

***HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+WRIT PETITION No.30566 of 2013

%25.08.2022

P. Ram Chandra Reddy

....Petitioner.

And:

Industrial Tribunal-cum-Labour
Court, Anantapur, rep by its
Chairman-cum-Presiding Officer
and another.

....Respondents

! Counsel for the petitioner : Sri V. Padmanabha Rao

^ Counsel for the respondent No.1 : None
Counsel for the respondent No.2 : Standing counsel for the
APSRTC.

< Gist:

> Head Note:

? Cases referred:

- 1.(1999) 9 SCC 86
- 2.1994 (2) ALT 253
- 3.(2005) 8 SCC 351
4. (2007) 4 SCC 566
5. (2007) 1 SCC 338
6. 1994(2) ALT 253
7. (2005) 5 SCC 100
- 8 (2006) 4 SCC 265
- 9 (2020) 19 SCC 549
10. (2007) 9 SCC 755
- 11 (2006) 4 SCC 265
- 12 (2006) 5 SCC 446

HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.30566 of 2013

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And:

Industrial Tribunal-cum-Labour
Court, Anantapur, rep by its
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....Respondents

DATE OF JUDGMENT PRONOUNCED:24.08.2022.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**WRIT PETITION No.30566 of 2013****JUDGMENT:-**

Heard Sri V. Padmanabha Rao, learned counsel for the petitioner and Sri K. Arjun, learned counsel representing Sri N. Srihari, learned Standing Counsel for Andhra Pradesh State Road Transport Corporation (in short "APSRTC") for Respondent No.2.

2. The writ petition has been filed under Article 226 of the Constitution of India for the following reliefs:-

"...issue an appropriate Writ Order or Direction particularly one in the nature of Writ of Certiorari and quash the Award passed by the 1st respondent in I.D. No. 131 of 2011 dated 10.07.2013 published on 31.08.2013 upholding the order of removal passed by the 2nd respondent and granting no relief to the petitioner as illegal, unjust, contrary to law and perverse and grant all consequential benefits; and pass..."

3. The petitioner has thus challenged the Award dated 10.07.2013 in I.D.No.131 of 2011 passed by the 1st respondent/Industrial Tribunal-Cum-Labour Court, Ananthapur, published on 31.08.2013 upholding the order of removal of the petitioner by the 2nd respondent.

4. The petitioner joined the services of the APSRTC as a driver in the year 1990 which were regularized w.e.f. 01.08.1991.

5. In an incident of murder of P. Anand, Assistant Manager APSRTC, Madenepally, an FIR was lodged on the complaint of one A. Prem Kumar, Superintendent (Mechanical) APSRTC Depot Mandal in which the petitioner was called for interrogation and remained in police custody from where he was released on 19.02.2010.

6. Initially the 2nd respondent issued a charge memo dated 20.02.2010 containing two charges one of abstention from a charted duty from 18.02.2010 up to 20.02.2010 without any intimation or sanction of leave, resulting into dislocation of operation of the bus services and inconvenience to the travelling public and loss to the corporation; and the other of irregular maintenance of attendance from January 2009 to February 2010, both the charges as constituting misconduct under regulations 28(xxvii) and 28(xxii) respectively of Andhra Pradesh State Road Transport Corporation Employees (conduct) Regulations 1963 (for short "the Regulations, 1963). To this charge memo, the petitioner filed his reply dated 24.02.2010.

7. The 2nd respondent while suspending the petitioner, issued another charge memo dated 09.03.2010 on the only charge of having willfully avoided to inform the fact of his arrest by the police on 05.03.2010 within 48 hours to the Depot authorities and concealment of facts of his arrest and remand dated 06.03.2010 in criminal case No.21/2010 registered against him under Section 302 IPC, Madenepally Town Police Station as constituting misconduct under Regulation 28 (xxii) of the Regulations, 1963.

8. The petitioner was in judicial custody and the charge memo dated 09.03.2010 was not received to him. However, an ex-parte enquiry was conducted. Pursuant to the enquiry officer's report a show-cause-notice dated 20.06.2010 was issued to the petitioner for removal from his services against which the petitioner filed W.P.No.15905 of 2010, which was disposed of by this Court vide order dated 13.07.2010, directing the 2nd respondent to conduct fresh enquiry after issuance of notice at least one week before the

actual date and till the completion of the enquiry the petitioner was deemed to be under suspension.

