N.Gokulakrishnan vs The Regional Transport Officer on 30 November, 2017

Author: S.Manikumar

Bench: S.Manikumar, R.Suresh Kumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.11.2017
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.No.1573 of 2017
and WMP No.20773 of 2017

N.Gokulakrishnan ... Appellant

versus

The Regional Transport Officer,
Nagapattinam. ... Respondent

Writ Appeal filed against the order dated 22.08.2017 in W.P.No.662 of 2016.

For Appellant : Mr.Kamadevan
for Mr.P.Ganesan
For Respondent : Mr.P.S.Sivashanmugha Sundaram
Special Government Pleader

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.) Challenge in this writ appeal is to an order made in W.P.No.662 of 2016 dated 22.08.2017 by which, the writ Court, declined to quash the charge memo bearing Memo No.RC.A1.13842/2015 dated 09.10.2015, issued to the appellant.

2. Facts deduced from the material on record are that the appellant was prosecuted in C.C.No.18 of 2001 on the file of the learned Chief Judicial Magistrate, Nagapattinam, for the alleged demand of gratification, under Section 7 and 13(1) (d), read with Section 13(2) of Prevention of Corruption Act, 1988 and vide judgment dated 06.09.2005, he was convicted and sentenced to undergo two years of rigorous imprisonment and to pay a fine of Rs.2,000/- and in default to undergo rigorous imprisonment for six months for offence under Section 7. Further, he was sentenced to under go rigorous imprisonment for two years and two pay a fine of Rs.2,000/- and in default to undergo rigorous imprisonment for six months for offence under Section 13(1)(d) read with 13(2) of

Prevention of Corruption Act, 1988. The appellant was also sentenced to undergo rigorous imprisonment for three months for the offence under Section 201 IPC. Sentences were ordered to run concurrently.

3. Being aggrieved, the appellant has filed Criminal Appeal in Crl.A.No.753 of 2005. After threadbare analysis of evidence adduced by the prosecution witnesses, statement of the appellant, under Section 313 of the Cr.P.C, arguments of the learned counsel appearing for the parties, and taking note of a catena of decisions, this court vide judgment in Crl.A.No.753 of 2005 dated 21.03.2011, held as follows:

> "22. It is well settled by a catena of decisions of the Hon'ble Apex Court that it is suffice for the accused to offer reasonable and probable explanation for the receipt of the amount.
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> 22.1. The Hon'ble Apex Court in Trilok Chand Jain Vs. State of Delhi reported in AIR 1977 SC 666 has held as under:
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> "The degree and the character of the burden of proof which Sec.4(1) on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under Section 101, Evidence Act reads on the prosecution. .... In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour: it is not necessary for him to establish his case beyond a reasonable doubt."

22.2. In yet another decision in Man Singh v. Delhi Admn. reported in AIR 1979 SC 1455, the Hon'ble Apex Court has held as under:

> "It is well settled that in such cases the accused is not required to prove his defence by the strict standard of proof of reasonable doubt but it is sufficient if he offers an explanation or defence which is probable and once this is done, the presumption under Section 4 stands rebutted."

22.3. The Hon'ble Apex Court has also held in State of Tamil Nadu v. Krishnan & Anr. reported in VII (2000) SLT 266 that, " the version of planting the amount by the prosecution witness is probablised coupled with the fact that the prosecution version of demand of bribe and the circumstances under which the said demand was made is suspect."

22.4. Again in Punjabrao Vs. State of Maharashtra reported in (2002) 10 SCC 371, the Hon'ble Apex Court has held as under:

> " It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt

> as the prosecution, but can establish the same by preponderance of probability. .... It is, of course, true as observed by the High Court that when the investigating office seized the amount from the accused Patwari, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case. "

22.5. The Apex Court in G.M.Girish Babu v. CBI, Cochin, High Court of Kerala reported in (2009) 2 SCC(Cri) 1, has held as under:

> "Mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.
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> .....
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> The crucial question is whether the appellant had demanded any amount as gratification to show any official favour and whether the said amount was paid by PW 10 and received by the appellant as consideration for showing such official favour. It is Accused 1 who is stated to have demanded the gratification for clearing and sending the wet grinder to Dubai but the High Court acquitted him of all the charges and found no case against him. The High Court as well as the trial court found that there was no criminal conspiracy between the appellant and Accused 1 and therefore acquitted both of them of the charge under Section 120-B IPC. The High Court upon re-appreciation of evidence came to the conclusion that the prosecution failed to prove the charge against the appellant for the offence under Section 13(1)(d) r/w. Section 13(2) of the Act.
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> .....
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> The evidence on record suggests that PW 10 had given money to the appellant stating that it was a loan repayable by PW 2 to Accused 1. The appellant was lulled into that belief based on which he received the amount from PW 10. The only evidence available as to any demand of amount as gratification and whether the said amount was paid is that of PW 10, who did not support the case of the prosecution. The appellant at the earliest point of time explained that it was not a bribe amount received by him by the same was given to him by PW 10, saying that it was towards repayment of a loan taken by PW 2 from Accused 1. This is evident from the suggestion put to PW 2 even before PW 10 was examined. Similar suggestion was put to the investigating officer that he had not recorded the version given by the appellant correctly in the post-trap mahazar, Exs.P9 and no proper opportunity was given to

> explain the sequence of events. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence can rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratification. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to the burden placed on the prosecution to prove the case beyond a reasonable doubt.
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> .....
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> Having examined the findings of both the courts, it is held that the appellant has proved his case by the test of preponderance of probability and the amount was not taken by the appellant as gratification. He has made to believe that the amount paid to him was towards the repayment of loan taken by PW2 from Accused 1."

22.6 The Hon'ble Apex Court in State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wandhede reported in (2010) 2 SCC (Cri.) 385 = (2009) 15 SCC 200 has held as hereunder:

> "16. .... indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-`-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

In Crl.A.No.753 of 2005 dated 21.03.2011, the appellate court, has observed that, the principles laid down by the Hon'ble Apex Court, in the decisions cited supra, are squarely applicable to the facts of the instant case, as in this case also, the defence has come forward with probable and reasonable explanation by placing reliance, on the answers elicited from PW2, 4 & 7 and also, by putting suggestions to the said witness, apart from offering such explanation, during the questioning, under Section 313 of the Criminal Procedure Code. In view of the aforesaid reasons, this Court, in the said criminal appeal, has come to an irresistible conclusion that the judgment in C.C. No.18/2001 dated 06.09.2005 on the file of Chief Judicial Magistrate, Nagapattinam, as unsustainable. Thus, while exercising appellate jurisdiction, High Court set aside the conviction and sentence, and acquitted the appellant.

4. Consequent to the acquittal, appellant has made representations dated 17.11.2011, 14.05.2012 and 24.07.2012, respectively, to reinstate him, in service. When there was no response, the appellant has filed W.P.No.28852 of 2012, for a writ of mandamus, directing the Transport Commissioner, State

Transport Authority, Chennai to reinstate him in service, on the basis of the judgment dated 21.03.2011 made in Crl.A.No.753 of 2005.

5. After considering the submissions, and in particular to the counter affidavit filed by the respondents therein that, the Director of Vigilance and Anti Corruption had not preferred an appeal against the judgment made in Crl.A.No.753 of 2005 holding that no charge memorandum was issued to the appellant; dismissal order was not based on disciplinary proceedings and the appellant has been dismissed from service, solely on the ground of conviction, writ Court vide order in W.P.No.28852 of 2012 dated 02.11.2012, has ordered, as hereunder:

"6. Admittedly, there was no charge memorandum issued to the petitioner and the dismissal order was not passed on any such charge memorandum. The petitioner was dismissed from service simply on the ground that he was convicted by the Criminal Court. Now, in the criminal case, on appeal, the petitioner has been acquitted by this Court and there is no appeal preferred to the Hon'ble Supreme Court also. When that be so, reinstatement of the petitioner is automatic and there can be no legal impediment at all for the same. As per the settled law, it is the duty of the respondents to reinstate the petitioner in service forthwith with continuity of service.

7. In view of all the above, the writ petition is allowed with a direction to the respondents to reinstate the petitioner in service with continuity of service. It is further directed that the first respondent shall pass consequential order in this regard within a period of six weeks from the date of receipt of a copy of this order. No Costs."

6. Pursuant to the directions of the writ Court, the Disciplinary Authority cum Principal Secretary / Transport Commissioner, Chennai, has issued proceedings in R.No.46752/VB1/2008 dated 12.12.2012, setting aside the order of dismissal from service. Vide proceedings in R.No.71075/R3/2012 (E.O.No.535/2012) dated 19.12.2012, the Principal Secretary / Transport Commissioner, Chennai, has directed reinstatement of the appellant in service.

