no evidence, whereby the competent Court decides to order acquittal by granting the benefit of doubt in favour of the accused and a case where inspite of the evidence being let in to the full extent, but yet no guilt is made out and thereby the accused is to be let off or comes out unscathed from the charges levelled against him.

19. In fact, in certain decisions of the Supreme Court referred to above reported in 2006 (5) SCC 446, AIR 1964 SC 787, 1981 (2) SCC 714, 2004 (8) SCC 200 and 2005 (7) SCC 764, the Supreme Court has consciously referred to the above distinction by using the expression "honourable acquittal", which results in complete exoneration of the charges, where and where alone it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence.

20. We also wish to make a reference to the recent decision of the Supreme Court reported in 2007 (3) CTC 211 (SC), wherein the Supreme Court has explained as to how a criminal prosecution and the departmental enquiry travel on two different planes. Paragraph 16 of that judgment is relevant for our present purpose, which reads as under:

> "16. The purpose of Departmental Enquiry and of prosecution is 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 Indian Evidence Act, 1872 (in short 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 Department 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."

21. Apart from the above decisions cited before us, in respect of the RTO who was also proceeded against along with the first respondent and another Office Assistant in the criminal case, the Tribunal interfered with the charge memo issued to the RTO. The Writ Petition was preferred by the State Government challenging the order of the Tribunal, which was decided by the Division Bench of this Court in the decision reported in 2002 (III) L.L.J. 66 (State of T.N. vs. H.A.Munaff) and the said decision was challenged by the RTO before the Supreme Court in Civil Appeal Nos.2674-2676 of 2004, which was disposed of by the Supreme Court by order dated 26.9.2006 after notice to the State of Tamil Nadu. At this juncture, we only refer and rely on the said decision to hold that the departmental action as against the first respondent can be proceeded with and the same does not call for any interference. We propose to deal with the said order in detail at the appropriate place where we consider the contention based on Rule 5(b)(i) of the 1955 Rules.

22. Having regard to the dicta of the Supreme Court in the various decisions, where stress has been laid on the expression "honourable acquittal", which according to the Supreme Court, is the total exoneration of the charges, we hold that such a distinction has necessarily to be maintained while dealing with the cases where the Courts have to examine whether after acquittal of the delinquent in the criminal proceedings, the employer can be permitted to proceed with the departmental action based on such acquittal.

23. Therefore, in the light of the said consistent rulings of the Supreme Court, we prefer to apply the said principles set out in the various decisions of the Supreme Court, which proposition has been stressed in the various decisions of this Court and other High Courts, and hold that unless there is honourable acquittal or complete exoneration of charges, the departmental proceedings cannot be stultified and that since in the case on hand, the acquittal by this Court in Crl.A.No.634 of 1992 was on the footing that the prosecution has not proved its case beyond all reasonable doubt, we hold that such acquittal cannot be equated to a case of honourable acquittal, as held in the various decisions of the Supreme Court and therefore, merely based on the said acquittal ordered by this Court in Crl.A.NO.634 of 1992, the departmental action cannot be stopped.

24. With this, when we consider the next submission of the learned counsel for the first respondent, according to the learned counsel for the first respondent, there is a statutory embargo for the petitioner-State to proceed against the first respondent in the light of the provisions contained in the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955. Learned counsel contended that under Rule 5(b)(i) of the 1955 Rules, it is for the Government after examining the records and after consulting the Head of the Department concerned to decide whether the case should be tried in a Court of law or by the Tribunal or by the departmental authority concerned. By referring to Rule 4(1) and (2) of the 1955 Rules, learned counsel for the first respondent contended that the reference to be made to the Tribunal was always subject to the provisions of Rule 5 of the 1955 Rules and since under Rule 5(b)(i) of the 1955 Rules, the Government should decide whether the case should be referred to a Court of law or the Tribunal or the departmental authority concerned, and the Government having chosen to try the first respondent in a Court of Law by launching a criminal prosecution, which has ended in acquittal, it is not open for the petitioner-State to take recourse by way of disciplinary action.

25. In fact, the above said contention of the learned counsel for the first respondent has found favour with the Tribunal, which has countenanced the said plea by holding that recourse to departmental proceedings after acquittal by the Criminal court, cannot be permitted. In the first blush, though the contention of the learned counsel for the first respondent really appears to be sound, but when we heard learned Additional Advocate General, we find that such a contention of the first respondent cannot be accepted for more than one reason. Learned Additional Advocate General in his contentions, submitted that invocation of Rule 4 or Rule 5 of the 1955 Rules itself would come into play only if the State Government chooses to make a reference to Tribunal under Rule 4 of the 1955 Rules. According to the learned Additional Advocate General, application of Rule 5 itself would not get attracted.