9. The charge memo dated 09.03.2010 was served to the petitioner to which he submitted explanation dated 18.08.2010, *inter alia* denying the charge and submitting his defense. Fresh enquiry was conducted on 04.10.2010 by the enquiry officer who submitted the enquiry report dated 20.10.2010 holding the charge as proved, against which the petitioner submitted his remarks/objections; but not being convinced with the remarks/objections the show cause notice for the proposed punishment of removal was served to the petitioner against which he filed his explanation dated 07.12.2010 and finally the order of removal dated 08.12.2010 was passed which was exhibited on the notice board on 10.12.2010. The petitioner's departmental appeal was rejected on 21.02.2011 and his review was also rejected on 05.08.2011.

10. The petitioner was acquitted in S.C.No.305 of 2010, arising out of the aforesaid FIR, vide judgment dated 25.07.2011 passed by the II Additional District and Sessions Judge, Chittor.

11. After acquittal, the petitioner represented the appellate authority for withdrawal of the removal order but his representation was rejected on 19.12.2011 holding that his appeal against the order of removal had already been rejected.

12. The petitioner filed I.D.No.131 of 2011 under Section 2-A(2) of the Industrial Disputes Act.1947, which has been dismissed vide the impugned award dated 10.07.2013.

13. Sri V. Padamanabha Rao, learned counsel appearing on behalf of the petitioner submitted that the charge as framed with respect

to the mentioned act did not constitute misconduct under Regulation 28 (xxii) of the Regulations 1963, as there was no failure on the petitioner's part to give full and correct information in the absence of any such information having been demanded by the Superior Officer. He submitted that non furnishing of the information of its own would not constitute misconduct, under Regulation 28 (xxii) unless there is demand by the superior officer. He submitted that the charge as framed, was different and not covered by regulation 28(xxii) as such the petitioner has been punished for a different charge.

14. Sri V. Padmanabha Rao, next submitted that the petitioner was arrested by the police on 05.03.2010 and was remanded on 06.03.2010 and as such he was not in a position to furnish such information within 48 hours and consequently there was no willful avoidance to furnish the information. He further submitted that the punishment of removal for the charge is shockingly disproportionate to the charge, even if taken as proved, and in any case after the petitioner's acquittal in criminal case, vide judgment dated 25.07.2011, his representation has not been considered in the correct perspective, which could not be rejected merely because of earlier rejection of the petitioner's appeal at a time when there was no order of acquittal.

15. Learned counsel for the petitioner placed reliance in the cases of ***Syed Zaheer Hussain vs. Union of India (UoI) And Ors¹***. and ***G. Chandrakanth vs. Guntur Dist. Milk Producers' Union Ltd.²***

16. Sri K. Arjun, learned counsel appearing for the 2nd respondent submitted that earlier the petitioner remained absent from

¹ (1999) 9 SCC 86

² 1994 (2) ALT 253

18.02.2010 to 20.02.2010 for which a charge memo on two charges was issued constituting the acts charged as misconduct under Regulations 28 (xxvii) and (xxii) of the Regulations 1963. The petitioner did not inform about his unauthorized absence and on proof of charge, impugned order of removal has rightly been passed in accordance with law, which is not disproportionate to the proved charge and calls for no interference by this Court in the exercise of writ jurisdiction.

17. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

18. In view of the submissions advanced, the moot point for consideration is as follows:-

“Whether the charge in charge memo dated 09.03.2010 constitutes misconduct under Regulation 28(xxii) of the Regulations, 1963 and the order of punishment is legal and justified?”

19. The submission of the learned counsel for the petitioner is that there was no demand by a Superior Officer to furnish the information as mentioned under Regulation 28 (xxii). The charge as framed did not state about any demand of requisite information by a superior officer. His submission is that only when, an information of the nature under regulation 28(xxii) is demanded by a superior officer and the employee fails to give full and correct information pursuant to such demand, in connection with any offence committed by himself or any other person, within his knowledge it can be said to be a failure on the part of the employee to give full and correct information contemplated under such regulation.

20. Regulation 29 of the Regulations, 1963, provides as under:

“A breach of any of the provisions of these Regulations by an employee shall amount to misconduct and render him liable to disciplinary action.”

21. Therefore, breach of Regulation 28(xxii) of the Regulations, 1963 by an employee shall amount to misconduct and render such an employee liable to disciplinary action.

22. Regulation 28 of the Regulations, 1963 provides as under:

“28. General provisions:

Without prejudice to the generality of the forgoing regulations, the following acts or omissions shall be treated as misconduct:

(xxii) failure on the part of an employee to give full and correct information regarding his previous history and record or regarding any matter connected with the Corporation in connection with any offence committed by himself or any other person, within his knowledge, when demanded by a superior officer.”