7. Thereafter, the Regional Transport Officer (I/C) Nagaipatinam has issued a charge, by a memorandum, under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, in Memo No.Rc.A1.13842/2015 dated 09.10.2015. The charge issued against the appellant is extracted hereunder Annexure-I Charge against Tr.N.Gokul @ Gokulakrishnan, formerly Assistant, Regional Transport Office, Nagapattinam and now Motor Vehicles Inspector (NT), Serkadu.

The accused officer Tr.N.Gokul @ Gokulakrishnan, was working as Assistant at the Regional Transport Office, Nagapattinam from 28.03.1995 to 24.10.2000.

During the said period, the accused officer Tr.N.Gokul @ Gokulakrishnan, formerly Assistant demanded bribe of Rs.5,000/- on 12.10.2000 at his office from the witness Tr.M.Mathivanan for processing the application presented by the witness in the RTO's Office for surrendering the route permits of the two Mini buses 1) TN51 W 3892 and 2) TN51 W 6577 and the Accused officer reiterated his earlier demand on 18.10.2000 at about 12.00 noon and reduced his earlier demand to Rs.4500/- and on 24.10.2000 at about 2.50 P.M. at his office the accused officer reiterated his

earlier demand and accepted the bribe amount of 4,500/- from the witness Tr.M.Mathivanan. The Accused officer was arrested at his office on 24.10.2000 at 5.20 pm, for committing the said grave offences and remanded to judicial custody for 15 days from 24.10.2000. Thereby the accused officer Tr.N.Gokul @ Gokulakrishnan, has failed to maintain absolute integrity and devotion to duty in violation of Rule 20(1) of Tamilnadu Government Servants Conduct Rules, 1973.

Sd/-

Regional Transport Officer I/C Nagapattinam"

8. Statement of allegations for formulation of the abovesaid charge, is extracted hereunder Annexure-II Statement of allegations namely imputation of misconduct or mibehaviour in support of the charge framed against Tr.N.Gokul @ Gokulakrishnan, formerly Assistant, Regional Transport Office, Nagapattinam and now Motor Vehicles Inspector (NT), Serkadu.

The accused officer Tr.N.Gokul @ Gokulakrishnan, was working as Assistant at the Regional Transport Office, Nagapattinam from 28.03.1995 to 24.10.2000.

On 24.10.2000 at about 11.45 a.m the complainant Tr.M.Mathivanan S/o.Muthaiyan, Keela Arayatheru, Thiruvilanthur, Mayiladuthurai, appeared before the Inspector of Police (V&AC), Nagapattinam and preferred a written complaint stating that Tr.N.Gokul @ Gokulakrishnan, Assistant, RTO Office, Nagapattinam demanded bribe of Rs.5,000/- on 12.10.2000 at his office from the complainant Tr.M.Mathivanan for processing the application presented by the complainant in the RTO's Office for surrendering the route permits of the two Mini buses 1) TN51 W 3892 and 2) TN51 W 6577 and again Tr.N.Gokul @ Gokulakrishnan, reiterated his earlier demand of bribe of Rs.5,000/- from the complainant on 18.10.2000 at about 12.00 noon at his office and on the request of the complainant Tr.N.Gokul @ Gokulakrishnan, reduced the bribe amount of Rs.5,000/- to Rs.4500/-. On the strength of the above complaint a case in Nagapattinam (V&AC), Crime No.-01/2000 U/s. 7 of PC Act 1988 was registered. A trap was organized on 24.10.2000 by observing the formalities and routine procedure. During the course of trap proceedings on 24.10.200 at about 02.50P.M. Tr.N.Gokul @ Gokulakrishnan, demanded bribe of Rs.4500/- and accepted the bribe of Rs.4500/- from the complainant Tr.M.Mathivanan, in the presence of an independent official witness Tr.Shankar. Tr.N.Gokul @ Gokulakrishnan, was arrested on 24.10.2000 at 05.20 p.m for the grave offences committed by him as per sections 7, 13(1) (d) r/w 13(2) of PC Act, 1988 and he was remanded in judicial custody for 15 days from 24.10.2000. Thereby the accused officer Tr.N.Gokul @ Gokulakrishnan, has failed to maintain absolute integrity and devotion to duty in violation of rule 20(1) of Tamilnadu Government Servant Conduct Rules 1973.

Sd/-

Regional Transport Officer I/C Nagapattinam"

9. Annexure-III is the list of documents, and the same is extracted:

Annexure-III List of documents by which tthe charges framed against Tr.N.Gokul @ Gokulakrishnan, formerly Assistant, Regional Transport Office, Nagapattinam and now Motor Vehicles Inspector (NT), Serkadu.

1. Copy of the FIR in Crime No.01/2000 of Vigilance and Anti Corruption, Nagapatinam.

2. Copy of the Entrustment Mahazar prepared on 24.10.2000 at 12.30 hrs at the O/o the V&AC, Nagapattinam.

3. Copy of the Seizer Mahazar prepared on 24.10.2000 at 15.15 hrs at the O/o the RTO, Nagapattinam.

4. Copy of the Observation Mahazar prepared on 24.10.2000 at 17.30 hrs at RTO Office, Nagapattinam.

5. Copy of the Rough Sketch prepared on 24.10.2000.

6. Copy of the chemical analysis No.Chem 449/2000 dated 07.11.2000.

7. Copy of 161(3) Cr.pc. statement of witness of Tr.M.Mathivanan, Tr.S.Shankar, Tr.D.Kumarasamy, Tr.K.Arockiyasamy and Tr.S.Gunasekaran.

Sd/-

Regional Transport Officer I/C Nagapattinam"

10. Annexure-IV, is the list of witnesses proposed to be examined, and the same, is extracted hereunder:

Annexure-IV List of witnesses by whom the charges against Tr.N.Gokul @ Gokulakrishnan, formerly Assistant, Regional Transport Office, Nagapattinam and now Motor Vehicles Inspector (NT), Serkadu.

1. Tr.M.Mathivanan, age 34/2000, S/o.Muthaiyan, 22-A Keela Arayatheru, Thiruvilanthur, Mayiladuthurai.

2. Tr.S.Shankar, age 26/2000, Junior Assistant, District Elementary Educational Office, Nagapattinam.

3. Tr.D.Kumarasamy, age 50/2000, Assistant HR&CE, Nagapattinam.

4. Tr.K.Arockiyasamy, age 52/2000, S/o.Gurusamy, RTO, Thiruvarur.

5. Tr.S.Gunasekaran, age-51/2000, Assistant, RTO, Office, Mayiladuthurai.

6. Tr.S.Rajendiran, formerly Inspector of Police, Vigilance & Anti Corruption, Nagapattinam.

7. Tr.M.Kuppusamy, formerly Inspector of Police, Vigilance & Anti Corruption, Nagapattinam.

Sd/-

Regional Transport Officer I/C Nagapattinam"

11. Being aggrieved by the initiation of disciplinary proceedings, Writ Petition No.662 of 2016, has been filed on the grounds inter alia that, when this Court, in Crl.A.No.753 of 2005 dated 21.03.2011, had honourably acquitted the appellant, initiation of disciplinary proceedings, on the same set of facts, is bad. Contention has also been made that after acquittal, the appellant was not only reinstated in service as Assistant, but, was also promoted to the post of Motor Vehicles Inspector (Non Technical), Serkadu, and therefore, there cannot be any charge, for the alleged misconduct, while he was discharging the duties of Assistant. According to the appellant, promotion to the higher post, means, consideration by the appointing authority, to the past conduct, and therefore, no charge could be framed.

12. Though, no counter affidavit was filed in the writ petition, after hearing the submissions of the learned counsel for both parties, vide order dated 22.08.2017, writ Court, has dismissed W.P.No.662 of 2016, as hereunder "5. Further, it is contended that on the same set of allegations, the department shall not be allowed to proceeds after a lapse of many years. This Court wishes to draw an interference from and out of the arguments advanced by the learned counsel for the writ petitioner. The standard of proof required for a criminal case to convict a person is high in nature, but no such high standard of proof is required for punishing a person under the departmental proceedings. Even preponderance of probabilities are sufficient to punish a Government servant under the said rules. In other words, a moral turpitude conduct is sufficient to inflict punishment under the Rules. The same is not the position in respect of the criminal case registered under the Penal Law. In the case on hand, the writ petitioner was involved in a trap case, more specifically, in respect of demand of illegal gratification. No doubt the writ petitioner was finally acquitted in the criminal case. This will not pave way for the writ petitioner to seek exoneration from the departmental disciplinary proceedings. In respect of the disciplinary proceedings a slightest mis-conduct or moral turpitude is sufficient to proceed against an employee under the Discipline and Appeal Rules.