26. In the case on hand, the impugned charge sheet dated 2.6.1999 has been issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the allegation that the first respondent failed to maintain absolute integrity and devotion to duty and thereby, contravened the provisions of Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973. For initiation of such proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, read along with Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973, the invocation of the 1955 Rules is not required. To put it differently, it will have to be held that the 1955 Rules would operate independently vis-a-vis the Tamil Nadu Civil Services (Discipline and Appeal) Rules read along with the Tamil Nadu Government Servants' Conduct Rules, 1973. When such an approach is made, while referring to Rule 5 of the 1955 Rules, as rightly contended by the learned Additional Advocate General, it can safely be held that the embargo as propounded by the learned counsel for the first respondent by relying upon Rule 5(b)(i) of the 1955 Rules, will never come into play.

27. The above said conclusion of ours is fortified by the fact that for the purpose of invoking Rule 5 of the 1955 Rules, the first step has to be necessarily made by invoking Rule 4 of the 1955 Rules. Therefore, unless the Government wants to make a reference to the Tribunal under the 1955 Rules, as provided under Rule 4, the question of invoking Rule 5(b)(i) of the 1955 Rules does not arise.

28. The next submission of the learned Additional Advocate General is that the expression "or" used in Rule 5(b)(i) of the 1955 Rules, as between the expression "Court of law" and the expression "by the Tribunal" is only an enabling provision and not a disjunctive prohibitive provision. According to the learned Additional Advocate General, any other contention would render Rule 5 of the 1955 Rules, itself unconstitutional. Elaborating his submissions, the learned Additional Advocate General pointed out that if the expression "or" as between "Court of law" and the expression "by the Tribunal" are given their literal meaning, and in the event of the State having chosen to make a reference to the Tribunal, even in extreme cases where the criminal prosecution is warranted, having regard to the nature of conduct indulged in by the delinquent, such a prosecution cannot be launched, having regard to the prohibitive nature of the construction of the expression "or" contained in Rule 5(b)(i) of the 1955 Rules.

29. We find force in the said submission of the learned Additional Advocate General and we do visualise in a case where a Government servant indulging in serious criminal offence of causing grievous injury by using a weapon inside the work place and if the disciplinary authority decided to refer the issue to the Tribunal, the delinquent concerned can contend that having regard to the reference made, the prosecution itself cannot be laid before the Court of law by strict application of Rule 5(b)(i) of the 1955 Rules. Such a far reaching consequence would have never been contemplated by the Rule makers while framing Rule 5(b)(i) of the 1955 Rules as that would be against public interest and destructive one. Moreover, such a prohibitive provision from launching of prosecution in a Court of law can never be approved of under a Rule as against the statutory provision contained in the criminal law system.

30. We are therefore in full agreement with the contention of the learned Additional Advocate General that the disjunctive expression "or" can only be read by this Court as "and" as between "Court of law" and "by the Tribunal" to give life and make the provision real and meaningful one. In this context, the decision relied upon by the learned Additional Advocate General reported in AIR 1976 SC 394 (cited supra) and AIR 1980 SC 360 (cited supra) can be usefully referred to.

31. In the former case (AIR 1976 SC 394), the Supreme Court, while dealing with Section 2(i)(f) of the Prevention of Food Adulteration Act, held as under in paragraphs 6(A) and 7:

> "6.A. The relevant part of Section 2 reads as under:
>
> "(i) "adulterated"--an article of food shall be deemed to be adulterated--
>
> (a) to (e) ....
>
> (f) if the article consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect infested or is otherwise unfit for human consumption".

7. The phrase "or is otherwise unfit for human consumption" can be read conjunctively as well as disjunctively. If it is read conjunctively, that is, in association with what precedes it, sub-clause(f)

with slight consequent rearrangement and parenthesis would read like this: "If the article is unfit for human consumption on account of (a) its consisting wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or being insect infested, (b) or on account of any other cause." In this view of the sub-clause proof of 'unfitness of the article for human consumption', is a must for bringing the case within its purview."