23. A bare reading of Regulation 28(xxii) shows that to constitute misconduct thereunder the following ingredients must co-exist.

- 1) There should be a demand by a superior Officer from the employee to give full and correct information regarding his previous history and record or regarding any matter connected with the corporation in connection with any offence committed by himself or any other person, within his knowledge and
- 2) There should be failure on the part of the employee concerned to give full and correct information regarding his previous history and record or regarding any matter connected with the Corporation in connection with any offence committed by himself or any other person as demanded by the Superior Officer.

3) It necessarily follows that the demand by a superior officer and failure to furnish demanded information must precede, framing of charge on that count.

24. In the considered view of this Court, even willful avoidance by the employee to give information of the facts as under regulation 28(xxii) of his own would not constitute any misconduct as the language of regulation 28(xxii) is clear and unambiguous and while considering the same, the words “when demanded by a superior officer” cannot be ignored.

25. In **M.M.Malhotra vs. Union of India others**³, the Hon’ble Apex Court held in paragraphs 17 to 21 on ‘Misconduct’ which are being reproduced as under:

“17. The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. **But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.**

18. In [Union of India and Ors. v. Harjeet Singh Sandhu](#), [2001] 5 SCC 593, in the background of Rule 14 of the Army Rules, it was held that any wrongful act or any act of delinquency which may or may not involve moral turpitude would be "misconduct" under Rule 14.

³ (2005) 8 SCC 351

19. In [Baldev Singh Gandhi v. State of Punnjab and Ors.](#), [2002] 3 SCC 667, it was held that the expression "misconduct" means unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc.

20. Similarly, in [State of Punjab and Ors. v. Ram Singh Ex. Constable](#), AIR (1992) SC 2188, it was held that the term "misconduct" may involve moral turpitude. It must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

21. "Misconduct" as stated in Batt's Law of Master and Servant (4th Edition) (at page 63) is "comprised positive acts and not mere neglects or failures." The definition of the word as given in Ballentine's Law Dictionary (148th Edition) is "A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness."

26. In **Inspector Premchand vs. Government of NCT of Delhi and others**⁴ the Hon'ble Apex Court considered the term "misconduct" and held as under in paragraphs 10 and 11:

"10. In [State of Punjab and Ors. vs. Ram Singh Ex. Constable](#)ⁱ, it was stated:

"Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.' Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the officer holder had no right to perform, acts

⁴ (2007) 4 SCC 566

performed improperly, and failure to act in the face of an affirmative duty to act."

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:

"The term 'misconduct' implies, a wrongful intention, and not a mere error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

27. From the aforesaid judgments, it is evident that "misconduct" though is not capable of precise definition but it is delinquency in performance and its effect on the discipline and the nature of the duty. Generally, it means unlawful behaviour, wrong conduct, misdemeanour etc. The word misconduct has to be construed with a reference to the subject matter and the context where the term occurs. It is failure to act in the face of an affirmative duty to act and is not mere negligence or failure or an error of judgment.

28. In view of Regulation 29 of the Regulations, misconduct is breach of any of the provisions of the regulations by an employee. Regulation 28 also specifically provides that the acts or omissions as mentioned therein i.e under Clauses-(i) to (xxxii) shall be treated as misconduct. Therefore, misconduct under the Regulation, 1963 is the acts or omissions of the specified nature.

29. Here, the charge specifically refers to Regulation 28(xxii) of the Regulations. Therefore, the alleged misconduct is to be

construed within the parameters of Clause (xxii), which is to be read as a whole, without omitting any part thereof. The expression, “when demanded by a superior officer” has also to be taken into consideration which cannot be ignored.

30. The charge against the petitioner vide charge memo dated 09.03.2010 reads as under:

“For having willfully avoided to inform the fact of your arrest by the police on 05.03.2010 within 48 hours to the depot authorities and concealed the facts of your arrest and remanded on 06.03.2010 in the criminal case registered against you vide Cr.No.21/2010 under Section 302 IPC of Madanapalle-II Town Police Station, which constitutes misconduct under Reg.28(xxii) of APSRTC Employees (Conduct) Regulations, 1963.”