6. The lapse of time will not have any impact on this case, in view of the fact that judgment in C.C.No.18 of 2001 was delivered on 16.09.2005 and on appeal, the writ petitioner was acquitted on 21.03.2011. Thereafter various proceedings were initiated and finally the impugned charge sheet was issued against the writ petitioner.

7. Any disciplinary proceedings are initiated against the writ petitioner should be allowed to continue and the same should reach its logical conclusion. A mere delay of initiation or conclusion will not be of any avail more specifically in respect of corruption cases. The Hon'ble Supreme Court, has time and again reiterated and emphasized that delay cannot be a ground to vitiate action against corruption charges. All such corruption cases should be dealt with in accordance with law, without showing any leniency. Corruption case deserves no leniency and the same cannot be quashed on the ground of delay.

8. The charge sheet itself is under challenge in this writ petition. A writ proceeding can be initiated against the charge memo only on exceptional circumstances and not in a routine manner. A Charge sheet can be challenged mainly on the ground of no jurisdiction, incompetency or malafides. Even in case of raising the allegation of malafides, the charge against whom such an allegation is made is to be impleaded as a party in writ proceedings in his personnel capacity. If, the charge sheet is issued against the statutory Rules, then also writ would lie. In the absence of any one of such grounds, no writ can be entertained, questioning the charge memo on merits. Thus, it is left open to the writ petitioner to submit his explanation/objections and and prove his innocence in the departmental disciplinary proceedings. This Court cannot adjudicate the merits and the demerits of the allegations raised in this writ petition. "

13. Aggrieved by the same, instant writ appeal has been filed. Apart from the grounds raised in the writ petition, inviting the attention of this Court to directions contained in G.O.Ms.No.251 P&AR (N) Department dated 21.04.1988 and further instructions of the Government, at paragraph No.7(ii) of Letter (MS).No.91/N/2012-1 dated 19.06.2012, Mr.Kamadevan, learned counsel for the appellant submitted that, though there is no bar for initiating disciplinary proceedings, after acquittal by a Court, whether on merits or on technical grounds or otherwise, disciplinary proceedings can be initiated, if only the competent authority, is of the view that there are good grounds and sufficient evidence to proceed with the departmental proceedings.

14. According to him, disciplinary proceedings, have been initiated solely, on the basis of a request from the Directorate of Vigilance and Anti corruption to pursue departmental action.

15. He also submitted that, when the vigilance and anti corruption department had not chosen to pursue further action, on the acquittal by a Court of competent jurisdiction, instructions issued to the department to pursue disciplinary action, is without jurisdiction, and therefore, the very formulation of the charges, at the instance of an external agency, without the individual application of mind by disciplinary authority, is erroneous.

16. Inviting the attention of this Court to, Annexure-III, list of documents intended to be produced during disciplinary proceedings and Annexure-IV, list of witnesses proposed to be examined, Mr.Kamadevan, learned counsel for the appellant submitted that the abovesaid documents and witnesses have been examined before

the trial Court, and upon appreciation of oral and documentary evidence, this Court, in exercise of appellate jurisdiction, held that the prosecution has not proved the case, beyond reasonable doubt, and that the defence of the appellant, was probable. According to him, when High Court, in appellate jurisdiction, has arrived at the conclusion, on the probability of the explanation offered, then the judgment rendered in Crl.A.No.753 of 2005 dated 21.03.2011, satisfies both the test of proof beyond reasonable doubt and principles of preponderance of probability.

17. Inviting the attention of this Court to a Hon'ble Division Bench judgment of this Court in W.A.No.1061 of 2009 dated 09.10.2009, Mr.Kamadevan, learned counsel for the appellant submitted that, in case of honourable acquittal on merits, there should not be any further disciplinary action.

18. Mr.Kamadevan, learned counsel for the appellant further submitted that when reinstatement has been ordered as early as on 21.03.2011 and when the appellant was also subsequently promoted as Motor Vehicles Inspector (NT), any act of misconduct alleged against Government servant is deemed to have been condoned. According to him, disciplinary proceedings initiated after four years from the date of acquittal is liable to be quashed on the grounds of delay also.

19. Earlier, when the matter came up for hearing, we directed Mr.PS.Sivashanmuga Sundaram, learned Special Government Pleader to produce the relevant files pertaining to the request made by the Directorate of Vigilance and Anti corruption to pursue disciplinary action, and Government Letter No.70338/TR.II-A/2008 dated 17.04.2012, by which, Government have directed the Transport Commissioner, Chennai to pursue action according to the instructions received by Directorate of Vigilance and Anti Corruption and to report compliance to the Government. Files perused.

20. Mr.PS.Siva Shanmuga Sundaram, learned Special Government Pleader made submissions to sustain the order of the Writ Court on the grounds that the charges are grave. According to him even taking for granted that there is a delay that would not vitiate the entire proceedings. He further submitted that when the writ Court had assigned, valid reasons for sustaining the disciplinary action, there is no need to interfere with the same. He also submitted that Government has power to initiate disciplinary proceedings, even in the case of an honourable acquittal, as the test of proof is principles of preponderance of probability. For the abovesaid reasons, he prayed to sustain the order impugned in this appeal.

21. Heard the learned counsel for the parties and perused the materials available on record.

22. On the aspect of Honourable acquittal in C.C.No.18 of 2001, this Court deems it fit to consider the appreciation of evidence by this High Court in Crl.A.No.753 of

2005

"9. The prosecution in this case has placed strong reliance on the evidence of (a) PW2, who has spoken about the demand and receipt of illegal gratification (b) PW4, the trap witness who has been examined to corroborate the version of PW2 and (c) PW7, the Inspector who has conducted the trap. At the outset it is to be stated that the prosecution has to discharge its initial burden of proving the first and foremost ingredient of demand of illegal gratification said to have been made by the accused prior to the trap and at the time of trap, in order to attract the ingredients of the offence alleged against the accused.

10. As far as the demand of illegal gratification said to have been made by the accused prior to the trap, the prosecution is left with the sole and solitary testimony of PW2. It is pertinent to note that PW2 is not an illiterate person and he is running a business in plying mini buses and holding permits for the same. Therefore, it is needless to state that PW2 must be well aware about the procedure in respect of obtaining and surrendering the permits for plying the mini buses. At this juncture, it is to be stated that the accused was working only as an Assistant in the Regional Transport Office. The application for surrendering the permits, Ex.P4 was addressed to the Motor Vehicle Inspector. Admittedly, PW2 has not met the Motor Vehicle Inspector. PW6, the RTO has categorically admitted in his cross examination that surrender and cancellation of permit order to be passed only by the District Collector and only the documents have to be verified and forwarded to the Collector's Office. PW6 categorically admitted that the accused has already prepared the documents with a note and sent to him on 23.10.2000. PW6 further categorically stated in his cross examination that he was on leave from 13.10.2000 to 23.10.2000 and when he came to the office on 24.10.2000, the file was kept ready by the accused on his table. All these materials available on record makes it crystal clear that it is highly improbable for the accused to demand the illegal gratification for the issue of surrender and cancellation of vehicle permits. If at all the accused intended to make the demand of illegal gratification, he could not have completed his work of preparing the file with an endorsement and thereafter placing the same before PW6, the RTO on 23.10.2000. Therefore, the prosecution version to the effect that the accused demanded the illegal gratification on 24.10.2000 is falsified by the evidence of PW6. Equally, the version of PW2 that the accused demanded the illegal gratification for accepting the surrender and cancellation of permits, prior to the date of trap i.e., on 24.10.2000, is also unbelievable and unreliable.

11. Now coming to the demand of illegal gratification said to have been made by the accused at the time of trap, the prosecution placed reliance on the evidence of PWs.2 & 4. PW4 was instructed by PW7, the Inspector to accompany PW2 to watch the transaction to be taken place between PW2 and the accused. It is the prosecution version that after entering inside the office of the accused, the accused asked PW2 whether he has brought the money and PW2 replied that he has brought the said amount. Thereafter, the accused enquired about PW4 and asked PW4 to wait outside. There is absolutely no reason for the accused to ask PW4 to wait outside after demanding the illegal gratification from PW2. If the accused wanted to avoid the presence of PW4 at the time of making the demand and receipt of the illegal gratification, he could not have asked PW2 as to whether he has brought the money. Therefore, the version of PWs.2 & 4 on this aspect is highly improbable and unbelievable. It is the further version of the prosecution through the evidence of PW4 is that PW4

left the room of the accused and went to the verandah and he was waiting and such being the position, it is inherently improbable for PW4 to watch the transaction between PW2 and the accused. Therefore, this Court has no hesitation to hold that the prosecution has miserably failed to prove the demand of illegal gratification said to have been made by the accused prior to the trap and on the date of trap i.e., on 24.10.2000.