32. However, the said decision (AIR 1976 SC 394) was subsequently distinguished by the Supreme Court in the decision reported in AIR 1980 SC 360. The Supreme Court however made it clear that the statement of law as laid down in AIR 1976 SC 394 should be confined to particular facts of that case in the light of Rule 48-B of the Prevention of Food Adulteration Rules, which came to be introduced subsequently after the Act came into force.

33. In the decision reported in AIR 1977 SC 2328 (Union of India vs. Sankalchand), the Constitution Bench of the Supreme Court has made it clear in paragraph 55 as under:

> "55. .... The literal construction should not obsess the Court, because it has only prima facie preference, the real object of interpretation being to find out the true intent of the law maker and that can be done only by reading the statute as an organic whole, with each part throwing light on the other and bearing in mind the rule in Heydon's case (1854) 76 ER 637 which requires four things to be "discerned and considered" in arriving at the real meaning: (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason of the remedy. There is also another Rule of interpretation which is equally well settled and which seems to follow as a necessary corollary, namely, where the words, according to their literal meaning "produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification", the Court would be justified in "putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear. Vide River War Commrs. vs. Adamson, (1877) 2 AC 743. ..."

Again in paragraph 84, the Constitution Bench of the Supreme Court made a reference to the case of Hutton vs. Phillips (45 Del. 156 : 70 A 2d 15 (1949)), which reads as under:

> "84. In Hutton v. Phillips, the Supreme Court of Delaware threw useful light on the use of contextual and environmental background to correct construction of statutes:
>
> "...(Interpretation) involves far more than picking out dictionary definition of words or expressions used. Consideration of the context and the setting is indispensable property to ascertain a meaning.In saying that a verbal expression is plain or unambiguous, we mean little more than that we are convinced that virtually anyone competent to understand it, and desiring fairly and impartially to ascertain its signification, would attribute to the expression in its context a meaning such as the one we derive, rather than any other; and would consider any different meaning, by

> comparison, strained, or far-fetched, or unusual, or unlikely.
>
> .... Implicit in the finding of a plain, clear meaning of an expression in its context, is a finding that such meaning is rational and 'makes sense' in that context." (45 Del. 156 : 70 A 2d 15 (1949))."

In the same paragraph 84, the Constitution Bench relied on the decision of the A.P.Green Export Co. vs. United States, (284 F. 2d 383, 386) (Dickerson, p.137), and the Constitution Bench held as under:

> "An explanatory tale should not wag a statutory dog" (Attributed to Jones C.J. in A.P.Green Export Co. v. United States, 284 F. 2d 383, 386) (Dickerson, p.137). True. But 'the meaning of some words in a statute may be enlarged or restricted in order to harmonize them with the legislative intent of the entire statute .. It is the spirit .... of the statute which should govern over the literal meaning ...."

34. In the above context, the recent decision of the Supreme Court reported in 2005 (5) SCC 420 (Prof.Yashpal vs. State of Chattisgarh) can also be usefully referred to. In that decision, the Supreme Court has stated as to under what circumstances, the expression "or" can be read as "and", which reads as under:

> "59. Shri Rakesh Dwivedi has also submitted that insofar as private universities are concerned, the word "or" occurring in the expression "established or incorporated" in Sections 2(f), 22 and 23 of the UGC Act should be read as "and". He has submitted that the normal meaning of the word "established" is to bring into existence and in order to avoid the situation which has been created by the impugned enactment where over 112 universities have come into existence within a short period of one year of which many do not have any kind of infrastructure or teaching facility, it will be in consonance with the constitutional scheme that only after establishment of the basic requisites of a university (classrooms, library, laboratory, offices and hostel facility, etc.) that it should be incorporated and conferred a juristic personality. The word "or" is normally disjunctive and "and" is normally conjunctive but at times they are read vice versa to give effect to the manifest intentions of the legislature, as disclosed from the context. If literal reading of the word produces an unintelligble or absurd result, "and" may be read for "or" and "or" may be read for "and". (See Principles of Statutory Interpretation by G.P.Singh, 7th Edn., p.339 and also State of Bombay v. R.M.D.Chamarbaugwala, (1957 SCR 874 : AIR 1957 SC 699) AIR at p.709 and Mazagaon Dock Ltd. v. CIT, 1959 SCR 848 : AIR 1958 SC 861). We are of the opinion that having regard to the constitutional scheme and in order to ensure that the enactment made by Parliament, namely, the University Grants Commission Act is able to achieve the objective for which it has been made and UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter, it is necessary to read the expression "established or

incorporated" as "established and incorporated" insofar as the private universities are concerned."