31. A perusal of the charge shows that the petitioner was charged with respect to willfully avoiding to inform the fact of his arrest by the police on 05.03.2010 within 48 hours to the Depot authorities and concealment of fact of arrest and remand on 06.03.2010 in the Criminal case registered against him vide Cr.No.21 of 2010 under Section 302 IPC. The charge does not mention about such demand of information by a superior officer.

32. The aspect “when demanded by a superior officer” has been considered by the Tribunal in its award as under:

“The submission of the learned counsel for the petitioner is that the respondent never demanded the petitioner to furnish information as required in the said regulation. This Court is not inclined to appreciate said plea. The proceedings did not commence from the date of issuance of Ex.M.15 charge sheet dated 9.3.2010. As per the material produced by the petitioner himself, proceedings commenced by issuing original Ex.W.2 charge sheet unauthorized absence from 18.2.2010 to 20.02.2010. for the said charge sheet the petitioner submitted Ex.W.3 explanation stating that he was taken by police into custody on 17.2.2010 and he remained in the custody of the police till 19.2.2010. Even in that explanation he no where contended that he was suspected by police to have got involvement in the death of their own employee by name Anand. As per the material available on record more particularly Ex.M.6 which is copy of charge sheet filed by police against the petition in the criminal case, he was arrested on 5.3.2010. The petitioner no where contended that he was attending duties from 17-2.2010 till date of his arrest i.e 5.3.2010. Also by the explanation submitted by him in the form of Exs.W.3 to W.5 it is clear that he did not attend duty as he was not taken

into duty. Thus again demanding the petitioner giving a literal meaning to the words “when demanded by superior officer” which are found in Reg.28(xxii), in the humble opinion of this court is not proper. Any rule or regulation has to be read in consonance with object of the statute. Likewise the application of any rule the case and also with the entire material available on record. Even in the explanation given by the petitioner i.e., in Exs.M.28 and M.34 the petitioner nowhere contended that he had got any valid ground for non-furnishing the information or that he was prevented by any reason to furnish the information. The learned counsel for the petitioner during the course of arguments pointed out that the respondent was aware about the happening of the incident i.e., death of his employee by name Anand. No doubt the respondent might have got knowledge about the death of his employee. But that does not ipso facto mean that the respondent had got knowledge about the accusation of the petitioner herein and the apprehension of the investigation agency about the involvement of the petitioner in the death of their employee. Likewise the respondent cannot be expected to have got knowledge about the arrest of petitioner herein in respect of the said criminal case. It is for the petitioner to pass on the said information to his employer. Admittedly, the petitioner did not do so. Therefore, in the considered view of this Court, regulation 28(xxii) squarely applies to the case on hand.”

33. The Tribunal in holding that regulation 28(xxii) applies has observed that the proceedings did not commence from the date of issuance of the charge memo dated 09.03.2010 but the proceedings commenced by issuing original charge memo dated 23.02.2010 through which the petitioner’s unauthorized absence from 18.02.2010 till 20.02.2010 was questioned. Though the petitioner submitted explanation but did not contend that he was suspected by the police in involvement in the death of P.Anand. The Tribunal further observed that giving literal meaning to the words “when demanded by the Superior Officer” was not proper as any rule or regulation has to be read in consonance with the object of the statute and its application should be seen by giving cumulative effect in all the circumstances and with entire material available on record. In other words, the Tribunal has taken the charge memo dated 23.02.2010 as demand of information by the superior officer in terms of Regulation 28(xxii) of the Regulations, 1963.

34. The Tribunal in so holding legally erred for the reasons more than one.

35. Before proceeding further at this stage itself, it is to be noted that the petitioner was earlier issued the charge memo dated 20.02.2010 containing two charges but thereafter he was issued another charge memo dated 09.03.2010 containing only one charge, different from the earlier charges as would be evident from the charges, of both the charge memos mentioned above. The order of removal has been passed on the proof of the charge in the second charge memo dated 09.03.2010 as would be evident from the relevant portion of the order of removal at pages 2 and 4 thereof, which reads as follows:

“Since prima face has been established, Sri P.R.C Reddy, Driver of Madanapalle-1 Dept was placed under suspension with effect from the date of detention i.e. 5.3.2010 in terms of Reg.18129 of APSRTC, Employees (C.C.&A) Regulations 1967 vide reference 5th cited and issued with a charge sheet vide reference 6th cited with the following charge:

Charge: For having willfully avoided to inform the fact of your arrest by the police on 5.3.2010 within 48 hours to the depot authorities and concealed the fact of your arrest and remanded on 6.3.2010 in the criminal case registered against you vide Cr.No.21 of 2010 under Section 302 IPC of Madanapalle-II Town Police Station, which constitutes misconduct under Reg.28(xxii) of APSRTC., Employees (Conduct) Regulations, 1963.”