12. At this juncture, it is relevant to refer the principles laid down by the Hon'ble Apex Court in the following decisions:

12.1. The Hon'ble Apex Court in T.Subramanian v. State of Tamil Nadu reported in 2006 (1) SCC (Cri.) 401 has held as hereunder, "The evidence in this case no doubt proves that a sum of Rs.200/- was paid by P.W.1 to the appellant. But the crucial question is whether the appellant had demanded the said amount as illegal gratification to show any official favour to P.W.1 and whether the said amount was paid by P.W.1 and received by the appellant as consideration for showing such official favour. Mere receipt of Rs.200/- by the appellant (admitted by the appellant) will not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification."

12.2. The Hon'ble Apex Court in V.Venkata Subbarao v. State Represented by Inspector of Police, A.P. reported in 2007 AIR SCW 9, has held as under:

"24. Submission of the learned counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under:

0. Presumption where public servant accepts gratification other than legal remuneration. (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

25. Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution. 12.3. The Hon'ble Apex Court in State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wandhede reported in (2010) 2 SCC (Cri.) 385 = (2009) 15 SCC 200 has held as

hereunder :

> "16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety..."

The principles laid down by the Hon'ble Apex Court in the decisions cited supra are squarely applicable to the facts of the instant case, as in this case also this Court already pointed out that the theory of the demand of illegal gratification said to have been made by the accused prior to the trap and on the date of trap is highly doubtful and unbelievable by pointing out the infirmities, inconsistencies and improbabilities found in the evidence of PWs.2 & 4.

13. Now coming to the trap conducted by PW7 on 24.10.2000 at the RTO office, hereagain the prosecution has placed reliance on the evidence of PWs.2, 4 & 7. This Court is constrained to state that the entire trap proceedings are bristled with doubts and improbabilities. As already pointed out PW4, the trap witness was instructed to accompany PW2 to watch the transaction between PW2 and the accused. It is the version of PWs.2 & 4 that the accused enquired about PW4 and that too after demanding the illegal gratification from PW2 and asked PW4 to wait outside his room. It is also the admitted version of the prosecution that thereafter, PW4 left the room of the accused and waited in the Verandah outside the room and such being the position, it is inherently improbable for PW4 to witness the transaction between the accused and PW2.

14. It is pertinent to note that the case of the prosecution is to the effect that after the receipt of the tainted currency notes by the accused, PW2 came out of the room of the accused and gave the prearranged signal and PW7 along with the raiding party rushed to the RTO office within five minutes. Meantime, it is claimed by PW4 that on hearing the noise of the vehicle, the accused started running from his office room. This Court is of the considered view that such version is unbelievable and unreliable. There is no explanation as to why the accused ran away by merely hearing the noise of the vehicle as it is not the case of PW4 that the accused has seen the police jeep or seen the police official in any other vehicle. It is seen that PW4 further claimed that the accused ran away from his room to a toilet near to the room of RTO and thereafter, went inside the room of the RTO. PW7, the Inspector stated that soon after receiving the prearranged signal, he has rushed to the office of the RTO and after hearing the sequence of events from PW2 and PW4, he went to the first floor of the office and found the accused at the room of the RTO and thereafter, he has introduced himself and other witnesses to the accused. He has also stated that the accused was perturbed at that time.

15. At this juncture, it is relevant to refer the decision of the Hon'ble Apex Court, in Sat Paul v. Delhi Administration reported in AIR 1976 SC 294 wherein the Hon'ble Apex Court has held as under:

> "25..... It would not be unusual even for an honest officer to be frightened out of wits on being suddenly accused of bribe-taking by a superior Officer."

Therefore, from the conduct of the accused being perturbed on seeing PW7, no adverse could be drawn against the defence.

16. It is the further version of PW7 that he has conducted phenolphthalein test subjecting the fingers of the two hands of the accused and questioned the accused about the receipt of currency notes from PW2 and the accused admitted the receipt of the amount, but refused to produce the amount. Even this version of the prosecution is also very curious as the accused having admitted the receipt of the amount, there is no need for the accused refusing to produce the same. In this aspect, the version of PW4 is contradictory to the version of PW7 as PW4 has not stated that in his evidence that the accused refused to produce the same and on the other hand, he has stated that he is not having the amount. The fact remains that even as per the admitted version of PWs.4 & 7, the search of the person of the accused revealed that the accused was not having the tainted currency notes either in his shirt pocket or in his hands.

17. It is to be pointed out that soon after the arrival of the police and that too within five minutes after getting the prearranged signal from PW2, the accused was admittedly found with the RTO in the room and as such, it is highly improbable for the prosecution to hold that the accused has ran away from that place and after going to the toilet had once again came back and chatting with the RTO. The said prosecution version is unreliable as it is not possible for the accused to take the currency notes and hide the same in some other place and to return to the room of RTO. Added to all these infirmities and improbabilities, the prosecution claimed that the currency notes were ultimately recovered from a Polythene bag, M.O.7 kept in a carry bag, M.O.8, which was found in the toilet of the RTO office and brought by the official witness, Kumaraswamy. There is no explanation from the prosecution as to how they have traced the carry bag in the toilet room. It is not the version of PW4 or any other witness that the accused kept the amount in the toilet room. The prosecution has withheld the examination of the said material official witness Kumaraswamy and this Court has no hesitation to draw adverse inference against the prosecution case for withholding the material witness namely Kumaraswamy.

18. At this juncture, it is also relevant to note that PW4 has stated, as pointed out earlier, that the accused after hearing the noise of the vehicle ran away to the toilet and thereafter came back to the room of the RTO, but the fact remains that PW4 has come forward with such version only for the first time before the Court as he has not stated so during the investigation while he was examined by PW8, the Inspector of Vigilance, as per his admission in his cross examination. Therefore, the entire trap proceedings right from the version of the prosecution about PWs.2 & 4 entering inside the office of the RTO till the claim of the prosecution about recovery of the tainted currency notes M.O.1 series, as taken from the Polythene bag kept inside the carry bag, are bristled with doubts, inconsistencies and improbabilities.

19. At this juncture, it is relevant to refer the decision of the Hon'ble Apex Court in Union of India Vs. Purnandu Biswas reported in 2005 (12) SCC 576, wherein the Hon'ble Apex Court has confirmed the judgment of acquittal passed by the High Court on the ground that absence of proof of demand and doubts and improbabilities in the prosecution version as to trap. The Hon'ble Apex Court in that decision has held as hereuner :

"35. .... Section 20 of the Prevention of Corruption Act, 1988 reads as under :

"20. Presumption where public servant accepts gratification other than legal remuneration (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

36. In this case demand of illegal gratification by the respondent has not been proved. ....

37. Mr.Narsinga Rao Vs. State of A.P. (2001 (1) SCC 691) relied upon by Mr.Sharan, was rendered having regard to the contention raised therein that it was not enough that some currency notes were handed over to the public servant to make it as acceptance of gratification ; prosecution has a further duty to prove that what was paid amounted to gratification."

20. The Hon'ble Apex Court in Venkatasubba Rao V. State reported in 2007 (3) SCC (Cri.) 175 has also disbelieved the prosecution version in view of the illegalities in the trap proceedings holding that the manner in which the trap proceedings were undertaken is questionable and ultimately set aside the impugned judgment of conviction and sentence passed by the High Court. The Hon ble Apex Court in the said decision has held as hereunder :

> 4. Illegalities committed in the trap proceedings are galore. The complaint, Exhibit P-3 was made on 11-12-1988. PW 2 did not state that he was asked to report on the next day.
>
> 15. According to PW 2, he had attended his office on 12-12-1988 at 2.30 p.m., but the documentary evidence brought on records established that he met the Inspector at 12.30 p.m. According to PW 6, it takes at least 2 to 3 hours to commence pre-trap proceedings, but in this case it was arranged within 40 minutes. The trap party

proceeded in an official car. Eight persons travelled in the same car. Why so many persons travelled in one car, is not explained. Why so many persons had to travel together is also beyond our comprehension. A trap proceeding envisages secrecy and not a wide publicity. It reached Chodavaram at about 6.10 p.m. PW 2, admittedly, was not travelling with them. He was taken to the spot by the said Shri Ram Murthy.

16. PW 2 did not know DW 1 at all. It was DW 1 who not only led the raiding party to the house of the appellant, he pressed the call bell also. Why services of an unknown person, who was not known to PW 2, were taken, remained to be explained. Even the circumstances in which his services had to be obtained were not disclosed.