35. We can also usefully refer to Maxwell's "Interpretation of Statutes" at page 228, which reads as under:

"Common Sense"

"Notwithstanding the general rule that full effect must be given to every word, yet if no sensible meaning can be given to a word or phrase, (Yorkshire Fire and Life Insurance Co. v. Clayton (1881) 8 Q.B.D. 421) or if it would defeat the real object of the enactment, it may, or rather it should, be eliminated (Lyde v. Barnard (1836) 1 M.&W. 115, per Lord Abinger; Stone v. Yeovil (1876)1 C.P.D. 701, per Brett,J.; though in that case the elimination was not necessary, and where elimination is unnecessary there is no power to delete; see ibid., on appeal (1876)2 C.P.D. 99)). The words of a statute must be construed so as to give a sensible meaning to them if possible. They ought to be construed ut res magis valeat quam pereat. (Curtis v. Stovin (1889) 22 Q.B.D. 513, per Bowen L.J.; The Duke of Buccleuch (1889) 15 P.D. 86, per Lindley L.J.; R. v. Bishop of Oxford (1879) 4 Q.B.D. 245, and the reversing judgment, 4 Q.B.D. 525; Att.-Gen. v. Beauchamp (1920) 1 K.B. 650. See also Whitney v. I.R.C. (1926) A.C. 37 at p.52 per Lord Dunedin, and the Foreword to this work).

Again at page 229, it is stated as under:

"The Conjunctions "or" and "and"

"To carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other. The Disabled Soldiers Act, 1601 (c.3) (repealed by S.L.R. Act, 1863 (c.125)), for instance, in speaking of property to be employed for the maintenance of "sick and maimed soldiers," referred to soldiers who were either the one "or" the other, and not only to those who were both. (Duke, Charit. Uses 127. Cf. R. v. Brixton Prison Governor, ex p. Bidwell ((1937) 1 K.B. 305))."

At page 230, it is interpreted by Maxwell as under:

"The Bankrupts Act, 1603 (c.15) (Repealed, Bankrupts (England) Act, 1825 (c.16), S.1) which made it an act of bankruptcy for a trader to leave his dwelling-house "to the intent, or, whereby his creditors might be defeated or delayed," if construed literally, would have exposed to bankruptcy every trader who left his home even for an hour, if a creditor called during his absence for payment. This absurd consequence was avoided and the real intention of the legislature was beyond reasonable doubt effected by reading "or" as "and" so that an absence from home was an act of bankruptcy only when coupled with the design of delaying or defeating creditors.

> (Fowler v. Padget (1798) 7 T.R. 509; R. v. Mortlake (1805) 6 East 397. See now Bankruptcy Act, 1914 (c.59), S.1 (1)(d))."

Again at page 231, Maxwell interpreted as follows:

> "It has been said that in a penal statute "or" should only be changed into "and" or vice versa if the result is more favourable to the subject, but there is no rule of law to that effect (R. v. Oakes (1959) 2 All.E.R. 92)"

36. In the light of the above proposition of law laid down by the Supreme Court as well as explained in the renowned book authored by "Maxwell" in "Interpretation of Statutes", we can safely conclude that even if it were to be held that Rule 5(b)(i) of the 1955 Rules will get attracted under all circumstances, in order to rule out the possibility of any absurdity as explained in the earlier paragraphs of this judgment, we are of the view that in Rule 5(b)(i) of the 1955 Rules, the expression "or" between the words "Court of law or by the Tribunal", has to be necessarily read as "and". If the said provision is read in the said fashion, it will be couched in the following manner:

> "5(b)(i): Notwithstanding anything contained in rule 4, the Government shall after consulting the head of the department concerned, if necessary, decide whether the case shall be tried in a Court of law and by the Tribunal or by the departmental authority concerned."

37. It may be that if the State prefers to make a reference to the Tribunal under the 1955 Rules, there would be no necessity for taking recourse to departmental action for one and the same conduct. However, launching of the prosecution would not certainly result in deprivation of action to be taken either by making a reference to the Tribunal or by way of disciplinary action. We therefore hold that such a construction alone would make the provision meaningful and enforceable. Any other construction as propounded by the learned counsel for the first respondent would defeat the very purpose of the Rules, which cannot be acceded to.