I have perused the domestic enquiry report and the evidences available on record. The charge leveled against him is held proved in the domestic enquiry beyond reasonable doubt. I quite agree with the findings of the Enquiry Officer, Tirupati. However, any charge wise findings are furnished hereunder:

Charge: For having willfully avoided to inform the fact of your arrest by the police on 5.3.2010 within 48 hours to the depot authorities and concealed the fact of your arrest and remanded on 6.3.2010 in the criminal case registered against you vide Cr.No.21 of 2010 under Section 302 IPC of Madanapalle-II Town Police Station, which constitutes misconduct under Reg.28(xxii) of APSRTC., Employees (Conduct) Regulations, 1963.”

36. The Tribunal erred, firstly as the charge memo dated 23.02.2010, was with respect to the petitioner's continuous unauthorized absence from 18.02.2010 resulting in dislocation in operation of bus services and causing inconvenience to the travelling public and loss to the corporation, and the 2nd charge related to irregular maintenance of the attendance being habitual absentee and being irregular in attending the duties; whereas the charge memo dated 09.03.2010 did not relate to the demand of any information pertaining to the facts of the charges in the charge memo dated 23.02.2010, but was with respect to the petitioner's arrest on 05.03.2010 and the remand on 06.03.2010 in Criminal Case No.21 of 2010. There is thus no correlation with respect to the information between the charge of memo(s) dated 09.03.2010 and 23.02.2010. It therefore cannot be said that the information with respect to the facts as in charge memo dated 09.03.2010, was demanded by a superior officer vide charge memo dated 23.02.2010. By the date of charge memo dated 23.02.2010, the incident dated 05.03.2010 of petitioner's arrest and dated 06.03.2010 of his remand, had not taken place and as such by any stretch of imagination the charge memo dated 23.02.2010 could not be construed as a demand from the superior officer with respect to the incidents dated 05.03.2010 and 06.03.2010.

37. Secondly in the charge memo dated 09.03.2010 there is no reference of the charge memo dated 23.02.2010. If the charge memo dated 23.02.2010 is to be taken as demand from the superior officer, the charge in charge memo dated 09.03.2010 must have clearly mentioned this fact that the demand was made vide charge memo dated 23.02.2010, as it is well settled in law

that the charge must be specifically framed to enable the employee to know it fully and answer it.

38. In **Government of Andhra Pradesh and others vs. A. Venkata Raidu**⁵, the Hon'ble Apex Court held that it is well settled that a charge sheet should not be vague but should be specific. In that case, the charge mentioned that the employee violated the orders issued by the Government. However, no details of the those orders were mentioned. The Hon'ble Apex Court held that the authority should have mentioned the date of the Government Order but that was not done. Hence, charge was not specific and no finding of guilt could be fixed on the basis of such charge.

39. In **G. Chandra Kanth vs. Guntur District Milk Producers' Union Limited**⁶, upon which learned counsel for the petitioner placed reliance, this Court held that before proceeding with the domestic enquiry against a delinquent official he must be informed clearly, precisely and accurately of the charges leveled against him. The charge-sheet should specifically set out all charges which the workman is called upon to show-cause against and should also state all relevant particulars without which he cannot defend himself. The object of this requirement is that the delinquent employee must know that he is charged with and have the amplest opportunity to meet the charge and to defend himself by giving a proper explanation, after knowing the nature of the offence or misconduct with which he is charged; otherwise it will amount to his being condemned unheard. Fair hearing pre-supposes a precise and definite catalogue of charges so that the person charged may understand and effectively meet it. If the charges are

⁵ (2007) 1 SCC 338

⁶ 1994(2) ALT 253

imprecise and indefinite, the person charged would not be able to understand them and defend himself effectively and the resulting enquiry would not be a fair and just enquiry. This court further held that the charged person ought to be informed of the charge levelled against him as also of the grounds upon which they are based. Charge of misconduct should not be vague. The charge-sheet must be specific and must set out all the necessary particulars irrespective of the fact whether the delinquent knows all about the charges. Whether he knows it or not he must be told about the charges and it is not his duty to connect the charge-sheet with his alleged understanding or knowledge of the charge. If a vague charge is given to delinquent, it is fatal defect which vitiates the entire proceedings and the vagueness in the charge is not excused on the plea that the employee concerned should be deemed to have known the facts correctly. It should not be left to the delinquent official to find out or imagine what the charges against him are and it is for the employer to frame specific charges with full particulars.