17. The appellant, at that time, had already taken his dinner. They were, allegedly, taken inside a bedroom, which is again wholly unlikely.

18. According to PW 2, after him several other persons entered the room whom he did not know. Why persons who were not connected with the raid gathered and entered into the room and even could know in which room the money was lying is a mystery.

19. Although, according to PW 2, he and the appellant met in one room alone, when the Inspector asked him to disclose as to where the money was, response came from three other persons and not from the appellant. Strangely PW 2 did not disclose the fact of availability of the money in a particular room to the Inspector.

20. PW 2 stated that the appellant had counted the money with both of his hands, but only the fingers of his right hand, when dipped in the sodium carbonate solution, rendered the positive result.

.....

24. .... In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. ....

25. Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution.

26. In M.S.Narayana Menon V. State of Kerala reported in (2006) 3 SCC (Cri.) 30, this Court held, Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding. The view taken by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case also, the entire trap proceedings suffers from doubts, inconsistencies and improbabilities, as pointed out earlier."

After considering evidence adduced by the prosecution and defence, at para 21 of the said judgment, this court held as follows:

" 21. It is pertinent to note that in the case on hand, the accused has given a reasonable and probable explanation for the recovery of the tainted currency notes from him. It is the definite version of the defence that PW2 thrusted the tainted currency notes into the shirt pocket of the accused and he has thrown out the same and again PW2 placed the said currency notes on the table of the accused and the accused pushed away the currency notes with his hands. The said explanation of the accused is probablised and strengthened by the circumstances as pointed out earlier namely the tainted currency notes admittedly were not recovered from the person of the accused and the recovery of the tainted currency notes from the polythene bag kept in the carry bag, is surrounded by doubts and improbabilities as pointed out earlier. This Court already held that in the absence of proof of demand, the presumption contemplated under Section 20(i) of the Prevention of Corruption Act, cannot be raised. However, in the event of raising the presumption, the accused can very well rebut the presumption by offering probable and plausible explanation. "

23. When the writ petitioner/appellant was not reinstated in service, he has made representation dated 17.11.2011, 14.05.2012 and 24.07.2012, respectively. Left with no other alternative, he has filed W.P.No.28852 of 2012 for a writ of mandamus directing the Transport Commissioner, State Transport Authority, Chennai, to reinstate him in service.

24. At paragraph No.8 of the counter affidavit, the respondents therein have stated that the Directorate of Vigilance and Anti Corruption had not preferred any appeal against the judgment of this Court in Crl.A. No.753 of 2005 before the Hon'ble Supreme Court. Recording the above, at paragraph Nos.6 & 7 of the order made in W.P.No.28852 of 2012 dated 02.11.2012, writ Court issued a direction to the respondents therein, to reinstate the appellant and that the same have been extracted in the foregoing paragraphs.

25. On 12.12.2012, proceedings have been issued by the Principal Secretary / Transport Commissioner, setting aside the order of dismissal from service stating that as there was charge memorandum pending and dismissal order was not passed on any such disciplinary action and solely on the basis of conviction by the criminal court, reinstatement has been ordered by the Principal Secretary / Transport Commissioner, Chennai, the disciplinary authority, and in proceedings dated 19.12.2012 indicates request made by the Directorate of Vigilance and Anti Corruption Department to pursue action against the appellant.

26. Inasmuch as, the Directorate of Vigilance and Anti Corruption has requested the Transport Department to take disciplinary action, it is necessary to consider the same. Files disclose that taking note of the acquittal of the appellant in Crl.A.No.753 of 2005, the Directorate of Vigilance and Anti Corruption has decided, not to prefer an appeal against acquittal. However, taking note of the instructions issued in

G.O.Ms.No.251 P&AR (N) Department dated 21.04.1988 as incorporated in Paragraph No.125 of the Vigilance Manual, in the case of an acquittal by the Court, whether on merits or on technical grounds or otherwise, departmental disciplinary action may be proceeded against the acquitted official for the delinquency of involving in grave official misconducts (i.e. for having accepted the said bribe amount of Rs.4,500/- from the complainant), the Directorate of Vigilance and Anti Corruption, Chennai has observed that disciplinary action may be taken against the appellant. Letter dated 21.07.2011 of the Directorate of Vigilance and Anti Corruption, Chennai addressed to the Transport Commissioner, Chennai, is only suggestive of disciplinary action to be taken against the appellant.

27. Directorate of Vigilance and Anti Corruption, Chennai in the letter dated 21.07.2011 has further observed that "in the event of ordering departmental action against the accused the disciplinary authority may instruct the Departmental Enquiry Officer to initimate the Directorate the exact date of the enquiry sufficiently in advance so that arrangements may be made for the production of witnesses and for the Directorate Officer who conducted the enquiry to be present at the time of the departmental enquiry to assist the enquiry officer.

28. The Directorate of Vigilance and Anti Corruption has prosecuted the appellant, which ended in acquittal, on appeal. After the completion of the trial, it is for the department to take a decision as to whether after acquittal, whether on merits or technical grounds, departmental action is required or not.

29. After the suggestion made by the Directorate of Vigilance and Anti Corruption to initiate disciplinary proceedings, Government have decided to initiate department action and thus on 17.04.2012, the Deputy Secretary to Government, Home (Tr.II-A) Department, Chennai has requested the Transport Commissioner, Chennai to take departmental action against the appellant. The said letter dated 17.04.2012, reads as follows:

"2. Pursuant to the orders of High Court in Crl.A.No.753/05 dated 21.03.2011 the Directorate of Vigilance and Anti-Corruption has requested to take departmental action against Thiru.N.Gokul @ Gokulakrishnan, formerly Assistant in accordance with the instructions issued in G.O.Ms.No.251, P&AR Department, dated 21.4.1988. I am therefore to request you to pursue action accordingly and report compliance to Government."

30. Reading of the letter shows that while considering the request of the Directorate of Vigilance and Anti Corruption to take departmental action, Government have directed the Transport Commissioner that such action should be in accordance with the instructions issued in G.O.Ms.No.251 P&AR (N) Department dated 21.04.1988.

31. G.O.Ms.No.251 P&AR (N) Department dated 21.04.1988 reads thus.

Abstract Personnel Disciplinary cases cases ended in acquittal by Courts Fresh departmental proceedings Institution of instructions issued.

Personnel & Administrative Reforms (Personnel-N) Department

G.O.Ms.No.251 Dated: 21st April 1988

Read:
Government memo No.109/Pub.(Ser.8/66 Dt.14.7.66)

ORDER:

In the Government memo cited, the following general instructions were issued.

(i) Where the acquittal is substantially on merits, on identical facts and charges, it will not be proper for the competent authority to record a finding of guilt and to punish the Government Servants thereon. But it is not a rigid or inflexible rule that the findings of a criminal court are conclusive in every sense, upon the competent authority. If the finding as to acquittal was purely on technical grounds, the competent authority may conceivably punish on the facts. It can certainly punish where the acquittal is solely based on lack of sanction or some technical defect in procedure. In certain cases, the punishment could be for some lesser charge, which may not amount to criminal offence, but may well amount to grave dereliction of duty entailing disciplinary action.

(ii) In cases where the acquittal is not on merits and the competent authority is of opinion that departmental proceedings against the Government Servant are necessary, the competent authority shall within one month from the date of judgment (exclusive of the period required for obtaining copy) report such cases to the Government for orders. Every cases so reported shall be accompanied by a copy of the judgment in the criminal case.

2) The general instructions mentioned in para 1 above were issued long back and the Government have examined the need to issue revised instructions in the matter. In this connection, the following points of distinction between the criminal proceedings and the departmental disciplinary proceedings have not been taken note of:

i) A disciplinary proceedings is not a criminal trial;

ii) In criminal proceedings the purpose sought to be achieved is protection of the Public, while in disciplinary proceedings the purpose sought to be achieved is purity and efficiency of public service;

iii) A criminal court requires high standard of proof for convicting an accused, while such a standard of proof is not required for finding a person guilty in disciplinary proceedings it is enough if there is preponderance of probability of the delinquent's guilt;

iv) Unlike the Criminal proceedings, in a disciplinary proceedings the strict rules of evidence and the provisions of the Evidence Act do not apply; and

v) Initiation of disciplinary proceedings against Civil Servant acquitted in a criminal trial on the same charge is not violative of any provisions of law or principles of natural justice.

3) Criminal proceedings and disciplinary proceedings undoubtedly operate in different fields. The question of continuance of domestic enquiry, after acquittal by a criminal court on the same charge, has come up before courts of law from time to time and it has been observed that taking a view that departmental disciplinary proceedings cannot be taken after the criminal case ended in favour of the delinquent can no longer be construed as good law.