38. It is relevant to note that along with the first respondent, the Regional Transport Officer was also prosecuted, who was also governed by the very same common judgment in Crl.A.Nos.633 and 634 of 1992, under which the acquittal came to be ordered. The question whether after acquittal ordered in Crl.A.No.633 of 1992 dated 20.11.1997 where the RTO can be proceeded against by way of departmental action, came up for consideration in the decision of a Division Bench of this Court reported in 2002 (III) LLJ 66 (State of Tamil Nadu vs. H.A.Munaff), in which, one of us (F.M.Ibrahim Kalifula,J) was a member, and after elaborate discussion on the issue concerned, ultimately it was held that the departmental proceedings initiated by the issuance of charge sheet dated 30.11.1998 should be allowed to be proceeded with in order to find out whether the misconduct levelled against the RTO is made out. The order of the Tribunal in having quashed the charge sheet was set aside by the Division Bench of this Court in the said decision. In fact, in that decision, one of the arguments centred around the question of delay of 11 years involved in issuance of the charge sheet. In paragraph 30 of the said judgment, the Division Bench held that the criminal proceedings came to be concluded only after the disposal of the Criminal Appeal in the judgment

dated 20.11.1997 and inasmuch as the charge sheet came to be issued in November 1998, it cannot be held that the said period can be construed as an extraordinary delay and on that ground to be interfered with the issuance of the charge sheet. It was submitted by learned counsel for the first respondent that as against the above said Division Bench decision of this Court reported in 2002 (III) LLJ 66, when appeal was preferred before the Supreme Court, the same was dismissed on 26.9.2006 in Civil Appeal No.2674-2676 of 2004.

39. Though the very same learned counsel who is appearing for the first respondent in this Writ Petition, appeared for the RTO also, which has resulted in the dismissal of the Civil Appeals before the Supreme Court and the learned counsel for the first respondent took substantial time of this Court by referring to various decisions on the interpretation of Rule 5(b)(i) of the 1955 Rules, to our dismay, the order of the Supreme Court dated 26.9.2006 passed in Civil Appeal Nos.2674-2676 of 2004 was not placed before us. After all, learned counsel appearing for the parties, as Officers of the Court, are expected to assist the Court in arriving at a just conclusion and also as expeditiously as possible. Since it was submitted by the learned counsel appearing for the first respondent before us that he was aware of the filing of the Civil Appeal before the Supreme Court and that the same was not entertained by the Supreme Court, though final order of the Supreme Court was not placed before us, in order to find out the outcome in that case, we directed the Registry to place the copy of the order of the Supreme Court, dated 26.9.2006 passed in Civil Appeal Nos.2674-2676 of 2004. On a perusal of the order of the Supreme Court, we find that the very same contentions were raised before the Supreme Court and the Supreme Court declined to entertain all those submissions. The very first contention raised therein was about the setting aside of the conviction by this Court in the judgment dated 20.11.1997 in Crl.A.Nos.633 and 634 of 1992 and that therefore, by virtue of Rule 5(b)(i) of the 1955 Rules, the Government can either proceed with the departmental proceedings or it can be tried in the criminal Court or by the Tribunal and that the Department having chosen to approach the criminal Court, it was not permissible to initiate the departmental proceedings by issuing the charge memo. The said contention was straightaway rejected by holding that the acquittal in the criminal Court would not debar the appropriate Government to initiate the disciplinary proceedings against the delinquent officer. The Supreme Court, while rejecting the said contention, has stated as under:

> "... Rule 5(b)(i) referred to by the counsel for the appellant, does not inhibit the Government from initiating the departmental proceedings against the appellant. Rule 5(b)(i) therefore, is of no assistance to the appellant."

Thus, the very contention based on Rule 5(b)(i) of the 1955 Rules, having been rejected by the Supreme Court in the connected case, there is no scope for the first respondent to raise the said contention once over, again to be dealt with by this Court. In other words, that contention is squarely covered by the above referred to order of the Supreme Court in Civil Appeal Nos.2674-2676 of 2004, dated 26.9.2006.