40. In the present case, applying the principles of law as laid down in **Government of A.P** (supra) and **G. Chandra Kanth** (Supra), the charge in the charge memo dated 09.03.2010 neither mentions that such information was demanded by the superior officer nor any details of the orders of demand of such information is furnished. The date on which the information was demanded by the superior officer is also not mentioned. The charge also does not specifically refer to the first charge memo dated 20.02.2010. Consequently, this court holds that the charge was not specific nor could be covered under Regulation 28(xxii) of the Regulations, so

as to constitute misconduct under Regulation 29 of the Regulations. No finding of guilt could either be fixed on the basis of such charge, and even if the finding is taken as correct that there was willful failure on the part of the petitioner in furnishing the information, even then in the absence of proof of the demand by the superior officer, any misconduct under regulations 28(xxii) & 29 was not proved and no punishment could be imposed.

41. So far as the submission of the learned counsel for the petitioner that the petitioner was acquitted in S.C.No.305 of 2010 vide judgment dated 25.07.2011 by the II Additional District and Sessions Judge is concerned, the petitioner-accused was given the benefit of doubt, and was acquitted under Section 235(1) Cr.P.C.

42. The law on the point of effect of acquittal in criminal case, on the departmental enquiry or the punishment imposed in the departmental enquiry, is no more *res integra*. In **Manager, Reserve Bank of India vs S. Mani and others**⁷, the Hon'ble Apex Court held that it is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employee. In **Commissioner of Police, New Delhi vs. Narender Singh**⁸, the Hon'ble Apex Court held that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same. In **Syed Zaheer Hussain** (supra), upon which learned counsel for the petitioner placed reliance, in the facts and circumstances of that case, it was held that the punishment of dismissal from service was too harsh,

⁷ (2005) 5 SCC 100

⁸ (2006) 4 SCC 265

which required to be substituted by an appropriate lesser punishment.

43. In **Pandiyan Roadways Corporation Limited vs. N. Balakrishnan**⁹, the Hon'ble Apex Court held that ordinarily, the question as to whether acquittal in a criminal case will be conclusive in regard to the order of the punishment imposed by the delinquent officer in a departmental proceedings is a matter which will depend upon the fact situation involved in a given case. The Hon'ble Apex Court further observed and held that there are two lines of decisions of the Apex Court operating in the field. One being the cases which would go within the purview of **Capt M. Paul Anthony vs. Bharat Gold Mines Limited**¹⁰ and **G.M. Tank vs. State of Gujarat and others**¹¹. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, where (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered or where the delinquent officer was charged with something more than the subject matter of the criminal case and or covered by a decision of civil court.

44. The submission of the learned counsel for the petitioner that after the petitioner's acquittal, the petitioner's representation was not considered in the correct perspective and its rejection merely because the petitioner's departmental appeal was earlier dismissed

⁹ (2007) 9 SCC 755

¹⁰ (2006) 4 SCC 265

¹¹ (2006) 5 SCC 446

cannot be sustained, finds force, as the authority has not considered the effect of acquittal on the punishment imposed.

45. In view of what has been held above it is considered not necessary to enter into the submissions made by the learned counsels for the parties on the point of proportionality of the punishment imposed as in the view of this Court, any punishment could not be imposed at all. But, as a principle there is no dispute that the doctrine of proportionality is applicable in the matters of imposition of punishment which should not be disproportionate to the proved charge.

46. The order of punishment, the appellate order as also the impugned award, cannot be sustained in the eyes of law.

47. In view of the aforesaid the writ petition deserves to be allowed and the impugned orders deserve to be quashed.

48. The writ petition is allowed. The impugned order and award(s) are quashed. The 2nd respondent shall reinstate the petitioner in service with immediate effect with all consequential service benefits and continuity in service, however, with respect to the back wages the 2nd respondent shall take appropriate decision, after affording opportunity of hearing to the petitioner on the point if the petitioner was gainfully employed elsewhere or not during the period he was out of service of the 2nd respondent under the order of removal, in accordance with law, within a period of one month from the date of production of copy of this judgment before the 2nd respondent. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending,
shall also stand closed.

RAVI NATH TILHARI, J

Date:25.08.2022

Note:

Issue CC in one week.

L.R copy to be marked.

B/o.

PGT/Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.30566 of 2013

Date: 25.08.2022

PGT/Gk