4) In the light of the position set out above, the Government after due consideration and in super-session of the instructions issued in Government Memo No.109/76-9, Public (Service B) Department dated 4.7.66 issue the following instructions.

i) that in the case of an Accused official acquitted by Courts of law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or continue disciplinary proceedings against the said Accused official for the same charges from which he was acquitted by court, if the competent disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings; and

ii) that, in cases of acquittal of an accused official by a court, the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted/continued against him, the competent authority shall, within one month of the date of the judgment (exclusive of the period required for obtaining the copy) shall send a report of such cases to the Government containing justification for the stand taken by him. Every case so reported shall be accompanied by a copy of the relevant judgment of the court.

5) The receipt of this G.O. should be acknowledge.

(By order of the Governor)

32. While issuing instructions in the matter of initiation of disciplinary proceedings in cases ended in acquittal by Courts, the Government in paragraph No.2(iii) of the said Government order have observed that a Criminal Court requires, high standard of proof for convicting an accused, while such a standard of proof is not required for finding a person guilty in disciplinary proceedings and it is enough if there is preponderance of probability of the delinquent's guilt.

33. Further instructions have been issued by the Principal Secretary to the Government in Letter (MS) No.91/N/2012-I dated 19.06.2012, to all the Secretaries to the Government, All Departments of Secretariat, All Heads of the Department, in the matter of cases ended in conviction/acquittal, and the follow up action to be taken in simultaneous proceedings while conviction has been recorded. For brevity, Government Letter, in Letter (MS) No.91/N/2012-I dated 19.06.2012, is extracted.

> "Sir, Sub: Public Servants Cases ended in conviction / acquittal follow up action instructions issued.
>
> Ref: 1. Government Memorandum No.301/70-1 Public (Services-B) Department, dated 31.1.1970
>
> 2. Government Letter No.42619/P&AR (N) Department/95 dated 20.6.1995.
>
> 3. Letter (Ms) No.126, Personnel and Administrative Reforms (N) Department, dated 26.4.1995.
>
> ******** In the Government Memorandum first cited, the Departments of Secretariat and the Heads of Department were informed that the High Court, Madras in its order dated 03.09.1969 in Criminal Miscellaneous Petition No.3311/68 filed by the accused officials who were convicted in the Lower Court and requesting stay of all further proceeding by way of disciplinary action in pursuance of the conviction, has observed that once the conviction is recorded by a competent court of Law on a criminal charge and until such conviction is set aside either on appeal or revision, such conviction remains effective and can be made the basis of dismissal, removal of reduction in rank of a public servants. It was also intimated that, the above decision may be kept as guidance. The same was reiterated in the reference 2nd cited.
>
> 2. It has been brought to the notice of the Government by the appropriate authority that in a number of cases, after the Judgment is pronounced and conviction is imposed, no follow up action is taken by the competent Disciplinary Authority/ Head of the Department, to obtain a copy of Judgment either from the concerned court or from the Director of Vigilance and Anti-Corruption, for causing necessary departmental action against the convicted Government Servant, u/r 17(c) (i) (1) of Tamil Nadu Civil Services (D&A) Rules 1955, in view of his conviction in the criminal case.
>
> 3. As a result, the convicted persons get postings and serve in the departments concerned, on the ground that appeal has been filed by them against conviction and the same is pending before the higher judicial forum.
>
> 4. In this connection, it is clarified that whenever an appeal is preferred by the convicted public servant and the sentence is suspended and not the conviction, the

conviction is in vogue till the trial court's judgment is revised by the appellate/revisional court. The crux of the relevant judgments of the High Court, Madras and Supreme Court of India are furnished below, subject-wise for reference:-

i) (a) Convicted Public Servant should not be allowed to continue in service:-

The Division Bench of the Madras High Court in V.Natarajan and another Vs. Deputy Inspector General of Police, Thanjavur Range, Thanjavur and others (2005(4) MLJ 366) have observed as follows:-

"If, such an official convicted for corruption is allowed to continue in service, it will shake the public administration and the people's confidence in the administration and will also demoralise the honest policemen".

I) (b) Convicted Public Servant should not be allowed to hold public office till he is exonerated after conducting a judicial adjudication at the appellate or revisional level:-

In K.C.Sareen Vs CBI, Chandigarh reported in (2001-SCC (Criminal) 1186-2001 (6) SCC 584), the Hon'ble Supreme Court has observed as follows:-

The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again, should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts, until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions, besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted persons. If honest public servants are compelled to take orders from proclaimed corrupt officers, on account of the suspension of the conviction, the fall out would be one of shaking the system itself. Hence, it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold (SIC) Public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. (I) (c) No need to wait till the appeal / revision and other remedies are over:-

In Deputy Director of collegiate Education (Administration), Madras Vs.S.Nagoor Meera reported in (1995) 3 SCC 377, the Hon'ble Supreme Court has observed as follows:

The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2), once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service. The other course suggested, viz., to wait for initiating disciplinary proceedings till the appeal, revision and other remedies are over, would not be advisable, since it would mean that continuing in service a person who has been convicted of a serious offence by a criminal court .

(II) Disciplinary proceedings for major penalty is not barred, though the sentence is suspended by the appellate court:-

In Deputy director of Collegiate Education Vs.S.Nagoor Meera reported in (1995) 3 SCC 377, the Hon'ble Supreme Court has observed as follows:-

Taking proceedings for and passing orders of dismissal, removal or reduction in rank of a Government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said Government servant accused has been released on bail pending the appeal .

Further, the Division Bench of the High Court, Madras in V.Natarajan and another Vs. Deputy Inspector General of Police, Thanjavur Range, Thanjavur (2005 (4) MLJ 366) has observed as follows:-

It is well settled that merely because the sentence and conviction by a trial court have been suspended by the appellate court, it does not mean that the conviction has been washed off or obliterated (See:S.Vasundara Vs.Canara Bank (1997) 9 SCC 523) : Deputy Director of Collegiate Education (Admin) Madras Vs.S.Nagoor Meera [(1995) 3 SCC 377] Vide Para-10.

(III) Dismissal of a convicted public servant is necessary :-

Municipal Committee Bahadurgarh Vs. Krishnan Behari and others ((1996) 2 MLJ 136 (SC) 1996 (2) SCC 714).

The Hon'ble Supreme Court while discussing the nature of punishment to be awarded in a departmental action against public servant who has been convicted of a serious crime of misappropriation has observed as follows:

In a case of such nature indeed, in cases involving corruption, there cannot be any other punishment other than dismissal. Any sympathy shown in such cases is totally

uncalled for and opposed to public interest. The amount misappropriation may be small or large: it is an act of misappropriation that is relevant.

5. Further, it is well settled that merely because the sentence and conviction by a trial court have been suspended by the appellate court, this does not mean that the conviction has been washed off or obliterated. The Hon'ble Supreme Court in Allahabad District Co-Operative Bank Ltd., Vs.Vidhya Varidh Mishra [(2004) 6 SCC 482] and Secretary, Ministry of Home affairs and another Vs.Tahir Ali khan Tyagi [J.T.2002 (Suppl.1) SC 520] has given directions that departmental proceedings be also initiated against a government servant in connection with the same charges, since it is well settled that even if an employee is acquitted in a criminal case, he can be punished in the departmental proceedings on the same charge.

6. Therefore, all the Heads of Department are requested to take note of the observation made by the Hon'ble High Court and Supreme Court of India in the aforesaid cases and take necessary follow up action immediately on receipt of Judgements or on receipt of report from the Director of Vigilance and Anti-Corruption, regarding conviction of a Public Servant in a criminal case. Further, the instructions issued in Government Memo No.2164/65-11/Pub(Ser.B), dated 11.03.1996 may also be taken note of, that Department action on a Public Servant who has been convicted by a Court need not be deferred, awaiting the result of the appeal preferred by him. This is the position even in respect of a case where an order of stay has been given by the appellate Court. However, if the appeal against the conviction is allowed, then the departmental enquiry or proceedings, as the case may be, initiated based on the said conviction, can be withdrawn, if pending or appropriately reviewed, if already disposed off.

7. Similarly, immediately after the criminal case ended in acquittal in the trial Court or in the criminal appeal or revision, immediate action may be taken to initiate departmental action against the public servant, if the acquittal is either on technical ground or on benefit of doubt, by following the instructions issued in G.O.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 21.04.1988, which is as follows:-

(1) The Criminal Proceedings and Disciplinary Proceedings undoubtedly operate in different directions. The question of continuance of domestic inquiry, after acquittal by a Criminal Court on the same charge, has come up before the Courts of Law from time to time and it has been observed by taking a view that departmental disciplinary proceedings cannot be taken after the criminal case ended in favour of the delinquent can no longer be construed as good law.