40. The next contention raised in those Civil Appeals was that the appellant therein was acquitted in the criminal case honourably and therefore, it was impermissible to prove the charge issued against him. Reliance was placed upon the decision reported in 2006 (5) SCC 446 (G.M.Tank vs. State of

Gujarat). The very same contention has now been raised by the first respondent herein in this Writ Petition. While dealing with the said contention, the Supreme Court, after referring to the two questions framed by the Supreme Court in the decision reported in 2006 (5) SCC 446 (cited supra), held that those questions are not relevant in the facts of the case at hand, that it was not a case where the appellant was dismissed from service even when there was no evidence against him in a criminal Court and that as already noted therein, the appellant therein was acquitted by the High Court by giving him the benefit of doubt and not acquittal on merits. The Supreme Court in its order dated 26.9.2006 in Civil Appeal Nos.2674-2676 of 2004, therefore ultimately held that the decision reported in 2006 (5) SCC 446 (cited supra), was distinguishable on facts and therefore, the same is not applicable to the appellant therein. As the first respondent herein is in all respects, identically placed like that of the appellant before the Supreme Court in Civil Appeal Nos.2674-2676 of 2004, the said decision applies on all fours to the facts of this case.

41. Therefore, we are convinced that the Tribunal was not justified in having set aside the charge memo on the sole ground that the criminal prosecution ended in acquittal by giving benefit of doubt and that since the State had preferred to launch a criminal prosecution, the departmental proceedings cannot be proceeded with.

42. At this juncture, we wish to deal with one of the contentions raised on behalf of the first respondent that for the incident which took place in the year 1989, the first respondent should not be proceeded with by way of issuance of charge memo in the year 1999. It was also pointed out that after the order of the Tribunal dated 20.12.2000, setting aside the charge memo, the first respondent was allowed to retire on superannuation on 31.12.2000 afternoon. The learned counsel for the first respondent pointed out that by proceedings dated 31.12.2000, the first respondent was relieved of his duties on attaining the age of superannuation. It was also pointed out that by proceedings dated 1.6.2001, the Transport Commissioner directed the RTO, Ramanathapuram to take action to draw and disburse the pensionary benefits admissible to the first respondent. It is therefore contended that having regard to such subsequent development, the charge memo issued on 2.6.1999 should not be proceeded with.

43. Under Rule 9(2) of the Tamil Nadu Pension Rules, any departmental proceedings initiated at a time when the delinquent was in service, can be proceeded with by the authority by which such proceedings were commenced, in the same manner as if the Government servant had continued in service. By virtue of Rule 9(2) of the Tamil Nadu Pension Rules, there is no impediment for the petitioner-State to proceed with the departmental action for its logical conclusion. Therefore, the contention of the learned counsel for the first respondent that the first respondent was allowed to retire on reaching the age of superannuation and therefore, the charge memo should not be proceeded with, cannot be accepted.

44. The contention of the first respondent by relying upon G.O.Ms.No.228, Personnel and Administrative Reforms (Personnel.J) Department, dated 13.4.1989 and G.O.Ms.No.544, Personnel and Administrative Reforms (F.R.III) Department, dated 19.6.1987, read along with the amended Fundamental Rules in F.R.54 by way of Ruling No.9 therein, is concerned, we hold that the said contention is totally inappropriate to the case on hand. The said Government Orders as well as the

amended F.R.54 by way of Ruling No.9 therein, only concern the consequence as regards the payment to be made in the event of a Government servant subsequently reinstated in service based on the decision of the Government after his acquittal. In fact, the provision contained in the above referred to G.Os. as well as amended F.R.54 by way of Ruling No.9 therein, is to the effect that the period of suspension or dismissal or removal or compulsory retirement from service, should be deemed to have not been there after the State Government decided to reinstate the Government servant based on his acquittal in the criminal proceedings. In the case on hand, we are not facing such a situation in order to apply the consequences of the above referred to G.Os. as well as amended F.R.54 by way of Ruling No.9. Therefore, the submission made based on the above referred to G.Os. and amended F.R.54 by way of Ruling No.9, is totally misconceived and the same is rejected.

45. As far as the plea of "promissory estoppel" is concerned, it is well settled that there could be no estoppel against a statute. We reject the said contention at the threshold and we hold that having regard to Rule 9(2) of the Tamil Nadu Pension Rules, which enables the State to proceed with the departmental action even after the retirement, there is no question of "estoppel" as against the petitioner-State.

46. As far as the plea of 'res-judicata' is concerned, we are not able to appreciate the contention at all to the case on hand. In order for the principle of res-judicata to apply, the matter in issue should be directly and substantially in issue in former proceedings before a forum which is equal in status in all respects to the latter and that such issue should be as between the same parties, which issue has been heard and finally decided in the former proceedings. By raising the plea of res-judicata, the learned counsel for the first respondent wants to compare the criminal Court verdict with that of the present charge memo issued by the petitioner.

47. In the above context, it will be more appropriate to refer to a recent decision of the Supreme Court reported in AIR 2004 SC 4647 (Management, K.Tea Estates vs. A.B.C.Mazdoor Sangh). The Supreme Court in that case dealt with a case where it was contended that the Labour Court dealt with a dispute relating to the non-employment of a workman, the basis of such non-employment was the misconduct which was also tried in a Criminal Court, wherein it was contended that in view of the honourable acquittal by the criminal Court, the Labour Court ought not to have brushed aside the finding of the Criminal Court. In fact, in the criminal Court verdict, it was specifically stated to the effect that, "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." But yet, the Supreme Court took the view that the approach and objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different and that even the Labour Court was not bound by the findings of the criminal Court. The Supreme Court by referring to its earlier decision in reported in AIR 1997 SC 13 (State of Rajasthan vs. B.K.Meena and others), pointed out that the approach and objectives in the criminal proceedings and the disciplinary proceedings being distinct and different, inasmuch as in the disciplinary proceedings, the question is whether the delinquent is guilty of such conduct as would merit his removal from service or lesser punishment as the case may be, whereas in the criminal proceedings, the question is whether the offence registered against him under the relevant Act is established and

if established, what sentence should be imposed upon him. The Supreme Court reiterated that the standard of proof, mode of enquiry and the Rules governing the enquiry and trial in both the cases are entirely distinct and different. Therefore, there is no question of extending the principle of "res-judicata" in the case of a disciplinary action vis-a-vis the criminal proceedings.

48. Since we do not find any merit in any of the contentions raised on behalf of the first respondent and as we are convinced that the Tribunal was not justified in setting aside the charge memo dated 2.6.1999, for the various reasons set out above, the Writ Petitioner-State is bound to succeed in this Writ Petition.

49. Before concluding, we are constrained to state that but for the action of the first respondent in having approached the Tribunal by questioning the charge memo at its very inception of initiation, it would not have dragged on upto this stage. Therefore, for the subsequent delay between 1999 and this date, the first respondent has to be solely held responsible for dragging on the proceedings. The first respondent having been proceeded for a serious misconduct of corruption attracting Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, where the integrity and honesty of the first respondent in the course of discharge of his duties as a public servant had to be examined, we are of the view that the first respondent was hell-bent to somehow or other drag on the proceedings to his advantage and thereby frustrate the whole proceedings. Such an attempt of the first respondent is bound to be condemned with an iron hand. Therefore, even while allowing this Writ Petition and setting aside the impugned order of the Tribunal and by restoring the impugned charge memo, we direct the petitioner-State to expedite the disciplinary proceedings and conclude the same expeditiously preferably within three months from the date of receipt of a copy of this order. Further, as we have held that the first respondent was squarely responsible for the delay subsequent to 2.6.1999, i.e. the date of charge memo, we feel that in order to refrain such parties from abusing the process of Court, substantial costs should be imposed on the first respondent.

50. For all the above stated reasons, this Writ Petition stands allowed by imposing the costs of Rs.10,000/- (Rupees ten thousand only) on the first respondent to be paid by the first respondent to the Tamil Nadu State Legal Services Authority, High Court Buildings, Chennai-600 104, within six weeks from the date of receipt of a copy of this order, failing which the Tamil Nadu State Legal Services Authority shall execute the order and recover the same from the first respondent through Court. The impugned order of the Tribunal is set aside and the impugned charge memo shall stand restored. The petitioner-State shall proceed with the disciplinary proceedings expeditiously and conclude the same preferably within three months from the date of receipt of a copy of this order. W.P.M.P. and W.V.M.P. are closed.

(F.M.I.K.J) (S.T.J)
4.7.2007

Index: Yes
Internet: Yes
cs

Registry to note:

Registry is directed to draft necessary order for recovery of a sum of Rs.10,000/- being the costs from the first respondent and send this order copy to the Tamil Nadu State Legal Services Authority, Copy to

1. The Transport Commissioner, Chepauk, Chennai-5.

2. The Registrar, Tamil Nadu Administrative Tribunal, Chennai-104.

3. The Tamil Nadu State Legal Services Authority, High Court Buildings, Chennai-600 104.

F.M.IBRAHIM KALIFULLA,J and S.TAMILVANAN,J cs 4.7.2007