(2) Government have therefore ordered:

(i)that, in the case of an accused official acquitted by the Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or to continue the disciplinary proceedings against the accused official for the same charges from which he was acquitted by the Court, if the competent disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings;

and

(ii)that, in cases of acquittal of an accused official by a court, the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted/continued against him, the competent authority shall, within one month from the date of the Judgement (exclusive of the period required for obtaining the copy), shall send a report of such cases to the government containing justification for the stand taken. Every case so reported shall be accompanied by a copy of the relevant judgment of the Court .

8. In view of the aforesaid judgement of the Hon'ble High Court, Madras and Supreme Court of India, the departments of Secretariat and the Heads of Department are requested to initiate immediate disciplinary proceedings under rule 17(C) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the convicted public servants under their administrative control.

Yours faithfully, for Principal Secretary to Government Copy to:

The Vigilance Commission, Chennai-09.

The Directorate of Vigilance and Anti-Corruption, Chennai-28.

The Home Department, Secretariat, Chennai.

(To issue necessary instruction with reference to TNPSS (D&A) Rules, 1955.) Stock File

34. Perusal of the above letter shows that after considering the line of decisions of the Hon'ble Supreme Court and this Court, at paragraph No.6 of the letter, Government have ordered that regarding conviction of a public servant in a criminal case, action need not be deferred, awaiting the result of the appeal preferred by him. This is the position in case of stay by the appellate Court. If appeal against conviction is allowed, the department enquiry or proceedings, as the case may be, initiated based on the said conviction can be withdrawn, if pending or appropriately reviewed, if already disposed of.

35. In the case of acquittal, at paragraph No.7 in the said letter dated 19.06.2012, the Government have directed that, after the criminal case ended in acquittal in the trial

> Court or an appeal or revision, as the case may be, immediate action may be taken to initiate departmental action against a Government servant , if the acquittal is either on technical ground or on benefit of doubt, by following the instructions issued in G.O.Ms.No.251 P&AR (N) Department dated 21.04.1988.
>
> 36. Paragraph 7 of the letter in Letter (MS) No.91/N/2012-I dated 19.06.2012, is extracted.

Similarly, immediately after the criminal case ended in acquittal in the trial Court or in the criminal appeal or revision, immediate action may be taken to initiate departmental action against the public servant, if the acquittal is either on technical ground or on benefit of doubt, by following the instructions issued in G.O.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 21.04.1988.

37. At Paragraph 2 of G.O.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 21.04.1988, Government ordered thus:

> (1) The Criminal Proceedings and Disciplinary Proceedings undoubtedly operate in different directions. The question of continuance of domestic inquiry, after acquittal by a Criminal Court on the same charge, has come up before the Courts of Law from time to time and it has been observed by taking a view that departmental disciplinary proceedings cannot be taken after the criminal case ended in favour of the delinquent can no longer be construed as good law.
>
> (2) Government ordered:
>
> (i) that, in cases of acquittal of an accused official by a court, the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted/continued against him, the competent authority shall, within one month from the date of the Judgement (exclusive of the period required for obtaining the copy), shall send a report of such cases to the government containing justification for the stand taken. Every case so reported shall be accompanied by a copy of the relevant judgment of the Court .
>
> (ii) that, in the case of an accused official acquitted by the Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or to continue the disciplinary proceedings against the accused official for the same charges from which he was acquitted by the Court, if the competent disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings;
>
> (iii)that, in the case of an accused official acquitted by the Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or to continue the disciplinary proceedings against the accused

> official for the same charges from which he was acquitted by the Court, if the competent disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings;

and that, in cases of acquittal of an accused official by a court, the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted/continued against him, the competent authority shall, within one month from the date of the Judgement (exclusive of the period required for obtaining the copy), shall send a report of such cases to the government containing justification for the stand taken. Every case so reported shall be accompanied by a copy of the relevant judgment of the Court .

38. Reading of the above, makes it clear that power of the Government/disciplinary authority to initiate disciplinary proceedings, after acquittal, whether on technical ground or on benefit of doubt or on merits, is not taken away. The Government after setting out the specific guidelines for initiation of disciplinary action, have made it clear that immediate action should be taken and that the competent authority has to arrive at a conclusion, as to whether there are good grounds and sufficient evidence to proceed with the disciplinary proceedings, the competent authority has to arrive at a decision as to whether departmental proceedings need not be instituted / can be continued, against the government servant, within one month from the date of judgment (exclusive of the period required for obtaining a copy of the order) and shall send a report of such cases to the Government containing the justification for the stand taken. Every case so reported shall be accompanied by a copy of the relevant judgment of the Court.

39. Reading of paragraph No.7 of the Government Letter in (MS) No.91/N/2012-I dated 19.06.2012 makes it clear that the competent authority should arrive at a subjective satisfaction on the basis of available materials and come to the conclusion that there are good grounds and sufficient reasons to proceed with the department disciplinary proceeds and such opinion / action should be done within the time frame stated supra.

40. Alleged misconduct was of the year 2000. Acquittal was on 21.03.2011. Appellant was not reinstated in service and that he was constrained to file W.P.No.28852 of 2012, seeking for a mandamus, as stated supra.

41. When G.O.Ms.No.251 P&AR (N) Department dated 21.04.1988, and further instructions contained in Government letter No.(MS) No.91/N/2012-I dated 19.06.2012 of the Principal Secretary to Government (N) Department, Chennai, makes it clear that when it is the competent authority, who has to take a decision, request has been made by the Directorate of Vigilance and Anti Corruption Department, Chennai to take disciplinary action.

42. Though Government in letter dated 17.04.2012 have requested the Transport Commissioner to take departmental action, the same can be done only in accordance with the guidelines contained in G.O.MS No.No.251 P&AR (N) Department dated 21.04.1988. There should be an independent application of mind to the facts of the case and that the competent authority has to arrive at the subjective satisfaction as to whether there are good grounds and sufficient evidence to take

departmental action, after acquittal whether on merits or on technical grounds.

43. Vide letter dated 26.06.2015, Joint Transport Commissioner (A) Chennai has instructed the Regional Transport Officer (Incharge), Nagapattinam to take disciplinary proceedings against the appellant under Section 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules.

TRANSPORT DEPARTMENT From To Thiru.A.Veerapandian, B.E., M.B.A., Thiru.P.Jayabaskaran, Joint Transport Commissioner (A), Joint Transport Commissioner (A), Chepauk, Nagapattinam. (w.e) Chennai-5.

Letter No.46752/VB1/2008, Dated 26.06.2015 Sub: Public Services Transport Department Nagapattinam District Allegation against Thiru.N.Gokul @ Gokulakrishnan, formerly Assistant, Office of the Regional Transport Officer, Nagapattinam, - Case registered Convicted in Trial Court Acquitted by the Hon'ble High Court Reinstatement in Government Service now Motor Vehicle Inspector (NT) Serkadu Check Post Departmental Disciplinary Action Charges under rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules to be framed Original file sent Regarding.

Ref: Govt.Lr.No.56630/Tr.IIA/2012-16, Dt 08.06.2015

I invite your attention to the reference cited, the Government have requested to institute departmental disciplinary action against Thiru.N.Gokul @ Gokulakrishnan, formerly Assistant, Office of the Regional Transport Officer, Nagapattinam.

The Chapter III Paragraph 7 of Hand Book on Disciplinary procedures provides that, the charges can be framed and the inquiry held by any officer acting under the orders of authority competent to award penalty.

Hence, I request you to institute disciplinary proceedings against the said officer, such as framing of charges under rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, obtaining of explanation from the individual after following the procedures as laid down in the Tamil Nadu Civil Service (Discipline and Appeal) Rules and Hand Book on Disciplinary Procedures without any flaw or error etc. It is informed that, the draft charge memo under rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules should be vetted by the Directorate of Vigilance and Anti-Corruption. After that only the same may be issued to the Accused Officer under proper acknowledgment.

I also request to remit the case back to Transport Commissioner to proceed further in this case.

It is also instructed that, the stage of the case should be intimated to this office then and there without fail.

Further I am to send herewith the connected files and records are as follows:-

1) File No.85139/V1/2000

2) C.J.M Court Nagapatinam Records.

Vol-I Pg No.1-81, Vol-II Pg.No.1-371

3) TN 51 W 3892 Original R.C. Book

4) TN 51 W 6577 Original R.C. Book

5) File No.24134/A2/2000 R.T.O. Nagapatinam

6) File No.24133/A2/2000 R.T.O. Nagapatinam

7) D.R-2000 One volume R.T.O. Nagapatinam

8) Attendance Register year 2000 One Volume R.T.O. Nagapattinam I request you to acknowledge receipt of said connected files and records to this office at the earliest.

Joint Transport Commissioner (A) Copy submitted to The Principal Secretary to Government, Home (Tr.IIA) Department, Secretariat, Chennai-9.

Copy to The Directorate of Vigilance and Anti Corruption, R.A.Puram, Chennai-28.

44. Letter dated 08.06.2015, referred to in the abovesaid letter is extracted hereunder:

Letter No.56630/Tr-IIA/2012-16, dated 08.06.2015 From Thiru.Apurva Varma, I.A.S., Principal Secretary to Government To The Transport Commissioner, Chennai-5 (w.e) Sir, Sub: Public Services Transport Department Nagapattinam District Allegation against Thiru.N.Gokul @ Gokulakrishnan, formerly Assistant, Office of the Regional Transport Officer, Nagapattinam Case registered Convicted in Trial Court Acquitted by the Hon'ble High Court Reinstatement into Government Service Departmental disciplinary action Requested Regarding.

Ref: 1. Government Letter No.70338 / Tr.IIA/2008-19, dated 17.04.2012.

2. Government Letter No.56630 / Tr.IIA/2012-1, dated 27.07.2012.

3. From the former Joint Transport Commissioner (A) (I/c) Letter R.No.46752/VB1/2008, dated 23.06.2014.

****** I am directed to refer to the letter third cited and to state that in Government letter first cited (copy enclosed for ready reference) it has been informed that pursuant to the orders of High Court in Crl.A.No.753/05, dated 21.03.2011, the Directorate of Vigilance and Anti-Corruption has

requested to take department action against Thiru.N.Gokul @ Gokuakrishnan, formerly Assistant, in accordance with the instructions issued in G.O.Ms.No.251, P&AR Department, dated 21.04.1988. Therefore, it has been requested to pursue action accordingly and report compliance to Government. In Government letter second cited, (Copy enclosed for ready reference) the Government have again reiterated the above decision of the Government.

2. I am, therefore, directed to request you to follow the above instructions scrupulously and report compliance to Government immediately.

Yours faithfully, for Principal Secretary to Government

45. Materials on record discloses that there is no independent application of mind by the competent authority, to the above but, Implicitly, the Regional Transport Officer, Nagapattinam, has framed the charge memorandum dated 09.10.2015 under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. As extracted in the foregoing paragraphs of the judgment, the list of documents and witnesses, are one and the same

46. When G.O.Ms.No.251 P&AR (N) Department dated 21.04.1988, and instructions contained in Government letter No.(MS) No.91/N/2012-I dated 19.06.2012 of the Secretary to Government, P&AR Department, makes it clear that immediate action to be taken and also set out a time frame, in the case on hand, disciplinary action has been taken after four years from the date of acquittal. Alleged incident is of the year 2000. Prosecution initiated in 2001 ended in acquittal in the year 2011, after 10 years, and four years later, departmental proceedings is initiated. Delay in initiating disciplinary proceedings is also yet another factor to be considered.

47. Yet another submission, which requires to be considered is that on reinstatement, the appellant is stated to have been promoted to the higher post of Motor Vehicles Inspector (NT). When promotion is ordered, presumption is that the alleged misconduct is deemed to have been condoned.

48. Though proof beyond all reasonable doubt is the test in prosecution and preponderance of probability is the principle to be followed in departmental proceedings, taking note of the distinction, Government after considering the several decisions, have issued letter dated 19.06.2012. Going though the judgment in Crl.A.No.753 of 2005 dated 21.03.2011, we are of the view that High Court has observed that the defence had come forward with probable and reasonable explanation by placing reliance on the answers elicited form prosecution witnesses 2 to 4 and 7 and also suggestions to the said witnesses apart from, offering explanations during questioning under Section 313 of the Cr.P.C. Ultimately, the High Court in Crl.A.No.753 of 2005 dated 21.03.2011, held that the conclusion of the trial Court, is unsustainable.

49. This Court in Crl.A.No.753 of 2005 dated 21.03.2011 has also considered the theory of principles of preponderance of probability. Be that as it may, there is no subjective satisfaction by the disciplinary authority, that there exists good grounds and sufficient evidence, to initiate disciplinary proceedings.

50. In W.A.No.1061 of 2009 dated 09.10.2009 in the matter of The State of Tamil Nadu, rep. by its Secretary to Government, Industries Department (E1), Fort St. George, Chennai - 600 009 and another Vs. T.Ganapathay, after considering the decision of the Hon'ble Supreme Court, a Hon'ble Division Bench of this Court, at paragraph Nos.14 to 16 ordered as hereunder.

> "14. In view of the submissions made by the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and on considering the relevant records available before this Court, we are of the considered view that the appellants have not shown sufficient cause or reasons for this Court to allow the present writ appeal by setting aside the order of the learned single Judge, dated 12.1.2009, made in W.P.No.31347 of 2007.
>
> 15. On a perusal of the judgment of the criminal Court, dated 23.08.2006, made in Special case No.4 of 2000, on the file of the Chief Judicial Magistrate, Tirunelveli, we stand convinced that the said acquittal of the respondent by the Chief Judicial Magistrate, Tirunelveli, is not based on the benefit of doubt being given to the respondent, as it is due to lack of evidence.
>
> 16. It is well settled in law that if a person is honourably acquitted based on the merits of the case, it cannot be put against him to deny the service benefits that would have accrued to him in the usual course of the service. However, if a person had been acquitted by a criminal Court, based on the benefit of doubt going in his favour, the same result may not accrue."

51. Decisions relied on by the Hon'ble Division Bench are reproduced.

> "1) In G.M.Tank V. State of Gujarat (2006(3) CTC 494), the Supreme Court had held as follows:
>
> "24..... 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.

25. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. 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....."

2) In Union of India V. N.S.Shekhawat (2008(2) L.LN 783) the Supreme Court had held as follows:

"There cannot be any doubt that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal Court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the Department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair. It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal Court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods. His visit to the border for discharging his duties did not tantamount to misuse of the post or the authority. No evidence has been presented that he did not have the authority to go to the border side on official duties and even the department had not forbidden him from going to that place. It was held that as misappropriation of the property has not been proved, the question of any criminal conspiracy did not arise. No evidence had been adduced to bring home the charge of criminal conspiracy, which is an independent crime."

3) In The Secretary, Vallalar Gurukulam Higher Secondary School V. District Educational Officer, Cuddalore (2005 (4) CTC 7), a Division Bench of this Court had held as follows:

"When a misconduct is committed by an employee, the authorities have the option to take two kinds of proceedings against him. Firstly a criminal proceeding if he is alleged to have committed a criminal offence, and in addition they can also take a departmental proceeding against him by issuing a departmental charge memo. Even

> if the employee is acquitted in the criminal case, he can yet be found guilty in the departmental proceedings. This is because the standard of proof in the two proceedings is different. In criminal proceedings, `the standard of proof' is proof beyond reasonable doubt, whereas in departmental proceedings, standard of proof is like in a civil case i.e., balance of probabilities."

4) In State of Tamil Nadu V. Jayapal.M. (2005-II-LLJ 1138), a Division Bench of this Court had held as follows:

> "The only point on which turned the success or failure of this petition was whether an acquittal of the respondent in criminal case upon a set of facts same as those on which a charge memo served on him were based would justify or not quashing of the charge memo. The High Court observed a judgment of acquittal giving benefit of doubt to the accused could not be equated to such judgment on technical grounds. In this case the acquittal was not on technical grounds. Hence the order of the Administrative Tribunal quashing the charge memo was upheld as proper. Further, on facts, the High Court found the charge memo had been issued fourteen long years after the incident and four years after the acquittal. It observed if the respondent had to face departmental enquiry after the lapse of so many years, considerable prejudice would be caused to him."

52. Gravity of misconduct alone is not sufficient to initiate disciplinary proceedings. Whether there is any need to initiate or continue, as the case may be, requires to be considered. Guidelines issued by the Government cannot be ignored and dehors the same, action cannot be allowed to be taken, at any time by the disciplinary authority/appointing authority, as the case may be, and that if that is allowed, the 'Damocles sword' would be hanging on the Government Servant forever, notwithstanding acquittal in the Court of law.

53. In the light of the above discussion and decisions, on the facts and circumstances of the case, the order impugned is liable to be set aside and accordingly, set aside. Charge memo is quashed. Writ Appeal is allowed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

[S.M.K., J.] [R.S.K., J.] 30.11.2017 Index : Yes Internet : Yes Speaking/Non-speaking orders ars/asr S. MANIKUMAR, J.

AND R.SURESH KUMAR, J.

ars 30.11.2017